



# Justice Centre for Constitutional Freedoms

December 7, 2021

The Honourable Hugh J. Flemming Q.C.  
Minister of Justice and Public Safety  
Marysville Place  
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Fredericton, NB E3B 5H1

By Email: [REDACTED]

Dear Minister Flemming,

## **RE: Mandatory Order of December 4, 2021**

Your revised Mandatory Order of December 4, 2021 has been brought to our attention. In particular, there are grave concerns with paragraphs 3 and 6.

### **Paragraph 3**

The Order states as follows:

“In every church and other faith venue, paragraph 2 does not apply, but the owners, occupiers and managers are required to take every reasonable step **to ensure at every indoor faith gathering that every person in the venue is fully vaccinated against COVID-19. For gatherings other than weddings, funerals and social gatherings**, the owners, occupiers and managers may alternatively choose to ensure that (a) all persons in the venues are masked at all times, (b) the venue does not at any time exceed 50% of its fire-rated capacity under the National Building Code, (c) persons attending are distanced 2 or more metres from person with whom they do not reside, (d) there is no congregational singing, (e) a record is kept of every person in attendance by date and time, with the name, contact information and row/pew number of each person, and the record [in] made available to Public Health upon demand, and (f) no persons are admitted if they have symptoms of COVID-19 or if they are under a self-isolation order.”

If correctly interpreted, the above provision appears to require mandatory vaccination for all weddings, funerals and social gatherings in a faith setting without exception, while paragraph 2 in the Order permits testing for festivals, performing arts events, sports events, restaurants, food courts, cafeterias in schools, colleges and universities, clubs, pubs and bars, nightclubs, amusement centres, pool halls, bowling alleys and casinos, movie theatres, libraries, museums, gyms, swimming pools, and other indoor recreational facilities, organized group recreational sports, and gatherings held indoors.

Unconscionably, the impugned paragraph egregiously discriminates against New Brunswickers of faith who choose to be vaccine-free. A grieving family who wishes to attend the funeral of a

loved one is not permitted to attend a monumental event in life as practiced for thousands of years, while being permitted to attend a pool hall. A social faith gathering is prohibited while a non-faith social gathering is permitted.

These are gross violations of Sections 2 and 15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”). They also contravene Section 6(1) of the *Human Rights Act* (the “*Act*”).

### Paragraph 6

The Order states as follows:

"In all public indoor spaces where proof of vaccination is not mandatory, whether mandated by law or by the owner or occupier of the property, occupiers and managers are required to take every reasonable step to require physical distancing of two meters or more between patrons who do not reside together. **For greater certainty: the owners and occupiers of premises in which proof of vaccination is not required by law are free to choose between making proof of vaccination a requirement of entry to their premises and making distancing mandatory in their premises.** This paragraph does not apply to schools, early childhood learning centres, colleges, universities, premises at which health professionals treat patients, nor to any parts of any building to which the general public is not admitted."

Growing and significant concern is being expressed across Canada and internationally, in relation to the above paragraph, as it necessarily includes grocery stores as a premise at which the Government is inviting the option of proof of vaccination. Interestingly, the Covid-19 Winter Plan materials on the Government website inconspicuously excludes this possibility which is contained in the Order itself.

The right to food is a fundamental Human Right enshrined in various international instruments including, Article 25 of *The Universal Declaration of Human Rights* and Article 11 of the *International Covenant on Economic Social and Cultural Rights* amongst other Human Rights instruments.

It goes without saying that access to food for all Canadians including citizens of New Brunswick is an essential service which should not be denied or invited to be denied to anyone, especially by Government. The impugned paragraph of the Order invites and elicits the private sector to discriminate against New Brunswick citizens in relation to an essential service, as defined by the Government of Canada.

Such discrimination is prohibited by Section 6(1) of the *Act* and moreover, Government's implicit invitation to engage in such practices triggers the *Charter*. To that end, the impugned paragraph contravenes Sections 7 and 15.

This shall serve as a warning upon you of such unconscionable violations. It is expected that you will forthwith correct paragraph 3 to accord with the *Charter* and the *Act* and at a minimum, include grocery stores in the enumerated exceptions to which paragraph 3 does not apply.

New Brunswickers deserve better and the citizens of Canada are looking for your correction to the impugned paragraphs.

Yours truly,

[REDACTED]

[REDACTED]

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cc: Premier Blaine Higgs – [REDACTED] and  
Dr. Jennifer Russell, Chief Medical Officer of Health – [REDACTED]