

AMENDED this 12 day of
August 2021 Pursuant to
Rule 3.62
dated the 12 day of August 2021

Form 10
[Rules 3.25]

COURT FILE NUMBER **2101-08689**
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLANTIFF TIMOTHY PAUL STEPHENS
DEFENDANTS HER MAJESTY THE QUEEN IN RIGHT OF
ALBERTA,
ALBERTA HEALTH SERVICES ("AHS"), and
CALGARY (POLICE SERVICE) ("CPS"),
MARK NEUFELD (CALGARY POLICE
CHIEF), and
THE CITY OF CALGARY



DOCUMENT **AMENDED AMENDED STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Justice Centre for Constitutional Freedoms
#253, 7620 Elbow Drive SW
Calgary, Alberta T2V 1K2
Sayeh Hassan
Henna Parmar

Phone: [REDACTED]
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NOTICE TO DEFENDANT(S):

You are being sued. You are a Defendant.

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

THE PLAINTIFF CLAIMS:

1. A declaration that Her Majesty the Queen in Right of Alberta (or "Crown"), Alberta Health Services ("AHS") and the Calgary Police Service ("CPS"), Mark Neufeld (Calgary Police Chief) and The City of Calgary (the "Defendants") violated the rights of Pastor Stephens (the

"Plaintiff") under sections 7 and 9 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*").

2. Damages against the Defendants under section 24(1) of the *Charter* in the amount of \$50,000.00 or such other sum as this Honourable Court deems just.
3. The costs of this proceeding on a substantial indemnity basis.

THE PARTIES:

4. The 41-year-old Plaintiff holds a bachelor's degree in Software Development from Queen's University and received a Master's degree in Divinity from Detroit Baptist Theological Seminary in 2013.
5. Since January of 2014, the Plaintiff has been the Pastor of Fairview Baptist Church ("Fairview Baptist"), a Protestant Christian church holding to a reformed theology.
6. Gathering for worship is integral to the Plaintiff's religious beliefs and fundamental to those of his Church and congregation. They follow the biblical injunction to assemble corporately for worship, the failure of which, they believe, is a violation of the Scriptures. The Plaintiff and the congregation believe that physical gathering for worship is distinct from and pre-eminent among every other gathering in the life of a church, and that such gathering should consist of the full body of Christ as constituted by the local assembly.
7. Furthermore, the Plaintiff and his congregation believe that the following items are essential elements for the perfection of gathering for worship:
 - a. The public proclamation of God's word (Eph 4:11–12; 2 Tim 4:2; Tit 2:15);
 - b. The public reading of Scripture (1 Tim 4:13);
 - c. Corporate prayer (Rom 15:5–6; Eph 6:18; 1 Tim 2:1–8);
 - d. Corporate singing (Eph 5:18–21; Col 3:16);
 - e. Fellowship through mutual edification and the practice of the "one another's commands" (Rom 12:1–13; 1 Cor 12:4–26; Heb 10:24–25);
 - f. Participation in the ordinances (Matt 28:19; 1 Cor 11:17–34); and
 - g. Church discipline (Matt 18:15–20; 1 Cor 5; 2 Thess 3:14–15; 1 Tim 5:19–21; Tit 3:10).

8. The Plaintiff and his congregation also believe that corporate worship is a ritual, consisting of both structured and unstructured elements, which allows church members to engage one another relationally in pursuit of mutual encouragement and edification.
9. The Defendant in this proceeding is named pursuant to the provisions of the *Proceedings Against the Crown Act*, RSA 2000, c P-25.

WRONGFUL ARREST AND DETENTION:

10. On May 6, 2021, Alberta Health Services ("AHS") obtained an *ex parte* Injunction Order (the "Order") against Christopher Scott, Whistle Stop (2021) Ltd., Glenn Carritt, John Doe(s) and Jane Doe(s) preventing them from organizing, promoting, and attending any in-person illegal gatherings. spacing

11. Section 1 of the Order states:

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

- a. organizing an in-person gathering, including requesting, inciting, or inviting others to attend an "Illegal Public Gathering;"
- b. promoting an Illegal Public Gathering via social media or otherwise;
- c. attending an Illegal Public Gathering of any nature in a "public place" or "private place," which each have the same meaning as given to them in the Public Health Act.

12. Section 5 of the Order states:

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

13. On May 13, 2021, the Justice Centre for Constitutional Freedoms ("JCCF") appeared as an intervenor to oppose the Order in *Alberta Health Services v. Christopher Scott, Whistle Stop (2012) Ltd., Glen Carritt, John Doe(s), Jane Doe(s)* (Crt. File No. 2101-05742) and petitioned that the words "or independently to like effect" (the "Term") be removed from section 1. After discussion, the Defendant consented to the removal of the Term.

14. On May 13, 2021, the amendment to the Order was pronounced. As a result, it was amended to apply only to “[t]he individual Respondents, and any other person acting under their instructions or in concert with them.”
15. On May 9, 2021, Calgary Police Service ("CPS") officers hand delivered a copy of the May 6, 2021 Order to an individual named Kent Pederson, a resident of Calgary, Alberta, who does not reside in the same location as the Plaintiff. CPS did not ask for identification, and assumed Pederson was the Plaintiff. CPS was acting on incorrect information provided by AHS and failed to take reasonable steps to identify the individual it served with the amended Order.
16. On the morning of Sunday May 16, 2021, the Plaintiff led a worship service at Fairview Baptist. Afterwards, CPS arrested him in the parking lot of Fairview Baptist in front of his wife, eight children and various congregants. It was alleged that Plaintiff had violated paragraph 5 of the amended Order. The Plaintiff was not served with the amended Order prior to his arrest.
17. The Plaintiff states that the arrest was wrongful because: (i) it occurred even though he was never served with the amended Order, which stipulated that notice was a pre-requisite to being detained; (ii) he was not acting under the "instructions" of or "in concert with" the parties named in the amended Order, and (iii) since the amended Order eliminated the term "or independently to like effect," he could not be arrested for acting on his own initiative.
18. On or about May 16, 2021, Alberta Health Services ("AHS") brought contempt proceedings against the Plaintiff for breaching the May 6, 2021 Order even though CPS and AHS had failed to serve the Plaintiff with the amended Order. On May 28, 2021, AHS withdrew its contempt application against the Plaintiff, admitting that it had failed to fulfill the condition precedent of the amended Order, that is, service on the Plaintiff.
19. While in custody from May 16, 2021 to May 18, 2021 the Plaintiff was first sent to Spy Hill Jail, where he was processed, and then transferred to the Calgary Remand Centre (CRC) for two nights and three days, after which he was released on bail.
20. Upon entering CRC he was strip searched, a practice that was humiliating and dehumanizing for a devout Christian who strongly believes in modesty. During his stay at CRC, he was

transferred to and from court on May 17, 2021 and May 18, 2021 with his ankles shackled in chains.

21. The Plaintiff was paired with a cellmate who was frequently abusive. On his first night in custody, the Plaintiff arrived when his cellmate was already asleep. Not being familiar with the rules of prison life, the Plaintiff flushed the toilet in the cell, which awakened the cellmate and caused him to launch into a verbal tirade. Also, the cellmate became verbally abusive, aggressive, and threatening every time the Plaintiff moved in his sleep because it caused his bed to make a creaking sound.
22. Another hardship was that Pastor Stephens could not follow his daily ritual of singing songs to comfort his soul, a practice intimately connected with his religious beliefs, for fear he would antagonize the cellmate.
23. Confinement became even more unpleasant for the Plaintiff due to the fact that prison guards refused to explain any of the unwritten rules or procedures of prison to him and dismissed his questions and concerns, which made him feel helpless and fearful.

CHARTER BREACHES:

24. The Plaintiff's rights to life, liberty and security of the person guaranteed under section 7 of the *Charter*, his right to be secure against unreasonable search under section 8, and his right not to be arbitrarily detained or imprisoned under section 9 were violated by his arrest and imprisonment.
25. Section 7 of the *Charter* states that "everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the fundamental principles of justice." Clearly, the Plaintiff's unauthorized arrest and imprisonment and the hardships he endured while incarcerated robbed him of section 7 rights, namely his right to physical liberty, his right to act autonomously, his right to personal security, his right to preserve his mental health and his right to due process.
26. Section 8 of the *Charter* states that "everyone has the right to be secure against unreasonable search or seizure." Clearly, the Plaintiff was subjected to unreasonable search when he was strip searched after being unjustifiably arrested and imprisoned.

27. Section 9 of the *Charter* states that "everyone has the right not be arbitrarily detained or imprisoned." Clearly, the Plaintiff' unauthorized arrest and imprisonment and the hardships he endured while incarcerated deprived him of his section 9 rights, namely, the right to not be subject to unjustified physical restraint and the right to make decisions of fundamental importance without state interference.

REMEDIES SOUGHT:

28. It is apparent that one, some or all of the Defendants breached Pastor Stephen's *Charter* rights as set out above, that these breaches were unjustified infringements of his *Charter* rights, and that through these infringements, he suffered considerable harm. As a result, the following remedies are requested:

- (i) A declaration that Her Majesty the Queen in of the Province of Alberta, Alberta Health Services ("AHS"), ~~and the Calgary Police Service ("CPS")~~, Mark Neufeld (Calgary Police Chief) and The City of Calgary have violated Plaintiff's rights under sections 7, 8 and 9 of the *Charter*;
- (ii) An award of damages pursuant to s. 24(1) of the *Charter* in the amount of \$50,000 or such other sum as this Honourable Court deems based on the following heads:
 - (a) compensation for harm to the Plaintiff's intangible interests, i.e., distress, humiliation, embarrassment and anxiety, caused by experiencing an arrest in front of family members and congregants, a strip search, restraint with chains during episodes of transport, enforced confinement with an abusive cellmate and loss of the daily ritual of faith-based singing;
 - (b) vindication for the harm to society as a whole by the state's violation of the rights of a faith leader in the city of Calgary, which had the effect of reducing public confidence in the efficacy of constitutional protection; and
 - (c) deterrence to signal to government that the violation of *Charter* rights during widespread state action to combat Covid-19 will not be tolerated.
- iii) The costs of this proceeding on a substantial indemnity basis.

NOTICE TO DEFENDANT(S):

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside of Alberta but in Canada

2 months if you are served outside of Canada

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the lawsuit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgement to the plaintiff(s) against you.