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Appeal No.: _____

IN THE PROVINCIAL COURT OF ALBERTA
JUDICIAL CENTRE OF EDMONTON

HER MAJESTY THE QUEEN

v.

JAMES DAVID COATES

Accused

T R I A L
(Excerpt)

Edmonton, Alberta
May 4, 2021

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EXHIBITS

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1 Proceedings taken in the Provincial Court of Alberta, Courthouse, Edmonton, Alberta

2

3 May 4, 2021 Morning Session

4

5 The Honourable Provincial Court
6 Judge Shaigec of Alberta

7

8 Public Health Prosecutor For the Crown

9 L.B. Grey, QC For the Accused

10 J.S. Kitchen For the Accused

11 A. Pearson Court Clerk

12

13

14 THE COURT: Thank you. Please be seated. Thank you. Good
15 morning. Crown, all right.

16

17 MR. GREY: Good morning, Sir.

18

19 THE COURT: All right. All right. Where we left off yesterday
20 was that Mr. Coates' evidence had concluded on the voir dire. An issue arose as to the
21 application by the defence to mark a copy of a transcript of court proceedings and I had
22 just asked yesterday for a summary of counsels' positions so that I could be aware of
23 what might be an issue this morning, and that's where we're at. And so, Mr. Grey, as I
24 understand it, the defence is still in the process of calling evidence within the context of
25 the blended voir dire. Is there additional evidence that the defence intends to call?

26

27 MR. GREY: We are -- our application, Sir, is to have the --
28 the transcript of the 16 February 2021 show cause hearing entered into evidence as an
29 exhibit in the voir dire. I understand that that application is opposed by my friend. Sir,
30 once we get through this part of it, I -- I had given some thought to how to proceed with
31 the rest of the -- of the week and I have some ideas I'd like to seek the Court's advice and
32 direction about that.

33

34 THE COURT: Right.

35

36 MR. GREY: I'm not sure whether you would like me to
37 speak to that now or after we conclude with this part of the procedure.

38

39 THE COURT: Let's deal with one in turn, so --

40

41 MR. GREY: Okay.

1
2 THE COURT: -- we're still within the context of you seeking
3 to adduce evidence, so let's deal with the transcript issue first.

4
5 MR. GREY: Okay. All right, Sir, may I make my
6 submissions on this?

7
8 THE COURT: Yes, please.

9
10 **Submissions by Mr. Grey (Admissibility of Evidence)**

11
12 MR. GREY: Okay. Sir, the -- starting with the -- the starting
13 point for the admissibility of evidence, in my submission, are two essential features. The
14 first is reliability and the second is relevance. Speaking firstly to the reliability of the
15 proposed evidence, I think this is somewhat obvious. It's a transcript of a court record
16 which has previously been admitted as evidence in a court proceeding. In fact, it was
17 made -- it was -- it was entered into evidence in a -- sorry.

18
19 PUBLIC HEALTH PROSECUTOR: If it assists my friend, I'm not arguing
20 reliability.

21
22 MR. GREY: Okay. Thank you.

23
24 THE COURT: All right.

25
26 MR. GREY: The second part, Sir, is relevance.

27
28 THE COURT: But I would like to you to finish your
29 sentence --

30
31 MR. GREY: All right, Sir.

32
33 THE COURT: -- and that is you were telling me that it's been
34 previously entered in a proceeding.

35
36 MR. GREY: Yes, Sir. Thank you.

37
38 THE COURT: Which proceeding and --

39
40 MR. GREY: Yes, Sir. It was entered as is -- as you know, as
41 is commonly done. The transcript was entered as -- as evidence before Mr. Justice

1 Michalyszyn --

2

3 THE COURT: All right.

4

5 MR. GREY: -- in a Court of Queen's Bench bail review --

6

7 THE COURT: That's what I assumed --

8

9 MR. GREY: -- that was conducted.

10

11 THE COURT: -- but I just wanted to clarify.

12

13 MR. GREY: Yes, Sir.

14

15 THE COURT: All right. Thank you. Go on.

16

17 MR. GREY: With respect to relevance, Sir, we submit, as I
18 indicated to you yesterday, that the transcript is relevant evidence in the context of the
19 voir dire because it's relevant to the different *Charter* violations which are alleged in our
20 notice, specifically Section 7 and Section 2(a). By way of elaboration, Sir, submit there's
21 a -- a twofold causal connection between those two rights and this piece of evidence, and
22 in combination with what the -- what the Court heard yesterday from James Coates.
23 Firstly, the transcript links the 20 December '20 incident which is before the Court today.
24 Two, the deprivation of the accused's liberty which is, of course, protected by Section 7
25 of the *Charter*. Secondly, it also evidences the fact that the accused was granted judicial
26 interim release conditional upon his acceptance of a term which he has told us violated
27 his religious conscience. And so that then causally connects his Section 2(a) protection
28 with his Section 7 *Charter* protection because the imposition of a bail term which
29 necessarily required the accused to forsake his religious convictions, also triggered
30 considerations concerning violation of the -- of Section 9 and also Section 11(e) *Charter*
31 protection concerning the right to a fair bail hearing. I would submit, Sir, frankly, that
32 those other two rights, Section 9 and Section 11(e) are not as particularly and as clearly
33 triggered as the Section 7 one. I'd submit Section 7, though, clearly -- there's a very clear
34 Section 7 violation not only in relation to the right to liberty, but also in terms of, based
35 on the evidence of James Coates, his security to person based upon the evidence he gave
36 about the psychological impacts of being separated from his family, being at the Remand
37 Centre and how that impacted him.

38

39 By analogy, I know, and perhaps this is your practice, Sir, in sitting as a judge in
40 Provincial Court, I have noticed over the past year or so that a -- a term that used to be
41 almost a routine one in terms of -- in terms of judicial interim release that a Court will

1 impose was absolute abstinence on the consumption of alcohol. I've noted recently that
2 Courts have gone away from that and have regarded that as something that is really
3 setting the accused's person -- the - the potential detainee up for failure. One judge I was
4 in front of recently actually compared the imposition of that term to asking an accused to
5 stop breathing because the -- the compulsion to alcohol was so great. Now, by analogy, I
6 -- I understand that -- I'm not suggesting that Pastor Coates is addicted to his religion.
7 What I'm saying is it has the same impact in the context of the bail of the application in
8 triggering his Section 7 right to liberty. In fact, what I'm saying is that was in this - in his
9 particular context, in his particular circumstances an unreasonable bail condition which
10 would have required him to forsake his Section 2(a) rights in order to secure his liberty.
11 And he talked about that in his evidence.

12
13 So in summary, Sir, in my submission, there isn't any juridical statutory procedural or
14 evidentiary basis for excluding this transcript from admission into evidence. I'd submit it
15 -- it's -- it checks all three boxes: reliability, relevance and probative value, and therefore
16 it's prima facie admissible.

17
18 THE COURT:

19 All right. And I do want to - with those
20 submissions in mind and so that Crown counsel knows as well - summarize, if I might,
21 from a trial management perspective, where the proceedings are at and what stage and/or
22 potential relevance the transcript might have. As I understand things, and I'm going to ask
23 you after I summarize them and I'll try to make it straightforward to confirm that that's
24 your understanding as well, and then I'll ask your friend. Crown counsel called evidence
25 on the merits, so to speak, those merits of the case meaning the agreed statement of facts
26 and the evidence of the health inspector. I'm invited, in effect, to conclude, as I
27 understand it, through the agreed statement of facts that the offence set out in the
28 violation ticket is provable, but not to make any finding at this stage in that regard given
29 the direction of the Supreme Court of Canada in *R. v. Lloyd* and in *Big M Drug Mart* that
30 a Provincial Court judge has the jurisdiction and, in fact, duty to declare legislation
31 invalid in criminal cases or quasi-criminal cases as it relates to the individual, not under
32 Section 52(1), but rather "an individual," to quote *Big M Drug Mart*, "is not to be
33 convicted under an invalid statute." I'm by no means saying the statute is invalid. I'm
34 saying that's an issue that will later be determined upon proper evidence being adduced.
35 That's an issue for a later day, i.e. an argument about the constitutional validity of the
36 legislation itself is, by agreement of counsel and through the case management process
37 that predated me, an issue that will be dealt with at a later day. There'll be evidence
38 called. But at this time, in this portion of the trial and in particular in relation to the
39 blended voir dire, although there is some layering of similar issues, the defence is seeking
40 a different remedy, and that is the defence is seeking a remedy -- a series of remedies,
41 potentially, under Section 24(1) of the *Charter*. And it is in relation to that remedy that
you seek which includes an alleged violation individually of Mr. Coates' Section 7 rights

1 that you seek to adduce the transcript as relevant evidence and only in relation to that
2 application, the 24(1) application. Is that correct?

3

4 MR. GREY: That is correct, Sir.

5

6 THE COURT: And have I correctly summarized the
7 proceedings and is my understanding of the proceedings ad idem with yours?

8

9 MR. GREY: Yes, Sir. And to be more clear about it, from
10 our point of view, and this is something that, as I said, I'll seek advice and direction from
11 you later, from our point of view, the focus for defence this week is to present the case to
12 you for these *Charter* breaches, mainly in relation to the Section 24 remedy, but also to
13 set the stage, as it were, for the subsequent proceedings, second phase as -- as you
14 described it.

15

16 THE COURT: One of the remedies you're seeking in this
17 proceeding this week is a stay of proceedings, at least as set out in the motion?

18

19 MR. GREY: That is correct, Sir.

20

21 THE COURT: If that remedy were to not be granted, then what
22 you're saying -- in other words, if the proceedings were to continue beyond this week,
23 you're saying that the evidence adduced throughout the course of this week would be
24 applied, by consent, to the next *Charter* voir dire which is the broader constitutional issue
25 as it relates to the regulations attaching to Section 73 of the Alberta *Public Health Act*?

26

27 MR. GREY: That -- that is correct, Sir.

28

29 THE COURT: All right.

30

31 MR. GREY: But it's also true to say what you said earlier,
32 that the Section 7 allegation is particular to the 24(1) remedy.

33

34 THE COURT: Yes.

35

36 MR. GREY: That's why we're --

37

38 THE COURT: Understood. All right. Crown, with that in
39 mind, your submissions, please. And firstly, do you agree that that's the stage of the
40 proceedings we're at? In other words, and just to summarize, perhaps more succinctly, the
41 Crown called evidence on its merits, but there is a challenge to the validity of the

1 legislation on a constitutional level that I need to determine as it relates to Mr. Coates as
2 an individual rather than a declaration under Section 52 of the Constitution, so I can't
3 make a determination, finally, so to speak, on the merits. That would have to be
4 adjourned to a later date. All of that evidence will be relevant. It's relevant to this
5 constitutional *Charter* application raised by Mr. Grey on behalf of Mr. Coates, ultimately,
6 potentially relevant to the broader constitutional issues and Section 1, if this case
7 progresses to that point, depending upon my ruling in relation to the Section 24 remedies.
8 All of that being said, the transcript that defence seeks to adduce is relevant only to the
9 Section 24 remedy sought within the context of this blended voir dire. Is that your
10 understanding of the procedure that has been proposed and that I understood to be
11 proposed?
12

13 PUBLIC HEALTH PROSECUTOR: Yes. I -- that is my understanding and also that
14 is my -- I agree with the Court's assessment --
15

16 THE COURT: All right.
17

18 PUBLIC HEALTH PROSECUTOR: -- that the transcript is limited to the Section 7
19 in the *Charter* argument.
20

21 THE COURT: All right. So we'll call this the *Charter* as
22 opposed to the constitutional --
23

24 PUBLIC HEALTH PROSECUTOR: Absolutely. That works, that -- that language.
25

26 THE COURT: -- just so that everybody knows. All right.
27

28 PUBLIC HEALTH PROSECUTOR: Yeah. That language does assist.
29

30 THE COURT: Thank you very much. Then your submissions,
31 please.
32

33 **Submissions by Public Health Prosecutor (Admissibility of Evidence)**
34

35 PUBLIC HEALTH PROSECUTOR: Yes. So the causal connection, I'm going to
36 suggest that's the only causal connection of the December 20th ticket that was issued that
37 is the subject of the proceedings today is that it was part of the Crown's submission as to
38 what had occurred and what happened. That was it. There was no connection other than it
39 was a recitation of all of the events, as the Court heard from the inspector. The -- the
40 undertaking and the resulting condition imposed by the justice of the peace all relates to
41 something that happened in February. That is not the subject of these proceedings. That

1 was dealt with by way of guilty plea and the charges were withdrawn. They're not even
2 live charges before the Court at present. So my submission is that there is no link
3 between what's happened subsequently and what happened on December 20th, 2020.
4

5 THE COURT: Could I ask you this? Clearly, whether there is a
6 link is an issue I'll need to decide. I have two questions. One is this entire concept of a
7 causal link, that's a phraseology more common to Section 24(2). The language of Section
8 24(2) requires a finding that the evidence was "obtained in a manner" and therefore
9 Courts have struggled with temporal, causal links --
10

11 PUBLIC HEALTH PROSECUTOR: Nexus.
12

13 THE COURT: -- nexuses. 24(1) is different. Section 24(1) is
14 broader. Section 24(1) can, for example, include after-the-fact conduct by police,
15 *Nasogaluak*. It can include after -- and by "after-the-fact," I mean after the alleged
16 offence occurred. It can include after-the-fact conduct by the Crown, *Stinchcombe*. The
17 Supreme Court has told us many times that 24(1) has both a function in ensuring trial
18 fairness and in ensuring the proper functioning of the administration of justice. So causal
19 link is relevant, but is different, isn't it, under Section 24(1)? Causal link is a factor that I
20 would potentially look to, but I'm not looking as to whether the evidence was obtained in
21 a manner. I'm looking at a broader section of the *Charter*, am I not?
22

23 PUBLIC HEALTH PROSECUTOR: The Court's correct. It is broader, but I submit
24 there is -- it still has to be relevant to --
25

26 THE COURT: Right.
27

28 PUBLIC HEALTH PROSECUTOR: -- the charges before the Court. And the
29 Crown's submissions are that -- are that they aren't relevant. They are not -- they're not
30 active proceedings which also impacts on the relevance, Sir. That would be my
31 submission.
32

33 THE COURT: Thank you very much.
34

35 **Ruling (Admissibility of Evidence)** 36

37 THE COURT: I am going to allow, as filing as the next
38 exhibit, in the voir dire, a transcript of the February 16, 2021 show cause hearing. I note
39 that in addition to my comments already made, namely that the purpose and effect of
40 Section 24(1) is potentially, depending upon the case, broader than Section 24(2), and
41 that Section 24(2) includes language of "obtained in a manner" which is not found in

1 Section 24(1). I note that this is the defence or accused's application for a remedy. And in
2 that regard, it would be an unusual case for the Court to exclude or to not allow the
3 defence to adduce evidence within the context of a *voir dire* on a *Charter* issue wherein
4 the defence says that that evidence may be useful in discharge of their onus or, in other
5 words, may tend to prove or disprove a fact in issue given that it is the defence
6 application and, in effect, the defence *voir dire*, and the defence is in the best position to
7 know, ultimately, in argument, what facts are in issue or that they are tending to prove or
8 disprove. Weight is a different issue. What weight, if any, will be afforded to the
9 transcript will be determined, of course, once I've reviewed the same within the context
10 of the evidence that I've heard and the submissions received.

11
12 Do you have a copy of the transcript to mark?

13
14 MR. GREY: I do, Sir.

15
16 THE COURT: And I think my counting is right, madam clerk,
17 is this V-5?

18
19 THE COURT CLERK: Sorry. It --

20
21 THE COURT: Sorry?

22
23 THE COURT CLERK: No, V-6, I think.

24
25 THE COURT: Six. Sorry. I missed the two documents that --

26
27 THE COURT CLERK: Thank you.

28
29 THE COURT: -- Mr. Coates had marked through his evidence.
30 I'll look at it later. Thank you.

31
32 THE COURT CLERK: Thank you.

33
34 THE COURT: So Exhibit V-6, transcript of the February 16,
35 2021 show cause hearing.

36
37 **EXHIBIT V-6 - Transcript of February 16, 2021 Show Cause Hearing**

38
39 THE COURT CLERK: Thank you.

40
41 **Discussion**

1
2 THE COURT: Does the defence intend to call any further
3 evidence on the blended voir dire? And to be specific, are you calling any further
4 evidence in relation to your April 14, 2021 *Charter* notice?
5

6 MR. GREY: Sir, the only other witness that we would have
7 potentially, and this gets my earlier submissions to you, would be the expert, Dr. Martin
8 Koebel. His evidence would be particular to the applicability or the availability of a
9 Section 24(1) remedy. And so, strictly speaking, he's -- he would not be providing
10 evidence that was intended to be put before the Court to persuade you that a *Charter*
11 breach occurred. And so at this stage, I'm seeking -- we're seeking some advice and
12 direction from the Court as how -- how you would like to proceed. Dr. Koebel would not
13 be available, Sir, until tomorrow.
14

15 THE COURT: I'm not sure I either heard or understood.
16

17 MR. GREY: Okay.
18

19 THE COURT: Are you saying -- and I've received Dr. Koebel's
20 curriculum vitae and other materials by agreement of counsel, are you saying that Dr.
21 Koebel's evidence is somehow relevant to the Section 24(1) remedy, or that it's not, that it
22 would be relevant to some later stage of the proceedings? Because his -- I thought you
23 said it was relevant and then you told me it didn't have anything to do with whether a
24 *Charter* breach has occurred.
25

26 MR. GREY: What I meant to say, Sir, and to be clear, his --
27 his evidence would be -- would be proffered for the purpose of persuading the Court that
28 a Section 24 remedy, the ones that we've sought in our notice, would be applicable.
29

30 THE COURT: Let me ask before we go further. Is the Crown
31 opposed to the receipt of Dr. Koebel's evidence within the context of the Section 24(2)
32 voir dire before I ask --
33

34 PUBLIC HEALTH PROSECUTOR: Yes, Sir, I am.
35

36 THE COURT: All right. And on the basis of?
37

38 PUBLIC HEALTH PROSECUTOR: Relevance.
39

40 THE COURT: Thank you.
41

1 Mr. Grey, Dr. Koebel's a medical doctor; correct?

2
3 MR. GREY: Yes, Sir. He's a pathologist.

4
5 THE COURT: He's a pathologist. How is the evidence of a
6 medical doctor -- and I'll be more specific in this instance, how is the evidence of a
7 pathologist, which will be general in nature, scientific in nature, how is that of assistance
8 in determining whether or not this -- the remedies that you sought -- and to be clear, you
9 sought a dismissal of the charge, and I'm just reading from your notice, or in the
10 alternative, an absolute discharge, in the alternative, a stay of proceedings. Those are the
11 three remedies you're asking me ultimately --

12
13 MR. GREY: Yes, Sir.

14
15 THE COURT: -- to consider under 24(1)?

16
17 MR. GREY: Yes, Sir.

18
19 THE COURT: How would expert evidence be of assistance?
20 It's very uncommon to call expert evidence about medical matters to be of assistance in
21 determining the appropriateness of a potential remedy.

22
23 MR. GREY: Yes, Sir. And this is part of what -- I appreciate
24 this because it's part of what we're seeking advice and direction from the Court about.

25
26 THE COURT: I think that I can just say --

27
28 MR. GREY: Sorry.

29
30 THE COURT: -- it is very -- I won't try to chart the course of
31 litigation here, but it is very potentially relevant to Section 1 --

32
33 MR. GREY: Yes, Sir.

34
35 THE COURT: -- obviously, but we're not at the Section 1
36 stage. Now, if Dr. Koebel has made plans and is a busy physician and is travelling, we
37 can potentially discuss hearing his evidence within a different voir dire and applying it
38 later at a different stage --

39
40 MR. GREY: M-hm.

41

1 THE COURT: -- if that's your intent, but if your intent is, no,
2 it's relevant to whether you, in this focussed voir dire, grant, for example, a stay of
3 proceedings or some lesser remedy, if any remedy, you'll need to explain that --
4

5 MR. GREY: All right.
6

7 THE COURT: -- because it would be very uncommon.
8

9 MR. GREY: I'll do my best to do that, Sir. The -- I believe
10 the Court's question was what is -- what would be the relevance of this expert evidence to
11 the -- to the issues that are presently before the Court. The -- the reason why that witness
12 would be called is as follows. The Court has heard a lot in the course of this trial about
13 COVID-19, different things. We've heard evidence from Ms. Hanrahan about her role,
14 her job, the restrictions that she's tasked with imposing. And then we also heard from
15 Pastor Coates who talked broadly in the course of evidence about his own ideas, his own
16 beliefs based upon sources of information that he accessed that informed decisions that
17 he made about whether or not to follow these restrictions that were imposed by a health
18 order. The purpose of Dr. Koebel's evidence would be to provide a basic objective
19 standard or some objective evidence or some objective scientific support for the -- let's
20 call it the belief or the opinion that Pastor Coates formed, specifically that COVID-19 did
21 not present a significant health risk to the community of his church. So it -- it's our
22 submission that that would be relevant in the context of the availability of a Section 24
23 remedy because, in our submission, part of what the Court would have to conclude, let's
24 say, for example, in relation to a discharge or a stay of proceedings. As you know, Sir,
25 those are extraordinary remedies. Perhaps all the 24(1) remedies are extraordinary, but
26 those are extraordinary remedies. And in order for the Court to arrive at such a
27 conclusion, I doubt that a Court could do that. If the Court were convinced or persuaded
28 that what Pastor Coates did and what is admitted in the trial pose a serious health risk to
29 the community of his church. And so that, in a -- nutshell, Sir, that's the explanation of
30 why we propose to call Dr. Koebel.
31

32 Now, just backing up a step, Sir. I had indicated to my friend in the course of the case
33 management process that you've referenced, My Lord (sic), before the Honourable Judge
34 Gardner, that if this became an issue from the Crown's point of view, if the Crown
35 thought that this put them at a disadvantage because they don't have expert evidence to
36 call at this stage, that I would not press the point. In other words, if the Crown is taking
37 the position that Dr. Koebel's evidence should be part of the second phase, as it were, of
38 this procedure, I -- I -- I'm not going to bang the -- my desk about that. I -- I think that --
39 that that's understandable. It's an understandable position. And I've given her my
40 undertaking in that regard. Obviously, from our point of view, as I've said, we think that
41 Dr. Koebel's evidence would be relevant in the Section 24(1) inquiry. We would be quite

1 content to call Dr. Koebel under the circumstances that you've indicated, Sir, that is that it
2 would necessarily -- it would be more relevant to the second phase. That's another option.
3 And here -- here again, I'm seeking your advice and direction in that regard. The other
4 thing I would be interested to know from Your Honour is we're obviously asking you for
5 a decision concerning whether or not certain of Pastor Coates' *Charter Rights* were
6 violated. But appreciate hearing from you as to whether you -- and -- and not just sort of
7 right now, but perhaps by the end of the day, you could give us an indication of whether
8 or not you would be prepared to -- to render a decision on that point now or, given that
9 we do have the benefit of some period of time, between the first and second phases of the
10 process, whether you would prefer to -- to reserve and consider all of the issues that have
11 been put before you, and ample case law, and then render a written decision sometime in
12 that interim. So these are things that --

13

14 THE COURT: Right.

15

16 MR. GREY: -- obviously, are options for the Court and we're
17 interested to know how the Court would like to proceed.

18

19 THE COURT: It will be latter.

20

21 MR. GREY: Okay.

22

23 THE COURT: And so once all of the evidence is called, that is
24 to be called in relation to this *voir dire*, the *Charter voir dire*, I'll hear full submissions
25 from counsel and then reserve.

26

27 MR. GREY: All right.

28

29 THE COURT: I appreciate that there is a next stage unless a
30 stay of proceedings is granted, and I appreciate that -- two things. One is the mechanisms
31 of scheduling that next stage would potentially be moving in any event and, two, that
32 there would be a need for a decision through me in relation to this *Charter* application in
33 a timely fashion and I would endeavour -- in other words, I'd be reserving for weeks, not
34 months. So does that help?

35

36 MR. GREY: It does, Sir. In -- in that event, I think I'm going
37 to seek instructions about this, but I would think it might make the most sense to -- to not
38 call Dr. Koebel. And if there's no objection from the Crown, to make that part of the
39 inquiry, let's say, part of the second phase.

40

41 THE COURT: Right.

- 1
2 MR. GREY: And then that would give the Court time to
3 render its decision on, from our point of view, the essential question for this week, and
4 that is whether or not Pastor Coates' *Charter Rights* were violated.
5
- 6 THE COURT: Whether they were violated and if so, what, if
7 any, remedy under Section 24(1) -- because the issues are a little bit sandwiched in the
8 sense that a violation in and of itself, the Crown is entitled to a Section 1 justification
9 attempt in that regard and that's being adjourned till later. But I can handle all of those
10 legal issues. Let's take a few minutes and you can seek instructions. Certainly, Mr. Grey,
11 to be clear, no one is saying that Dr. Koebel would not testify, It's where would his
12 evidence fit best in the proceedings.
13
- 14 MR. GREY: Yes, Sir.
15
- 16 THE COURT: And given now that you know that once I hear
17 the evidence the parties intend to call, and the arguments, we would be scheduling a
18 return date for a decision on this part of the application sometime in the next
19 approximately 3 or so weeks.
20
- 21 MR. GREY: Okay.
22
- 23 THE COURT: All right? All right. So why don't we take a
24 break and you can discuss the matter with your client and/or with the Crown, and we will
25 reopen when you let madam clerk know that we're ready. All right?
26
- 27 MR. GREY: Thank you, Sir.
28
- 29 THE COURT: Thank you.
30
- 31 (ADJOURNMENT)
32
- 33 THE COURT: Thank you everyone. Please be seated.
34
- 35 Mr. Grey?
36
- 37 MR. GREY: Yes, Sir. Following the --
38
- 39 THE COURT CLERK: Please be seated.
40
- 41 THE COURT: Sorry? Go ahead now.

1
2 MR. GREY: Sir, following the -- the last exchange with the
3 -- the Court and having listened to -- we appreciate you've been very frank with us about
4 what your process is going to be, we've received instructions to not call Dr. Koebel. And
5 subject to how you want to proceed in terms of timing, we're prepared to proceed to
6 argument respecting the -- in the blended voir dire concerning the alleged *Charter*
7 violations.
8
9 THE COURT: Thank you.
10
11 MR. GREY: But --
12
13 THE COURT: And just in fairness, Dr. Koebel may be a
14 witness at a later stage of the proceedings?
15
16 MR. GREY: Yes, Sir. We would reserve that.
17
18 THE COURT: Yes. Thank you. So did you want to make
19 argument now? Did you prefer time to organize things? The argument can be at any time
20 today, subject to whatever works best for you, and then the Crown.
21
22 MR. GREY: Yes, Sir. We --
23
24 THE COURT: You would argue first, so when would you like
25 to start, Mr. Grey?
26
27 MR. GREY: We're -- we're prepared to proceed if my friend
28 is. I don't want to put her at a disadvantage, if she needs time.
29
30 THE COURT: Well, we may need a break by then, depending
31 on --
32
33 MR. GREY: Okay.
34
35 THE COURT: -- how long we go. So --
36
37 MR. GREY: All right, Sir.
38
39 THE COURT: -- any --
40
41 PUBLIC HEALTH PROSECUTOR: So I -- so then all of the evidence for the voir

1 dire has been called?
2
3 MR. GREY: That's correct.
4
5 THE COURT: Thank you.
6
7 PUBLIC HEALTH PROSECUTOR: Thank you. And I --
8
9 THE COURT: So defence closes its case on the blended voir
10 dire?
11
12 MR. GREY: That is correct, Sir.
13
14 THE COURT: Thank you very much.
15
16 PUBLIC HEALTH PROSECUTOR: I do want to bring to -- I -- I thought it was in
17 my briefs that were filed, but I have not been able to access it, but I do need to just
18 address the 24(1) remedies, specifically the absolute discharge.
19
20 THE COURT: You do mention it in your brief.
21
22 PUBLIC HEALTH PROSECUTOR: Okay. Good.
23
24 THE COURT: Section 787 of the *Criminal Code*, Section 3 of
25 the *Provincial Offences Act*.
26
27 PUBLIC HEALTH PROSECUTOR: Thank you.
28
29 THE COURT: You're going to argue that it's not a remedy
30 that's available to me even if I find a breach?
31
32 PUBLIC HEALTH PROSECUTOR: Correct. And I just wanted to make sure that
33 that was --
34
35 THE COURT: That's here. So I think Mr. Grey will make his
36 arguments and then I'll hear your --
37
38 PUBLIC HEALTH PROSECUTOR: Great. Thank you.
39
40 THE COURT: Okay. Thank you.
41

1 I'm ready if you are, Mr. Grey.

2

3 MR. GREY: Sir, what we had proposed to do, between
4 myself and Mr. Kitchen, is to -- to divide the labour, as it were, so I'm going to have --
5 I'm going to ask Mr. Kitchen to make submissions to you, Sir, concerning the alleged
6 violations under Section 2(b), 2(c) and 2(d) of the *Charter*. And I will make submissions
7 to the Court, Sir, concerning Section 2(a), 7, 9 and 11(e).

8

9 THE COURT: That's fine.

10

11 **Submissions by Mr. Kitchen (Section 2(b), 2(c) and 2(d) *Charter* Violations)**

12

13 MR. KITCHEN: Your Honour, I'm going to proceed
14 chronologically, as it were, 2(b), 2(c), 2(d). So I'm going to start with 2(b). Your Honour,
15 there is a well-known three-part test for determining if freedom of expression has been
16 infringed. We've included it at section -- or at page 5 of our April 14th *Charter* notice.
17 Now, I note -- I note my friend takes issue with the test. I only read the *Charter* notice
18 this morning, that's when I received it, but as far as I understand her objection, she's
19 basically saying there's no point to the second part of the test, and I -- I would agree. In
20 fact, that's -- that's what I'm going to submit, but I just want to get that out there to start
21 with. But the first part of the test asked whether expressive content -- well, first of all,
22 whether there is expression of content and whether or not that content is captured by the
23 provision under which Pastor Coates has been charged. And that provision, of course, is
24 the 15 -- I'm going to call it the 15 percent capacity restriction. In other words, the
25 restriction that the venue in which a worship service is held does not have more attendees
26 that what would exceed 15 percent of the fire code of that venue. Now -- and, obviously,
27 there's no issue with -- with method either here. Obviously, location is not a problem.
28 We're in a church. There's no issue with method, of course, because the -- the content
29 being expressed is not -- is not violent and it's not being expressed in any violent means.
30 And there's no other method by which this communication of this expression is being
31 expressed that would remove the protection. The third part of the test asks whether in
32 purpose or in effect the 15 percent restriction -- or in this case, its -- its particular
33 enforcement is an infringement of that protected expression.

34

35 Now, we heard evidence yesterday from Pastor Coates of the expressive activities that
36 take place at GraceLife worship services on Sunday morning. And they are, of course,
37 participated in by the entire body of GraceLife congregates, and this is a key point,
38 including Pastor Coates himself. Some of the examples that I'm going to particularly
39 touch on are the preaching by Pastor Coates, the singing by the worship band as they lead
40 the congregation of worship, the singing of the congregation, the members collectively
41 together, and the conversations between individual members of the GraceLife

1 congregation during and after the -- the worship. And this is otherwise called the -- the
2 fellowship part of their meeting together on a Sunday. And then, of course, there's --
3 there's prayer which is, obviously, an expressive activity. And -- and we submit that all of
4 these expressive activities are protected. In other words, these are constitutionally
5 protected expressive activities.

6
7 Now, for the purposes of analyzing this unique restriction and the effect it has on freedom
8 of expression, it must be kept in mind that Section 2(b) of the *Charter* doesn't only
9 protect the dissemination or communication of expressive content by the expresser, it
10 also protects the receipt of that content. In other words, it protects the right to listen. The
11 Supreme Court affirmed this in the case of *Little Sisters*, 2000 SCC 69, at paragraph 41.
12 This isn't often discussed in the jurisprudence, but it's -- it's a key point to keep in mind in
13 relevant situations where we are dealing with not just content being disseminated, but
14 received. And we submit that, on multiple levels, the right to hear, the right to listen is
15 engaged by this restriction.

16
17 I'm going to give some examples. The congregants of GraceLife, each of them and all of
18 them, having right to hear Pastor Coates unhindered and un-interfered with by
19 government restrictions on a Sunday morning at their worship service. By requiring the
20 85 percent of the GraceLife congregation not be present at any time that Pastor Coates
21 preaches on a Sunday morning, the 15 percent capacity restriction interferes with the
22 rights of those GraceLife congregants to listen to their pastor in person. In similar
23 fashion, the 15 percent capacity restriction interferes with Pastor Coates' freedom of
24 expression, his freedom of expression, by removing 85 percent of his potential normal in-
25 person listeners. That severely limits the reach of his expressive content to an in-person
26 audience. It's a form of censorship because now only 15 percent of Pastor Coates' regular
27 audience can listen to him in person. Now, I would imagine this is where my friend
28 would say that there really is no infringement because the excluded 85 percent could just
29 listen virtually. But that begs the question: Does Section 2(b) only protect virtual
30 communication?

31
32 THE COURT: Can I ask you this? Your friend might say that
33 at this stage of the proceedings, which is, I think you said it best, is the enforcement an
34 infringement? There was no 85 percent not listening because the rules weren't followed.
35 So it's not a question that in a grand sense at this stage of constitutional validity or virtual
36 versus in person, your friend might say where is the infringement in this case given that
37 GraceLife chose, for reasons as articulated in the evidence by Mr. Coates, to not abide by
38 the 15 percent capacity.

39
40 MR. KITCHEN: I have two points to that. One is that this
41 argument is for the purposes of both a 24(1) remedy and for the purposes of Section 1. So

1 what -- what we're arguing -- we're argue -- we're arguing all the *Charter* violations that
2 are relevant to both of those remedies, to the 52(1) remedy and to the 24(1) remedy.

3
4 THE COURT: Okay.

5
6 MR. KITCHEN: All right. So it is -- it's -- it's -- we're all -- we're
7 dealing with the particular enforcement and also the underlying restriction. Right. So the
8 -- the exact scope or nature of -- of those *Charter Right* violations don't necessarily
9 perfectly overlap. Right. So one of the things I'm going to be saying here, and I'll just
10 touch on it now, is that here you have a particular enforcement of this restriction and --
11 and really what it is is it's a penalization for the exercise of that 2(b) right. Now,
12 obviously, the -- the restriction is not being followed, so because it's -- so there's a
13 restriction that says you can't express yourself, and they say, well, we're going to express
14 ourselves anyways, so they do, but then they -- then they receive a ticket for it. So they're
15 being penalized. Well, if you're being penalized for exercising your -- your constitutional
16 rights, then your constitutional right has been limited because you're being penalized for
17 exercising it. That's what that ticket is. So those -- those would be my two responses to
18 that as I'm -- I'm dealing with argument that's -- that's covering both -- both of the
19 remedies and I'm also dealing with argument on the particular infringements that arise
20 both from the restriction itself and the particular enforcement manifested through the
21 December 20th ticket.

22
23 THE COURT: Thank you.

24
25 MR. KITCHEN: As I was saying, Your Honour, the key question
26 in this case that has never really been asked before in the history of our *Charter* --
27 jurisprudence, as far as I know, because of technology and because of the unique
28 restrictions we have, is does Section 2(b) only protect virtual communication or does it
29 have protection specifically and substantially for in-person human communication, eye-
30 to-eye, in-person, physically beside each other or in the same room together? Such a
31 question must be addressed in this case as it has never needed to before. Our
32 jurisprudence demands that we give fundamental freedoms protected by Section 2 of the
33 *Charter* purposive and generous interpretations. Section 2(b) must and does protect in-
34 person communication. Any other state of affairs would not only ignore our
35 jurisprudence, it would ignore the nature of human communication itself. We don't need a
36 psychologist to tell us that in-person communication is more effective and that humans
37 need it, want it, and derive more benefit from it.

38
39 Similarly, Section 2(b) protects the rights of individuals to express themselves
40 collectively, together, in-person with others. And this is going to be relevant for 2(c) as
41 well, but this -- but this -- this is -- this is a -- this is a facet of 2(b). GraceLife

1 congregants, we submit, have a Section 2(b) right -- not just 2(a), but 2(b) right to sing
2 praises together with each other, all of them at once. I -- I could use the analogy of a
3 choir and -- and take out the religion aspect. Right? And so we have -- we have a choir
4 that wants to sing secular Christmas songs at Christmastime. Right? Do they have a 2(b)
5 right to sing together in person? Why I -- I would say the -- the answer to that is obvious.
6 Of course they do. If the government said no more choir, well, what would the claim be?
7 Well, probably the first one would be 2(b). Right? We have a right not just to sing, we
8 have a right to sing together. Right? Because communal singing is different. It has a
9 unique aspect to it that individual singing does not. Right? That's why a choir is different
10 than a solo artist.

11
12 Now, as I -- as I would allude to, I'm going to say that Section 2(b) also protects the
13 rights of individuals, on an individual basis, to communicate with each other physically
14 in-person. If people want to meet together, in-person, to pray and discuss spiritual
15 matters, they have a 2(b) right to do so. By excluding 85 percent of the GraceLife
16 congregates from gathering together, the 15 percent capacity is infringing those
17 restrictions on a -- on a collective and an individual basis. Right? Because if you're one of
18 the individuals that's in that excluded 85 percent group, you can't be there to exercise
19 your individual right to communicate with people in-person, to pray with them in-person,
20 to sing with them in-person, to talk with them in-person.

21
22 Now, the December 20th ticket infringes free expression in all the ways mentioned by, I
23 guess, penalizing the exercise of free expression in the manner just described. And this is
24 a little bit odd because what's happening with that ticket and what's happening with the
25 restriction is that it's penalizing Pastor Coates for the conduct of others in -- in exercising
26 their rights. It -- it essentially is saying, Look, Pastor Coates, you have to keep -- the
27 worship service that you lead, you have to keep it to 15 percent. You have to limit the
28 constitutional rights of all those other people. You have to take away the rights of those
29 85 percent that are excluded. So -- so if -- if one of those 85 percent goes and exercises
30 their constitutional rights, he's penalized for it which means that their rights are engaged.
31 Their rights to hear are engaged. Their rights to express themselves are engaged, not just
32 his. Okay. So this -- and this is relevant for the enforcement, not just the provision itself.
33 Right? Because where do we get the enforcement from? The enforcement comes because
34 other people have broken that 15 percent restriction. We heard it -- we heard evidence
35 about this yesterday as -- as far the masks are concerned. He said, I'm not going to police
36 other people. I'm not going to violate their conscience and tell them they have to wear a
37 mask. Right? He says any -- I think he said, We're not going -- we're not going to turn
38 people away. People are going to come. Right? So that's why the rights of other people,
39 the -- the two -- the Section 2 rights of other people are engaged in this and that's why we
40 have to consider them because he's being -- he's not being penalized simply because he
41 preached. He's being penalized because more than 15 percent venue capacity came to

1 listen to him preach. And they came to be there, they were engaged in their own
2 expressive activities of singing and praying and talking to others. Essentially, the -- the
3 85 percent excluded would have to self-censor. Right? They can't go. They can't hear in -
4 person. They can't speak in-person.
5

6 Your Honour, what I've just been talking about is effect. Okay. I'm not saying that the
7 purpose of the CMOH order is to infringe freedom of expression. I don't think that's true.
8 I think that might be different for some of the other sections. I would -- I would say,
9 obviously, the purpose of the -- 15 percent restriction is to infringe 2(c). I don't think the
10 purpose is to infringe 2(b). I think the effect is. But -- and that's -- that's to go to the 52(1)
11 remedy, but then if we -- if we're talking about enforcement, particular in this case, I'm
12 going to submit to this Court that it can infer -- in fact, it's the best explanation, that the
13 purpose of the December 20th ticket was to censor, it was to penalize Pastor Coates.
14 Why? Because that particular morning, he preached a sermon critical of the government.
15 All right? We -- we heard the facts about this.
16

17 In November, Ms. Hanrahan and RCMP officers began coming to -- to GraceLife
18 Church. The evidence is that they came pretty much at -- if not all Sundays, every Sunday
19 they were there in the morning at some point, before or during the service, all through
20 December, all through January, all through February. Well, the timing of that ticket is
21 really important. Right? It could have been issued before. Right? And the evidence shows
22 that no ticket was issued after December 20th. It's not like we have multiple tickets. You
23 go to the -- we go to February, we have another ticket, but interestingly enough, that --
24 that ticket also wasn't issued until we had a -- a sermon from Pastor Coates that was
25 critical to the government. Okay? So on December 27th and on December 13th, and --
26 and on -- and the Sunday -- the other Sundays around December 20th, we have no tickets
27 issued. They could have been issued, but they weren't. We have a ticket issued on
28 December 20th. Well, unlike his other sermons around the December 20th sermon, that
29 one, on December 20th, criticized the government. And let's look at the particular timing
30 on that day when the ticket was issued. AHS and RCMP showed up before the service or
31 when the service was starting, earlier on in the morning, they did their observations and
32 they left. Then the RCMP came back after the sermon was preached. They came back
33 and that was when they issued the ticket. And we heard the evidence from Pastor Coates.
34 He said, I felt -- I felt like maybe I was going to gaol, I was going to get arrested, I don't
35 know, because I knew -- he knew -- he had just preached a sermon that was critical of the
36 government which was different than the other Sundays that RCMP and AHS has shown
37 up, and now after that sermon was preached, they're back and they give him a ticket. I
38 mean it was clear -- it was clear the 15 percent was exceeded long before he preached.
39 Why wait till after?
40

41 We also -- we also know that the RCMP are not acting unilaterally. And in some manner,

1 they are acting on the recommendation, the advice, the order, however -- however we
2 want to exactly label it, they are acting on some sort of direction from AHS. Why did
3 AHS direct that he be ticketed that day? We know his sermons are livestreamed. We
4 know people can listen to them. You can listen to them live. We know people are doing
5 that. Now, we -- now, we don't know if Janine Hanrahan was listening to that sermon, but
6 she could have been. Why did she direct that the RCMP go back after that particular
7 sermon to ticket him? Not the Sunday before, not -- not the next couple Sundays either
8 when he went back to just preaching about -- about the Bible. We submit that the -- the
9 best explanation for why that was -- that ticket was issued that particular Sunday, after
10 the sermon was preached, is because it was meant to impose a chilling effect on Pastor
11 Coates. It was to send a message that you better stop criticizing the Government of
12 Alberta for what they're doing. It's bad enough you're not following the restrictions, now
13 you're criticizing us. You better be quiet. How could that chilling effect not be felt by any
14 reasonable person? You said -- you -- you stood there wondering, why was I ticketed
15 today? Well, I criticized the government today. So we submit that the -- that not merely
16 the effect of that ticket on that particular day, but the purpose was to infringe 2(b) of the
17 *Charter*, to censor.

18
19 Now, Your Honour, those are my submissions on -- on Section 2(b), but I welcome any
20 questions you have.

21
22 THE COURT: I do not have any questions. Thank you.

23
24 MR. KITCHEN: Your Honour, I'm going to move on to freedom
25 of peaceful assembly. This is Section 2(c) of the *Charter*, one of the forgotten freedoms, I
26 would submit. Now, of the four fundamental freedoms, peaceful assembly is the most
27 underdeveloped. There is no binding case law. The Supreme Court of Canada has not
28 given substantial direction on this. There's no developed test for determining when it has
29 been violated. Now, the most obvious context in which freedom of peaceful assembly
30 arises is the context of protestor demonstrations. This is where it's received a little bit of
31 attention. Freedom of -- now, the problem with that, of course, is that freedom of
32 expression is often the freedom that gets all the judicial attention in those scenarios. And
33 that's understandable 2 -- 2(b) is absolutely engaged when it comes to protests and
34 demonstrations, physical gatherings outdoors, and they're usually for -- political
35 purposes.

36
37 Now, but 2(c) of the *Charter*, as a matter of logic and statutory interpretation must be
38 considered independently. It stands to reason that there are at least a few activities
39 specially protected more directly by freedom of peaceful assembly than by the other
40 freedoms. Now, as we know with the fundamental freedoms, they all intertwine. They're
41 interconnected. It's possible to be exercising all four of them at once. Right. If you go -- if

1 -- if you go to a demonstration outside, in front of the legislature, you're obviously
2 engaged at least 2(b) and 2(c), maybe 2(d), maybe even 2(a) if there's a religious element
3 to it. But there has to be something special about 2(c). Maybe it's not much, but there has
4 to be something.

5
6 As -- as a starting point for that, I'm going to take you to a few sources. I'm going to --
7 I'm going to start with *Roach v. Canada*. It's [1994] 2 FC 406. And at paragraph 69 -- I
8 don't know if you have -- Sir, I don't know if you have a copy of our authorities.

9
10 THE COURT: Not the actual authorities with me, no.

11
12 MR. KITCHEN: Well, at least in the physical copy, it's at tab 39.

13
14 THE COURT: But I -- and further, I can tell you I've read
15 them, and paragraph 69 is cited at page 6 of your notice of *Roach*.

16
17 MR. KITCHEN: Thank you. Well, all I want to point out here is
18 the Court says in this case:

19
20 There is scant case law in the guarantee of freedom of peaceful
21 assembly. However, what little there is would appear to indicate
22 that freedom of peaceful assembly is geared towards protecting
23 the physical gathering together of people.

24
25 Now, I'm going to submit, that is -- that is the distinguishing feature from 2(b) and 2(d).
26 We get a little bit of attention paid to 2(c) in *Mounted Police Association of Ontario*,
27 citation 2015 SCC 1, and I'm going to take you briefly there, and at paragraphs 64 to 66.
28 I'm starting at -- I'm reading from paragraph 64:

29
30 First, the *Charter* does not exclude collective rights. While it
31 generally speaks of individuals as rights holders, its Section 2
32 guarantees extend to groups. The right of peaceful assembly is,
33 by definition, a group activity incapable of individual
34 performance.

35
36 So it's an individual right, an individual exercises their 2(c) rights, but they can only
37 exercise it with others also individually exercising that same right together with -- with
38 each other:

39
40 Freedom of expression protects both rights...
41

1 Or:

2
3 ...both listeners and speakers. The right to vote is meaningless in
4 the absence of a social context in which voting can advance self-
5 government. The Court has also found that freedom of religion is
6 not merely a right to hold religious opinions, but also an
7 individual right to establish communities of faith.
8

9 And, of course, we know from recent 2(a) jurisprudence that -- that 2(a) is a -- a
10 collective and individual right if they're exercised both an individual and an institution.
11 Right? We look at *Loyola*, for example. That school had its own 2(a) right in addition to
12 all those who were added. I'm moving down onto paragraph 65, and of the second
13 sentence:

14
15 Recognizing group or collective rights complements rather than
16 undercuts individual rights...

17
18 It complements:

19
20 ...as the examples just cited demonstrate. It is not a question of
21 either individual rights or collective rights. Both are essential for
22 full *Charter* protection.
23

24 Paragraph 66:

25
26 In summary...

27
28 Now, we're talking about 2(d), but this is going to apply to 2(c):

29
30 ...2(d), viewed purposively, protects three classes of activities:
31 the right to join with others and form associations; the right to
32 join with others in the pursuit of other constitutional rights...
33

34 Like I said, what I'm going to submit is that unlike 2(d), and this is where there's extra
35 protection, see 2(c) protects extra protection where the other three together maybe don't
36 provide quite as strong protection for the physical gathering, in-person, together.
37

38 Now, I'm also going to take you to -- of course, there's been very little written about 2(c)
39 because we haven't really dealt with it, we haven't had to. I'm going to take you to an
40 academic article written in 2017, by a lawyer and PhD candidate at Queen's, and he
41 writes a -- a brief article about 2(c). And I think some of his comments are -- are worth

1 reflecting on. On page 4 of that article, and I'm in the second paragraph, second sentence,
2 he says: (as read)

3
4 While there is obvious overlap of freedom of expression, the
5 *Charter* lists peaceful assembly separately rather than as part of
6 the group of protections protected alongside expression.

7
8 Because, of course, freedom of expression, we have to call it that, but there's -- there's a
9 litany there. Right? A thought, opinion. This is where we get freedom of the press is -- is
10 one of the last things listed in that list of what freedom of expression protects. You don't
11 see freedom of peaceful assembly listed in 2(b). It's got its own -- it's got its own section.
12 Moving down, he says: (as read)

13
14 There must be a purpose for this difference especially since there
15 is a presumption against tautology. A separation in drafting
16 reflects that peaceful assembly is a unique collection, an
17 expressive activity that involves rationales and issues warranting
18 distinction from those included in the *Charter* guarantee of
19 freedom of expression.

20
21 It's different. Thought, opinion, expression, those -- those are all the same category.
22 Right? And -- and categorically, we can see why freedom of the press fits in there.
23 Freedom of assembly is different. And the -- the last sentence in that paragraph: (as read)

24
25 Freedom of assembly should accordingly stand as an independent
26 right of independent content essential to the development and
27 maintenance of the vibrant civil society upon which our
28 democracy rests.

29
30 Now, that's going back to Mount -- *Mounted Police* which I'm going to be referencing a
31 lot. A lot of this article references that particular case which just came out a couple years
32 before this article did. Now, I'm over on page 8, this is the last quote I'm going to have
33 from this article. I'm on the second paragraph of that page, second sentence: (as read)

34
35 Courts determine the scope of application for a freedom such as
36 peaceful assembly by analyzing its purpose. Its purpose in light
37 of the interests it was meant to protect. Courts conduct this
38 analysis...

39
40 And here, he's quoting *Mounted Police* -- no, I think he's quoting *Big M Drug Mart*: (as
41 read)

1
2 Courts conduct this analysis...

3
4 Right? Deciding on what's the -- what's the purpose underlying the right: (as read)

5
6 ...by reference to the character in the larger objects of the
7 *Charter* itself, to the language chosen to articulate the specific
8 right of freedom, to the historical objects of the concepts
9 enshrined and where applicable to the meaning and purpose of
10 other specific rights and freedoms with which is associated
11 within the text of the *Charter*. The *Charter* must be placed in its
12 properly listed philosophical and historical contexts. That said,
13 Courts are instructed to conduct an activity-based contextual
14 approach that looks at the activity in question in its full context
15 and history when considering the fundamental freedoms.

16
17 So now that we've got a little bit of content to what this freedom actually is, we need to
18 talk about its application in very unique context. I don't think anybody would disagree
19 that if 2(c) means anything, it protects protests, it protects peaceful -- peaceful political
20 gatherings. All right. The classic example of that is gathering at the legislature to protest
21 some government public policy decision. And, you know, we -- looking back to the 2(d)
22 -- or 2(b) analysis, we -- we -- we've always identified in our jurisprudence that there's
23 certain purposes underlying 2(b). Right? There's certain -- there's certain types of
24 expression that go to the core. Right? We have political discourse, we have self-
25 fulfilment, and we have truth seeking. All right. Those are at the core. This is why
26 commercial expression doesn't receive quite the same protection as political expression
27 does because it doesn't go to the core of what 2(b) protects. Well, if we're going to have --
28 we're going to -- we're going to look at 2(c) and we're obviously going to incorporate a
29 little bit of what -- of the analysis in 2(b) if we're going to come to any sort of concrete
30 understanding of what 2(c) is. Well, it makes perfect sense that 2(c) protects political
31 demonstrations. All right. Political demonstrations are really important to maintain a
32 democracy, to maintaining a free society. Well, I submit that equally at the core of what
33 2(c) ought to protect, and I would say does protect is religious expression, is religious
34 gatherings, is the manifestation of religious beliefs on an individual level and on a
35 collective level while individuals collectively exercise or manifest their religious beliefs
36 and exercise their right to engage in religious expression. If 2(c) protects anything, it
37 doesn't just protect protests and demonstrations. It protects religious gatherings. I would
38 say this is a -- this is a huge part of the history of Western society.

39
40 For 2000 years, the Christian church has gathered in-person. And we don't need to go too
41 much into the history, but we -- we know how important this is to -- to Christians as soon

1 as we look at any history in the middle ages or in the Roman times when the church was
2 born, gathering in-person was fundamental and -- and Christians did, 2000 years ago and
3 a 100 years ago, in the 20th century, give their lives to meet in-person. The Chinese
4 church does not meet just virtually. They take great risks to meet in-person. The -- the
5 underground church comes from that context. 2(c), freedom of peaceful assembly,
6 protects the physical gathering together of people in the exercise of their other
7 constitutional rights. All right. So it protects protests because we're engaging in 2(b).
8 Right? It protects religious, physical religious gatherings because we're -- we're
9 manifesting 2(a) and 2(b). Right? We're -- we're gathering together for the purpose of
10 exercising those rights.

11
12 So, and the -- and -- and this makes sense, this analysis makes sense, I submit, because
13 that's exactly what the Supreme Court says about 2(d). The whole purpose behind 2(d) is
14 to allow individuals to exercise that right collectively together. It's the same thing here.
15 That's -- that's what church is. Church is each individual belief, each individual co-
16 congregating coming together, individually exercising those -- those 2(a) and 2(b) rights
17 collectively together in-person. Right? So when you have a -- when you have GraceLife
18 come together on a Sunday morning, they're exercising their 2(a), 2(b), 2(d) rights
19 because they are a -- a private religious association, but 2(d) doesn't protect physical
20 assembly. It only protects their right to have an association. So if the government breaks
21 up Zoom church, well, they're not violating 2(c), they're violating 2(d) in addition to 2(b),
22 2(a), leave that out of it for a second. Right? When they break up a physical gathering,
23 then they're violating 2(c) directly and uniquely and viscerally in addition to all the other
24 rights violations.

25
26 Now, this, of course, is novel, right, because we -- we have never dealt with this. We --
27 we live in a country that has -- has a heritage of freedom, certainly attempts to some
28 degree to maintain that heritage, and so we look back at history. We don't see any -- very
29 few recent examples of the breaking up of peaceful gatherings. We do see the breaking
30 up sometimes of protests that have turned quasi-violent or fully violent. We -- we see
31 that. And then, of course, the -- the 2(c) argument loses its -- loses its -- its force because,
32 you know, even if some protestors are -- are peaceful, we're talking now about violent
33 ones. Right? I can -- I can think of the G20 protests, for example. And there's plenty of
34 other examples. But, I mean, we want to talk about peaceful. It's as peaceful as it gets on
35 a Sunday morning at GraceLife. All right. We're not talking about a volatile political
36 protest outside the legislature which can get rowdy. We're talking about families, babies,
37 peaceful people peacefully gather -- they're singing hymns, that's what they're doing. So
38 there can be no question that this -- not only is this gathering peaceful, it will stay
39 peaceful.

40
41 So we haven't seen that. We haven't seen in this country the State physically separating

1 people, physically breaking up their physical gatherings because this -- this country has a
2 heritage of freedom. And that -- that rights violation is so visible that I think governments
3 have a healthy fear of violating it because it's -- the world will see. Right? When you
4 physically break up a gathering, the world sees it. You can engage in internet censorship
5 as the federal liberals want to do it. It's not as easy to see. It's not as obvious to the world.
6 All right. The world sees the fences around GraceLife. The world sees that people cannot
7 enter that building to physically gather in person. It's obvious. But we're seeing it now.
8 We're seeing the violation of 2(c) like we've never seen it before. And so we submit that
9 this Court is going to have to wrestle with 2(c) even though it doesn't have a lot of
10 guidance, even though it's a forgotten freedom, even though it's new, we're going to have
11 to wrestle with this rights violation. It's at the core of this case.

12
13 Now, my friend has said -- and just briefly I've read her *Charter* notice, she said that 2(d)
14 is at the core of this case. Well, 2(d) is engaged, it's relevant, but I think at the core of this
15 case, more than anything else, because this case is now -- there's a whole lot more going
16 on with -- with COVID than just a 15 percent capacity restriction, but we're talking about
17 that one individual particular restriction, right, which -- which it's obvious the purpose of
18 this restriction is to exclude 85 percent. It's to make sure that more than 60 people gather
19 in the sanctuary of GraceLife. It's not just the effect. It's obviously the purpose is to keep
20 people from physically gathering together. So this Court's going to have to wrestle with
21 what 2(c) means, the scope of what it protects, whether or not it's engaged, whether or not
22 -- whether or not the activity in question in this case, physical gathering together of
23 worshippers on a Sunday morning, goes to the core of what 2(c) protects. We're going to
24 have to wrestle with all those issues and we're going to have to wrestle with this
25 legislation. Is it -- is -- is the purpose to infringe 2(c), not just the effect? Right. We go
26 back to *Drug -- Big M Drug Mart*, the purpose was 2(a), not just the effect. Right? This --
27 that's -- and, of course, then that's rare. Recently in our *Charter* jurisprudence, we're
28 usually dealing with effects. Here, we're dealing with purpose. Right? And I -- I think
29 that's really key to distinguish 2(c) from the rest of it. Is the purpose of this restriction to
30 violate 2 -- 2(d)? No. Is the purpose to violate 2(b)? No. Is the purpose to violate 2(a)?
31 Maybe. But the purpose -- the purpose of this restriction is to violate 2(c). It's to violate
32 the freedom of peaceful physical assembly.

33
34 Your Honour, those are my submissions on 2(c), subject to any questions you have.

35
36 THE COURT: Thank you. No. Go on, please.

37
38 MR. KITCHEN: Now, Your Honour, I don't have a whole lot
39 extra to say on freedom of association. I've touched on it a lot. I just want to emphasize
40 that the Court has found that -- that Section 2(d) -- and -- and they may find this when
41 they get a chance to deal with 2(c) more substantively, but the Court has found that 2(d)

1 recognizes the profound -- this -- I'm at paragraph 22 of our -- of our *Charter* notice, by
2 the way.

3

4 THE COURT: Yes.

5

6 MR. KITCHEN: A purposive approach to freedom of -- of
7 association defines the content of this right by reference to its purpose. Its purpose being
8 to recognize the profoundly social nature of human endeavours and to protect the
9 individual from State-enforced isolation from the pursuant of his or her ends. It's almost
10 prophetic. We are dealing with unprecedented State-enforced isolation on every level
11 right now as if we -- as if -- as if the State has utterly forgotten the profoundly social
12 nature of human endeavours. You might ask why -- why -- why would people risk all this
13 trouble to gather in-person, physically, for worship. Well, primarily for GraceLife
14 congregates it's -- it's in service to their lord. Their lord and saviour commands it and they
15 do it joyously because they seek to live according to his will. But it's not just that. I
16 submit it's also because they're lonely. They don't want to pray alone. They don't want to
17 sing hymns alone. They want to be with other people. Right? This is the Court. The Court
18 has -- the Court has said this. The profoundly social nature of human endeavours. Well,
19 and, of course, the Court said it. That's common sense. Again, we don't need a
20 psychologist to tell us we are social beings and we -- we demand and require social
21 interaction. And it doesn't get much more sweeter for social interaction than fellowship at
22 GraceLife Church after the service. That's why it lasts so long.

23

24 So I'm not going to say that 2(d) necessarily protects the physical gathering of people, but
25 indirectly it does because if it protects the individual from State-enforced isolation, if it
26 protects the profoundly social nature of human endeavours, well, then it has to extend
27 some sort of protection to physical gathering, not merely Zoom church because Zoom
28 church ignores that aspect. Right? Is there some social interaction on Zoom church? Sure.
29 Is there as much as there is in person? Obviously not. So the question then endorsed, does
30 -- does 2(d) extend beyond that? And, of course, maybe this is where the boundaries of
31 2(d) rubs up against the boundaries of 2(c), but nonetheless it's -- it's definitely engaged
32 here.

33

34 And again, we know from *Mounted Police* that -- that the purpose of 2(d) -- or one of the
35 purposes -- or 2(d) comes up in a lot in the union context and that's where we get into the,
36 you know, meet on equal terms, the power and strength of those with whom their
37 interests interact rather that's where we have the context of workers gathering together
38 that form unions so that they can meet collectively together in more strength. They can
39 match the strength of -- of management and of the corporation of the business owners.
40 Right? (INDISCERNIBLE) that -- that doesn't apply here, but -- but that -- that's why we
41 have these other approaches.

1
2 If we look at -- right. So I'm at subparagraph 23 of our *Charter* notice. The freedom of
3 association encompasses the protection of individuals joining together to form
4 associations. Well, there's -- that's not really engaged here. Right? The government hasn't
5 said that we -- that GraceLife can't form an association. All right. We're not dealing with
6 some sort of club or group that's not able to form. Right? We're not dealing with the
7 derivative approach. That's -- that's the union context. But the constitutive approach is
8 collective activity in support of other constitutional rights. That's what's engaged here for
9 2(d) because GraceLife -- the congregants of GraceLife, the church, is exercising 2(a),
10 2(b), and as I've now said 2(c), 2(d) protects that. The individuals coming together to
11 collectively exercise those individual rights. Right? GraceLife is a private religious
12 association. When they gather, how ever they gather, they are -- they are exercising their
13 freedom of association which protects exercising the other three freedoms together.
14

15 So, of course, the 15 percent capacity restriction says that 85 percent has to associate at
16 home on Zoom church and 15 percent gets to associate in-person. So the question is: Is
17 the effect of the restriction, the effect of the ticket, to -- to violate 2(d) insofar as we're
18 splitting people up? They're not able to exercise their rights together. Some are able to
19 exercise them much better than others because we have 85 percent that are excluded.
20 Your Honour, we submit that the effect of the restriction, of the ticket, is to violate the
21 2(d) rights of all of the GraceLife congregation, but specifically the 85 percent that are
22 excluded on any given Sunday morning, if the restrictions are followed. Now, I'm -- and
23 again, I want to go back to this point because, right, the -- the government will say, well,
24 they've been able to exercise them anyways, but only under the threat of penalization, not
25 just the threat, it's been manifested. Right? You don't -- your right is not violated simply
26 because you exercise it anyways. It's violated by the fact that there is this potential for
27 penalization if you exercise it. We don't even -- we don't even need the manifestation of
28 that penalization. If the threat is there, your right has been limited. But in this case, of
29 course, we actually have the enforcer. So we -- we do have that penalization for
30 exercising those rights. So those rights have been limited.
31

32 Your Honour, those are my submissions. I -- I -- like I said, I'm only covering 2(b), 2(c),
33 2(d). My co-counsel is going to be covering the rest, so if you have any questions about
34 the totality of my submissions, I'll take them now.
35

36 THE COURT: I do not. Thank you very much, Mr. Kitchen.

37
38 MR. KITCHEN: Thank you.

39
40 THE COURT: Mr. Grey, are you ready now, or did you need a
41 break?

1
2 MR. GREY: If you'd like to take the morning break, Sir, that
3 would be fine.
4
5 THE COURT: Let's just take a 15 minute health --
6
7 MR. GREY: Fine, Sir.
8
9 THE COURT: -- break and then reconvene at 11:30.
10
11 MR. GREY: Yes, Sir.
12
13 THE COURT: Thank you.
14
15 (ADJOURNMENT)
16
17 THE COURT: Thank you. Please be seated.
18
19 PUBLIC HEALTH PROSECUTOR: Sir --
20
21 MR. KITCHEN: Oh, go ahead.
22
23 PUBLIC HEALTH PROSECUTOR: -- I would just like to address. I -- I'm finding
24 the air conditioning that's in the courtroom to be quite high. I've canvassed with other
25 people. I don't think it's just me. I'm actually getting quite cold. My hands are very cold.
26 I'm not sure if there's something that can be done, but I --
27
28 THE COURT: I don't control the temperature, but there's a
29 thermostat on the wall there. I have no idea whether that will change anything, if maybe
30 the sheriff can tell us.
31
32 THE SHERIFF: There is one there, but we cannot control it from
33 that switch --
34
35 THE COURT: Can't control it.
36
37 THE SHERIFF: -- unfortunately.
38
39 THE COURT: Thank you. That's like it --
40
41 PUBLIC HEALTH PROSECUTOR: All right. So be it.

1
2 THE COURT: I'll make an inquiry during --
3
4 PUBLIC HEALTH PROSECUTOR: Thank you.
5
6 THE COURT: -- the next break with whoever it is that controls
7 the temperature in the courtroom, so...
8
9 PUBLIC HEALTH PROSECUTOR: I'd appreciate that. Thank you, Sir.
10
11 THE COURT: Mr. Kitchen?
12
13 MR. KITCHEN: Your Honour, I apologize I have one last point I
14 neglected to make and then I'll hand it over to my friend. And that point is this. We
15 submit that the Court must consider all of the rights that we've alleged and even if a
16 violation of one or two or three or four of the -- of the seven rights violations we have
17 alleged are found, we would ask the Court -- and I realize this asks extra effort of you,
18 but -- but I would ask the Court to give consideration to all the *Charter Rights* violations.
19 This case is very unique, not just because of the facts, but because of all the *Charter*
20 *Rights* engaged. Even if there's no violation found, I -- I think we can all agree they're at
21 least -- we have 2(a), 2(b), 2(c), 2(d) all engaged and I think -- I think it's incumbent upon
22 the Court to -- to provide analysis on all of those. I think -- I think either the *Charter*
23 itself calls for that, I think this -- the unique facts of this case calls for that, and -- and
24 furthermore, I think that's highly relevant for the Section 1 analysis. It's -- I think it's --
25 it's a little bit rare to -- to have a case where we have so many layers of constitutional
26 rights that are violated or potentially violated, and before I look at the Section 1 analysis,
27 it -- we -- we need to know whether or not we are dealing with a 2(c) violation and not
28 just a 2(a) violation.
29
30 THE COURT: There's no question about that. I'm duty bound
31 to make a ruling with respect to the rights that are alleged to have been breached. I agree.
32
33 MR. KITCHEN: Excellent. Well, thank you, Your Honour.
34 Those are my submissions.
35
36 THE COURT: Thank you.
37
38 Mr. Grey?
39
40 MR. GREY: Thank you, Sir.
41

1 **Submissions by Mr. Grey (Section 2(a), 7 and 24(1) Charter Violations)**

2

3 MR. GREY: Sir, so I'm going to make submissions to you
4 concerning the other *Charter* violations, more - most concentrated upon Section 2(a) and
5 Section 7. I'm -- I'm also going to make some submissions concerning the -- the
6 availability and propriety of a Section 24(1) remedy.

7

8 As a starting point, Sir, I'd like to draw the Court's attention to a very recent case that was
9 decided in a -- in the Supreme Court of British Columbia. This is *Beaudoin v. British*
10 *Columbia*. It was decided only in March of this year by Chief Justice Hinkson. And I
11 realize that was a -- a civil case; however, I would submit it's -- it's relevant here in the
12 sense that the Court there was dealing with an allegation of a violation of some of the
13 same *Charter Rights*, specifically 2(a), 2(b), 2(c) and (d), and also Section 7. But the
14 starting point in terms of that case, the reason why I mention it is because it's of note that
15 the Province of British Columbia actually admitted the *Charter* violation in relation to
16 2(a). They didn't dispute it the way this -- the -- the way the Crown is here and, I submit,
17 wrongly. I -- I really think that on the facts that are before the Court here, they're so
18 analogous to what happened in British Columbia for this reason -- or for these reasons.
19 Firstly, at paragraph 56 of the -- of the judgment, this is at page 15 of it, there's a
20 reference to a public statement that was made by Dr. Henry who, of course, is the Chief
21 Medical Officer for the British -- the Province of British Columbia, the equivalent in that
22 province of -- of our Dr. Hinshaw. And she -- she said this publically which -- which I
23 read and I submit was a -- was a tacit if not more acknowledgement that certain *Charter*
24 *Rights* were being violated by the imposition of a restriction upon worship there that
25 affected the -- the applicants in that case which was that they couldn't have any more than
26 50 persons at a church. So, obviously, the facts, quite analogous to the ones at bar. But
27 she said this. She said:

28

29 I further recognize that constitutionally protected interests
30 include the rights and freedoms guaranteed by the *Canadian*
31 *Charter of Rights and Freedoms*, including specifically freedom
32 of religion and conscience, freedom of thought, belief, opinion
33 and expression, freedom of peaceful assembly, freedom of
34 association. These freedoms and other rights protected by the
35 *Charter*, are not, however, absolute and are subject to reasonable
36 limits, prescribed by law as can be demonstrably justified in a
37 free and democratic society.

38

39 So, essentially, there, the way I read that, and, of course, the -- the Province of British
40 Columbia went on in that case to advance the Section 1 argument which the -- which the
41 Crown will do here, but my point is in the Province of British Columbia, there, the Health

1 Minister there essentially acknowledged that these restrictions, specifically the one
2 involving only 50 people in a house of worship, triggered these *Charter* violations. And I
3 see that as the threshold question that's before you, essentially is not the Section 1
4 analysis that ultimately was advanced and will be advanced in this case, if we get there,
5 but an acknowledgement in British Columbia, neighbouring province, where, essentially,
6 the Section 2(a) analysis is admitted. And then, of course, the Province of British
7 Columbia was guided by that. And at page 34 of the judgment, at paragraph 132, it -- it
8 states that:

9
10 ...the respondents conceded that the impugned orders engage
11 that the -- the religious petitioners' rights under Section 2(a),
12 2(b), 2(c) and (d) of the *Charter*...

13
14 So, in that case, which I -- as I say, had analogous facts, very recent, the *Charter*
15 violation was admitted. And I submit it probably ought to have been in this -- in this case.
16 Not all the *Charter* violations, but certainly the ones that were acknowledged there are
17 equally applicable here.

18
19 Turning specifically, Sir, to Section 2(a), at tab 1 of our materials, there's a case called
20 *Alberta v. Hutterian Brethren of Wilson Colony*, this is from 2009, from the Supreme
21 Court of Canada. This case, in my submission, answers the Crown's submission about
22 regulatory offences attracting a lower level of *Charter* scrutiny. I'd submit that in the
23 *Hutterian Brethren* case, which involved the assertion of the -- or the freedom of religion
24 in the face of a requirement, a regulatory requirement, that the Hutterians submit to
25 having their picture taken, which they saw as a violation of the second commandment.
26 But in that situation, they're -- and at page -- that's paragraph 32 of the judgment, the
27 Court -- the Supreme Court set out the -- the test which is well-known and said that:

28
29 An infringement of Section 2(a) of the *Charter* will be made out
30 where: the claimant sincerely believes in a belief or practice that
31 has a nexus with religion.

32
33 And I would submit that's rather obviously that in this case. We have a -- a Christian
34 pastor. And the second test is whether:

35
36 ..the impugned measure interferes with the claimant's ability to
37 act in accordance with his or her religious beliefs in a manner
38 that is more than -- trivial or insubstantial.

39
40 I'd submit the second part of that is -- is also made out here. This was much more than a
41 trivial or insubstantial interference with Pastor Coates' freedom of religion for the reasons

1 that are clear from the evidence. And the Court goes on there to refer to the case of
2 *Edwards Books and Art*, a 1986 case from the Supreme Court of Canada in which Chief
3 Justice Dickson, as he then was, said this. He said:

4
5 The purpose of Section 2(a) is to ensure that society does not
6 interfere with profoundly personal beliefs that govern one's
7 perception of oneself, humankind, nature, and, in some cases, a
8 higher or different order of being. These beliefs, in turn, govern
9 one's conduct and practices. The constitution shelters individuals
10 and groups only to the extent that religious beliefs or conduct
11 might reasonably or actually be threatened.

12
13 And under Section 2(a), he says:

14
15 It must be capable of interfering with religious belief or practice.

16
17 For a State-imposed cost or burden to be prescribed by Section
18 2(a), it must be capable of interfering...

19
20 In that way:

21
22 In short, legislative or administrative action which increases the
23 cost of practising or otherwise manifesting religious beliefs is not
24 prohibited if the burden is trivial or insubstantial.

25
26 So in that -- in that case, again, the province actually conceded the first element of the --
27 of part of the test, sincere belief. And, ultimately, the Court found that there was a
28 violation of Section 2(a) even in the -- in those circumstances which I'd submit are facts
29 that are less serious than the ones in the case at bar.

30
31 Sir, at tab 3 of our materials, there is the case of *Baars v. Children's Aid Society of*
32 *Hamilton*. This is another Section 2(a) case in which the Section 2(a) was triggered
33 because some foster parents were told that -- they were directed by the -- by the
34 Children's authority to impose the ideas about the Easter Bunny. That case clearly is
35 much less serious than the -- than the case at bar in terms of facts. And even there, a
36 Section 2(a) breach was found. So I'd submit, again, this is in answer to the Crown's
37 assertion that this is only a regulatory offence and that it shouldn't trigger a *Charter*
38 scrutiny to the level that the claimant is alleging.

39
40 THE COURT:

I'll hear from the Crown in relation to that, Mr.

41 Grey, but I take it a distinction may be drawn in instances where an individual is

1 engaging in a regulated activity such as driving which is deemed by our law to be a
2 privilege, not a right, as opposed to an individual in engaging in what you're saying and,
3 of course, is an enshrined constitutional right, and being prosecuted as a regulatory
4 offence that there's a distinction to be drawn there, isn't there? In other words, nobody is,
5 I don't think, suggesting that Mr. Coates was engaging in any regulated activity. There is
6 no regulation upon the freedom of religion.

7

8 MR. GREY: Not until -- not until now.

9

10 THE COURT: Well, I appreciate that.

11

12 MR. GREY: Yeah.

13

14 THE COURT: Yeah. But it's regulatory insofar as being quasi-
15 criminal.

16

17 MR. GREY: Yes.

18

19 THE COURT: It's not a federal power under 91(20), under
20 Section 91, but it's not a regulated activity like driving or fishing, to use the *Fitzpatrick*
21 example from the Supreme Court and the need to keep logs and things like that.

22

23 MR. GREY: Right.

24

25 THE COURT: There is a genuine distinction there.

26

27 MR. GREY: Yes. I appreciate --

28

29 THE COURT: All right.

30

31 MR. GREY: -- the distinction. Thank you, Sir.

32

33 Sir, I next turn to the case that's mentioned at tab 16, and this is perhaps getting a little bit
34 closer to the heart of the matter. This is a case of the *Law Society of British Columbia v.*
35 *Trinity Western University*. This is another Section 2(a) case. It's significant in the sense
36 that the -- the facts of that case -- and this is at paragraph -- sorry, page 337 of that
37 decision, Sir, and at paragraph 64. What's of note here is that the -- the Court talks about
38 the socially embedded nature of religious belief. And I'd submit that this is important in
39 the sense of the facts that are before you here in this case because although the -- the
40 accused is charged as an individual, and we're alleging that his religious freedom, which
41 is a personal freedom, is being infringed. But we're -- we're also arguing that that

1 infringement relates to the -- the expression of that freedom vis-à-vis the community of
2 this church. And I'd submit that in this case, at paragraph 64, the Court specifically
3 recognizes this, and it reads as follows:
4

5 Although this Court's interpretation of freedom of religion
6 reflects the notion of personal choice and individual autonomy
7 and freedom, religion is about both religious beliefs and religious
8 relationships. The protection of individual religious rights under
9 Section 2(a) must therefore account for the socially embedded
10 nature of religious belief, as well as the deep linkages between
11 this belief and its manifestation through communal institutions
12 and traditions.
13

14 So the ability of religious adherents to come together, and after what my friend just
15 argued before you, Sir:

16 The ability of religious adherents to come together create
17 cohesive communities of belief and practice is an important
18 aspect of religious freedom under Section 2(a).
19
20

21 Sir, at tab 22 of our materials is the seminal case of -- that the Court has referenced
22 earlier of *R. v. Big M Drum -- Drug Mart*. That was, of course, a case involved the -- the
23 *Lord's Day Act*. That case is important because it and other cases of that vintage talk
24 about the -- the *Charter* needing to be given a -- a liberal, broad and purposive
25 interpretation. And, of course, this is trite language to you, Sir, as a -- as a judge. But in
26 support and to be emphasized here that these rights are to be taken in context, but are also
27 to be given a broad and liberal interpretation. The reason -- another thing that's relevant
28 about -- or interesting about the -- the *Big M Drug Mart* case is that although the Court
29 there found that the *Lord's Day Act* was enacted pursuant to a criminal law power under
30 Section 91, it still, in its application, is -- was -- is not part of the *Criminal Code* in the
31 same sense that the Provincial *Health Act* is not. I would submit that the nature of that
32 statute is just as you put it, Sir, quasi-criminal. I'd submit although that's not the --
33 necessarily the intention of the Provincial *Health Act*, it is quasi-criminal in its -- in its
34 impact. And certainly it has -- it was in this particular case. In any case, Sir, at paragraph
35 94, the Court had this to say about freedom of religion:
36

37 A truly free society is one which can accommodate a wide
38 variety of beliefs, diversity of tastes and pursuits, customs and
39 codes of conduct. A free society is one which aims at equality
40 with respect to the enjoyment of fundamental freedoms and I say
41 this without any reliance upon Section 15 of the *Charter*.

1 Freedom must surely be founded in respect for the inherent
2 dignity and the inviolable rights of the human person. The
3 essence of the concept of freedom of religion is the right to
4 entertain such religious beliefs as a person chooses, the right to
5 declare religious beliefs openly, without fear of hindrance or
6 reprisal, and the right to manifest religious belief by worship and
7 practice or by teaching and dissemination.
8

9 Sir, at tab 45, there's a case that clearly is not of any binding precedential value upon you,
10 but it's a case out of California. It's the Supreme Court of California County of Kern. So
11 this is an interesting case in that it presented some of the same issues that are -- were --
12 are engaged in -- in the case at bar, but the reason why I mention it is that at page 8 -- 865
13 of the judgment, the Court said something very interesting about the freedom of religion
14 which I think is useful for this Court to consider. The Court there said: (as read)
15

16 Members of this court are not public health experts and we
17 should respect the judgment of those with special expertise and
18 responsibility in this -- in this area.
19

20 But this is the key part, Sir. It says: (as read)
21

22 But even in a pandemic, the constitution...
23

24 In that case, the US Constitution: (as read)
25

26 ...cannot be put away and forgotten. The restrictions at -- at issue
27 here...
28

29 Which were freedom of religious expression: (as read)
30

31 ...by effectively barring many from attending religious services
32 strike at the very heart of the first amendment's guarantee of
33 religious liberty. So before allowing this to occur, we have a duty
34 to conduct a serious examination of the need for such a drastic
35 measure.
36

37 And that's essentially what we're asking the Court to do here, to take a serious look at
38 what the province is doing and how it's impacting the *Charter Rights* of James Coates
39 and the faith life of the people at GraceLife Church.
40

41 At tab 46, Sir, there is a case from Scotland which uses similar language because, again,

1 freedom of religion is -- is also a recognized right of individuals in that country. I won't
2 read from it, but I -- but I mention it because it shows that it's not just in Canada. It's also
3 in other parts of the world where these -- the -- the expression of religious freedom is a
4 core freedom that's essential to the conduct and the maintenance of a free and democratic
5 society.

6
7 So to sum up Section 2(a), Sir, the -- the essence of it here, in my submission, is the two-
8 part test which I won't repeat, but I would submit that both arms of that test are met in
9 this particular case. And that with respect to Section 2(a), leaving aside the section of --
10 or -- or the question of whether or not what the province has passed in terms of the
11 Provincial *Health Act* and the health order that's before you, leaving aside the question of
12 whether or not that's constitutional, I'd submit there's no question that the claimant in this
13 particular case, the accused, has met the threshold test to make out a *Charter* breach on a
14 balance of probabilities under Section 2(a).

15
16 THE COURT: Thank you. Which section do you wish to
17 address next?

18
19 MR. GREY: Section 7, Sir.

20
21 So in relation to Section 7, Sir, at tab 4 of our materials, there's a case of *Canada (the*
22 *Attorney General) v. Bedford*. This is a decision of the Supreme Court of Canada. And at
23 paragraphs 74 and -- and following, there's discussion about the sufficient causal
24 connection. And there, that in this case, the Court was talking about the distinctions that
25 Your Honour was mentioning earlier about what is the appropriate standard to -- to apply.
26 In this situation --

27
28 THE COURT: Which paragraph are you at, sir?

29
30 MR. GREY: This is at paragraph 74 and following, Sir --

31
32 THE COURT: Thank you.

33
34 MR. GREY: -- particularly at paragraph 76.

35
36 THE COURT: Go on.

37
38 MR. GREY: So the Court, at that point, was -- was
39 considering whether or not a sufficient causal connection was a proper standard, and
40 ultimately decided that it was in the context of Section 7. And the Court said this at
41 paragraph 76:

1
2 A sufficient causal connection standard does not require that the
3 impugned government action or law be the only or the dominant
4 cause of the prejudice suffered by the claimant, and is satisfied
5 by a reasonable inference, drawn on a balance of probabilities.
6

7 And there are references *Canada (Prime Minister) v. Khadr*:

8
9 A sufficient causal connection is sensitive to the context of the
10 particular -- of the particular case and insists on a real, as
11 opposed to speculative, link. Understood in this way, a sufficient
12 causal connection standard is consistent with the substance of the
13 standard that the Court of Appeal applied in -- in this case.
14

15 And then it goes on, Sir, at paragraph 78, to say:

16
17 ...from a practical perspective, a sufficient causal connection
18 represents a fair and workable threshold for engaging of Section
19 7 of the *Charter*. This is the port of entry for Section 7 claims.
20 The claimant bears the burden of establishing this connection.
21 Even if established, it does not end the inquiry, since the claimant
22 must to go to show the deprivation of the -- their security of the
23 person is not in accordance with the principles of fundamental
24 justice. Although mere speculation will not suffice to establish
25 causation, to set the bar too high risks barring meritorious claims.
26 What is required is a sufficient connect, having regard to the
27 context of the case.
28

29 The context of the case here, Sir, in the case before you, is that Pastor Coates was placed
30 in a situation where he would have to forsake his conscience in order to secure his liberty,
31 and that that resulted in, as I say, a causal connection between the -- the ticket, the
32 violation ticket, which was before the Court in a bail hearing at the essential time, and the
33 -- and the -- and his decision whether or not to -- to be released. And the *Bedford* case,
34 Sir, is also significant in that it goes on to recognize that choice -- the choice to engage in
35 certain behaviour does not necessarily negate Section 7. So in the situation you have
36 before you, in this case, although it could be said, it could be argued, that Pastor Coates
37 could have prevented the deprivation of his liberty by making a choice to enter into the
38 bail condition, that -- that in -- in and of it -- that in and of itself doesn't -- does not negate
39 or vitiate the Section 7 violation. It's -- it's because that he was -- he was put in a situation
40 where he had to choose between his conscience and his liberty that the Section 7
41 violation is made out. And I'd submit that that -- that interpretation is -- is supported by

1 what the Supreme Court of Canada said in -- in *Bedford*.

2
3 There's also, Sir, discussion in *Bedford* about arbitrariness and the -- although that thread
4 is picked up at -- at tab 6, Sir, in the *Carter* case, again from the Supreme Court of
5 Canada, 2015. This is at tab 6 of our materials. The -- in the *Carter* case, Sir, at paragraph
6 72, the Court there said that:

7
8 Section 7 does not catalogue the principles of fundamental justice
9 to which it refers. Over the course of 32 years of *Charter*
10 adjudication, this Court has worked to define the minimum
11 constitutional requirements, the law that trenches on life, liberty
12 or security of person must meet. While that court has recognized
13 a number of principles of fundamental justice, three have
14 emerged as central in the recent Section 7 jurisprudence: laws
15 that impinge on life...

16
17 Which is -- obviously is not applicable here, thankfully:

18
19 ...liberty...

20
21 Which is engaged:

22
23 ...or security of person...

24
25 And that these:

26
27 ..must not be arbitrary, overbroad, or have consequences that are
28 grossly disproportionate to their object.

29
30 I'd submit, Sir, in the case at bar, liberty is clearly engaged, but also some consideration
31 has to be had to security of the person. Specifically, in terms of the -- it'd be because the
32 -- the Courts have recognized that a psychological impact or an emotional impact is also
33 part of the security of the person. And we have evidence before you from Pastor Coates
34 about the separation from his family, how that impacted him, the separation from his
35 church, the loss of weight while he was in the Remand Centre, and how difficult that
36 process was for him, where he had to consider every day whether or not to just sign the
37 release. One can only imagine the -- the horror of that each and every day, to make that
38 awful decision, to stay in Remand, to be true to his conscience rather than simply sign the
39 -- agree to the release term and be released. He mentioned that at any time, any day, he
40 could have been out of there, but he didn't make that decision. I'd submit that must have
41 been very difficult for him and that there's evidence of that, so that not only liberty, but

1 security of the person are engaged.

2
3 Also, in *Carter*, Sir, at 80 -- paragraph 83, there's a -- there's a discussion about the
4 concept of arbitrariness. The Court there said that:

5
6 The principle of -- of fundamental justice that forbids
7 arbitrariness targets the situation where there is no rational
8 connection between the object of the law and the limit it imposes
9 on life, liberty or security of the person. An arbitrary law is one
10 that is not capable of fulfilling its objectives. It exacts a
11 constitutional price in terms of rights, without furthering the
12 public good that is said to be the object of the law.
13

14 Here, Sir, there's a question that has to be grappled with and Mr. Kitchen talked about it,
15 and that is is this concept of arbitrariness engaged where a law that -- or an order that
16 functions as law limits -- has limited Pastor Coates' freedom of religion, his other
17 freedoms that we've talked about, but also, in the result, ultimately, because the -- that
18 law has the force of the penal power of the State, it ultimately engages his -- his liberty
19 and engages his Section 7 freedoms. Is there -- is there an arbitrariness question to be --
20 to be answered there? That's something that the cases, in my submission, are not clear
21 about that, but I'd submit that this man's detention, in the way that it occurred, in the way
22 that I've described, does have an element of arbitrariness to it. And I would think that, in
23 the circumstances, it was most regrettable and something that, in hindsight, could have
24 been -- and was better avoided.
25

26 Sir, at tab 13, there's a case of *Godbout v. Longueuil (City)*. This is another Section 7
27 decision. And here, at paragraph 66, this is yet another decision of the Supreme Court of
28 Canada, but at paragraph 66, the Court said this, that -- that they're talking about a
29 Section 7 right to liberty:
30

31 The foregoing discussion is served simply to reiterate my general
32 view that the right to liberty enshrined in Section 7 of the
33 *Charter* protects within its ambit the right to an irreducible
34 sphere of personal autonomy wherein individuals may make
35 inherently private choices is free from state interference.
36

37 Precisely what happened here:

38
39 I must emphasize here that, as the tenor of my comments in
40 *B.(R.)* should indicate, I do not by any means regard this sphere
41 of autonomy as being so wide as to encompass any and all

1 decisions that individuals might make in conducting their affairs.

2
3 And, but the Court does go on to say there that, and this emphasizes the point I made
4 earlier, there is no doubt that Pastor Coates made a personal decision not to enter into the
5 recognizance. But I'd submit that was a personal decision that was consistent with the
6 expression of his *Charter Rights*. And that in that context, as I say, that would not negate
7 the fact that his Section 7 rights to liberty and security of the person were triggered by the
8 situation into which he was placed.

9
10 I would next refer you, Sir, to a case at tab 20 of our materials. This is, again, a Supreme
11 Court of Canada case from 1999, *N.B. (Minister of Health) v. G.(J.)*. In that case, Sir, at --
12 at page 77, paragraph 60, there is -- the Court sets out the basic test under Section 7 for a
13 restriction of -- of liberty to -- to satisfy the Section 7 test for a violation -- sorry, this is
14 for security of the person. I beg your pardon:

15
16 For a restriction of security of the person to be made out, then,
17 the impugned state action must have a serious and profound
18 effect on a person's psychological integrity. The effects of the
19 state interference must be assessed objectively, with a view to
20 their impact on the psychological integrity of a person of
21 reasonable sensibility. This need not rise to the level of nervous
22 shock or psychiatric illness, but must be greater than ordinary
23 stress or anxiety.

24
25 I'd submit, Sir, the evidence before the Court about Pastor Coates' experience at the
26 Edmonton Remand Centre certainly rises to the level that's required under that case,
27 under that decision.

28
29 Those are my submissions with respect to Section 7, Sir. I have some brief comments
30 regarding Section 24(1), unless you'd prefer to hear from the Crown first.

31
32 THE COURT: No. I'd like to hear your submissions on 24(1).

33
34 MR. GREY: Okay. Sir, at --

35
36 THE COURT: And then I think we'll give your friend some
37 time to --

38
39 MR. GREY: Yes, Sir.

40
41 Sir, at tab number 9 of our materials, there's a case of *Boudreau v. Nova Scotia (Minister*

1 *of Education*), again out of the Supreme Court of Canada. And at paragraph 87, the Court
2 had this to say about Section 24(1), that:

3
4 Section 24 (sic) under the *Charter* requires that courts issue
5 effective, responsive remedies that guarantee full and meaningful
6 protection of *Charter Rights and Freedoms*. The meaningful
7 protection of *Charter Rights*, and in particular the enforcement of
8 Section 23 rights, may in some cases require the introduction of
9 novel remedies.

10
11 And that's what we're asking for here, novel in the sense that not necessarily new in a true
12 sense, but unusual, extraordinary:

13
14 A (sic) court may craft any remedy that it considers appropriate
15 and just in the circumstances.

16
17 And:

18
19 In doing so, courts should be mindful of their roles as
20 constitutional arbiters and the limits of their institutional
21 capacities.

22
23 At tab 21 -- 21 of our materials, Sir, there's the Supreme Court of Canada case, *R. v.*
24 *974649 Ontario Inc.*, from 2001. And here again, the -- the Court is talking about Section
25 24 in the contents of -- of remedies and in comparison in relation to Section 52:

26
27 The *Charter* guarantees the fundamental...

28
29 This is at paragraph 14, Sir:

30
31 The *Charter* guarantees the fundamental rights and freedoms of
32 all Canadians. It does this through two kinds of provisions. The
33 first are provisions describing the rights and freedoms
34 guaranteed. The second are provisions providing remedies or
35 sanctions for breaches of these rights. If a law is consistent (sic)
36 with the *Charter*, Section 52 of the *Constitution Act*, provides
37 that it is invalid to the extent of the inconsistency. On the other
38 hand, if a government action is inconsistent with the *Charter*,
39 Section 24 provides remedies for the inconsistency.

40
41 It goes on to say:

1
2 Section 24(1) permits a Court of competent jurisdiction...
3

4 Which this Court clearly is:
5

6 ...to provide such a remedy as the Court considers appropriate
7 and just in the circumstances.
8

9 And if a remedy is to be had in an instant case, it can issue under Section 24(1). So the
10 point of that case being that, in our submission, this Court is in a position to grant the
11 type of Section 24 remedies that we've indicate -- that we've sought or, in the alternative,
12 some other remedy that this Court thinks appropriate.
13

14 THE COURT: What paragraph are you referring to?

15
16 MR. GREY: That, Sir, was --

17
18 THE COURT: Was it 14?

19
20 MR. GREY: -- fourteen. Thank you.

21
22 THE COURT: Right. That's what I thought. Thank you.
23

24 MR. GREY: Sir, at tab 23 of our materials, there's a Supreme
25 Court of Canada case of *R. v. Carosella*, from 1997. This case is the authority for the
26 concept that a stay of proceedings is available in a situation of irreparable harm. The --
27 that's at paragraph 56 of the decision, Sir. I won't quote from it, but I'll say this about it.
28 The -- the species of irreparable harm that we're -- that we are alleging here, it could
29 justify a stay, in your discretion, are, obviously, the deprivation of his liberty, the loss of
30 35 days of his life that's precious, that's time that he can't get back. And then also the --
31 the psychological harm, in my submission -- our submission, is -- is irreparable. So in the
32 -- in that situation, the -- the stay of proceedings under Section 24(1) is normally
33 reserved, at -- at least as I understand the case law, for situations where the claimant can
34 show that they're -- that they've suffered irreparable harm. And that's what the *Carosella*
35 case stands for, and I think that's consistent with the case law that I am familiar with. But
36 that's essentially our position of what would bring Pastor Coates, James Coates, within
37 the ambit or the scope of -- of a situation where the Court could reasonably grant a stay of
38 proceedings.
39

40 Sir, at tab 26, there's a case of *Elliott*. This is an Alberta Provincial Court case. And here,
41 this is an interesting case because, obviously, it's very early than what we might call the

1 *Charter* era, and what's fascinating about it is that you can -- it's -- it's palpable that the
2 presiding judge was sort of trying to figure out what to do with this new law, with Section
3 20 -- 24(1) of the *Charter*. And it's also fascinating that the Court gets it exactly right.
4 And I'd submit the -- the approach that's -- that's taken there, which is available to you in
5 this case -- what the Court did there is they -- they decided that the accused was guilty of
6 the alleged offence, but then went on to apply a Section 24(1) remedy in all of the
7 circumstances in order to, as it were, remedy the situation. And I -- and I would submit
8 that that is -- that is -- although this case is not binding upon you, I would -- I think that
9 the rationale that's employed there at paragraphs 13 and 14 is very useful. And, Sir, I
10 mention that case also because the -- the Court in that case saw fit to grant an absolute
11 discharge.

12
13 Sir, at paragraph (sic) 27, there's a case of *R. v. Ferguson*.

14
15 THE COURT: So can you --

16
17 MR. GREY: Sorry.

18
19 THE COURT: -- address your friend's position which is that
20 the intersection of Section 787 of the *Criminal Code* and Section 3 of the Provincial
21 Offences -- *Provincial Offences Procedures Act* does not confer upon me the jurisdiction
22 to grant a discharge? That's one of the arguments made by your friend. Do you have a
23 submission in that regard?

24
25 MR. GREY: My submission, Sir, is that that jurisdictional
26 argument does not prescribe the jurisdiction of this Court constitutionally, that -- that this
27 -- the -- the *Charter* is the supreme law of the land, Section 24(1). And so I would submit
28 that your jurisdiction would not -- could -- would not and could not be prescribed by
29 Provincial legislation.

30
31 THE COURT: But you're not challenging the constitutionality
32 of that legislation, and I appreciate you're saying --

33
34 MR. GREY: Yeah.

35
36 THE COURT: -- that I have broader powers under Section
37 24(1), but I'm still -- a Court of statute. I'm governed by it.

38
39 MR. GREY: Yes. Yes. Yes, you are, Sir.

40
41 THE COURT: The laws that apply to me, I can't just decide

1 which of --

2

3 MR. GREY: No.

4

5 THE COURT: -- those laws I'm to follow.

6

7 MR. GREY: I understand, Sir. But as -- as I said, our
8 submission is that you're -- you're sitting not only as a Provincial Court judge, but as a
9 constitutional court.

10

11 THE COURT: Right. All right. Can I ask another question, Mr.
12 Grey? Unless you have more to say about your request for a stay of proceeding, because
13 if you do --

14

15 MR. GREY: M-hm.

16

17 THE COURT: -- I'll let you finish that, otherwise I had a
18 question about that aspect --

19

20 MR. GREY: Okay.

21

22 THE COURT: -- of your submissions.

23

24 MR. GREY: Go ahead, Sir.

25

26 THE COURT: All right. This is a unique proceeding by way of
27 structure. The argument being made today by you and Mr. Kitchen, on behalf of Mr.
28 Coates, is that there ought to be a finding by me at this stage of the proceedings of a
29 violation of the enumerated rights, all four under Section 2, as well as Section 7 and
30 perhaps 9 and 11(e), but I'll hear from you about that in a moment. I'm being invited,
31 given the evidence heard, to make the finding of infringement of one or more of those
32 rights. Correct?

33

34 MR. GREY: Yes, Sir.

35

36 THE COURT: Number 2: you're seeking a stay of proceedings,
37 but I want to be clear that the stay that you're seeking would be premised upon the
38 individualized facts of this case, as you submit, under Section 7, the loss of liberty, the 35
39 days. The reason I want to limit it to that, or seek clarification, is I'm assuming you would
40 agree that in relation to the more global question of whether rights were infringed, and I'll
41 use the perfect example of the freedom of religion or peaceful assembly. If I make a

1 finding of law based upon these facts, that there was infringement of that right, I can't go
2 to remedy. The Crown's entitled to a Section 1 attempt to justification, which they've
3 given notice of their intent to proceed with. And so am I correct that what you're seeking
4 at this stage is a finding as to what, if any, enumerated rights, as particularized that have
5 been infringed, and, number two, a unique remedy under 24(1), that be it a stay or some
6 other remedy, as you're articulating now, but that would relate to the Section 7 issues
7 only and/or 9 and 11(e). They're all relating to the imprisonment, the issue of the
8 undertaking, et cetera, not the overall question of freedom of religion because that's got to
9 go to Section 1 --

10

11 MR. GREY: Yes, Sir.

12

13 THE COURT: -- if there's a finding of breach?

14

15 MR. GREY: Yes, Sir.

16

17 THE COURT: Are we ad idem?

18

19 MR. GREY: That's quite correct, Sir.

20

21 THE COURT: Continue then. Thank you.

22

23 MR. GREY: Sir, the -- the only other case that I was going to
24 refer to -- just give me a moment, Sir.

25

26 THE COURT: Take your time.

27

28 MR. GREY: Because you've -- you've actually summarized
29 our position rather well. The only other case that I was going to refer to, and I was
30 referring to it a moment ago, but perhaps it's not necessary in light of what the Court has
31 indicated, was the case of *Pringle*. This is at tab 34 of our materials, Sir. This is from
32 2003. It's an Alberta Provincial Court case. And it just mentions, Sir, that at paragraph 94
33 of that decision, the -- it indicates that the Provincial Court of Alberta is a court of
34 competent jurisdiction to grant a -- a judicial stay. I appreciate the Court's comments
35 about the jurisdictional issue, but I just point that out.

36

37 THE COURT: I think at the time -- I think that's Judge
38 Lefever, in *Pringle*, if my memory serves.

39

40 MR. GREY: That -- yes, Sir.

41

1 THE COURT: I think at the time that might have been
2 controversial. I don't think that anyone would -- perhaps I'll hear otherwise, but --

3

4 MR. GREY: Okay.

5

6 THE COURT: -- I think that's -- that controversy has been put
7 to rest.

8

9 MR. GREY: All right. The -- the other thing I'd mention
10 about that case, Sir, is that -- and about this case in general, is it's -- it's important to
11 remember, significant, that although it's true that what the accused is facing in this case is
12 a regulatory statute, it's important to note that the effect of this legislation, of these
13 regulations, these health orders, they're not just health regulations. The -- the Province of
14 Alberta has delegated, under Section 29 of the Provincial *Health Act*, unprecedented
15 power to Dr. Hinshaw. The -- the -- and those powers, under Bill 66, which is being
16 debated -- or was being debated until legislature was closed recently, actually proposes to
17 expand those powers. And we've heard in evidence that Pastor Coates referred to her as a
18 -- as a dictator, and in -- in the strict sense of that term, it -- it dates back to ancient Rome
19 and a dictator -- what that means is that at certain times in the Roman Empire, they would
20 select somebody of competence to guide the Roman people through a period of
21 emergency, and they would be granted broad emergency powers. That seems to be what
22 has happened during the pandemic. Dr. Hinshaw has been placed in a very unique
23 situation in Alberta law, as have all the Chief Medical Health Officers in Canada, but
24 these laws, these health orders, Sir, they're not specific to health. They operate as laws of
25 general application that impact the personal and social and public lives of all Albertans.
26 And they are backed by the penal force of law, and that's what we saw in this case,
27 regrettably. So I would submit it's important to remember that and -- and to be mindful of
28 that in -- in assessing the *Charter* evidence that are being put forth here.

29

30 The Crown would have you believe that the Provincial *Health Act* and these regulations
31 are just regulatory offences, but the reality, the -- the practical reality, the legal reality of
32 that has as been explored and revealed in vivid detail in the facts of this case as if the
33 Provincial *Health Act* is much, much more than that. It's a broad sweeping legislation. It's
34 taken on a role in Alberta law that, in my submission, is -- is quite unprecedented. And I
35 -- I can tell you as a member of the bar, as an officer of the court, and I expect that the
36 Court -- that -- that your -- your brother and sister judges would echo this, all of us in the
37 legal profession are struggling to try and deal with the impact that this has had upon our
38 lives. Even the structure of our courthouses have changed drastically. And this case, I
39 think big -- a big part of the reason why it's drawing so much public attention is that it --
40 it seems to be something of a -- of a vortex. It's drawn a lot of these different issues that
41 we're dealing with as a society, as a province, as individuals, as people before the courts,

1 who would work in the courts, investigators, it's drawn all of these different issues into
2 this case. And so I say all that to say this. It's -- it's simplistic. It's overly simple to say to
3 you that, oh, this is just a regulatory statute. This is just a regulation. This is something
4 like what the Court was dealing with in *Sault Ste. Marie*. It most certainly is not. And it's
5 disingenuous and it's wrong to argue that, in my submission.

6

7 Those are my submissions, Sir, subject to your questions.

8

9 THE COURT: All right. Thank you. I do not have any
10 questions at this stage.

11

12 Crown, I wonder if 2:00 would be a convenient time to hear --

13

14 PUBLIC HEALTH PROSECUTOR: Yes, Sir.

15

16 THE COURT: -- your submissions?

17

18 PUBLIC HEALTH PROSECUTOR: Thank you.

19

20 THE COURT: All right. We'll adjourn till 2. Madam clerk, I
21 have not had an opportunity to see Exhibit 6, so can I take that with me over the break so
22 I can read it and then I've reviewed all of the exhibits?

23

24 THE COURT CLERK: Okay.

25

26 THE COURT: Is that all of the exhibits? I'll take custody of
27 them all. Two o'clock. Thank you very much.

28

29 MR. GREY: Thank you, Sir.

30

31

32 PROCEEDINGS ADJOURNED UNTIL 2:00 PM

33

34

35

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41

1 **Certificate of Transcript**

2

3 I, Brenda Stokes, certify that

4

5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the
6 best of my skill and ability and the foregoing pages are a complete and accurate
7 transcript of the contents of the record, and

8

9 (b) the Certificate of Record for these proceedings was not included orally on the record.

10

11 Royal Reporting, A Veritext Company

12 Order Number: AL14221

13 Dated: May 14, 2021

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1 Proceedings taken in the Provincial Court of Alberta, Courthouse, Edmonton, Alberta

2

3 May 4, 2021 Afternoon Session

4

5 The Honourable Provincial Court
6 Judge Shaigec of Alberta

7

8 Public Health Prosecutor For the Crown

9 L.B. Grey, QC For the Accused

10 J.S. Kitchen For the Accused

11 A. Pearson Court Clerk

12

13

14 THE COURT: Thank you everyone.

15

16 THE COURT CLERK: Court is reconvened.

17

18 THE COURT: Please be seated. Thank you.

19

20 PUBLIC HEALTH PROSECUTOR: Good afternoon.

21

22 THE COURT: Good afternoon. Go ahead when you're ready.

23

24 **Submissions by the Public Health Prosecutor (*Charter* Violations)**

25

26 PUBLIC HEALTH PROSECUTOR: In *R. v. Collins*, the Supreme Court of Canada
27 held that Mr. Coates bears the burden of persuading the Court that his rights have been
28 breached on a balance of probabilities and the burden of initially presenting evidence.
29 Quoting from *Collins*:

30

31 The appellant, in my view, bears the burden of persuading the
32 Court that her *Charter Rights and Freedoms* have been infringed
33 or denied.

34

35 And further:

36

37 The standard of persuasion required is only the civil standard of
38 the balance of probabilities and, because of this..., in a case
39 where the evidence does not establish whether or not the
40 appellant's rights were infringed, the Court must conclude that
41 they were not.

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We are not arguing the constitutionality of the Chief Medical Officer of Health Order. We are arguing the *Charter Rights and Freedoms* as they pertain to Mr. Coates on December 20th, 2020. Mr. Coates must demonstrate that a government actor specifically did something that infringed Mr. Coates' rights or freedoms, and that infringement was not trivial.

THE COURT: Was not?

PUBLIC HEALTH PROSECUTOR: Trivial.

THE COURT: Thank you.

PUBLIC HEALTH PROSECUTOR: The government actor, we have an inspector who testified, specific did something. We have RCMP that issued a ticket. So that's the -- I'm -- I'm guessing that it's the issuing of the ticket, but I'm not exactly sure which actor did something specific that breached Mr. Coates' rights and freedoms. I guess the handing of a ticket to someone, right, there is an interaction, but I submit that that is minimal and trivial. We have, in evidence, that Mr. Coates delivered this -- a sermon on December 20th, 2020, that the inspector and the police were respectful. The ticket was issued after the service. So again, no disruption to delivering a sermon. There was some suggestion that it was because of a sermon and the contents of the sermon that was critical. That's all we have. There's no evidence of -- of that at all. The inspector wasn't asked. The RCMP members were available and there was no -- nothing in evidence that suggested that it was anything other than Mr. Coates was in breach of the CMOH orders. Mr. Coates has the ability to hold services, many services, online services. And I just want to point out December 20, 2020, actually the order allowed singing. I note the inspector considered that risky behaviour, but, in fact, singing was not against the CMOH orders.

Everyone has been affected by the pandemic. That was in evidence. It's changed our behaviours, but I submit that the evidence before this Court, there has been no breach established of Mr. Coates' rights or freedoms.

Would the Court like me to address anything specific, or anything further?

THE COURT: The -- I'll go back to the passage that I read earlier today, and I'm going to read it in its entirety from *R. v. Lloyd*, at paragraph 15, 2016 SCC 13, at paragraph 15, and ask for your comment. And the passage is as follows:

The law on the matter is clear. Provincial Court judges are not empowered to make formal declarations that a law is of no force

1 or effect under Section 52 of the *Constitution Act*... However,
2 Provincial judges do have the power to determine the
3 constitutionality of the law where it is properly before them. As
4 this Court started in *R. v. Big M Drug Mart*, "it has always been
5 open to Provincial Courts to declare legislation invalid in
6 criminal cases. No one may be convicted of an offence under an
7 invalid statute."
8

9 As I understand the argument advanced by Mr. Coates, there are, if I can put it this way,
10 perhaps, two levels of inquiry. One, an inquiry at the micro level of what happened on
11 December 20, 2020, and am I able to draw inferences as to why or for what reason a
12 ticket was issued? I've heard argument about that. There is a broader macro issue of an
13 argument being raised that the statute is invalid that Mr. Coates is charged under, and I
14 am being asked to make that finding. It's within that context that certain rights have been
15 addressed as having been breached. What submissions do you have in that regard?
16

17 I understand your submissions about December 20. You're saying there was clear
18 evidence of a violation. The Alberta Health inspector issued a violation ticket. And I
19 understand your argument that the position advanced by the defence is theory or
20 speculation as to its motive. The only evidence before me is the ticket was issued because
21 there was a violation. Oh the broader scope, I'm being asked to declare the statute invalid
22 as it relates to James Coates. My understanding is the Crown is seeking an opportunity to
23 call Section 1 evidence in that regard at a later date, if we get to that stage, if I make a
24 finding of any breaches of Mr. Coates' rights. Is that correct?
25

26 PUBLIC HEALTH PROSECUTOR: Yes.

27
28 THE COURT: What submissions do you have in particular
29 with respect to the arguments advanced as to breaches under Section 2, on a broader
30 scale, which is that the 15 percent capacity rule leads to those breaches? What
31 submissions do you have in that regard?
32

33 PUBLIC HEALTH PROSECUTOR: So those submissions go the constitutionality of
34 the legislation, which I understand is going to be -- there's going to be medical evidence
35 led in order to establish whether there is, in fact, an overreach of the legislation.
36

37 THE COURT: Isn't the --

38
39 PUBLIC HEALTH PROSECUTOR: The difficulty -- sorry?
40

41 THE COURT: Isn't the medical evidence that's anticipated to

1 be called -- and I'm speaking of the Crown's evidence relating to Section 1. We don't get
2 to Section 1 unless I find there's been a violation of certain *Charter Rights*.

3

4 PUBLIC HEALTH PROSECUTOR: Right.

5

6 THE COURT: Yes.

7

8 PUBLIC HEALTH PROSECUTOR: So I would submit that on the evidence before
9 you that with regards to -- for example, a lot of the Section 2 arguments relate to the
10 CMOH orders and the validity of that legislation, and they don't relate to the evidence of
11 there being a breach of Mr. Coates' *Charter Rights*. It's a difficult position because the --
12 they -- they are connected.

13

14 THE COURT: Yes, they are.

15

16 PUBLIC HEALTH PROSECUTOR: And so the difficult that -- with the *Charter* is
17 that the Court is really being asked for some very specific findings as put upon the -- the
18 defendant -- the defence. They have the onus to establish these breaches. And I would
19 submit that the fact that there is evidence of the -- Mr. Coates' ability to practice his
20 religion, to deliver his sermons, to sing, all is before the Court. So on that aspect of the --
21 whether his rights have been infringed under Section 2, I would submit all of that
22 evidence would establish that his rights have not been affected.

23

24 THE COURT: So the seminal decision with respect to
25 definition of the right, if we're going to focus on 2(a), is perhaps *Big M Drug Mart*, and
26 the Court says this at page 336 of the Supreme Court Report, and I quote:

27

28 ...the right to declare religious beliefs openly and without fear of
29 hindrance or reprisal, and the right to manifest religious belief by
30 worship and practice or by teaching and dissemination.

31

32 PUBLIC HEALTH PROSECUTOR: Yes.

33

34 THE COURT: It's a very broad definition. It's a definition that,
35 as argued by the defence, led to a concession in British Columbia, for example by the
36 Attorney General that legislation has the effect of limiting the right.

37

38 PUBLIC HEALTH PROSECUTOR: Now, I have not -- I don't have that case before
39 me and I -- but was that a situation where, at that time, the churches were not allowed to
40 be open?

41

- 1 THE COURT: No. I believe it was a 50 person capacity time in
2 British Columbia. Much like Alberta, British Columbia has gone through different stages
3 of rules during the pandemic. And so my memory of that decision is that it was at a time
4 when capacity in churches was limited to 50 people --
5
- 6 PUBLIC HEALTH PROSECUTOR: Well, if the --
7
- 8 THE COURT: -- which is a -- an analogy or a close
9 comparison to the Alberta rule of 15 percent. It's a setting of a number that is designed to
10 increase, by necessity, physical distancing and thereby decrease the potential spread of
11 COVID-19.
12
- 13 PUBLIC HEALTH PROSECUTOR: All right. And the report is -- because again, I
14 have not read that case, I was aware of it, but I understood there, the church was not
15 allowed to be open, but if the Court is saying that -- that there was a -- a limit to the
16 amount of people, I take a different position.
17
- 18 THE COURT: And what is your position?
19
- 20 PUBLIC HEALTH PROSECUTOR: My position is by Mr. Coates being allowed to
21 operate with a 15 percent capacity, he was still able to practice all of those broad
22 protected *Charter Rights*. He still was able to practice his religion. He was still able to
23 have multiple services. He was still able to go online. I -- I take a different position.
24
- 25 THE COURT: All right. And I just want to then move on to --
26 we'll get to Section 7 in a moment, as Mr. Grey devoted much of his submission to that.
27 And 24(1), I'll hear your submissions as well. But before we get there, we heard
28 submissions from Mr. Kitchen in relation to the freedom of expression, peaceful
29 assembly and association. What is your reply to that? Is there any limitation upon those
30 rights as experienced by Mr. Coates? I appreciate that I'm not here to answer or to
31 address hypothetical questions about the constitutional validity of legislation by way of
32 making a declaration.
33
- 34 PUBLIC HEALTH PROSECUTOR: Okay.
35
- 36 THE COURT: We are focussed on Mr. Coates, but given his
37 evidence and the submissions of Mr. Kitchen, what is your response?
38
- 39 PUBLIC HEALTH PROSECUTOR: So I -- so the -- the 2(a), I believe that I've made
40 my submissions.
41

- 1 THE COURT: You did. Yes. I'm asking --
- 2
- 3 PUBLIC HEALTH PROSECUTOR: Yes.
- 4
- 5 THE COURT: -- more. I'm sorry.
- 6
- 7 PUBLIC HEALTH PROSECUTOR: Yeah. And 2 -- so 2(b), again, as is laid out in
8 my brief, that there's a series of events going far beyond the scope of the December 20,
9 '20 ticket that constitutes the freedom of expression. The freedom of expression, it's
10 clearly in a private place here, a church. The foundation test in *Irwin Toy* is the proper
11 one. Quoting from that:
- 12
- 13 Where, on the other hand, it only aims to control the physical
14 consequences of particular conduct...
- 15
- 16 I submit that this conduct is still allowable.
- 17
- 18 THE COURT: All right.
- 19
- 20 PUBLIC HEALTH PROSECUTOR: And the 2(c), of course, the Crown's position is
21 that this is a collective right as opposed to an individual right which is why the Crown
22 had asked that that be addressed summarily.
- 23
- 24 THE COURT: Thank you.
- 25
- 26 PUBLIC HEALTH PROSECUTOR: 2(d), again, this has to do with the freedom of
27 association rights. And this, again, I -- I heard my -- defence's comments, but this at least
28 addresses, like, the 15 percent limit, I submit. But again, there is the ability to -- as the
29 Court heard on Mr. Coates' evidence, they were online for 2 weeks. They were able to do
30 the -- the conduct and the worship. They just had to modify the behaviour a bit to have 15
31 percent. They could have many services that they could get together. There is -- there is
32 ways in which they can conduct all of these freedoms. They chose not to.
- 33
- 34 THE COURT: Can I ask then, because I want to ensure I have
35 all of your submission, your response to Mr. Grey's arguments about Section 7 and his
36 argument that the subsequent incident of imprisonment is something that I am to
37 consider, please, your response?
- 38
- 39 PUBLIC HEALTH PROSECUTOR: Mr. Coates subsequently was issued I believe it
40 was a long form Information which had an undertaking, which he didn't agree to -- didn't
41 agree with, continued in the face of that, then he was issued another long form

1 Information, I believe, where he went before the justice of the peace and he was released
2 subject to the condition that he follow the CMOH order, the Chief Medical Officer of
3 Health's orders. Mr. Coates chose not to sign that order. That was his decision, his alone.
4 At what part does he not have to take responsibility for his decisions? The State had
5 nothing to do with Mr. Coates deciding not to sign the release order and to stay in
6 custody. And you've heard the reasons that he did it. It was his conscience. He gets to
7 have that belief and that commitment to his belief, but that's his behaviour. That's his
8 decision.

9
10 That same argument goes to this -- the Section 9 and under the 11(e).

11
12 THE COURT: And I saw Section 9 and 11(e) as, and I won't
13 ask Mr. Grey to interrupt, but I'll have him clarify in a moment, subsumed, in effect, by
14 the Section 7 argument. Mr. Grey didn't stress 9 or 11(e), or didn't mention even 9 or
15 11(e). It's more of an overall position under Section 7 that the imprisonment for 35 days
16 is something that I should take into account because, in the defence view, there's a causal
17 connection. So I don't need submissions on 9 or 11(e) unless Mr. Grey -- Mr. Grey, am I
18 right? You're not --

19
20 MR. GREY: I --

21
22 THE COURT: -- arguing that? It's more of a --

23
24 MR. GREY: -- I would go further and say, Sir, that if -- if
25 you don't find a Section 7 violation, the other two would fall.

26
27 THE COURT: Right. Thank you.

28
29 24(1), and I just want to ensure, Crown, that I have your submissions on all of the issues
30 that have been raised by the defence so that I have full submissions. You've addressed the
31 onus, you've addressed the role that I have here in applying the constitution to the facts of
32 this case and to Mr. Coates individually. You've addressed Section 2(a), (b), (c) and (d)
33 and 7. Can you set out your position, please, on 24(1)? And there's, effectively, been a
34 request for a stay of proceedings or a dismissal of the charge --

35
36 PUBLIC HEALTH PROSECUTOR: Okay.

37
38 THE COURT: -- and a broader, perhaps absolute discharge,
39 but if you can tell me your position in relation to those three remedies sought under
40 24(1). We're not at a Section 1 inquiry at this stage.

41

1 PUBLIC HEALTH PROSECUTOR: It's a little difficult, Your Honour, just in the
2 event that what breaches would be found would also then determine maybe what remedy.
3

4 THE COURT: So if I can answer that. Mr. Grey's position this
5 morning is that the alleged breaches under Sections 2(a), (b), (c) and (d), I'm being asked
6 to find breaches of those *Charter Rights*. I'll have to decide whether there are any
7 breaches of any *Charter Rights*. If I find that any of those *Charter Rights* of Mr. Coates
8 have been breached, that would then become a Section 1 inquiry for a later date. Mr.
9 Grey's Section 24(1) remedy that he seeks was only in relation to Section 7 and this
10 overall argument of imprisonment arising from the undertaking that he couldn't enter into
11 out of conscience. And so I think that that narrows the issue such that you can make
12 submissions because Mr. Grey's position is that the 24(1) remedy would flow only from a
13 finding by me that there has been a breach of Section 7. And again, there is no such
14 finding by me today. That is an issue that I'll need to consider.
15

16 PUBLIC HEALTH PROSECUTOR: Well, the -- the law under the stay, under 24(1)
17 remedy, is that it has to be the clearest of cases. So the Court would have to find that the
18 breach was such that there was -- it -- it would be the -- the clearest of cases that you
19 would enter a stay. And I would submit that that's a -- a fairly high test because, of
20 course --
21

22 THE COURT: Well, it is. There's no question. It's the highest
23 of hurdles.
24

25 PUBLIC HEALTH PROSECUTOR: Right.
26

27 THE COURT: And by analogy, a dismissal of the charge,
28 which is also sought by the defence, is the functional equivalent of the stay. There's really
29 no difference.
30

31 PUBLIC HEALTH PROSECUTOR: Right. Correct.
32

33 THE COURT: Right.
34

35 PUBLIC HEALTH PROSECUTOR: Correct. Correct. And I think the 24(1) law has
36 evolved in the -- the sense that there is now case law that talks about flexible remedies.
37 Right? There's other remedies that the courts have that can deal with the 24(1), and I
38 think that that makes, again, the -- the hurdle of the clearest of cases even more so.
39

40 THE COURT: Right. All right. Thank you. That is the entirety
41 of the issues that were raised. Is there any other submissions that you have?

1
2 PUBLIC HEALTH PROSECUTOR: Not unless the Court has any questions.

3
4 THE COURT: No. All right. Thank you.

5
6 Mr. Grey or Mr. Kitchen, a reply? But I would ask that it be limited to one counsel, but
7 also ensuring that it's only if new issues have been raised that you wish to address
8 because I have your very clear positions from this morning.

9
10 MR. GREY: Oh. I guess I'll ask, Sir, if -- if you think you
11 need to hear from me concerning any of the -- I -- I do have some brief --

12
13 THE COURT: Go ahead.

14
15 MR. GREY: -- submissions in reply, but I would not --

16
17 THE COURT: Well --

18
19 MR. GREY: -- I'm not going to --

20
21 THE COURT: -- go ahead and I'll stop --

22
23 MR. GREY: Okay.

24
25 THE COURT: -- if I think it's simply a reiteration of --

26
27 MR. GREY: Okay.

28
29 THE COURT: -- what you've already said.

30
31 **Submissions by Mr. Grey (*Charter Violations*)**

32
33 MR. GREY: Firstly, Sir, my friend started off by saying that
34 she wasn't clear about what government action had triggered the -- the *Charter Right*. I
35 think it's pretty clear that Ms. Hanrahan's order, which is part of the agreed statement of
36 fact, which is in evidence, that that's clearly government action. There was an imposition
37 in -- by that order which stemmed from, of course, the direction of the Chief Medical
38 Officer of Health. That was government action and that what set the whole set of -- of
39 things in motion. So from my mind, that's -- that's the answer to that.

40
41 With respect to my friend's comments about how Pastor Coates and the congregants of

1 GraceLife Church could have exercised their freedom of religion within limits sounds to
2 me like an admission by the Crown that there are some limits that were placed upon the
3 freedom. And so I think there's a confusion there between a reasonable limitation and the
4 *Charter Right*. And in my submission, the -- as I read the case law, there are different
5 thresholds with respect to the different rights, as you know. But taking Section 2(a), for
6 example, I read that threshold in terms of the -- the -- an accused's person establishing
7 breach of the right to be a relatively low threshold. And the reason why it is that way is
8 because the framers of the *Charter* had both Section 24, where the Court would have an
9 opportunity to consider whether a remedy is appropriate, and also Section 1, a saving
10 provision. So I don't think that the way that the -- the *Charter* is structured, it's designed
11 to consider, of course, Section 7 being something of an exception because it has its own
12 inquiry in there with respect to limits. But what I'm saying is I think it's -- we have to be
13 careful about confusing whether or not Pastor Coates and the congregants of the church
14 could have done things in order to comply with the health order. Confusing that with the
15 idea of whether or not the health order itself violated the freedom of religion. That's the
16 point that we're making.

17
18 With respect to Section 7, Sir, I say again that imprisonment at the Remand of Pastor
19 Coates is inextricably tied to a series of events about which the Crown led evidence in the
20 course of its own case, and by which the Crown itself tied the denial of the release to the
21 events before the Court. So I -- I don't think that we can break these pieces apart. It seems
22 to me that we have a -- a series of -- of events that all involved Ms. Hanrahan, all
23 involved Pastor Coates. And we can't go in and pick them all apart because the reality of
24 it is, and the transcript, I think, that establishes this is clear -- the transcript of the bail
25 hearing and the evidence of Pastor Coates establishes clearly that those events of
26 December 20th, 2020, were before the Court, were considered as part of the -- the facts
27 that were considered upon his release, and he was denied release. My friend has her
28 comments about the choice that Pastor Coates made, but I think I've already covered that
29 in my previous submissions, Sir.

30
31 But those would be my only comments in reply. I don't know whether Mr. Kitchen has
32 anything to add. I don't think so.

33
34 **Ruling Reserved (*Charter* Violations)**

35
36 THE COURT:

All right. Thank you.

37
38 So, counsel, two things I want to map out: the path forward and propose some dates to
39 counsel by way of the next appearance. And I want to ensure that all parties are in
40 agreement as to -- given that we're hearing this matter in stages, as to what issues I am to
41 decide at this stage. In addition to the obvious, which is I need to assess and weigh the

1 evidence that I've heard and make determinations based upon it, the legal questions -- and
2 I'll ask the Crown first to confirm that this is their understanding. But the legal questions
3 that I am being asked to answer at this stage are, as I see it, threefold in a general sense.
4 Number 1: Were any of James Coates' *Charter Rights* violated? Number 2: If his Section
5 7 *Charter Rights* were violated, is he entitled to any of the remedies he seeks under
6 Section 24(1)? And number 3: If my answer to the first question as to whether any rights
7 were violated is yes, if it is yes, then the next stage would be engaged which is a date
8 would be set for Section 1 evidence and, ultimately, argument?
9

10 Crown, are we on the same page entirely?
11

12 PUBLIC HEALTH PROSECUTOR: Yes, we are.
13

14 THE COURT: Mr. Grey?
15

16 MR. GREY: Yes, Sir. Thank you.
17

18 THE COURT: All right. Now, I have some dates, then, to
19 propose to counsel by way of when I would provide my decision on those three legal
20 questions. First, I'll tell you that the dates that I'm proposing are in Stony Plain Provincial
21 Court, and I'll explain what I am suggesting and why. Number 1, we're in this courtroom
22 for the last 2 days for a number of reasons, but this courtroom is not readily available to
23 us. Number 2, the appearance at the next occasion would be for the sole purpose of me
24 providing my reasons for judgment in relation to those three questions that have been
25 posed. In other words, counsel could, and I would encourage appearance remotely. And
26 third, I have confirmed with the court administration that on the following dates, as I'll
27 propose them, we are able to convene in Stony Plain Provincial Court where this case
28 originates from, with full WebEx capabilities akin to those capabilities in this courtroom
29 such that all members of the public and media will have access to the proceedings in the
30 same fashion that they've had access to these proceedings.
31

32 So with that in mind, the dates that I can propose, and we'll go through this -- now, keep
33 in mind, counsel, that you can appear, and I would ask you to consider appearing
34 remotely, and therefore we can have the case scheduled at a different hour than perhaps
35 9:30 if that needs to be the case. June 7th, June 11, 14 or 15. Those are the 4 days that
36 court administration can accommodate the matter. And if it's June 11, it would be at 1
37 PM. If it's on the other days, we could be more flexible by way of the time.
38

39 So, Crown, are any of those dates unavailable for a remote appearance? And if so, at
40 what times, if they're unavailable at certain times only?
41

1 PUBLIC HEALTH PROSECUTOR: I can make myself available, Sir.

2

3 THE COURT: All right. Defence?

4

5 MR. GREY: We will as well, Sir.

6

7 THE COURT: Then to ensure that the matter continues to
8 move along as quickly as reasonably possible, June 7.

9

10 PUBLIC HEALTH PROSECUTOR: June 7th?

11

12 THE COURT: Yes. At 9:30 or as soon thereafter as we start.
13 And again, it'll be for my reasons for judgment and that alone.

14

15 PUBLIC HEALTH PROSECUTOR: And you said, 9:30, Sir?

16

17 THE COURT: Yes. Thank you.

18

19 Is there anything else, then, counsel, that we need to address prior to June the 7th?

20

21 MR. GREY: No, Sir. Thank you.

22

23 PUBLIC HEALTH PROSECUTOR: No, Sir.

24

25 THE COURT: All right. Thank you all very much, and we are
26 adjourned till June 7th. Thank you.

27

28

29 PROCEEDINGS ADJOURNED UNTIL 9:30 AM, JUNE 7, 2021, STONY PLAIN

30

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1 Certificate of Record

2

3 I, Ashley Pearson, certify that this recording is the record made of the evidence in the
4 proceedings in Provincial Court, held in courtroom 514, at Edmonton, Alberta, on the 4th
5 day of May, 2021, and that I was the court official in charge of the sound-recording
6 machine during the proceedings.

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1 **Certificate of Transcript**

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I, Brenda Stokes, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

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