

FORM 1a
[Rule 6]

IN THE COURT OF APPEAL FOR SASKATCHEWAN

BETWEEN:

JASMIN GRANDEL and DARRELL MILLS

Appellants
(Applicants)

AND:

**THE GOVERNMENT OF SASKATCHEWAN and
DR. SAQIB SHAHAB in his capacity as CHIEF MEDICAL
HEALTH OFFICER FOR THE PROVINCE OF
SASKATCHEWAN**

Respondents
(Respondents)

NOTICE OF APPEAL

TAKE NOTICE THAT:

1. JASMIN GRANDEL and DARRELL MILLS hereby appeal to the Court of Appeal from the Judgment of the Honourable Mr. Justice D.B. Konkin dated September 20, 2022.
2. The whole of the Judgment is being appealed.
3. The source of the Appellants' right of appeal and the Court's jurisdiction to entertain the appeal is:
 - a) Section 7(2)(a) of *The Court of Appeal Act, 2000*; and
 - b) Section 10(2) of *The Queen's [King's] Bench Act, 1998*.
4. The appeal is taken on the following grounds:
 - a) **Standing**

- I. The Learned Judge erred by failing to grant standing to the Applicants to challenge the Outdoor Gathering Restrictions of 30-persons in addition to the 10-person limitation, on the basis that the evidence established that the Applicants were motivated to protest during the 30-person limitation and that public interest standing ought to have been reasonably granted as sought.

b) Striking of the Rathwell Affidavit

- I. The Learned Judge erred by failing to strike the Rathwell affidavit on the grounds that affidavit evidence presented in an application for final relief must be confined to such facts as the witness is able to confer of his or her own knowledge;
- II. The Learned Judge erred by failing to strike the Rathwell affidavit on the further grounds that the evidence is irrelevant, scandalous and its prejudicial effect outweighed any probative value.

c) Dr. Warren's Expert Evidence

- I. The Learned Judge erred by failing to recognize the central importance of infectious disease expertise before him, limiting the scope of Dr. Warren's expert evidence and concluding that Dr. Warren's expertise was not necessarily in the area he was opining on;
- II. The Learned Judge erred by concluding that the negligibility of outdoor transmission of SARS-CoV-2 as stated by Dr. Warren was an unfair characterization of the evidence.

d) Subsuming *Charter* 2(c) and 2(d) into 2(b) analysis

- I. The Learned Judge erred by failing to assess and give due consideration to compound violations of numerous *Charter* rights;
- II. By subsuming violations of *Charter* sections 2(c) and 2(d) into 2(b) in his proportionality analysis of deleterious and salutary effects, the Learned Judge erred by concluding that limiting the assembly of protestors was relieved by the Applicants having the alternative ability to *express* themselves on the Internet.

e) Section 1 analysis

- I. The Learned Judge erred by concluding that the Outdoor Gathering Restrictions were rationally connected to the objective of reducing transmission of SARS-CoV-2, since the uncontroverted evidence was that there existed no evidence of outdoor transmission and expert evidence established that outdoor transmission was negligible.
- II. The Learned Judge erred by concluding that the Outdoor Gathering Restrictions were minimally impairing by misapplying the precautionary principle in the face of cogent evidence that outdoor transmission was negligible and that reasonable alternatives existed.
- III. The Learned Judge erred by considering certain individuals' alleged non-compliance of health guidelines to be a justification of the Outdoor Gathering Restrictions.

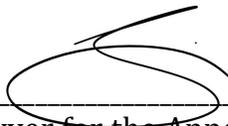
IV. The Learned Judge erred by affording the Respondents undue deference on their decision to impose the Outdoor Gathering Restrictions in face of uncontroverted evidence that outdoor transmission was far less than indoor transmission, and while the Respondents imposed greater limits outdoor than indoor.

5. The Appellant requests the following relief:

- a) THAT the appeal be granted and the judgment set aside;
- b) THAT a Declaratory Judgment be pronounced pursuant to section 24(1) of the *Charter* and section 52 of the *Constitution Act, 1982*, finding the Outdoor Gatherings Restrictions to be a violation of each individually plead *Charter* right and that such violations were not a reasonable limit demonstrably justified in a free and democratic society and are of no force or effect.

6. The Appellant requests that this appeal be heard at Saskatoon.

DATED at Saskatoon, Saskatchewan, on the 20th day of October 2022.



Lawyer for the Appellants

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