

Form 10
[Rules 3.25]

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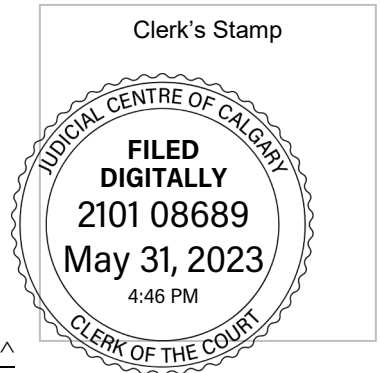
COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLANTIFF TIMOTHY PAUL STEPHENS

DEFENDANTS ^ ALBERTA HEALTH SERVICES ("AHS") ^
and MARK NEUFELD (CALGARY POLICE
CHIEF) ^

DOCUMENT THIRD AMENDED ^ STATEMENT OF
CLAIM



AMENDED *E. Wheaton*
on May 31, 2023
before the close of pleadings

ADDRESS FOR
SERVICE AND
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INFORMATION OF
PARTY FILING THIS
DOCUMENT

Glenn Blackett Law



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 ^ Alberta Health Services ("AHS") ^ and Mark Neufeld (Calgary Police Chief) ^ (collectively, the "Defendants") violated the rights of Pastor Stephens (the "**Plaintiff**") under sections 2(a), 7, 8 and 9 of the *Canadian Charter of Rights and Freedoms* (the "**Charter**").
2. Damages against the Defendants under section 24(1) of the *Charter*, or in the alternative, in tort, in the amount of \$50,000.00 or such other sum as this Honourable Court deems just.
3. ^

4. If section 66.1 of the *Public Health Act*, RSA 2000, c P-37 applies to the matters alleged herein, which is denied, a declaration that it is inconsistent with the provisions of the *Charter* and, to the extent of the inconsistency, an order that it is of no force or effect.
5. Costs.

THE PARTIES:

6. The Plaintiff is a resident of Calgary, Alberta.
7. The 41-year-old Plaintiff holds a bachelor's degree in Computer Engineering from Queen's University and received a Master's degree in Divinity from Detroit Baptist Theological Seminary in 2013.
8. At all material times the Plaintiff was an elder of and, since January of 2014, the Pastor of Fairview Baptist Church ("Fairview Baptist"), a Protestant Christian church holding to a reformed theology.
9. At all material times it was the Plaintiff's sincerely held religious belief that:
 - a. he should neither cover his face during religious worship nor compel any person to do so;
 - b. he should physically gather for worship with his congregation and guests including addressing one another in psalms, hymns, and spiritual songs, and should not prohibit such gathering for worship by his congregation and guests; and
 - c. he should worship in a manner that includes physical proximity and interaction with his congregation and guests, including washing one another's feet, hugging, shaking hands, elders laying hands on and praying over those in need, and partaking of communion, and that he should not prohibit such physical proximity or interaction amongst his congregation or guests.
10. 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 physically 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.

11. 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).
12. 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.
13. ^
...
14. The matters summarized at paragraphs 9 to 12, above, are the Plaintiff's sincerely held beliefs which have a nexus with religion (the "**Religious Beliefs**").
15. AHS is a regional health authority incorporated under the *Regional Health Authorities Act*, RSA 2000, c R-10.
16. The term "**CPS**" herein shall mean one or more of Mark Neufeld (Calgary Police Chief) and such members of the Calgary Police Service as were involved in the matters alleged herein. Mark Neufeld (Calgary Police Chief) is named herein as the state entity directly and vicariously liable to the Plaintiff for damages arising from the conduct of CPS, including pursuant to section 39 of the *Police Act*, RSA 2000, c P-17.

17. Each of the police officers referred to herein or otherwise involved in the matters alleged herein were, at all material times, under the direction and control of the Calgary Police Chief and were purportedly performing their duties as police officers.

FIRST WRONGFUL ARREST AND DETENTION:

18. On May 6, 2021, Alberta Health Services ("AHS") obtained an *ex parte* Injunction Order (the "**Order**") against Christopher Scott, Whistle Stop (2021) Ltd., and Glen Carritt (the "**Named Respondents**") as well as "John Doe(s) and Jane Doe(s)" in Court of King's Bench of Alberta Action No. 2101-05742 (the "**Whistle Stop Action**"), preventing the Named Respondents and certain other persons from ^ organizing, promoting, and attending certain ^ in-person illegal gatherings. ^
19. The Order had been obtained on the basis of AHS evidence that the Named Respondents and others had organized "large-scale protest driven events" protesting Alberta Chief Medical Officer of Health's (the "**CMOH**") orders imposing COVID-19 restrictions where organizers "frequently and regularly express views that others should participate in their illegal actions" including:
- a. a May 4, 2021, "Save Alberta Camp-out Protest" in Mirror, Alberta where Christopher Scott had operated a business including a restaurant, convenience store, gas station, adjoining campground, drive-in theatre, karaoke system, outdoor dining tents, live bands and beer tents;
 - b. a May 1-2, 2021, "No More Lockdown Rodeo" in Bowden, Alberta; and
 - c. a May 15, 2021, "Welcome to the Fun Zone! Family Jamboree!" in Innisfail, Alberta organized by Glen Carritt.
20. 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** 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; and

- 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.

(emphasis added on words referred to as the “Impugned Phrase”)

- 21. The term “Illegal Public Gathering” was defined as one that did not comply with the Records of Decisions issued by the Chief Medical Officer of Health in the Province of Alberta under the *Public Health Act* including:
 - a. masking requirements;
 - b. attendance limits applicable to indoor or outdoor gatherings; and
 - c. minimum physical distancing requirements.
- 22. In the hearing in which the Order was granted to AHS, the presiding Justice, the Honourable Associate Chief Justice Rooke (“**Rooke**”) (as he was at the time), expressly stated that the Impugned Phrase was necessary for the Order to apply to Albertans “not working in concert with the respondents or acting under their instructions” but acting independently to host events like those in Innisfail and Mirror.
- 23. At no material time were the Defendants in possession of any evidence that the Plaintiff had engaged in any conduct “to like effect” the conduct at issue in the Whistle Stop Action.
- 24. 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.
- 25. ^
- 26. ^
- 27. From no later than May 6, 2021, until at least July 1, 2021, AHS and CPS operated in “partnership” including regular communication, cooperation, and support in the service and enforcement of the Order in Alberta. AHS was aware, or ought to have been aware, that CPS relied, at all times, on AHS providing accurate and timely information about the Order.

28. By no later than May 9, 2021, AHS had provided a copy of the Order to CPS and had requested that CPS serve and enforce the Order on the Plaintiff. CPS was aware by that time that the Court would be considering amendments to the Order.
29. On May 9, 2021, ^ CPS, including officer Chris Develter (badge #4817), 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 and does not look like 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 including failing to:
- a. locate an image of the Plaintiff;
 - b. check the registered owner of the vehicle being driven by Pederson; and
 - c. ask Pederson for identification.

The Plaintiff was not technically or substantively served with a copy of the Order or the amended Order until May 29, 2021.

30. On May 10, 2021, the Justice Centre for Constitutional Freedoms ("JCCF") wrote to Rooke by its counsel, copying AHS, in connection with a request to strike the Impugned Phrase from the Order on the basis of improper overbreadth of the injunction, as the Order was being interpreted and enforced to "... prohibit persons whom are not named as Respondents in respect of events or gatherings which are outside of the Whistle Stop Activities." Following this letter, JCCF's counsel further discussed the problem of overbreadth with AHS's counsel and obtained AHS's consent to amend the Order to strike the Impugned Phrase. AHS granted such consent having expressly agreed that the amendment narrowed the scope of the Order.
31. On May 13, 2021, *inter alios*, JCCF and AHS appeared before Rooke who, by consent, pronounced the Order amended, expressly effective May 13, 2021 (the "**Amendment**") to, *inter alia*:
- a. strike the Impugned Phrase from the Order; and
 - b. insert "a pretty standard clause" providing CPS the right to detain persons with notice of an in violation of the Order (the "**Detainment Clause**").

32. At no material time were the Defendants in possession of any evidence that the Plaintiff had engaged in any conduct at the instruction of or in concert with any party to the Whistle Stop Action.
33. Either:
- a. AHS failed to communicate the Amendment to CPS when it knew or ought to have known that CPS was continuing service and enforcement of the Order; or
 - b. in the alternative, AHS communicated the Amendment to CPS,
and each of AHS and CPS knew or ought to have known that any further service or enforcement of the Order on persons acting “independently to like effect” would be illegal, would constitute false arrest and imprisonment, would be a gross abuse of process, and would be unconstitutional. CPS failed to confirm, from time-to-time as it continued service and enforcement, whether and how the Order had been amended. Once CPS and AHS became aware of the Amendment, they knew or ought to have known that the Amendment had some effect. However, CPS and AHS each continued their cooperative service and enforcement of the Order with a total and reckless disregard for the Amendment. On or about June 9, 2021, AHS posted to its website, with respect to the Amendment:

This wording change does not change anything in the order with respect to those individuals inciting and organizing others to breach the CMOH's Orders with respect to large gatherings or protests.
34. On May 14, 2021, and again on May 27, 2021, JCCF wrote to CPS and advised of the Amendment and its effect.
35. On the morning of Sunday, May 16, 2021, the Plaintiff led a worship service at Fairview Baptist ^ in accordance with his Religious Beliefs and not contrary to the original or amended Order. In reliance, in part, on information provided by CPS Officer Stephen Harris (badge #3112) and AHS (including information provided by AHS's Director (Calgary Zone) Environmental Public Health, Lynne Navratil) that such worship was a violation of the Order, CPS nevertheless arrested the Plaintiff (on instruction of CPS Superintendent Joe Brar, badge #3473, and by arresting Officer M. Slater, badge #4290, and by assisting Officer H. Shim, badge #5517) in the parking lot of Fairview Baptist in front of his wife, eight

- children and various congregants. ^ CPS said he was being arrested for violating the original Order.
36. At the time of his arrest, the Plaintiff immediately advised CPS that he had not been served with the Order and of the existence of the Amendment. CPS entirely ignored this information and failed to conduct any or any reasonable investigation of those facts.
37. The Plaintiff states that the arrest was wrongful ^ for reasons including: (i) it occurred even though he was never served with the Order or amended Order, which stipulated that notice was a pre-requisite to being arrested or detained; (ii) ^ neither CPS nor AHS had any evidence that the Plaintiff was acting under the "instructions" of or "in concert with" the parties named in the amended Order, ^ (iii) ^ neither CPS nor AHS had any evidence that the Plaintiff had engaged in any conduct "to like effect" the conduct at issue in the Whistle Stop Action; and (iv) neither CPS nor AHS had any evidence that the Plaintiff had engaged in any conduct at the instruction of or in concert with any party to the Whistle Stop Action.
38. On or about May 16, 2021, ^ 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 and it did not apply to him. 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.
39. Upon his arrest, the Plaintiff was Charter cautioned and advised of his right to contact legal counsel. However, when the Plaintiff repeatedly requested to contact his legal counsel, such requests were refused. The Plaintiff was only able to contact his legal counsel several hours later after he had been processed.
40. On May 16, 2021, CPS purported to be acting on the basis of the unamended Order which had no Detainment Clause. At no time prior to May 17, 2021, was any warrant for detention issued with respect to the Plaintiff.
41. While in custody from May 16, 2021, to May 18, 2021, the Plaintiff was first ^ brought by the arresting officers and by officer A. Weale (badge #5757) to the Spy Hill ^ Arrest Processing Unit. There, he was processed by CPS and, prior to any hearing before this Honourable Court, was ^ transferred by CPS to the Calgary Remand Centre ("CRC") on the evening of May 16, 2021, for two nights and three days, after which he was released on bail.

CRC relied, in part, on information from Stephen Harris (badge #3112) that the detention was lawful.

42. Upon entering CRC, he was strip searched ^ in accordance with standard procedures known at all material times to CPS and AHS. 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.
43. ^
44. ^
45. ^
46. May 17, 2021, was the Plaintiff's first bail hearing, at which hearing AHS acted as prosecutor. AHS represented to the presiding Honourable Justice A.W. Germain that the Amendment had not been "pronounced" in support of AHS's submission that the Plaintiff should not be immediately released without conditions. As a result of AHS's representation, the Plaintiff was not released immediately without conditions and, in fact, the Plaintiff spent another day and night at CRC until the terms of a release order were agreed, and a release order was pronounced and issued.
47. At some time on May 17, 2021, without any notice to the Plaintiff, Justice A.W. Germain issued a civil warrant for the Plaintiff's detention at CRC.

SECOND UNLAWFUL ARREST AND DETENTION

48. On May 29, 2021, the day following AHS's abandonment of the contempt proceedings, CPS served a copy of the Order, as amended, on the Plaintiff. The Plaintiff immediately objected on the basis that the Order, as amended, did not apply to him. CPS again entirely ignored this information and failed to conduct any or any reasonable investigation of that fact.
49. On the morning of Sunday June 6, 2021, the Plaintiff led an outdoor worship service of his Fairview Baptist congregation in accordance with his Religious Beliefs and not contrary to the Order, as amended.
50. On June 14, 2021, CPS charged Stephens under section 127(1) of the *Criminal Code* RSC 1985, c C-46 for failure to comply with the Order, as amended, and arrested him (by officer H. Robinson, badge #4196). He was, again, arrested in front his wife and children. The

Plaintiff, again, immediately objected on the basis that the Order had been amended and certainly did not apply to him. CPS, again, entirely ignored this information and failed to conduct any or any reasonable investigation of that fact, including reading a copy of the amended Order and understanding its plain meaning.

51. The Plaintiff was thereafter offered bail. The Plaintiff refused the bail condition, “You shall obey the public health orders and any other orders of the Court including Queen’s Bench.” The Plaintiff was compelled to refuse the bail condition because it violated his Religious Beliefs. The period of the Plaintiff’s second detention was, therefore, indeterminate – an uncertainty which compounded the Plaintiff’s hardship while incarcerated at CRC.
52. The Plaintiff was thereafter held at CRC from June 14, 2021, to and including July 1, 2021, where he was again strip-searched in a humiliating fashion. On July 1, 2021, he was released because Provincial health restrictions had been reduced, effective June 30, 2021, and the Plaintiff was able to comply with the bail condition without violating his Religious Beliefs.

CHARTER BREACHES AND TORTS:

53. Service of the amended Order on the Plaintiff, and the Plaintiff’s arrests and periods of detention substantially interfered with the Plaintiff’s Religious Beliefs and his freedom of religion guaranteed under section 2(a) of the *Charter*:
 - a. AHS and CPS served and enforced the Order for the purpose of restraining conduct which was the manifestation of the Plaintiff’s Religious Beliefs, namely:
 - i) physical gathering for worship;
 - ii) neither wearing nor compelling facial coverings during worship;
 - iii) being in physical proximity and contact and not prohibiting proximity and contact; and
 - b. while detained on Sundays the Plaintiff was unable to assemble with his congregation for worship.
54. 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 arrests and periods of imprisonment.

55. 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.
56. 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 processed for arrest and strip searched at CRC after being unjustifiably arrested and imprisoned including before he was offered bail and at a time when no warrant for detention had been issued.
57. Section 9 of the *Charter* states that “everyone has the right not to be arbitrarily detained or imprisoned.” Clearly, the Plaintiff’s 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.
58. Given AHS’s and CPS’s careless and reckless conduct, including their total disregard to:
 - a. the plain meaning of the Order;
 - b. the absence of a Detainment Clause in the Order;
 - c. the absence of any evidence that the Plaintiff had either engaged in any conduct “to like effect” the conduct at issue in the Whistle Stop Action or had engaged in any conduct at the instruction of or in concert with any party to the Whistle Stop Action;
 - d. the plain meaning of the Amendment and that fact that the Amendment had any meaning;
 - e. the information provided by the Plaintiff on May 16, 2021, that he had not been served and the Order having been amended;

- f. the Amendment and Rooke's clarifying statement with respect thereto (see paragraph 18);
- g. there being no warrant for committal issued on or before May 16, 2021;
- h. the Plaintiff having not been taken before a Justice, as required under the Order, and in order to seek bail, before being sent to CRC;
- i. the fact that the Amendment had been pronounced on May 13, 2021, and made expressly effective on that date by Rooke;
- j. the information provided by the Plaintiff on May 29, 2021, and again on June 14, 2021, that the Order had been amended so that it did not apply to him; and
- k. due process and the principles of fundamental justice guaranteed in the *Charter*,

and given the seriousness of the Charter breaches, which resulted in the Plaintiff twice being unlawfully arrested, strip-searched, and detained at CRC for a total of 21 days for exercising his Religious Beliefs, it is just, appropriate and necessary to award *Charter* damages against the Defendants to compensate the Plaintiff, vindicate the Plaintiff's Charter rights and to deter future such breaches.

- 59. With respect to the matters alleged above, the Defendants got together in furtherance of a common design or plan, namely the service and enforcement of the Order against the Plaintiff, including by arrest, detention and imprisonment, during the course of which common design or plan, tortious acts and Charter breaches were committed.
- 60. The foregoing conduct constitutes breaches of common law obligations and the *Charter* which caused the Plaintiff damage being pain and suffering, distress, humiliation, embarrassment, and anxiety.
- 61. If section 66.1 of the *Public Health Act*, RSA 2000, c P-37 applies to the matters alleged herein, which is denied, it is inconsistent with the provisions of the *Charter* and is, to the extent of the inconsistency, of no force or effect.

REMEDIES SOUGHT:

- 62. ^ The following remedies are requested:

- (i) A declaration that ^ AHS ^ and Mark Neufeld (Calgary Police Chief) ^ have violated Plaintiff's rights under sections 2(a), 7, 8 and 9 of the *Charter*;
- (ii) An award of damages on a joint and several basis pursuant to s. 24(1) of the *Charter* in the amount of \$50,000 or such other sum as this Honourable Court deems just based on the following heads:
 - a) compensation ^;
 - b) vindication including 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 ^ will not be tolerated.
- (iii) ^
- (iv) In the alternative to paragraph 62, an award of damages on a joint and several basis for false arrest and imprisonment in the amount of \$50,000.00;
- (v) If section 66.1 of the *Public Health Act*, RSA 2000, c P-37 applies to the matters alleged herein, which is denied, a declaration that it is inconsistent the provisions of the *Charter* and, to the extent of the inconsistency, an order that it is of no force or effect;
- (vi) Costs; and
- (vii) Such further remedies as this Honourable Court deems just.

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.