C120-01-29284

File No. ~~CI08-01-~~

THE QUEEN'S BENCH
Winnipeg Centre

APPLICATION UNDER: *The Constitutional Questions Act*, C.C.S.M., c. 180

AND UNDER: The Court of Queen's Bench Rules, M.R. 553/88

IN THE MATTER OF: *The Public Health Act*, C.C.S.M. c. P210

BETWEEN:

GATEWAY BIBLE BAPTIST CHURCH, PEMBINA VALLEY BAPTIST CHURCH, REDEEMING GRACE BIBLE CHURCH, THOMAS REMPEL, GRACE COVENANT CHURCH, SLAVIC BAPTIST CHURCH, CHRISTIAN CHURCH OF MORDEN, BIBLE BAPTIST CHURCH, TOBIAS TISSEN, DJ'S FAMILY RESTAURANT, LYLE NEUFELD, HELEN NEUFELD, ROSS MACKAY

Applicants,

– and –

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA and DR. BRENT ROUSSIN in his capacity as CHIEF PUBLIC HEALTH OFFICER OF MANITOBA

Respondents.

NOTICE OF APPLICATION
CIVIL UNCONTESTED MOTIONS
HEARING DATE: December 17, 2020, at 10:00 a.m.

FILED DEC 09 2020

JUSTICE CENTRE FOR CONSTITUTIONAL FREEDOMS

Allison Kindle Pejovic / Jay Cameron
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Calgary, Alberta T2V 1K2
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Applicants,

– and –

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF MANITOBA, DR. BRENT ROUSSIN in his capacity as Chief Public Health Officer of Manitoba,

Respondents.

NOTICE OF APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicants. The claims made by the Applicants appear on the following pages.

THIS APPLICATION will come on for a hearing before a judge, on **THURSDAY, December 17, 2020 at 10:00 a.m.**, at The Law Courts, 408 York Avenue, Winnipeg, Manitoba.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or a Manitoba lawyer acting for you must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2:00 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

December 9, 2020

Issued by: V. SCHAEFFER
DEPUTY REGISTRAR
COURT OF QUEEN'S BENCH
FOR MANITOBA
(Deputy) Registrar

TO: Attorney-General of Manitoba
[redacted]
Constitutional Law Section, Legal Services Branch
Manitoba Department of Justice
1205-405 Broadway
Winnipeg, Manitoba, R3C 3L6

AND TO: Dr. Brent Roussin, Chief Public Health Officer of Manitoba
[redacted]

AND TO: Attorney-General of Canada
c/o Prairie Regional Office – Winnipeg
Department of Justice Canada
Suite 301, 310 Broadway
Winnipeg, Manitoba, R3C 0S6

APPLICATION

RELIEF SOUGHT

1. The Applicants seek the following relief:

   a) An Order abridging the time for service of this Application, if necessary;

   b) A Declaration that sections 67(1), 67(2), and 67(3) of *The Public Health Act* C.C.S.M. c. P210 (the "*Act*") are *ultra vires* as offending the unwritten constitutional principle that only the Legislative Assembly can make laws of general and universal application and that such law-making authority cannot be delegated to medical officers of health or to individual Ministers;

   c) A Declaration that the November 21, 2020 Public Health Orders that prohibit gatherings at private residences, restrict public gatherings and public expression, and restrict and close businesses and places of worship (the "Orders"), do not meet the statutory criteria set out in section 3 of the *Act* (restrictions of rights and freedoms are greater than are reasonably necessary in order to respond to the COVID-19 pandemic) and are therefore *ultra vires* the *Act*;

   d) A Declaration pursuant to section 52(1) of the *Constitution Act, 1982*, that the Orders unjustifiably infringe the Applicants' rights and freedoms which are protected under sections 2(a) (freedom of conscience and religion), 2(b) (freedom of expression), 2(c) (freedom of assembly), 7 (liberty and security of the person), and 15 of the *Canadian Charter of Rights and Freedoms* ("*Charter*"), and therefore are of no force or effect;

   e) A Declaration that the violations of the Applicants' sections 2(a), 2(b), 2(c), 7, and 15 *Charter* rights as set out above are not justified under section 1 of the *Charter*;

   f) In the alternative, a Declaration pursuant to section 24(1) of the *Charter* that the Orders are unreasonable because they unjustifiably infringe:

      a. Sections 2(a), 2(b) and 2(c) of the *Charter*,

      b. Section 7 of the *Charter*, and

c. Section 15 of the *Charter*;

g) A Declaration that the Orders pertaining to the restriction of religious services are in direct contravention of section 176 of the *Criminal Code*, R.S.C., 1985, c. C-46, and are therefore of no force or effect pursuant to the doctrine of paramountcy;

h) A Declaration prohibiting the Respondents from issuing further Orders which restrict or close places of worship and businesses, and place restrictions on congregation, home and public gatherings and public expression;

i) Costs of this Application; and,

j) Such further and other relief as counsel may advise and as this Honourable Court deems just and equitable.

GROUNDS OF APPLICATION

2. The Applicants are applying for the relief set out above on the following grounds:

Foundational Principles

a) The rule of law and the constitutional rights of Manitobans are not suspended by the declaration of a public health crisis. The Constitution, both written and unwritten, continues to apply to all legislation and government decisions and operates to protect the fundamental freedoms and civil rights of all Manitobans notwithstanding the presence of an infectious illness;

b) The citizens of Manitoba have at no time waived or foregone their right to a representative system of democracy in accordance with the Constitution, and the checks and balances of the rule of law;

c) In elucidating the unwritten constitutional principles embedded by the preamble of the *Constitution Act, 1867,* the Supreme Court of Canada has recognized that it is fundamental to the working of government that the legislative bodies not improperly delegate their exclusive legislative authority to civil servants who are

neither democratically accountable nor jurisdictionally capable of making laws;

d) Section 92 of the *Constitution Act, 1867*, explicitly outlines that the making of laws is in the exclusive jurisdiction of the Legislature;

e) The Orders are rules or laws of general and universal application which trample the *Charter* rights of Manitobans and punish them for the peaceful and lawful exercise of their fundamental constitutional rights and freedoms. The Orders are therefore *ultra vires* and of no force or effect;

f) The Orders to date are inextricably linked with the diagnostic tool known as a "Polymerase Chain Reaction" test (hereafter "PCR Test"). The Respondents rely on PCR Tests despite knowing that PCR Tests as utilized by the Respondents result in unreliable and misleading data;

g) Public health and safety protections may infringe *Charter* freedoms *only* to the extent reasonably necessary in accordance with law in a free and democratic society. There is nothing democratic about the Orders – they are issued without Manitobans' representatives considering and debating their profound and devastating impact on constituents. Further, the Orders fail to minimize interference with *Charter* rights of those vast portions of society which are not at significant risk from COVID-19. The Respondents have failed or refused to show that the vulnerable cannot be protected without the broad trampling of everyone else's *Charter* rights;

h) The Respondents have failed to properly consider, or consider at all:

    i) The collateral social and health costs of the restrictions;

    ii) The extent to which the restrictions are effective in reducing the spread of COVID-19;

    iii) Whether the restrictions are based on credible scientific evidence and data;

i) The Applicants state that the vast harms from "locking down" society far outweigh

the harms caused by COVID-19, and include: cancelled surgeries and other medical treatments and resultant hardship, suffering and in some cases death, delayed medical diagnoses with similar consequences, deterioration of mental health generally and especially in those who are most at risk for mental health issues, exponential increases in suicides, drug use and domestic abuse, severe economic hardship for many but especially business owners and employees subject to lay-offs, loss of social cohesion and familial and social relations, and profound loss of enjoyment of civil liberties, including life and liberty;

j) The Respondents failed to conduct a risk assessment prior to enacting the Orders, and thereby failed to account for significant harms to the public as a result. Specifically, the Applicants state that the Respondents failed to assess the likelihood of deaths and other harms from suicide, domestic abuse, increased drug use, delayed diagnoses and cancelled surgeries, caused by the Orders, and weigh such harms against the limited benefits of prolonged and crippling lockdowns resulting from the Orders, and that the Respondents failed or refused to correct course when the legal, social and economic devastation of the Orders became apparent;

k) The Respondents failed to conduct a risk assessment of the economic harm to business owners and other Manitobans who would be laid off due to the Orders;

l) The Respondents have failed or refused to provide evidence that the Orders will or have reduced or prevented hospitalizations and deaths from COVID-19 in Manitoba as a whole;

m) The Respondents have failed or refused to provide evidence that deaths from COVID-19 cannot be prevented by alternative, mitigative measures such as taking extra precautions to protect the immunocompromised and elderly populations;

n) The number of COVID-19 deaths in Manitoba has been inflated in a manner that will be proven at the hearing of this matter;

o) The Respondents failed or refused to complete a cost-benefit analysis of "locking

down" the Manitoba population through these Orders, and failed over the progression of time to conduct necessary review of the disproportionate damage the Orders have caused to society;

p) The Respondents failed or refused to properly consider, or consider at all, the opinions of other qualified medical practitioners, including the 45,000 medical doctors and scientists who authored and signed The Great Barrington Declaration advocating against "locking down" societies and instead recommended taking special precautions to protect the elderly and immunocompromised populations, causing immense and preventable harm to Manitobans;

q) The modelling data that the Respondents used to justify the Orders in April 2020 is flawed and unreliable, and not updated prior to the drafting of these Orders;

r) The Applicants state that the Respondents have failed or refused to estimate the potential years of life saved by these Orders, and weigh the results of those conclusions against the loss of life and profound damage resulting from the Orders;

The Applicants

s) The Applicant Pembina Valley Baptist Church is a Baptist church in Winkler, Manitoba. It was founded in October 1988. This Applicant has approximately 650 attendees on Sunday mornings, and 600 on Sunday and Wednesday evenings. Under the Respondents' Orders, this Applicant was instructed to close on or about November 21, 2020.

t) The Applicant Redeeming Grace Bible Church is a Reformed Baptist church in Morden, Manitoba. It was founded on March 25, 2013. This Applicant has 23 members, and between 90-100 attendees attend church service on Sundays. Under the Respondents' Orders, this Applicant was instructed to close on November 21, 2020.

u) The Applicant Thomas Rempel is a Deacon at Redeeming Grace Bible Church in Morden, Manitoba. He resides in Morden, Manitoba. Under the Orders, this

Applicant is prohibited from exercising his right to worship with the rest of his church congregation. This Applicant states that these Orders are a breach of his rights of conscience, worship, expression and assembly, in addition to his freedom of religion, which are protected under sections 2(a), 2(b), 2(c) and 15 of the *Charter*. This Applicant further states that the Orders that permit him to assemble indoors at liquor stores and grocery stores but not worship at a church are arbitrary in that they disproportionately limit his right to security of the person as protected by section 7 of the *Charter* in a manner that is not in accordance with the principles of fundamental justice;

v) The Applicant Grace Covenant Church is a Reformed Baptist church in Altona, Manitoba. It was founded in September 2019. This Applicant has 23 members, and between 60-70 regular attendees. Under the Respondents' Orders, this Applicant was instructed to close on November 21, 2020;

w) The Applicant Gateway Bible Baptist Church is a Baptist church in Thompson, Manitoba. It was founded on August 17, 2012 as an Independent Baptist Church, and it currently has 13 active members. Under the Respondents' Orders, this Applicant was instructed to close on November 21, 2020.

x) The Applicant Slavic Baptist Church is an Evangelical Christian Baptist church in Morden, Manitoba. It was founded on March 23, 2017, and has approximately 60 active members. Under the Respondents' Orders, this Applicant was instructed to close on November 21, 2020.

y) The Applicant Christian Church of Morden is a Christian Protestant Church in Morden, Manitoba. It was founded in September 2006 and has 180 members and approximately 280 attendees for its Sunday service. Under the Respondent's Orders, this Applicant was instructed to close on November 21, 2020.

z) The Applicant Bible Baptist Church is an Independent Baptist Church in Brandon, Manitoba. It was founded in 1988 and has approximately 35 attendees. Under the Respondent's Orders, this Applicant was instructed to close on November 21, 2020.

aa) The aforesaid Applicant churches are herein referred to as the "Applicant Churches". The Applicant Churches state that the Orders are a breach of their and their congregants' rights of conscience, religion, expression, assembly and equality as protected by sections 2(a), 2(b), 2(c), and 15 of the *Charter*.

bb) The Applicant Tobias Tissen is a Minister at the Church of God, which is located near Steinbach, Manitoba. The church has approximately 140 members who attend services on Sunday morning and evening, and on Wednesday evenings. Under the Orders which closed the church, this Applicant is prohibited from exercising his right to worship with the rest of his church congregation. This Applicant states that these Orders are a breach of his rights of expression, conscience, worship and assembly, in addition to his freedom of religion, which are protected under sections 2(a), 2(b), 2(c) and 15 of the *Charter*. This Applicant further states that the Orders that permit him to assemble indoors at liquor stores and grocery stores but not worship at a church are arbitrary in that they disproportionately and arbitrarily limit his right to security of the person as protected by section 7 of the *Charter* in a manner that is not in accordance with the principles of fundamental justice;

cc) The Applicant DJ's Family Restaurant is a restaurant in Winkler, Manitoba. It is co-owned by the Applicants Lyle and Helen Neufeld. The restaurant has operated since 1973, and specializes in serving pizza and chicken. It has a seated capacity of 100 people, and on busy days can turn over that number 2-3 times a day. It operates Monday to Friday, 9:30 a.m. – 9:00 p.m., and Sunday 11:00 a.m. – 8:00 p.m. Under earlier Public Health Orders issued since March 2020, this Applicant had to close and/or reduce its capacity by varying degrees. On November 22, 2020, the Orders restricted all in-person dining at the restaurant. The Applicants Lyle and Helen Neufeld state that due to the economic hardship these Orders have caused them, the Respondents have unjustifiably and arbitrarily interfered with their right to survive as independent and free citizens in a free and democratic society, and jeopardized their security of the person rights as guaranteed by section 7 of the *Charter*, in a manner that is not in accordance with the principles of fundamental justice;

dd) The Applicant Ross MacKay is a Winnipeg resident. He attended a peaceful Hugs for Masks rally in Steinbach, Manitoba on November 14, 2020, and spoke at the rally. On November 20, 2020, representatives of the Respondents served him at his residence with a fine for violating the Orders. He also desires to both visit friends and extended family and also have friends and extended family visit his home but is prohibited from doing so by these Orders. This Applicant states that these Orders are an oppressive and unjustified breach of his freedom of expression and right to peacefully assemble which are protected under sections 2(b) and 2(c) of the *Charter*. He also states that the prohibition of home gatherings in these Orders, in addition to being a draconian interference with personal autonomy, is arbitrary in that it disproportionately limits his liberty and security of the person as protected by section 7 of the *Charter* in a manner that is not in accordance with the principles of fundamental justice;

ee) The Applicants state that the Respondents have failed to provide evidence that restaurants, churches and small businesses, which are deemed "non-essential" and are negatively impacted by the Orders, pose a greater risk of facilitating the spread of COVID-19 than liquor stores, big-box stores or drug stores, which are deemed "essential" and permitted to stay open;

ff) The Applicants state that the Orders infringe their religious rights and rights of conscience as protected under section 2(a) of the *Charter* by prohibiting churches from opening and holding religious services, and prohibiting the gathering in homes to worship and hold Bible studies, all of which is a gross, offensive and outrageous overreach of state authority;

gg) The Applicants state that the Orders disproportionately target and discriminate against houses of worship, religious services, and religious persons including the Applicants, contrary to section 15 of the *Charter*;

hh) The Applicants state that the Orders cruelly and irrationally infringe freedom of expression as protected by section 2(b) of the *Charter* by prohibiting singing, preaching, and corporate prayer, as well as those rights of listeners who would hear said expression. The Applicants state these infringements are gross

unconstitutional exercises of state authority, effected without sound scientific evidence, and a deprivation of the citizenry of the joys of worship and praise and general enjoyment of life;

ii) The Applicants state that the Orders interfere with peaceful assembly generally as protected by 2(c) of the *Charter* and prevent protected citizen activities which are necessary to inform the Respondents of the injustice of the Orders, the lockdowns, and their resultant suffering, contrary to all democratic imperatives;

jj) The Applicants state that the Orders interfere with the right to survive as an independent and free citizen in a free and democratic society as guaranteed by section 7 of the *Charter* by closing businesses and causing the loss of jobs, resulting in a loss of the ability to provide for one's self and one's family, and jeopardizing the future security of the person of the Applicants Lyle and Helen Neufeld, co-owners of the Applicant DJ's Family Restaurant, all of which is a profound breach of trust by the public officials entrusted with civil governance;

3. The following materials will be used at the hearing of the application:

(a) the Affidavit of Christopher Lowe;

(b) the Affidavit of Riley Toews;

(c) the Affidavit of Thomas Rempel;

(d) the Affidavit of Tobias Tissen;

(e) the Affidavit of Lyle Neufeld;

(f) the Affidavit of Ross MacKay;

(g) such further and other materials as counsel may advise and this Honorable Court may allow.

4. The Applicants intend to rely on the following Acts and Rules:

a) Manitoba *Court of Queen's Bench Rules*, Manitoba Regulation 553/88

b) *Constitutional Questions Act*, C.C.S.M., c. 180

c) *Constitution Act, 1867*

d) *Constitution Act, 1982*

e) *Public Health Act* C.C.S.M. c. P210

f) *Canadian Charter of Rights and Freedoms*, ss. 1, 2(a), 2(b), 2(c), 7, and 15

g) *Criminal Code*, R.S.C., 1985, c. C-46

h) *The Manitoba Evidence Act*, C.C.S.M. c. E150

i) *The Emergency Measures Act*, C.C.S.M. c. E80

j) Such other enactments as the Applicants may advise.

December 9, 2020

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