

Docket No.: AJ05091608

Cranbrook Registry

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

Between

HER MAJESTY THE QUEEN

and

DAVID RIPLEY

(Accused/Applicant)

NOTICE OF CONSTITUTIONAL QUESTION

(Pursuant to section 8(2) of the *Constitutional Question Act*, RSBC 1996, c 68)

TO: **Attorney General of British Columbia**
1001 Douglas Street
Victoria BC, V8W 2C5
Attention: Duty Counsel

AND TO: **Attorney General of Canada**
900-840 Howe Street
Vancouver BC, V6Z 2S9

TAKE NOTICE, pursuant to section 8(2) of the *Constitutional Question Act*, RSBC, c 68 that on May 26, 2022 at the courthouse at 1355 Water Street, Kelowna in the Province of British Columbia (the "Hearing"), the Accused/Applicant seeks an order and/or declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the "*Charter*"), relying on the principle of constitutional supremacy as set out in section 52(1) of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (the "*Constitution Act, 1982*"), that the order of the Provincial Health Officer titled "Gatherings and Events" in effect April 11, 2021 (the "Impugned Order") unjustifiably infringes the rights and freedoms guaranteed by sections 2(a), 2(b), 2(c), 2(d), and 15(1) of the *Charter* and is therefore void and of no force or effect in this matter.

AND TAKE FURTHER NOTICE that the Accused/Applicant seeks an order and/or declaration, pursuant to section 24(1) of the *Charter*, dismissing the charges and/or

quashing the proceedings, or in the alternative, to be acquitted of the charges made against him, pursuant to the above.

AND TAKE FURTHER NOTICE that the particulars necessary to show the points to be argued in the Hearing concerning the constitutional remedies sought are set out as follows:

a. No person may be convicted pursuant to an unconstitutional law

1. Pursuant to the supremacy of the Constitution as embodied in section 52(1) of the *Constitution Act, 1982*, no person may be convicted of an offence under a law which is itself “inconsistent with the provisions of the Constitution”, as such a law is, “to the extent of the inconsistency, of no force or effect”.

2. “[L]aw” in this context is broader than statutes or statutory provisions, and includes binding norms of a general and impersonal nature that determine a line of conduct and the application of which is not limited to a specific case.

b. The Impugned Order is a law within the meaning of section 52(1) of the *Constitution Act, 1982*

3. The Impugned Order is a law within the meaning of section 52(1) of the *Constitution Act, 1982*: it has imposed binding norms of general application, restricting the conduct of all persons in British Columbia on penalty of law. This has included the imposition of sweeping and previously unimaginable restrictions on personal interaction amongst British Columbians, including a general prohibition on the hosting or attending of “a worship or other religious service”.

c. The Impugned Order unjustifiably infringes the *Charter* rights and freedoms of the Accused/Applicant and other British Columbians

4. The Impugned Order unjustifiably infringes the *Charter* rights and freedoms of the Accused/Applicant and other British Columbians.

5. The Impugned Order unjustifiably infringes the fundamental freedoms of conscience and religion (as protected by section 2(a) of the *Charter*); of thought, belief, opinion, and expression (as protected by section 2(b) of the *Charter*); of peaceful assembly (as protected by section 2(c) of the *Charter*); and of association (as protected by section 2(d) of the *Charter*).

6. Further, the Impugned Order unjustifiably infringes the right to equal protection and equal benefit of the law without discrimination on the basis of religion (as protected by section 15(1) of the *Charter*).

i. Freedom of conscience and religion (section 2(a) of the *Charter*)

7. The Impugned Order infringes the freedom of conscience and religion of members of an identifiable group, including the Accused/Applicant and other British Columbians, as protected by section 2(a) of the *Charter*.

8. The essence of this freedom is founded in respect for the inviolable rights of the human person and reflects an emphasis on individual conscience and individual judgment which lies at the heart of our democratic political tradition, and yet is profoundly communitarian. This freedom must therefore account for the socially embedded nature of religious belief, as well as the deep linkages between this belief and its manifestation through communal institutions and traditions.

9. An infringement of this freedom is made out when the claimant shows (1) that he or she sincerely believes in a belief or practice that has a nexus with religion, and (2) the impugned law or government action interferes with the claimant's ability to act in accordance with that belief or practice in a manner that is more than trivial or insubstantial.

10. The Accused/Applicant is an Evangelical Christian who sincerely believes that the Bible is the Word of God and the fundamental God-ordained truth. The Accused/Applicant sincerely believes that the gathering of Christian believers is vital for Christian spiritual wellbeing, as the Bible instructs against "forsaking the assembling of ourselves together" (Hebrews 10:25). The Accused/Applicant sincerely believes that the gathering of the saints – be it for worship and preaching or for prayer and contemplation – is an essential element of the pursuit of his spiritual wellbeing and the spiritual wellbeing of his congregation. Gathering in some capacity is and remains central to his beliefs.

11. The effect of the Impugned Order is to prohibit the Accused/Applicant from engaging in collective in-person religious practice as commanded by his highest spiritual authority, on penalty of law. The same is true for all British Columbians who hold similar beliefs concerning collective in-person religious practice, whatever those practices entail and whatever the religion.

12. The Impugned Order has therefore interfered with the ability of the Accused/Applicant and other British Columbians to act in accordance with their sincere religious beliefs in a manner that is well beyond trivial or insubstantial. This order consequently infringes section 2(a) of the *Charter*.

ii. Freedom of thought, belief, opinion and expression (section 2(b) of the Charter)

13. The Impugned Order infringes the freedom of thought, belief, opinion and expression of the Accused/Applicant and other British Columbians, as protected by section 2(b) of the *Charter*.

14. Section 2(b) extends *prima facie* constitutional protection to all human activity intended to convey a meaning. Such activity may only be excluded from section 2(b) protection if its method (e.g., violence or threats of violence) or location clearly undermines the values that underlie the guarantee, namely democratic discourse, truth-finding and self-fulfillment.

15. Prayer is an expressive activity not excluded in the present case from constitutional protection on the basis of its method or location.

16. The effect of the Impugned Order is to prohibit expressive religious activity in a collective in-person setting. The Impugned Order therefore infringes the expressive freedom of the Accused/Applicant, other members and other British Columbians as protected by section 2(b) of the *Charter*.

iii. Freedom of peaceful assembly (section 2(c) of the Charter)

17. The Impugned Order infringes the freedom of peaceful assembly of the Accused/Applicant and other British Columbians as protected by section 2(c) of the *Charter*.

18. Although section 2(c) jurisprudence remains largely undeveloped, an identified purpose of the freedom of assembly is to protect the physical gathering together of people. Further, the right of peaceful assembly is, by definition, a collectively held right: it cannot be exercised by an individual and requires a literal coming together of people.

19. The freedom of peaceful assembly is separate and distinct from the other fundamental freedoms protected by section 2 of the *Charter*, and it requires the state to refrain from interfering in such assembly. This freedom is therefore an independent constitutionally-protected right.

20. Both the purpose and ultimate effect of the Impugned Order is to severely restrict or outright prohibit the in-person assembly of British Columbians in particular settings, including a prayer service. This order consequently infringes the freedom of peaceful assembly of the Accused/Applicant and other British Columbians as protected by section 2(c) of the *Charter*.

iv. Freedom of association (section 2(d) of the Charter)

21. The Impugned Order infringes the freedom of association of the Accused/Applicant and other British Columbians as protected by section 2(d) of the *Charter*.

22. Section 2(d) of the Charter protects against laws and other government action which substantially interferes with the freedom of association.

23. A purposive approach to freedom of association defines the content of this right by reference to its purpose: to recognize the profoundly social nature of human endeavors and to protect the individual from state-enforced isolation in the pursuit of his or her ends. Freedom of association allows the achievement of individual potential through interpersonal relationships and collective action.

24. The freedom of association encompasses the protection of (1) individuals joining with others to form associations, (2) collective activity in support of other constitutional rights, and (3) collective activity that enables those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict.

25. The effect of the Impugned Order is to substantially interfere with the freedom of the Accused/Applicant and other British Columbians to associate by gathering in-person together for the purposes of manifesting religious beliefs, amounting to the collective exercise of other constitutional rights. The Impugned Order therefore infringes section 2(d) of the *Charter*.

v. Protection against discrimination on the basis of religion (section 15(1) of the *Charter*)

26. The Impugned Order infringes the right of the Accused/Applicant and other British Columbians against discrimination on the basis of religion as prohibited by section 15(1) of the *Charter*.

27. The Impugned Order has imposed a clear distinction in treatment between British Columbians on the basis of religion, as the order has generally prohibited constitutionally-protected in-person collective worship and other religious services while the Provincial Health Officer permitted certain secular forms of in-person gathering to continue, thereby favouring irreligious British Columbians over those to whom the prohibited activities hold significance on the basis of their religious beliefs. Forms of secular gathering which continued to be permitted by the Provincial Health Officer include support groups and classroom education, exercise in fitness facilities, and purely economic activities such as in-person shopping in big box and other retail establishments and indoor service in restaurants and bars.

28. The Impugned Order disadvantaged the Accused/Applicant and other British Columbians who place religious value on gathering to pray by denying them the ability to gather which is afforded to similar secular gatherings such as support group meetings and in-person classes.

29. Drawing such distinctions on the basis of religion is constitutionally prohibited under section 15(1) of the *Charter*.

vi. The Impugned Order's infringements of the *Charter* are not justified under section 1

30. The infringements of the *Charter* rights and freedoms of the Accused/Applicant and other British Columbians imposed by the Impugned Order are not justified under section 1 of the *Charter*. Consequently, this order is—to the extent of this inconsistency with the Constitution—of no force or effect.

31. To the extent that Violation Ticket No. AJ05091608 (the “Ticket”) results from these infringements, it must fall with the Impugned Order underlying it.


32. Per section 1, the rights and freedoms guaranteed by the *Charter* are subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

33. Due to the lack of scientific evidence in support of any significant effectiveness of the Impugned Order in protecting public health, the Impugned Order is not justified under section 1. The order is not rationally connected to any identifiable pressing and substantial objective and imposed a sweeping prohibition on in-person religious worship and practice which is not minimally impairing of the *Charter* rights and freedoms engaged. Further, the severely deleterious effect of this order on these rights and freedoms is not outweighed by any proven salutary effect.

d. Further proceedings

34. This application does not include a remedy for any unconstitutional actions resulting from enforcement of the Impugned Order, which will, if necessary, be raised in a subsequent notice.

Dated: April 18, 2022


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