

Form 3-49
(Rule 3-49)

COURT FILE NUMBER

QBG 98/21

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

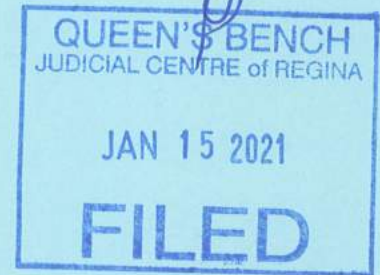
JUDICIAL CENTRE

REGINA

APPLICANTS

REBEL NEWS NETWORK LTD., PATRICK MOORE, and
LEO GAUMONT

RESPONDENTS

ATTORNEY GENERAL OF SASKATCHEWAN and
SASKATCHEWAN MINISTER OF HEALTH

ORIGINATING APPLICATION

NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court. To do so, you must be in Court when the application is heard as shown below:

Where	<u>Regina, Saskatchewan</u>
Date	<u>February 16, 2021</u>
Time	<u>1:30 p.m.</u>

Go to the end of this document to see what you can do and when you must do it.

PARTICULARS OF APPLICATION

The Parties

1. Rebel News Network Ltd. ("**Rebel News**") is an independent news media outlet, with its head office located in Toronto, Ontario. Rebel News has journalists located across Canada and around the world. Rebel News is known for challenging mainstream media narratives and for being a champion of liberty and freedom of speech across Canada.
2. The Applicant Rebel News organized and promoted a speaking event in Regina, Saskatchewan, featuring a founding member of Greenpeace, Dr. Patrick Moore ("**Dr. Moore**"). Rebel News has been forced to reschedule the event multiple times and currently remains unable to host the event due to various restrictions put in place by the Respondents.
3. The Applicant Dr. Moore is a public speaker, author and ecological consultant; and has his Ph.D. in Ecology from the Institute of Resource Ecology at the University of British Columbia.

4. The Applicant, Léo Gaumont (“**Mr. Gaumont**”), is an individual residing in Alberta and an intended attendee of Dr. Moore’s speaking event hosted by Rebel News.
5. The Respondent is Her Majesty the Queen in Right of Saskatchewan, as represented by the Attorney General of Saskatchewan (“**Saskatchewan**”) and the Saskatchewan Minister of Health (“**MoH**”).

The Application

6. The Applicants seek judicial review and challenge the constitutional validity of the Public Health Orders issued by Dr. Saqib Shahab most recently dated December 14, 2020 or any subsequent or substantially similar order (the “**PHO**”), which is the most recent of a number of orders previously issued under *The Public Health Act, 1994*, SS 1994, c P-37.1 (the “**PHA**”) in response to the existence of COVID-19 in Saskatchewan.

Remedy

7. The PHO is *ultra vires* the PHA, and an unjustifiable violation of the fundamental freedoms of expression, assembly, and association, as well as freedom of the press. As a result, the Applicants seek:
 - (a) An order or declaration pursuant to section 52(1) of the *Charter* that the PHO is unconstitutional for infringing upon sections 2(b), 2(c), and 2(d) of the *Charter*, is not justified under section 1 of the *Charter*, and is therefore of no force or effect;
 - (b) Further, or in the alternative, such remedy or remedies pursuant to section 24(1) of the *Charter* that this Honourable Court considers appropriate and just in the circumstances, including damages suffered by the Applicants due to the postponement or cancellation of the CAC Event;
 - (c) A declaration that the PHO is unconstitutional for being inconsistent with and contrary to section 1(e) of the *Bill of Rights* and as such is of no force or effect;
 - (d) An order or declaration that the PHO is invalid, unlawful and *ultra vires* the PHA, and is therefore of no force or effect;
 - (e) Costs of this Application; and
 - (f) Such further and other relief as counsel may request and that this Honourable Court may permit.

The Grounds for the Application

8. The Applicants assert that the PHO is improper and *ultra vires* the authority granted to the MoH pursuant to the PHA, as the MoH does not or cannot believe on reasonable

grounds in the prerequisites for issuing health orders prescribed in section 45(1) of the *PHA*. Specifically:

- (a) A “serious public health threat” does not exist in Saskatchewan; and
 - (b) The restrictions set out in PHO are overly restrictive and are not necessary to eliminate the risk to health presented by COVID-19 in Saskatchewan.
9. In addition, the PHO unjustifiably infringes upon fundamental freedoms protected by the *Canadian Charter of Rights and Freedoms* (the “*Charter*”), Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11; and to that extent is of no force and effect. Specifically, the:
- (a) PHO unjustifiably and unreasonably has the effect or incidental purpose of restricting expressive activity, causing a chilling effect on expression and activism, and impairs the ability of the Applicants in seeking or attaining the truth, participating in social and political decision-making and achieving self-fulfillment, contrary to section 2(b) of the *Charter* for the freedom of expression;
 - (b) PHO unjustifiably and unreasonably prevents the media from producing and publishing news, and creates unconstitutional obstacles to media activities, contrary to section 2(b) of the *Charter* for the freedom of the press;
 - (c) PHO unjustifiably and unreasonably impairs the right to gather and engage in public life, contrary to section 2(c) of the *Charter* for the freedom of assembly; and
 - (d) PHO unjustifiably and unreasonably impairs the right to join together for common goals, contrary to section 2(d) of the *Charter* for the freedom of association.
10. The PHO is not rationally connected to its legislative purpose, does not minimally impair fundamental freedoms protected by the *Charter* and is not a proportionate response to the public health situation in Saskatchewan. Therefore, the PHO is not reasonable or justifiable and is not saved by section 1 of the *Charter*.
11. Finally, the PHO also unjustifiably infringes upon the freedoms of assembly and association as protected by section 1(e) of the *Canadian Bill of Rights*, SC 1960, c 44 (the “*Bill of Rights*”).

The Applicants’ Summary of Material Facts

The CAC Event

12. Earlier this year, the City of Regina intended to host the “Reimagine Conference 2020: Roadmap to Sustainable Cities”. As was stated on the City of Regina’s website, “Patrick Moore was requested, through the National Speakers Bureau, to present his keynote

speech". The speech that Dr. Moore intended to give was entitled "Fake Invisible Catastrophes and Threats of Doom".

13. Dr. Moore is a founding member of Greenpeace, a prominent Canadian, and a world-renowned public speaker. Dr. Moore holds a Bachelor of Science in Forest Biology (Honours) and a Ph.D. in Ecology, both from the University of British Columbia. His experience in the field of environment and ecology is extensive. He also holds non-mainstream views about climate change.
14. Following the announcement of Dr. Moore's keynote at the Reimagine Conference, there was an active attempt by some members of the public to suppress Dr. Moore's keynote speech and deny him the opportunity to address participants at the Reimagine Conference.
15. These tactics are commonly known as "de-platforming" where there is a mob-like focus on suppressing controversy and denying the target an opportunity to speak. This is most often accomplished by aggressive social media and online campaigns to silence thoughts and beliefs that are in opposition to those of the "mob". These types of tactics are becoming more and more common in a world that is increasingly online. These types of tactics also further divisions between citizens and allow antagonists to avoid and suppress points of view which are contrary to their own. There are extremely negative effects to public and political discourse as a result.
16. As a result of the online campaign, the City of Regina capitulated and de-platformed Dr. Moore.
17. The City of Regina retracted Dr. Moore's invitation to present his keynote at the Reimagine Conference. It is understood that the online campaign and comments were directed at Dr. Moore's opinions on climate change. As such, this decision by the City of Regina's conference organizers to retract the invitation to speak had the result of censoring Dr. Moore and his opinions on and contributions to the science of climate change.
18. Rebel News is a champion of free speech and takes very seriously the pervasive pattern of social media bullying, online campaigns to silence others and the de-platforming or censorship of controversial ideas and opinions. When Rebel News heard that the City of Regina had capitulated to this behaviour, Rebel News felt compelled to protect the values of free speech and expression.
19. In response to the de-platforming of Dr. Moore by the City of Regina, Rebel News offered to host Dr. Moore at a public speaking event in Regina on May 19, 2020. Dr. Moore agreed.
20. Rebel News then contracted with the Conexus Arts Centre in Regina, Saskatchewan to provide a venue for the event, including a VIP reception, the main speaking event (with a

question and answer session) and a small after-event dinner (the “CAC Event”). Rebel News signed a rental agreement, paid for the rental fees in advance and also agreed to hire an extra security detail for the CAC Event.

21. Rebel News initially sold 1,660 tickets for the May 19th date of CAC Event. Mr. Gaumont had purchased a ticket and intended to attend the CAC Event on May 19th.
22. Dr. Moore’s speech at the CAC Event is an important public policy, social and political event. His ability to speak freely and the opportunity for attendees, including Mr. Gaumont, to assemble, associate and to hear Dr. Moore is a Constitutionally protected right. Further, the CAC Event is being held in direct response to the de-platforming, censorship and silencing of Dr. Moore by the City of Regina.
23. Due to the measures ostensibly related to the public health circumstances in Saskatchewan, the May 19, 2020 date for the CAC Event was cancelled and rescheduled for September 16, 2020. Following this rescheduling, approximately 150 people requested refunds. Mr. Gaumont intended to attend the CAC Event on September 16th.
24. The Conexus Arts Centre seats well over 2,000 attendees. Leading up to the September date, Rebel News had issued approximately 1,500 active tickets for the rescheduled CAC Event. Given the large size of the main theatre in the Conexus Arts Centre, it was possible to hold the event with all 1,500 ticket holders attending, while maintaining social distancing between family “bubbles”, “cohorts” or “extended household groups”. In addition, other precautions (besides cancelling the event) could easily be taken. Accordingly, the PHO (or the applicable orders that came before it) is not appropriately tailored to minimally impair *Charter* rights.
25. The September date for the CAC Event was also cancelled, and the event was again rescheduled. The CAC Event has since been cancelled and rescheduled multiple times in order to comply with the prior and current public health orders in Saskatchewan. The Applicants are unable to predict when the CAC Event may be able to proceed.
26. Given the very low rates of COVID-19 in Saskatchewan (as described in greater detail below), the perpetual cancellation and postponement of the CAC Event is an unjustifiable infringement on the Applicants’ fundamental freedoms protected by sections 2(b), 2(c), and 2(d) of the *Charter*.

The Public Health Scheme in Saskatchewan

The PHO is Unconstitutional

27. The PHO is the most recent of a number of orders previously issued under the *PHA* in response to COVID-19 in Saskatchewan. Section 1(b) of the PHO wholly prohibits indoor public gatherings (like the CAC Event), except where two-meter distancing can be maintained and:

- (a) Settings where people are distributed into multiple rooms or buildings, and workplaces; and
 - (b) Are a critical public service or an "allowable business service".
28. Outdoor public gatherings over 10 people are also prohibited, pursuant to section 1(c) of the PHO.
 29. "Allowable business services" are described in the Re-Open Saskatchewan Plan ("ROSP"). Different businesses are subject to different exceptions or guidelines in the ROSP. Critical public services are listed as health care, law enforcement, first responders, government, and community services (as further described on the Government of Saskatchewan website). The CAC Event does not seem to qualify as either an allowable business service or a critical public service.
 30. Pursuant to the PHO, the ROSP is permitted to impose alternative gathering sizes for specific events or activities. There are no exceptions or guidelines created in ROSP for the CAC Event, nor any made generally for protests, political events or any event or business which has the purpose of participating in social or political engagement or discourse.
 31. Specifically, the PHO unjustly impairs the Applicants' right to assemble at the CAC Event to speak, listen, share thoughts, and engage in political discourse and decision-making.
 32. In contrast, spiritual, ceremonial or religious worship services are enumerated in the ROSP and are permitted to host services with gatherings of people, at times worship services have been allowed up to 150 people (as long as the service does not exceed 30% seating capacity). Currently, worship services are permitted by drive-in services or by usual attendance up to a 30-person capacity.
 33. The distinctions over the past year between worship services and social or political gatherings are arbitrary. Such distinctions are not rationally connected to public health interests.
 34. There are no guidelines or exceptions in Saskatchewan for gatherings for political or free speech events, which is a further indication that the current restrictions are arbitrary or, at the very least, not designed to impair the Applicants' rights as minimally as possible.
 35. Rather than protecting the public, the PHO is a disproportionate response that harms the social and physical well-being of others, while impairing their *Charter* rights. The PHO purports to protect public health, but in actuality it restricts access to health facilities, isolates individuals and harms their mental well-being, and exposes the public to untold harms.
 36. The PHO therefore violates the fundamental freedoms protected by sections 2(b), 2(c), and 2(d) of the *Charter* for unconstitutionally impairing expression, assembly, press, and association. PHO is not rationally connected to its legislative purpose, does not minimally

impair fundamental freedoms protected by the *Charter* and is not a proportionate response to the public health situation in Saskatchewan. Therefore, the PHO is not reasonable or justifiable and is not saved by section 1 of the *Charter*.

37. In the same manner, the PHO unjustifiably infringes upon the freedoms of assembly and association as protected by section 1(e) of the *Bill of Rights*.

PHO is ultra vires the PHA

38. Pursuant to section 45(1) of the *PHA*, the MoH may make an order to prohibit public gatherings, but such an order can only be made when the MoH believes, on reasonable grounds, that:
- (a) a “serious public health threat” exists in Saskatchewan; and
 - (b) the requirements set out in the order are necessary to decrease or eliminate the risk to health presented by the communicable disease.
39. A “serious public health threat” is defined in the *PHA* as an “occurrence or threat of an occurrence” of a communicable disease, “if it poses a significant risk to the health of many people.”
40. Pursuant to the *Disease Control Regulations*, c P-37.1, Reg 11, coronavirus infections associated with severe acute respiratory syndrome or COVID-19 is a prescribed Category I communicable disease.
41. The information published by the Government of Saskatchewan regarding COVID-19 shows that there is not a “significant” risk to the health of “many” people. Further, the requirements on gatherings contained in the PHO are not necessary to decrease or eliminate any perceived risk to health caused by COVID-19.
42. The MoH cannot reasonably believe that the prerequisites for PHO have been met, and therefore the PHO is *ultra vires* the *PHA*. In addition, it was not the MoH who issued the PHO.

Saskatchewan’s Current Public Health Situation

43. At the time of filing, there were a relatively small number of active cases of COVID-19 positive people in the Regina geographical zone (the “**Regina Zone**”). The Regina Zone has a total population of 273,287. Approximately 0.02% of the Regina Zone is currently testing positive with COVID-19. Of those currently testing positive, very few are hospitalized including those that are in an intensive care unit (“**ICU**”).
44. At the time of filing, there were very few deaths in the Regina Zone associated to COVID-19 dating back to March 26, 2020.

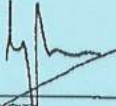
45. Saskatchewan has a total population size of approximately 1,200,000. About 0.002% of the population in Saskatchewan is currently testing positive for COVID-19 and less than 0.00001% of the population is hospitalized, and a fraction of those hospitalized are in ICU.
46. There is a risk that these numbers self-reported by the Respondent are not accurate due to faulty testing and false positives. Further, these numbers provide no context as to the actual risks to public health, or how many people suffer no ill effects.
47. It is clear from these numbers, recorded and reported by the Government of Saskatchewan and the MoH, that a serious public health threat (as defined in the *PHA*) does not exist in Saskatchewan. Specifically, this is because COVID-19 does not pose a “significant” risk to the health of “many” people in Saskatchewan.
48. It is clear that the PHO is a disproportionate response on the basis Saskatchewan’s self-reported incidents of COVID-19 when put in comparison to other harms to public health and other public interests. The disproportionate response is unconstitutional.
49. In addition, the gathering restriction requirement as set out in the PHO, which prohibits public indoor or outdoor gatherings including those with a political purpose, is not “necessary” to decrease or eliminate risks to health. Rather, the PHO is unreasonable, arbitrary, unjustifiable, irrational, and disproportionate. The PHO is not tailored to infringe on the *Charter* rights of the Applicants or others as minimally as possible.
50. There are more reasonable, proportionate, and rationally connected means to mitigate the health risks (to the extent that they exist) which Saskatchewan and the MoH have failed to enact.

Material or Evidence to be Relied On

51. In support of this application, the Applicants rely on the following material or evidence:
 - (a) The Affidavit of Ezra Levant, sworn on January 4, 2021;
 - (b) The Affidavit of Dr. Patrick Moore, sworn on January 7, 2021;
 - (c) The Affidavit of Léo Gaumont, sworn on January 8, 2021; and
 - (d) Such further and other materials as counsel may advise and this Honourable Court may permit.

DATED at Calgary, Alberta, this 13th day of January, 2021.

**JENSEN SHAWA SOLOMON DUGUID
HAWKES LLP**



GAVIN PRICE
ROBERT HAWKES, Q.C.
COUNSEL FOR THE APPLICANTS

This notice is issued at the above-noted judicial centre on the 13th day of January, 2021.



Local Registrar

NOTICE

You are named as a respondent because you have made or are expected to make an adverse claim with respect to this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form.

The rules require that a party moving or opposing an originating application must serve any brief of written argument on each of the other parties and file it at least 3 days before the date scheduled for hearing the originating application.

If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must serve a copy of the affidavit and other evidence on the originating applicant at least 10 days before the originating application is to be heard or considered.

CONTACT INFORMATION AND ADDRESS FOR SERVICE

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