

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

THE ATTORNEY GENERAL OF ONTARIO

Applicant (Responding Party)

-and-

**TRINITY BIBLE CHAPEL, JACOB REAUME, WILL SCHURMAN, DEAN
WANDERS, RANDY FREY, HARVEY FREY, and DANIEL GORDON**

Respondents (Moving Party)

A N D B E T W E E N:

HER MAJESTY THE QUEEN IN ONTARIO

Applicant (Responding Party)

-and-

**THE CHURCH OF GOD (RESTORATION) AYLMER, HENRY HILDEBRANDT,
ABRAM BERGEN, JACOB HIEBERT, PETER HILDEBRANDT, SUSAN MUTCH,
ELVIRA TOVSTIGA, and TRUDY WIEBE**

Respondents (Moving Party)

FACTUM OF THE MOVING PARTIES (RESPONDENTS)

December 31, 2021

**JUSTICE CENTRE FOR
CONSTITUTIONAL FREEDOMS**

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I. OVERVIEW

1. Since the beginning of the COVID-19 pandemic (the "**Pandemic**") in March 2020, the province of Ontario ("**Ontario**" or the "**Province**") has enacted regulations which limit attendance at religious gatherings (the "**Capacity Restrictions**" or the "**Restrictions**"). These Capacity Restrictions apply to religious gatherings held indoors (the "**Indoor Restrictions**" or the "**Indoor Capacity Restrictions**") and outdoors (the "**Outdoor Restrictions**" or the "**Outdoor Capacity Restrictions**").
2. COVID-19 ("**COVID**") transmission can occur indoors, whether at a religious gathering or at a retail store. However, religious services at even the largest, best ventilated churches were strictly limited to as few as 5 attendees while retail stores have remained open throughout the Pandemic with flexible attendance limits based on building size.
3. The risk of outdoor transmission is negligible.¹ According to Ontario's own expert witness Dr. Zain Chagla: (i) outdoor religious gatherings are safe, whether there are 10 COVID cases a day or 10,000, regardless of variants of concern; (ii) the Outdoor Restrictions may have increased COVID transmission by encouraging clandestine gatherings in small indoor spaces where transmission risks are much higher; and (iii) restrictions on outdoor gatherings are not justified or appropriate from a public health perspective.²
4. The moving parties are churches and associated individuals who tried to practice their religion in a safe manner during the Pandemic, but were prohibited from doing so and charged with offences pursuant to the Restrictions. The moving parties are subject to orders of this Court (the "**Restraining Orders**") which require them to comply with the Restrictions.
5. Both the Indoor and Outdoor Capacity Restrictions are overbroad, unreasonable and arbitrary limits that violate the *Charter of Rights and Freedoms*³ (the "**Charter**") and cannot be demonstrably justified in a free and democratic society. Accordingly, we ask this Court to declare the Restrictions to be of no force and effect, and to set aside the Restraining Orders.
6. In particular, the Outdoor Restrictions do nothing at all to prevent the spread of COVID, and very likely have the opposite effect. If the Courts and the *Charter* have any role in constraining the actions of the state, surely that role must include striking down oppressive measures which are not merely ineffective, but counterproductive.

1 Motion Record, Tab 11, *Affidavit of Dr. Thomas Warren*, May 25, 2021 ("**Warren Affidavit**"), at para. 55

2 Motion Record, Tab 18, *Transcript of cross-examination of Dr. Z. Chagla* ("**Chagla Transcript**"), at Q. 96-125

3 *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.

II. THE COVID-19 PANDEMIC

7. COVID is an infectious respiratory disease caused by the SARS-CoV-2 RNA virus, a novel coronavirus first documented in Wuhan, China in late 2019 which quickly spread throughout the world. In March 2020, the World Health Organization declared the global COVID outbreak to be a pandemic.⁴

COVID Transmission

8. The SARS-CoV-2 virus is primarily transmitted via small respiratory droplets emitted by an infected person. If another person inhales airborne SARS-CoV-2 particles, the virus can infect the mucous membranes of their respiratory system, begin to reproduce, and that person may develop COVID. Droplet transmission typically occurs between people in very close proximity (less than two meters apart).⁵
9. When an infected person coughs, sneezes, sings, shouts, sings or talks loudly, they may produce contaminated aerosolized particles which can remain suspended in the air for some time. Aerosol transmission of COVID is not common, and aerosol particles disperse harmlessly outdoors or in a space with good ventilation. But if infectious people attend a gathering of any kind in a poorly ventilated indoor space for extended periods of time, aerosol transmission is possible.⁶

Outdoor COVID Transmission is not a serious risk

10. Provided participants have enough space to follow distancing guidelines, "outdoor religious gatherings are safe, whether there are 10 COVID cases a day, or 10,000"⁷ regardless of variants of concern.
11. Ontario's expert Dr. Zain Chagla testified (i) that outdoor transmission may be responsible for as few as 1 in 100,000 cases of COVID; (ii) that limits on outdoor gatherings may have the effect of increasing COVID transmission because they would cause people to gather illicitly indoors where transmission risk is much greater; and (iii) restrictions which do nothing to control the spread of COVID or potentially increase the spread of COVID are not justifiable or appropriate from a public health perspective.⁸

4 Respondent's Application Record, Volume II - Tab 4, *Affidavit of Dr. Z. Chagla and Dr. K. Ali*, July 5, 2021 ("**Chagla/Ali Affidavit**"), at para 3(a)

5 *Chagla/Ali Affidavit* at para 4(c)

6 *Chagla/Ali Affidavit* at para 4(d) and 4(c) footnote 1

7 *Chagla Transcript*, at Q. 119-120

8 *Chagla Transcript*, at Q. 96-125

COVID Disease Severity

12. Most people with COVID experience mild symptoms or no symptoms at all, and the vast majority recover completely within a few weeks. However, severe outcomes do occasionally occur. The overwhelming majority of severe outcomes, including deaths and hospitalizations, have occurred in people over 60 years old.⁹
13. Approximately 30,000 COVID deaths have been recorded across Canada in 2020 and 2021. Every death is a tragedy, but death is a constant companion to life - it's important to keep the severity of COVID in perspective. 30,000 deaths is approximately 4.5 times the number of deaths from seasonal influenza that would be expected in Canada in any given two year period.¹⁰
14. Since the start of the pandemic, out of every 100,000 people in Canada, approximately 242 people with COVID have been hospitalized. This is approximately 2.5 times more than the number of hospitalizations due to seasonal influenza that would be expected in Canada in any given two year period. COVID Hospitalization data assumes - generously - that hospitalizations involve patients suffering from COVID symptoms, as opposed to admissions for unrelated reasons where a positive test was obtained on arrival or during admission.¹¹

Ontario Plan For An Influenza Pandemic

15. The Government of Ontario has anticipated the potential for a severe influenza pandemic and published the *Ontario Plan for an Influenza Pandemic* (the "Plan") released in 2013.¹² The Plan analysed the potential impact of an influenza pandemic by considering four categories depending on whether transmission was high or low and whether the clinical severity was high or low. For context, the 1957-58 Asian Flu Pandemic was considered to fall in the low-transmissibility, high-clinical-severity category.
16. Dr. Chagla testified that the COVID pandemic fell within the range of potential outcomes contemplated in the Plan.¹³ However, Ontario's response to COVID has not followed the Plan. In striking the balance between reducing harm from a pandemic and incidental harm caused by public health measures, the Plan adopted two over-arching principles: "to minimize the impact of death and illness, not just death and illness from the pandemic infection" and "to minimize the disruption of normal life."¹⁴ Brief and limited mandatory public health measures were contemplated by the Plan, but reserved for the most severe pandemic diseases.¹⁵

9 Motion Record, Tab 11, *Affidavit of Dr. Thomas Warren*, May 25, 2021 at para. 10 and 16 ("**Warren Affidavit**")

10 *Chagla Transcript* at q. 199-211

11 *Chagla Transcript* at q. 181-198

12 Motion Record, Tab 13, *Affidavit of Dr. Richard Schabas*, May 29, 2021 at para. 17. ("**First Schabas Affidavit**")

13 *Chagla Transcript* at q. 249.

14 *First Schabas Affidavit* at paras. 16-18.

15 *First Schabas Affidavit* at para. 18; Exhibit D: Ontario Health Plan for an Influenza Pandemic Chapter 4 – Public Health Measures at p. 4.

III. LEGISLATIVE FRAMEWORK

17. On March 17, 2020, at the beginning of the Pandemic, *Ontario Regulation 52/20*¹⁶ declared a province-wide emergency pursuant to section 7.0.1 of the *Emergency Management and Civil Protection Act* (“**EMCPA**”).¹⁷
18. On March 24, 2020, *O. Reg. 82/20* ordered the closure of all “non-essential” businesses and institutions and from March 18 to July 17, 2020 *O. Reg. 52/20* placed limits on the number of people permitted to attend public events, including indoor and outdoor religious gatherings.
19. On July 24, 2020 the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*¹⁸ (“**ROA**”) was proclaimed into force. It terminated the provincial emergency, but continued certain emergency orders made under the EMCPA, including *O. Reg 82/20*.
20. On April 27, 2020 Ontario released its *Framework for Reopening our Province*, which set out a three stage approach to reopening the economy. Then, on November 3, 2020 Ontario released its *Keeping Ontario Safe and Open Framework*¹⁹ (the “**Framework**”) which refined the three stage approach by establishing five color-coded “zones” (the “**Zones**”) of increasingly restrictive public health orders which the Province could apply on a regional basis. *O. Reg. 363/20* assigns each of Ontario's public health units to one of the Framework Zones, and has been amended whenever one or more regions were assigned into a different Zone.
21. Concerned about increasing COVID case counts, on December 21, 2020 Ontario announced that effective December 26, the Framework would be suspended and a more restrictive “Provincewide Shutdown” would begin. On January 12, 2021 Ontario declared a second province-wide state of emergency²⁰, and issued a stay-at-home order²¹ which was continued in force in most regions after the state of emergency ended on February 9, 2021 by amending *O. Reg. 82/20* to add a new Stage 1 “Shutdown Zone”.
22. The regulations that set out the restrictions in effect for each Zone are set out below:

Zone	Regulation
Stage 3 - Green-Prevent	O. Reg. 364/20
Stage 3 - Yellow-Protect	O. Reg. 364/20
Stage 3 - Orange-Restrict	O. Reg. 364/20

16 Declaration of Emergency, O Reg 50/20, <<https://canlii.ca/t/549l6>>

17 Emergency Management and Civil Protection Act, RSO 1990, c E.9, <<https://canlii.ca/t/53nmt>>

18 Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, SO 2020, c 17, <<https://canlii.ca/t/54clq>>

19 <https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-24.pdf>

20 Declaration of Emergency, O Reg 7/21, <<https://canlii.ca/t/54w8b>>

21 Stay-at-Home Order, O Reg 11/21, <<https://canlii.ca/t/54wst>>

Stage 2 - Red-Control O. Reg. 263/20

Stage 1 - Grey-Lockdown O. Reg. 82/20

Stage 1 - Shutdown O. Reg. 82/20

23. On April 1, 2021 the Province moved all 34 public health units in Ontario into the "Shutdown Zone", and declared a third province-wide state of emergency on April 7, 2021.²² On May 20, 2021 Ontario government announced its three-step "*Roadmap to Reopen*"²³, and the province-wide stay at home order was lifted on June 2, 2021.

Summary of the Religious Gathering Restrictions

24. The chart below summarizes the Capacity Restrictions applicable to indoor and outdoor religious gatherings in the Southwestern PHU (where the Respondent the Church of God of Aylmer is located - "**SW**") and the Waterloo PHU (where the Respondent Trinity Bible Chapel is located - "**WA**") from the beginning of the Pandemic to July 2021. Indoor capacity restrictions applicable to essential retail stores during the same time periods are also listed for comparison purposes. Hyperlinks are provided to the version of the regulations applicable to each time period.

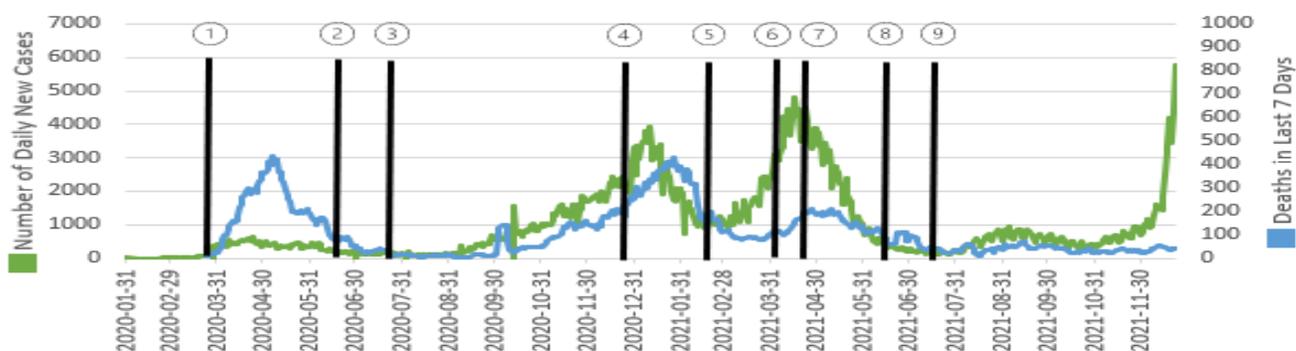
Date (D/M/Y)	Outdoor	Indoor	Regulation	Essential Retail
18/3/20-27/3/20	50 ppl	50 ppl	52/20 (18/3/20)	Allowed to operate (82/20)
28/3/20-15/5/20	5 ppl	5 ppl	52/20 (28/3/20)	Allowed to open, must follow guidance on distancing, cleaning (82/20)
16/5/20-28/5/20	5 ppl	5 ppl	52/20 (16/5/20)	Allowed to open, must follow guidance on distancing, cleaning (82/20)
29/5/2020-11/6/20	5 ppl	5 ppl	52/20 (29/5/20)	Allowed to open, must follow guidance on distancing, cleaning (82/20)
12/6/20-16/7/20	50 ppl	30% cap.	52/20 (12/6/20)	Allowed to open, must follow guidance on distancing, cleaning (82/20)
13/7/20-6/11/20 (SW) 17/7/20-6/11/20 (WA)	100 ppl	30% cap.	364/20 (13/7/20) per 363/20	Capacity limited to number capable of maintaining 2m distance
7/11/20-22/11/20	100 ppl	30% cap.	364/20 (7/11/20) per 363/20	Capacity limited to number capable of maintaining 2m distance

22 Declaration of Emergency, O Reg 264/21, <<https://canlii.ca/t/55278>>

23 <https://news.ontario.ca/en/backgrounder/1000159/roadmap-to-reopen>

Date (D/M/Y)	Outdoor	Indoor	Regulation	Essential Retail
23/11/20-26/12/20	100 ppl (SW) 100 ppl (WA)	30% cap. (SW) 30% cap. (WA)	364/20 (23/11/20) per 363/20	Capacity limited to number capable of maintaining 2m distance
26/12/20 - 9/2/21	10 ppl	10 ppl	82/20 (26/12/20) per 363/20	50% capacity and 2m distance
10/2/21-15/2/21	10 ppl	10 ppl	82/20 (10/2/21) per 363/20	50% capacity and 2m distance
16/2/21 - 28/2/21	100 ppl	30% cap.	263/20 (16/2/21) per 363/20	75% capacity and 2m distance
1/3/21 - 29/3/21	100 ppl (SW) 100 ppl (WA)	30% cap. (SW) 30% cap. (WA)	364/20 (26/2/21) (SW) 263/20 (26/2/21) (WA) per 363/20	Capacity limited to number capable of maintaining 2m distance (SW) 75% capacity and 2m distance (WA)
29/3/21 - 2/4/21	No fixed limit Maintain 2m distance	30% cap.	364/20 (29/3/21) (SW) 263/20 (29/3/21) (WA) per 363/20	Capacity limited to number capable of maintaining 2m distance (SW) 75% capacity and 2m distance (WA)
3/4/21 - 18/4/21	Maintain 2m distance	15% cap.	82/20 (3/4/21) per 363/20	50% capacity and 2m distance
19/4/21 - 10/6/21	10 ppl	10 ppl	82/20 (19/4/21) per 363/20	25% capacity and 2m distance
11/6/21 - 29/6/21	Maintain 2m distance	15% cap.	82/20 (8/6/21) per 363/20	25% capacity and 2m distance
30/6/21 – 15/7/21	Maintain 2m distance	25% cap.	263/20 (29/6/20) per 363/20	50% capacity and 2m distance

25. To assist the Court in understanding the timing of the Capacity Restrictions summarized above in relation to the progress of the Pandemic, some of the more significant regulatory changes are flagged on the chart below which tracks new COVID cases and deaths in Ontario between January 31, 2020 and November 30, 2021.



(1) 28/3/20 – Indoor/outdoor gathering limits reduced to 5 people; (2) 12/6/20 – Outdoor gathering limit raised to 50 people, indoor is 30% room capacity; (3) 13/7/20 – Outdoor gathering limit raised to 100 people; (4) 26/12/20 – Indoor/outdoor gathering limits reduced to 10 people; (5) 16/2/21 – Outdoor gathering limit raised to 100 people, indoor is 30% room capacity; (6) 29/3/21 – Outdoor gathering limit lifted; (7) 19/4/21 – Indoor/outdoor gathering limits reduced to 10 people; (8) 11/6/21 – Outdoor gathering limit lifted, indoor is 15% room capacity; (9) 16/7/21 – Indoor gathering limit lifted.

Drive-In Gatherings

26. At the beginning of the Pandemic, the Restrictions did not specifically address drive-in religious gatherings. The Church of God began holding drive-in services in early April 2020 when outdoor gatherings were limited to 5 people. Five Church of God leaders stood two meters apart on an outdoor stage and broadcast a religious service over FM radio. All other attendees remained safely in vehicles two meters apart and listened to the service on their car radio.²⁴
27. In late April 2020, Aylmer Police announced that they considered drive-in services to be illegal outdoor gatherings of more than 5 people, and threatened the Church of God with penalties of up to \$100,000 and a year in jail. The Church of God brought a constitutional challenge to the prohibition on drive-in services in May 2020. By the end of May 2020 Ontario amended the regulations to allow drive-in religious services.²⁵

IV. THE PARTIES

Trinity Bible Chapel et. al.

28. Trinity Bible Chapel ("**Trinity**") is a church located in Waterloo, Ontario. Their lead pastor is Jacob Reaume, and the remaining parties are the church elders and associate pastors. Trinity's church facility can safely house 900 people, based on fire code regulations.²⁶
29. In the early months of the first lockdown, the church was closed for in-person services, and online services were provided.²⁷ When churches were finally permitted to open to 30% capacity in June of 2020, Trinity set up a massive overflow section in their gymnasium to space people out further, provided access to hand sanitizers and face masks, and developed a comprehensive policy to mitigate the spread of COVID-19. For example, when serving the Lord's Supper all elders wore masks.²⁸
30. When Ontario locked down churches again in December of 2020, Trinity's elders decided they could not in good conscience close their doors to the faithful again.²⁹ This resulted in numerous summonses issued to Trinity and its leadership. Each charge for individuals may result in a \$100,000 fine and/or one-year of imprisonment,

24 Motion Record, Tab 9, *Affidavit of H. Hildebrandt*, June 4, 2021 ("**Hildebrandt Affidavit**"), at paras. 9-10

25 *Hildebrandt Affidavit*, at paras 13, 20

26 Motion Record, Tab 7, *Affidavit of Jacob Reaume*, June 4, 2021 ("**Reaume Affidavit**") Para 4

27 *Reaume Affidavit*, para 5

28 *Reaume Affidavit*, para 14

29 *Reaume Affidavit*, at para 18, 21

and for the church each charge carries a maximum penalty of \$10 million.³⁰ Those charges remain outstanding, pending the outcome of this hearing.

31. The Attorney General commenced the Application for a statutory injunction under s. 9 of the *ROA*, leading to the impugned Orders, on January 21 with a return date of January 22.³¹ The Restraining Order was granted, with a 30-day period within which to move to set aside the Restraining Order on constitutional grounds or otherwise. That motion to set aside, and a subsequent one based on a more broadly-worded Restraining Order dated April 26, 2021, are the proceedings before this Honourable Court.

32. Following the imposition of the statutory Restraining Orders, Trinity continued to meet in numbers exceeding the allowable limits and faced contempt of court proceedings and significant fines and legal costs totalling approximately \$200,000, which they have since paid. They were also locked out of their church building by Court order for several months.³²

Church of God (Aylmer) et. al.

33. The Church of God (Restoration) Aylmer ("**CoG**") is a non-denominational religious organization located in Aylmer, Ontario. CoG's church facility can safely accommodate more than 400 people. Many of the CoG parishioners come from a Mennonite background.³³

34. Heinrich (Henry) Hildebrandt is the pastor at CoG. Abram Bergen, Jacob Hiebert, Peter Hildebrandt, Susan Mutch, Elvira Tovstiga and Trudy Wiebe are elders or former elders of the church.³⁴

35. After closing initially in March of 2020, CoG began holding drive-in services in April of that year, as referenced above. They continued with these services until churches were permitted to open with capacity limits in June of 2020.³⁵ At that time, they implemented public health protocols such as posting signs and making masks and sanitizer available. In conversation with the police, they established the appropriate capacity of the building and adhered to that limit. If people wanted extra space for physically distanced seating, that was made available in the overflow room. They also accommodated drive-in services for those who were not comfortable entering the building and reminded people to stay away if they or a family member were feeling unwell.³⁶

30 *Reaume Affidavit*, at para 32-34, 52

31 *Reaume Affidavit*, at para 40

32 *Reaume Affidavit*, at para 55, 58-59

33 *Hildebrandt Affidavit*, at para 2, 4

34 *Hildebrandt Affidavit*, at para 2, 3

35 *Hildebrandt Affidavit*, at para 22

36 *Hildebrandt Affidavit*, at para 23

36. CoG continued to largely abide by public health guidelines and had few difficulties with police until January of 2021, at which point the return to an almost complete shutdown of churches was met with some resistance. The church and its leaders faced numerous charges over the ensuing weeks and ultimately a s. 9 Restraining Order was obtained by the Province. This, too, resulted in contempt of court proceedings and significant fines and costs totalling over \$274,000, which have been paid. Additional charges under the ROA are outstanding, pending the outcome of this hearing. Many of the charges and the final contempt finding related to outdoor services held on the church's large acreage. Police drones flew overhead during services to obtain evidence used in court.³⁷

V. STATEMENT OF ISSUES

37. This motion asks this Court to make a determination on the following issues:

Do the Capacity Restrictions infringe section 2(a), 2(b), 2(c), and 2(d) Charter rights?

Can the Outdoor Capacity Restrictions be justified under section 1 of the Charter?

Can the Indoor Capacity Restrictions be justified under section 1 of the Charter?

Can Capacity Restrictions which made no distinction between indoor and outdoor religious gatherings be justified under section 1 of the Charter?

VI. ARGUMENT

38. The *Charter* applies to the legislature and government of Ontario in respect of all matters within the authority of the Province, including the laws and regulations which comprise the Restrictions.³⁸

Infringement of Charter Rights

39. The Restrictions infringe on the fundamental freedoms guaranteed under section 2(a), 2(b), 2(c) and 2(d) of the *Charter*.

³⁷ *Hildebrandt Affidavit*, at para 33-47

³⁸ *Charter*, s. 32(1)(b); *Eldridge v. British Columbia (Attorney General)*, 1997 CanLII 327 (SCC), [1997] 3 SCR 624, <<https://canlii.ca/t/1fqx5>> at para. 20-21

Section 2(a) - Freedom of Religion

*"Religious freedom is also defined by the absence of constraint. From this perspective, religious freedom aims to protect individuals from interference with their religious beliefs and practices. Its character is noncoercive; its antithesis is coerced conformity."*³⁹

40. Freedom of religion includes the right *"to declare religious belief openly without fear of hindrance or reprisal"* and *"to manifest religious belief by worship and practice or by teaching and dissemination."*⁴⁰ Religion is *"profoundly communitarian"*⁴¹ and must be permitted to manifest *"through communal institutions and traditions."*⁴² In other words: Canadians have a constitutional right to gather together for communal worship in a church or other place of their choosing.
41. In order to make out an infringement of section 2(a), a claimant must show: *"(1) that he or she sincerely believes in a belief or practice that has a nexus with religion"*; and *"(2) that the impugned conduct interferes with the claimant's ability to act in accordance with that belief or practice in a manner that is more than trivial or insubstantial."*⁴³
42. Pastor Hildebrandt and his parishioners believe that *"Scripture commands us to meet for worship in person, that the definition of 'church' requires us to gather in person, and that the Law of God demands we gather at least weekly."*⁴⁴
43. Rev. Reaume explains: *"Scripture, which is God's Word to us, commands Christians to gather in person for church (Hebrews 10:24-25)."*⁴⁵ Gathering in church for fellowship and worship is an essential *"participatory experience"* for which there is no substitute.⁴⁶ *"Where there is no physical gathering, there is no church."*⁴⁷
44. The Moving Parties sincerely believe the Law of God commands them to gather in church. For months at a time, the Restrictions have constrained attendance at every religious service in Ontario to as few as 5 or 10 people, and prohibited all others from attending under penalty of law. The Restrictions forced the Moving Parties to choose between obeying the law of their God, or the law of the province of Ontario. Those who chose to obey their God were punished by the Province.

39 *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 (CanLII), [2018] 2 SCR 293, <<https://canlii.ca/t/hsjpr>> at para 213

40 *Ibid* at para. 94.

41 *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para 89 [*Hutterian Brethren*].

42 *Loyola High School v Quebec (Attorney General)*, 2015 SCC 12 at para. 60.

43 *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54 (CanLII), [2017] 2 SCR 386, <<https://canlii.ca/t/hmtxn>> at para 122

44 *Hildebrandt Affidavit*, at paras. 60-61.

45 *Reaume Affidavit*, at para. 85

46 *Reaume Affidavit*, at para. 75.

47 *Reaume Affidavit*, at para.88.

45. Clearly, Ontario interfered substantially with the Moving Parties' ability to act in accordance with their sincerely held religious beliefs, and the Restrictions must be found to be in breach of s. 2(a) of the *Charter*.

Section 2(b) - Freedom of Expression

"It's not just the right of the person who speaks to be heard. It is the right of everyone in the audience to listen and to hear. And every time you silence somebody, you make yourself a prisoner of your own action because you deny yourself the right to hear something."

~ Christopher Hitchens, 2006 (University of Toronto debate)

46. Section 2(b) extends prima facie constitutional protection to all human activity intended to convey a meaning. Expressive activity may only be excluded from section 2(b) protection if its method or location clearly "*undermines the values that underlie the guarantee*": values such as "*democratic discourse*", "*truth-finding*" and "*self-fulfilment*".⁴⁸ Clearly, religious services do not undermine these values.
47. Section 2(b) also protects the right to receive expression - it "*protects listeners as well as speakers*."⁴⁹
48. The Supreme Court of Canada has established a three-part test to determine whether an activity is protected by section 2(b): (i) Does the activity have expressive content? (ii) Does the method or location of the activity remove it from section 2(b) protection? (iii) Does the impugned law or government action infringe that protection in purpose or effect?⁵⁰
49. Religious gatherings incorporate a great deal of expressive content, including sermons, prayer and song. Pastor Hildebrandt and Rev. Reaume have a *Charter* right to preach to their congregants, just as their congregants have a right to hear what they have to say. Those not in attendance cannot join in expressive prayer or song, and are deprived of the opportunity to witness the expression of others.
50. Clearly, Restrictions which limit the number of people permitted to attend religious services not only abrogates the section 2(b) rights of those not permitted to attend, but also limits the rights of Hildebrandt, Reaume, and others in attendance to be heard. Nothing about a religious service can be seriously argued to remove s. 2(b) protection.

48 *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 SCR 927, <<https://canlii.ca/t/1ft6g>> [Irwin Toy] at pages 968-969 (paras 52-55); and *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62 (CanLII), [2005] 3 SCR 141, <<https://canlii.ca/t/1lwq0>> ("**Montreal (City)**") at para 72, 74

49 *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69 (CanLII), [2000] 2 SCR 1120, <<https://canlii.ca/t/5239>> at para 41, quoting *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 SCR 712, <<https://canlii.ca/t/1ft9p>> at page 767

50 *Montreal (City)* at para. 56

Section 2(c) - Freedom of Assembly

51. The right to peacefully assemble is a collective right “*incapable of individual performance.*”⁵¹ Section 2(c) protects the “*physical gathering together of people.*”⁵²
52. By placing limits on the number of people permitted to assemble for worship, the Capacity Restrictions directly and explicitly infringe on the s. 2(c) right of the Moving Parties to peacefully assemble. The very purpose of the Capacity Restrictions is to prevent free assembly.

Section 2(d) - Freedom of Association

53. “*Freedom of association seeks to protect... the freedom of individuals to interact with, support, and be supported by, their fellow humans in the varied activities in which they choose to engage.*”⁵³ Section 2(d) recognizes “*the profoundly social nature of human endeavours and to protect the individual from state-enforced isolation in the pursuit of his or her ends*” and guarantees “*the right to join with others and form associations*” as well as “*the right to join with others in the pursuit of other constitutional rights.*”⁵⁴ “*The historical emergence of association as a fundamental freedom — one which permits the growth of a sphere of civil society largely free from state interference — has its roots in the protection of religious minority groups.*”⁵⁵
54. Infringement of section 2(d) occurs when the impugned government action constitutes “*a substantial interference with freedom of association*” in either its purpose or effect.⁵⁶ The Capacity Restrictions directly and explicitly interfere with the right of churchgoers to join with one another for communal worship, and so ought to be found to violate s. 2(d).

Section 1 Analysis - the "Oakes Test"

55. The Capacity Restrictions are laws and regulations of general application enacted by the province of Ontario that place limitations on rights and freedoms guaranteed by the *Charter*. Section 1 allows limitations of *Charter* rights, provided: (i) that the limitations are reasonable; (ii) that they are prescribed by law; and (iii) that they can be demonstrably justified in a free and democratic society. The analytical framework set out in *R. v.*

51 *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 (CanLII), [2015] 1 SCR 3, <<https://canlii.ca/t/gfxx8>> at para. 64 (“**Mounted Police**”).

52 *Roach v. Canada (Minister of State for Multiculturalism and Citizenship)*, 1994 CanLII 3453 (FCA), [1994] 2 FC 406, <<https://canlii.ca/t/4nm5>> (CA).

53 *Reference Re Public Service Employee Relations Act (Alta.)*, 1987 CanLII 88 (SCC), [1987] 1 SCR 313, <<https://canlii.ca/t/1ftnn>> at para. 88 (“**the Alberta Reference**”).

54 *Mounted Police* at paras. 54, 66.

55 *Mounted Police* at para 56

56 *Mounted Police* at para. 121.

*Oakes*⁵⁷ is the proper approach to determine whether the Restrictions can be justified under section 1. Ontario must prove, on a balance of probabilities that:

- I. The objective of the Capacity Restrictions is pressing and substantial; and
- II. The Capacity Restrictions are proportional to their objective. Specifically:
 - a) The limitations that the Capacity Restrictions impose on *Charter* rights are rationally connected to their objective. They are not arbitrary, unfair or based on irrational considerations. There must be a reasonable and logical causal connection between the infringement of *Charter* rights and the benefit sought⁵⁸;
 - b) The Capacity Restrictions must minimally impair *Charter* rights - the approach taken must fall within a range of reasonable means of attaining the objective. If Ontario fails to explain why a significantly less intrusive approach was not taken, the law may fall at this stage⁵⁹; and
 - c) The effect of the Capacity Restrictions on *Charter* rights and freedoms is proportional to the objective. The more severe the deleterious effects of a measure, the more important the objective must be if the measure is to be reasonable and demonstrably justified in a free and democratic society.⁶⁰

56. *"The onus of proving that a limitation on any Charter right is reasonable and demonstrably justified in a free and democratic society rests upon the party seeking to uphold the limitation."*⁶¹ Ontario must provide "cogent and persuasive" evidence that "make[s] clear to the court the consequences of imposing or not imposing the limit" and the court must be told what alternative measures for implementing the objective were available to Ontario.⁶²

Oakes I - Pressing and Substantial Objective

57. Dr. David McKeown, former Associate Chief Medical Officer of Health for Ontario testified that *"the objective of those restrictions was to reduce [COVID] transmission."*⁶³ Dr. McKeown says the Capacity

57 *R. v. Oakes*, 1986 CanLII 46 (SCC), [1986] 1 SCR 103 ("**Oakes**"), <<https://canlii.ca/t/1ftv6>> at para 69-70

58 *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1995 CanLII 64 (SCC), [1995] 3 SCR 199, ("**RJR-MacDonald**") <<https://canlii.ca/t/1frgz>> at para 153

59 *RJR-MacDonald, Supra.* at para 160

60 *Oakes, Supra.* at para 71

61 *Oakes, Supra.* at para 66

62 *Oakes, Supra.* at para 68

63 Motion Record, Tab XX, *Affidavit of Dr. David McKeown*, July 5, 2021 ("**First McKeown Affidavit**") at paras. 60-61.

Restrictions were "also informed by the burdens that the pandemic placed on the healthcare system,"⁶⁴ but this was secondary to the direct and immediate purpose of the Capacity Restrictions - in the government's view, it was necessary to reduce transmission *in order to* protect the healthcare system.

58. At some times during the pandemic, the Indoor Capacity Restrictions and the Outdoor Capacity Restrictions were the same. For example, Schedule 1, s. 1.(1)(c) of the version of *O. Reg. 52/20* which was in force from May 16, 2020 to May 28, 2020 set out the same 5 attendee limit for both indoor and outdoor religious gatherings.

1. (1) Subject to subsections (3) and (4), no person shall attend,

(a) an organized public event of more than five people, including a parade;

(b) a social gathering of more than five people; or

(c) a gathering of more than five people for the purposes of conducting religious services, rites or ceremonies.

59. At other times, the Indoor Restrictions and the Outdoor Restrictions were set out in separate sections. For example, Schedule 3, s. 4 and 5 of the version of *O. Reg. 263/20* which was in force from February 16, 2021 to February 18, 2021 read as follows:

Indoor wedding, funeral or religious service, rite or ceremony

4. (1) This section applies with respect to gatherings for the purposes of a wedding, a funeral or a religious service, rite or ceremony, if the gathering is held in a building or structure other than a private dwelling.

(2) No person shall attend a gathering to which this section applies unless the following conditions are met:

1. The number of persons occupying any room in the building or structure while attending the gathering must not exceed 30 per cent of the capacity of the particular room.

2. All persons attending the gathering must comply with public health guidance on physical distancing.

Outdoor wedding, funeral or religious service, rite or ceremony

5. (1) This section applies with respect to outdoor gatherings for the purposes of a wedding, a funeral or a religious service, rite or ceremony.

(2) No person shall attend a gathering to which this section applies unless the following conditions are met:

1. No more than 100 people may be in attendance.

2. All persons attending the gathering must comply with public health guidance on physical distancing.

60. When applying the Oakes test, "Care must be taken not to overstate the objective. The objective relevant to the s. 1 analysis is the objective of the infringing measure, since it is the infringing measure and nothing else which is sought to be justified. If the objective is stated too broadly, its importance may be exaggerated and the analysis compromised."⁶⁵ The objective of an impugned measure may be narrower than the objective of the legislative scheme as a whole.

⁶⁴ *First McKeown Affidavit* at para 75

⁶⁵ *RJR-MacDonald, Supra.* at para 144

61. At times when the Capacity Restrictions were set out in regulatory measures that made no distinction between indoor and outdoor religious gatherings ("**Merged Restrictions**"), the objective of the Merged Restrictions was *"to reduce COVID transmission"* as Dr. McKeown testified. However, in order not to compromise the section 1 analysis at times when the Indoor Restrictions and the Outdoor Restrictions were regulated separately, the objective of those measures must be defined more narrowly, as follows:

The objective of the Indoor Restrictions was *"to reduce COVID transmission indoors"*; and

The objective of the Outdoor Restrictions was *"to reduce COVID transmission outdoors."*

Reducing outdoor transmission is not a pressing and substantial objective

62. While *"reducing COVID transmission"* or *"reducing COVID transmission indoors"* could reasonably be considered to be pressing and substantial objectives, it is clear that *"reducing COVID transmission outdoors"* cannot. Ontario has provided no evidence of any COVID transmission risk associated with outdoor activity. In fact, Ontario's evidence shows that outdoor activity is safe and should be encouraged.⁶⁶ Dr. Chagla, Ontario's own expert witness testified that the Outdoor Restrictions were not justifiable or appropriate from a public health perspective.⁶⁷

63. Ontario may argue that the Outdoor Restrictions were enacted in order to prevent transmission at stores, gas stations, or other places where an individual might stop on their way to or from an outdoor religious gathering. If this were the objective of the Outdoor Restrictions, they would fall at the rational connection or minimal impairment stage of Oakes - if Ontario's goal was to prevent spread at stores or gas stations, those places ought to have been regulated directly rather than indirectly.

64. Similarly, if Ontario claims to have enacted the Outdoor Restrictions in order to prevent parishioners from, for example, touching or hugging one another, then that behaviour alone should have been targeted - only distancing ought to have been required, and capacity limits should never have been imposed.

65. The risk of outdoor transmission of COVID is negligible.⁶⁸ If mitigation of a negligible risk could be found to be a pressing and substantial objective, the first arm of the Oakes test would be meaningless. The Outdoor Restrictions cannot be demonstrably justified in a free and democratic society and must be struck down.

66 *Chagla/Ali Affidavit*, at para 5(f) and 5(h); *First McKeown Affidavit*, Exhibit Y, pg. 2, 13, 14; and *Chagla Transcript* at Q.

67 *Chagla Transcript* at Q.

68 *Warren Affidavit*, at para 55

Oakes II.A - Rational Connection

66. In order to survive s. 1 scrutiny, the Capacity Restrictions *"must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective."*⁶⁹
67. Laws which are arbitrary do not have a rational connection to their objective. An arbitrary law is one that is not capable of fulfilling its objectives - it exacts a constitutional price in terms of rights, without furthering the public good that is said to be its object.⁷⁰ The Outdoor Restrictions are arbitrary and have no rational connection to their objective, because restrictions on an activity which is safe and does not meaningfully contribute to the spread of COVID cannot possibly have any beneficial impact.
68. Ontario must prove a causal connection between the Capacity Restrictions and their objective. In other words, the government must show that the Capacity Restrictions actually do reduce the spread of COVID.⁷¹
69. This causal connection should be proved with direct scientific evidence, unless the effect that the Capacity Restrictions have on the spread of COVID in Ontario is not scientifically measurable.⁷² Here, the effect sought by the Province is a measurable scientific objective - specifically, a lower incidence of COVID transmission as compared to what would be expected in the absence of Capacity Restrictions.
70. The only evidence that Ontario has offered of a causal connection between the Restrictions and their objective is a loose correlation between the times when the most restrictive public health measures were imposed and the times when case counts in the province peaked and began to fall. Correlation does not imply causation, and even if it did, the religious gathering Capacity Restrictions were not the only measures imposed at those times - many different restrictive measures were imposed, up to and including stay at home orders, prohibitions on all social gatherings of all kinds, closures of all kinds of businesses, etc. The Province has offered no evidence whatsoever that speaks specifically to the effectiveness of the oppressive limitations placed on religious gatherings. It is required to do so in order to demonstrate a rational connection between the impugned measures and their objective, and it has not. Accordingly, both the Indoor and Outdoor Restrictions should be found to have failed at the rational connection stage of the section 1 analysis.

69 *Oakes, Supra.* at para. 74.

70 *Carter v. Canada (Attorney General)*, 2015 SCC 5 (CanLII), [2015] 1 SCR 331, <<https://canlii.ca/t/gg5z4>>

71 *RJR MacDonald, Supra.* at para 154

72 *RJR MacDonald, Supra.* at para 155

Oakes II.B - Minimal Impairment

71. The Capacity Restrictions must impair *Charter* rights as little as reasonably possible - no more than necessary to achieve the objective. The court does not expect perfection here - as long as the measure taken is among a range of reasonable alternatives. *"The test at the minimum impairment stage is whether there is an alternative, less drastic means of achieving the objective in a real and substantial manner."*⁷³
72. A failure to "explain why a significantly less intrusive and equally effective measure was not chosen" may be fatal to the impugned measure.⁷⁴ *"The analysis at this stage is meant to ensure that the deprivation of Charter rights is confined to what is reasonably necessary to achieve the state's object."*⁷⁵

Merged Restrictions

73. Regulatory measures which made no distinction between indoor and outdoor religious gatherings must be struck down in their entirety at the minimal impairment stage. The risk of COVID transmission at an outdoor gathering is negligible and restrictions on such gatherings are not justifiable or appropriate from a public health perspective. Ontario has a positive obligation to impair *Charter* rights as little as reasonably possible, and a measure that needlessly restricts religious gatherings in safe outdoor settings cannot be saved even it happens to also have some (here unproven) effect on transmission indoors.
74. Ontario has put forward no evidence as to why they did not choose to implement a measure that restricted only indoor gatherings, or why such a measure would not have been equally effective. In fact, a measure which did not restrict outdoor gatherings may have actually been more effective, because (as Dr. Chagla testified⁷⁶) restrictions on outdoor gatherings would likely incentivize people to gather clandestinely indoors where risk of transmission is several orders of magnitude greater.

Outdoor Restrictions

75. In the event that the Court is still in doubt as to whether the Outdoor Restrictions can be saved under section 1, it is important to remember that for several lengthy periods the Restrictions limited attendance at outdoor gatherings to as few as 5 or 10 people. Both of the Moving Parties' church facilities have large outdoor spaces that could easily accommodate far more than 5 or 10 appropriately distanced people. Ontario has provided no evidence as to why they chose to impose an extremely restrictive fixed attendance limit rather than an equally effective but more flexible measure that took the available outdoor space into account.

73 *Hutterian Brethren, Supra.* at para 55

74 *RJR MacDonald, Supra.* at para 160

75 *Carter v. Canada, Supra.* at para 102

76 *Chagla Transcript*, at Q.

Indoor Restrictions

76. Indoor Capacity Restrictions which imposed fixed limits on attendance at indoor religious gatherings of 5, 10, or 50 people must fail at the minimal impairment stage because they impair the *Charter* rights of Ontarians to attend religious services in large, well-ventilated churches far more than is reasonably necessary to attain the objective of controlling the spread of COVID. Moreover, a fixed limit of 50 might significantly elevate risk of transmission in a very small place of worship.
77. "Essential" businesses (including liquor and beer stores) in the province have been permitted to operate throughout the Pandemic with flexible limits based on building size and fire code capacity.⁷⁷ Arbitrary fixed attendance limits like those put in place for religious gatherings have never been imposed on these businesses. Nor should they have been. Because some stores are larger than others, variable capacity limits clearly balance safety with the need to minimally impair *Charter* rights far more effectively than a fixed capacity limit ever could. The same is true for places of worship.
78. Trinity's church facility, for example, has a fire code capacity of 900 people.⁷⁸ If Trinity was an essential retailer rather than a place of worship, they could have legally accommodated as many shoppers as could distance appropriately for almost all of 2020. At various times in 2021, essential businesses were limited to 25%, 50%, or 75% of rated capacity. At a 900 person capacity, this translates to 225, 450, or 675 people.
79. Because it is a church, attendance at Trinity's indoor religious services were limited to 10 people between December 26, 2020 and February 15, 2021, for example. If the very same building housed a liquor store rather than a place of worship, it could have legally welcomed 450 shoppers (50% of fire code capacity) during the same time period. This is a huge difference, and Ontario has failed to address it, let alone show that it is justified.
80. Ontario has failed to explain why they did not choose to implement a flexible and significantly less intrusive religious service capacity limit based on the size or fire code capacity of each place of worship instead of a fixed limit of 5, 10 or 50 people (in Trinity's case, this amounts to only .5%, 1% or 5% of their building capacity.)
81. Ontario's witnesses have attempted to draw a distinction between retail stores and religious gatherings. For example, Dr. McKeown claims in his affidavit that people from different households attend religious gatherings, may sing and pray loudly, and may remain in a place of worship for an hour or more.⁷⁹ Yet, at least as many people from at least as many different households also pass through a grocery store, for example, and may remain in stores for a comparable amount of time. He stereotypes religious people as the type of people who "*will be tempted to greet or socialize with each other in violation of physical distancing requirements,*" and is

77 See the Summary of Religious Gathering Restrictions table below paragraph 24 of this factum

78 *Reaume Affidavit*, para 4

79 *First McKeown Affidavit* at para 82

concerned that they will not wear masks consistently or correctly.⁸⁰ Stereotyping aside, undoubtedly, these concerns apply equally to neighbourhood stores. He implies that churches are, in general, poorly ventilated, but no evidence that retail store ventilation is, on average, any better.⁸¹

82. Even if one were inclined to see a distinction between churchgoers and retail shoppers, a comparison with retail workers may be far more apt. Retail workers come from different households, typically remain at work for 8 hours or more, are likely to greet and socialize with one another, may sing or shout, may breathe heavily when doing physical work, are no more likely than anyone else to wear masks correctly, and in the course of a typical shift they interact with large numbers of shoppers, sometimes in very close proximity.⁸²
83. Dr. Chagla conducted a study that looked at COVID outbreaks among retail workers over a period of a month and a half, and testified that "hundreds" of outbreaks occurred during that period of time. By contrast, Ontario's witness Dr. Matthew Hodge testified that only 59 outbreaks associated with religious gatherings have been identified from the beginning of the Pandemic to June 18, 2021 - a period approximately 10 times the duration of Dr. Chagla's study. In other words, "hundreds" of outbreaks have occurred among retail workers for every 5.9 outbreaks that have been traced to religious gatherings.⁸³
84. Ontario has failed to demonstrate why flexible limits were appropriate for retail settings, but not for religious settings. Even if the Province had shown some meaningful difference between the two that creates a higher transmission risk in religious settings - which it has not done - the Province has made no effort to explain why it couldn't have imposed less oppressive limits on religious gatherings and offset that risk elsewhere, for example by dropping retail capacity limits slightly.
85. The Indoor Restrictions failed to minimally impair *Charter* rights, and Ontario has failed to justify its decision to impose such oppressive restrictions or to show that any of the many less oppressive options available to them would not have been equally effective at controlling the spread of COVID. Quite plainly, a fixed limit of 5 or 10 attendees in a large, well-ventilated place of worship with a rated capacity of 900 people was not within a range of reasonable alternatives, and the Indoor Restrictions must be struck down.

80 *First McKeown Affidavit* at para 83

81 *First McKeown Affidavit* at para 103

82 *Chagla Transcript*, at Q 149-166

83 *Chagla Transcript*, at Q 137-166

Oakes II.C - Proportionality

86. To be justified, the salutary effect of a measure which infringes *Charter* rights must outweigh its deleterious effect on the rights at issue. In other words, the Court must weigh the impact “*on protected rights against the beneficial effect of the [measure] in terms of the public good.*”⁸⁴
87. The harms inherent to oppressive limits on attendance at religious gatherings are obvious, and plenty of evidence of harm has been introduced - see for example, the Reaume, Schabas, Hildebrandt, Bergen and Williams affidavits.
88. Ontario bears the evidentiary burden of justifying the Capacity Restrictions under section 1, and it quite simply has not provided any evidence of any beneficial effect conveyed by restrictions on religious gatherings specifically. Ontario has not met its evidentiary burden, and proportionality cannot be demonstrated. Accordingly, the Capacity Restrictions cannot pass this stage of the Oakes analysis.

VII. CONCLUSION

89. The Capacity Restrictions seriously infringe on *Charter* rights and cannot be demonstrably justified under the section 1 analytical framework set out in Oakes. Accordingly, they are unconstitutional and are of no force and effect pursuant to section 52 of the *Charter*. Restraining orders which require compliance with unconstitutional laws are themselves unconstitutional and must be set aside.

NOTE: Ontario's Witness Dr. Matthew Hodge

90. Dr. Hodge testified on cross examination that provincial case counts (a "case" requires a positive PCR test) have accounted for 90% of the cases in the community. In other words, only 10% of cases have gone undetected.⁸⁵ This estimate is not at all consistent with other expert testimony or studies of case count accuracy. Ontario's other expert Dr. Chagla testified that Dr. Hodge's estimate was "false," "not even close" and "not just a little bit wrong, but very wrong". Dr. Chagla testified that an understanding of case counts is fundamental to understanding the Pandemic, and that he would question the expertise of anyone who expressed that opinion.⁸⁶
91. In our submission, Dr. Hodge's expertise is in question and his evidence should be given very little weight.

84 *Carter v. Canada (Attorney General)*, 2015 SCC 5 (CanLII), [2015] 1 SCR 331, <<https://canlii.ca/t/gg5z4>>

85 Motion Record, Tab 16, *Transcript of cross-examination of Dr. M Hodge ("Chagla Transcript")*, at Q. 66-68

86 Chagla Transcript at Q. 14-25

List of Authorities

	Cases
1	Law Society of British Columbia v. Trinity Western University, 2018 SCC 32 (CanLII), [2018] 2 SCR 293, < https://canlii.ca/t/hsjpr >
2	Alberta v. Hutterian Brethren of Wilson Colony, 2009 SCC 37 (CanLII), [2009] 2 SCR 567, < https://canlii.ca/t/24rr4 >
3	Loyola High School v. Quebec (Attorney General), 2015 SCC 12 (CanLII), [2015] 1 SCR 613, < https://canlii.ca/t/ggrhf >
4	Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations), 2017 SCC 54 (CanLII), [2017] 2 SCR 386, < https://canlii.ca/t/hmtxn >
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15	Eldridge v. British Columbia (Attorney General), 1997 CanLII 327 (SCC), [1997] 3 SCR 624, < https://canlii.ca/t/1fqx5 >

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1	<i>Canadian Charter of Rights and Freedoms</i> , Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11. < https://canlii.ca/t/ldsx >
2	O Reg 50/20, < https://canlii.ca/t/549l6 >, as amended from time to time
3	Emergency Management and Civil Protection Act, RSO 1990, c E.9, < https://canlii.ca/t/53nmt >
4	Reopening Ontario (A Flexible Response to COVID-19) Act, 2020, SO 2020, c 17, < https://canlii.ca/t/54clq >
5	O Reg 82/20, < https://canlii.ca/t/54b1j >, as amended from time to time
6	O Reg 364/20, < https://canlii.ca/t/556s5 >, as amended from time to time

7	O Reg 263/20, < https://canlii.ca/t/55497 >, as amended from time to time
8	O Reg 264/21, < https://canlii.ca/t/55278 >, as amended from time to time

<i>Other References</i>	
1	<i>Keeping Ontario Safe and Open Framework</i> https://files.ontario.ca/moh-covid-19-response-framework-keeping-ontario-safe-and-open-en-2020-11-24.pdf
2	<i>Roadmap to Reopen</i> https://news.ontario.ca/en/backgrounder/1000159/roadmap-to-reopen
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**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE
ATTORNEY GENERAL OF ONTARIO**

APPLICANTS (RESPONDING PARTIES)

-and-

**TRINITY BIBLE CHAPEL ET AL.;
CHURCH OF GOD (RESTORATION) AYLME ET AL.**

RESPONDENT (RESPONDING PARTIES)

St. Thomas Court File No.: 21-08
Kitchener Court File No. CV-21-00000095-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at St Thomas and
Kitchener

FACTUM OF THE MOVING PARTIES

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