

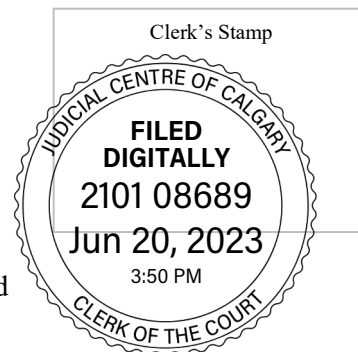
COURT FILE NUMBER **2101-08689**

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF TIMOTHY PAUL STEPHENS

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



DOCUMENT **STATEMENT OF DEFENCE
OF THE DEFENDANT,
ALBERTA HEALTH SERVICES TO
THE THIRD AMENDED
STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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Statement of facts relied on:

1. Except as expressly admitted in this Statement of Defence to the Third Amended Statement of Claim, the Defendant, Alberta Health Services ("AHS"), denies each and every allegation as against AHS in the Plaintiff's Third Amended Statement of Claim (the "Claim") and puts the Plaintiff to the strict proof thereof.
2. AHS is an entity constituted under Alberta's *Regional Health Authorities Act*, RSA 2000, c R-10.
3. AHS delivers health services to individuals located in Alberta. One of AHS' primary concerns is public safety.
4. Subject to the *Regional Health Authorities Act* referenced in paragraph 2 above and the Regulations thereunder, in carrying out its responsibilities AHS is mandated to, *inter alia*:
 - (a) Promote and protect the health of the population in Alberta and work toward the prevention of disease and injury;
 - (b) Assess on an ongoing basis the health needs of the citizens of the Province of Alberta; and

- (c) Promote the provision of health services in a manner that is responsive to the needs of individuals and communities and supports the integration of services and facilities in the Province. At all material times, AHS and all of its employees, staff, and anyone else for whom AHS was responsible for at law, acted reasonably and in good faith in executing their duties, including fulfilling its mission to provide a patient-focused, quality health system that is accessible and sustainable for all Albertans, as well as fulfilling AHS' mandates under the *Regional Health Authorities Act* referenced in paragraph 2 above.
- 5. In order to lessen the negative impacts that COVID-19 poses to the health and safety of Albertans, as well as to safeguard the functioning of the health care system as a whole, Alberta's Chief Medical Officer had issued several orders ("CMOH Orders") intended to curb the spread of the SARS-CoV-2 virus, pursuant to the *Public Health Act*, RSA 2000, c P-37 (the "Act").
 - 6. In spite of the evident and growing risks posed by COVID-19 to Albertans and the health care system, certain "anti-lockdown/pro-freedom" proponents emerged that challenged, *inter alia*, the legitimacy and enforceability of the CMOH Orders. In several instances, these individuals and groups had called for public gatherings to take place and had taken steps to organize gatherings to protest the CMOH Orders and otherwise challenge same, as well as other associated restrictions implemented to decrease the spread of COVID-19. In many cases, these efforts involved arguments related to alleged religious freedoms, including unrestricted assembly.
 - 7. In order to pre-emptively address and mitigate the risks posed by large, organized, public rallies and gatherings, AHS sought injunctive relief on May 6, 2021, in a separate legal proceeding which would be applicable to a variety of these gatherings as they might arise from time to time.
 - 8. On May 6, 2021, The Honourable Associate Chief Justice Rooke of the Court of King's Bench of Alberta granted an order sought by AHS respecting Respondents Christopher Scott, Whistle Stop (2012) Ltd., Glen Carritt, John Doe (s), and Jane Doe(s) (the "Order").
 - 9. The Order, *inter alia*, stipulated that any named individual or any other person acting under the Respondents' instructions or in concert with them or independently to like effect, and with Notice of the Order, would 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 a "private place".
 - 10. For the purposes of the Order, an Illegal Public Gathering was defined as one that did not comply with the requirements of the CMOH Orders in effect at the time, including masking requirements, attendance limits, and physical distancing requirements applicable to indoor and outdoor gatherings.
 - 11. In specific response to paragraph 27 of the Claim, AHS denies that it was in partnership with the Calgary Police Service ("CPS") as alleged by the Plaintiff, or at all. AHS admits, however, that it communicated with CPS for the purpose of sharing information related to independent investigations by each of them in relation to complaints made by members of the public against the Plaintiff and the Fairview Baptist Church, located at 230 78 Avenue SE, in the City of Calgary

(“the Church”) for not following the CMOH Orders in effect at the time, such complaints more particularly described in paragraphs 12 and 14 below.

12. Between December 22, 2020 and May 9, 2021, AHS received over 40 complaints regarding concerns of mass gatherings and other infractions of CMOH Orders at the Church. Given that the Plaintiff had been a long-standing opponent of CMOH Orders, the Calgary Police Service (“CPS”) served an individual believed be the Plaintiff with the Order on May 9, 2021.
13. In specific response to paragraphs 19 and 23 of the Claim, there were a number of articles posted to the Church’s website, dated from May 28, 2020 onward, in which the Plaintiff specifically outlined plans designed to circumvent the CMOH Orders and other regulations, including the City of Calgary Bylaws, and inciting the congregation of the Church to do the same.
14. To the best knowledge of AHS, on May 16, 2021, CPS separately received numerous complaints regarding cars parking and individuals attending at Church in violation of CMOH Orders. AHS was advised by CPS that, on attendance, CPS officers observed the Plaintiff leading mass gatherings in violation of CMOH Orders. On livestream broadcasts of same, the Plaintiff was observed, *inter alia*, telling the congregation to “squish over if there are single seats” and acknowledging that attendance came at a risk. No masks were observed on the Plaintiff or the people of the congregation throughout the duration of the service.
15. Based on the observations of CPS on May 16, 2021, it was determined that the gathering at the Church was in breach of both the subject Order and the CMOH Orders prevailing at the time. As a result, CPS arrested the Plaintiff.
16. On May 17, 2021, a contempt application was commenced automatically by effect of the Plaintiff’s arrest and was heard before The Honourable Justice Germain. Counsel for the Plaintiff subsequently attempted to vary the release conditions of the Plaintiff which had previously been agreed upon in front of Justice Germain. Specifically, the proposed drafted conditions were read into the court record and agreed to by the parties, only to be modified by the Plaintiff’s counsel later that day. This delay alone resulted in the Plaintiff’s continued incarceration.
17. On May 18, 2021, a further hearing was held in front of Justice Germain to discuss proposed amendments to the Plaintiff’s Release Order. After a slight modification was made and agreed to as between counsel to the proposed order, a Release Order was issued, releasing the Plaintiff from custody on the condition that he attend a future contempt hearing.
18. On May 28, 2021, the AHS application for contempt against the Plaintiff was withdrawn.

Any matters that defeat the claim of the plaintiff:

19. AHS states that it had reasonable and probable grounds to seek the Order, given the state of the pandemic and ongoing health care situation, and request it be served on the Plaintiff, who had knowingly and continuously breached CMOH Orders on prior occasions.
20. To the best of AHS’ knowledge, the Plaintiff was shown a copy of the Order, or had it read to him, by the individual who was served with the same on May 9, 2021 and, therefore, the Plaintiff had appropriate notice, as required.
21. In the alternative, the Plaintiff had obtained notice of the Order prior to his arrest by CPS on May 16, 2021, from other means that are within his knowledge.

22. AHS denies that the Plaintiff's rights were violated or infringed under the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), as alleged in the Claim, or at all, and puts the Plaintiff to the strict proof thereof.
23. In the alternative, if any of the Plaintiff's rights were violated or infringed under the *Charter*, which is not admitted but expressly denied, AHS states that it was not as a result of any actions or omissions by AHS or anyone for whom it is responsible at law.
24. Further, or in the alternative, if any of the Plaintiff's rights were violated or infringed under the *Charter*, which is not admitted but expressly denied, AHS states that such violations were justifiable under s. 1 of the *Charter*, particularly in light of the public health crisis at the time.
25. Further, or in the alternative, and in further answer to the whole of the Claim, AHS has protection from liability under s. 66.1 of the *Public Health Act*, RSA 2000, c P-37, as amended and, as such, the Claim should be dismissed as against AHS.
26. Further, or in the alternative, if any of the Plaintiff's rights were violated or infringed under the *Charter*, which is not admitted but expressly denied, such violations or infringements did not result in considerable harm to the Plaintiff, as alleged or at all.
27. In answer to the whole of the Claim, AHS denies that it owed any duty, statutory or otherwise, to the Plaintiff and puts the Plaintiff to the strict proof thereof.
28. In the alternative, if AHS did owe a duty, statutory or otherwise, to the Plaintiff, which is not admitted but denied, neither AHS, nor any employee or staff member of AHS, breached any such duty, and put the Plaintiff to the strict proof thereof.
29. Further, or in the alternative, if AHS did owe a duty, statutory or otherwise to the Plaintiff and the same was breached, which is not admitted but denied, any such breaches did not cause the Plaintiff any damages.
30. In specific response to paragraph 42 of the Claim, AHS denies that it knew of the standard procedures of the CRC with respect to conducting strip searches upon entering the CRC, or regarding the use of chains when transferring the Plaintiff from court.
31. AHS specifically denies that the Plaintiff suffered any harm or damages as alleged in the Claim, or at all.
32. In the alternative, if the Plaintiff did suffer any harm or damages, which is not admitted but denied, then such damages were as a result of his own negligence or wrongful or intentional acts, for which he is responsible.
33. Further, or in the alternative, if the Plaintiff did suffer any harm or damages, which is not admitted but denied, then such damages were not reasonably foreseeable and are excessive and remote. In the further alternative, the Plaintiff has failed to mitigate any harm or damages suffered, as required by law.
34. AHS pleads and relies on 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 *Contributory Negligence Act*, RSA 2000, c C-27, the *Regional Health Authorities Act*, RSA 2000, c R-10, and the *Public Health Act*, RSA 2000, c P-37, together with the amendments thereto and Regulations thereunder.

Remedy sought:

35. AHS requests that the Claim be dismissed as against it with costs.