

APPELLANT'S APPEAL BOOK

Court of Appeal File No. CACR3906

IN THE COURT OF OF APPEAL FOR SASKATCHEWAN

JUDICIAL CENTRE OF REGINA

BETWEEN:

ERINN L. KNOLL

Appellant

-and-

HIS MAJESTY THE KING

Respondent

APPELLANT'S APPEAL BOOK

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TAB 1

KING'S BENCH FOR SASKATCHEWAN

CRM-RG-00242-2023 Judicial Centre of Regina

Erin Knoll v His Majesty the King

Bryan Carter counsel for the Crown (respondent)
Erin Knoll self represented appellant

FIAT - February 27, 2024

KEENE, J.

[1] The Crown filed an application to summarily dismiss the summary conviction appeal filed by the appellant Erin Knoll and this application is set to be heard on the civil chambers list on February 29, 2024.

[2] Ms. Knoll wrote to the court on February 21, 2024 indicating she can not advance any further arguments, other than those already filed with her appeal materials. She asks to participate in the hearing by providing her written submissions alone, or by having a friend from out of province to appear by teleconference or video. She expresses a preference for relying upon her written submissions alone.

[3] In these circumstances, I grant Ms. Knoll's request to make her submissions in writing.

[4] The application filed by the Crown to summarily dismiss Ms. Knoll's summary conviction appeal will be heard in the civil chambers list on Thursday February 29, 2024 and Ms. Knoll may rely upon the written submissions she already filed.



J.

T. KEENE

TAB 2

KING'S BENCH FOR SASKATCHEWAN

CRM-RG-00242-2023 Judicial Centre of Regina

Erin Knoll v His Majesty the King

Bryan Carter counsel for the Crown (respondent)
Erin Knoll self represented appellant

FIAT - February 29, 2024

KEENE, J.

[1] The appellant Erin Knoll was acquitted of a summary conviction offence (*R v Apodaca*, 2023 SKPC 37 at para 74) but now appeals a ruling made by the trial judge during the trial (*R v Knoll*, 2023 SKPC 29 at paras 33-43).

[2] Before the summary conviction appeal was heard, the Crown filed an application seeking a summary dismissal of Ms. Knoll's appeal because she lacked the jurisdiction to appeal from her acquittal.

[3] In this regard, the Crown relies upon s. 813 of the *Criminal Code* which only provides a right of appeal from a conviction, sentence or final order; see also *R v Yates*, 2023 SKCA 47 at paras 38-40 and *R v Sears*, 2014 SKCA 72. It is clear Ms. Knoll, after being acquitted, is not entitled to appeal from a judge's mid-trial ruling.

[4] However, I am unable to find any source for the court's jurisdiction to summarily dismiss an appeal on an application in civil chambers. I find no such authority for this jurisdiction in the provisions of the *Criminal Code* or *The Summary Conviction Appeal Rules*.

[5] As a consequence, I am unable to grant the Crown's application and dismiss Ms. Knoll's appeal in civil chambers. Instead, the Crown and Ms. Knoll may argue this jurisdictional question when the summary conviction appeal is heard.

[6] The Crown's application is therefore dismissed, but may be raised again at the hearing of the summary conviction appeal.



J.
T. KEENE

TAB 3

COURT OF KING'S BENCH FOR SASKATCHEWAN

CRM-RG-00242-2023

Judicial Centre of Regina

Erin Knoll v His Majesty the King

Bryan Carter

counsel for the Crown (respondent)

Theodore Litowski

counsel for Attorney General

Erinn Knoll

self-represented appellant

FIAT – November 5, 2024 – CURRIE J.

Mr. Litowski makes a valid point in suggesting that the appeal hearing be separated into two hearings – first, an argument on the question of whether the court has jurisdiction to hear the appeal and second, on a later date if the court determines that it does have jurisdiction, an argument on the appeal itself. His point is that, as it seems inevitable from Justice Keene's fiat, if the court determines that it does not have jurisdiction then the parties will be saved the time and effort of preparing for and arguing the appeal on its merits.

Ms. Knoll makes a valid point in observing that she already has incurred expense and devoted her resources to preparing for an appeal hearing. She is correct in arguing that it would not be appropriate for the court to determine the jurisdiction question at a case management conference – but that is not what Mr. Litowski suggests. He suggests only that it might be decided at such a conference to separate the appeal hearing into two hearings.

In any event, while I am attracted to Mr. Litowski's suggestion of potentially saving the parties' resources by separating the appeal hearing, I am more attracted to the prospect of getting this appeal scheduled and dealt with once and for all. Certainly, I recognize Mr. Litowski's expectation that the judge on the appeal will find that there is no jurisdiction, but at this point I cannot guarantee that result. In this circumstance, it is preferable to schedule the hearing in the normal fashion and, as Justice Keene anticipated, let the parties argue the jurisdiction question at that appeal hearing.

Accordingly, I direct that there will not be a case management conference as requested by Mr. Litowski. Rather, I direct the Local Registrar, in consultation with counsel and Ms. Knoll, to set a date for the appeal hearing.



L. Pickering, D/Local Registrar

TAB 4

PROVINCIAL COURT OF SASKATCHEWAN

BETWEEN:

Erinn L. Knoll and Christina Hagel

Applicants

-and-

His Majesty The King

Respondent

AFFIDAVIT

**I, Erinn L. Knoll, of 1346 McVeety Drive in Regina, Saskatchewan, MAKE OATH
AND SAY AS FOLLOWS:**

1. I am one of the applicants and defendants in this matter. I was charged on or about May 15th, 2021 for the offence of FAIL TO COMPLY WITH A PUBLIC HEALTH ORDER BY ATTENDING A GATHERING EXCEEDING 10 PERSONS, CONTRARY TO S. 61 OF THE *PUBLIC HEALTH ACT, 1994*.
2. My right to peacefully protest was cancelled. I was punished for doing so outside in Victoria Park. Other people were also specifically targeted by the police. We were protesting in a political capacity in a public park that has long held other political protests.
3. I have made this affidavit in support of an application that I have not given up my rights under sections 4, 5 and 6 of the **Bill of Rights** under the *Saskatchewan Human Rights Code, 2018*, or sections 2(b) or (c) of the *Canadian Charter of Rights and Freedoms*. In addition, I have waived no other statutory rights, or those under common law.

Erinn Knoll

Signature

Sworn by the said Erinn Knoll

Before me, NANCY SHENHER

at REGINA, SK

on the 28 day of FEBRUARY, yr. 2023



[Signature]
 (a commissioner, etc.)

TAB 5

PROVINCIAL COURT OF SASKATCHEWAN

BETWEEN:

Erinn L. Knoll and Christina Hagel

Applicants

-and-

His Majesty The King

Respondent

SUPPLEMENTARY AFFIDAVIT

I, Erinn L. Knoll, of 1346 McVeety Drive in Regina, Saskatchewan, MAKE OATH AND SAY AS FOLLOWS:

1. I am one of the applicants and defendants in this matter. I am self-represented. I was charged on or about May 15th, 2021 for the offence of FAIL TO COMPLY WITH A PUBLIC HEALTH ORDER BY ATTENDING A GATHERING EXCEEDING 10 PERSONS, CONTRARY TO S. 61 OF THE *PUBLIC HEALTH ACT, 1994*.
2. I received the Attorney General's Brief of Law on January 16, 2023. This was only two days of notice before the hearing on January 18, 2023. I submitted an application for the hearing, but it substantially applied to mandatory face covering. Not protesting. This was for lack of time.
3. As I understood it, the purpose of the hearing was to submit arguments, which could be replied to later. It was not at all clear I might lose my rights following its conclusion. No one indicated this. Not the prosecutor. Not the Attorney General's lawyer. Not the judge. No one.
4. During the hearing, I argued that I benefited from the protection of the *Canadian Bill of Rights* and the *Saskatchewan Bill of Rights*. There was no legal professional there to aid me in my arguments and I did not cite any case law in support. Again, not enough time to do so.
5. I heard the judge's decision on January 18, but it was not easy to follow. This was especially so because I had still not been able to go over the Attorney General's Brief of Law during the previous two days and understand it fully. I similarly could only process a limited amount of the decision in person, without seeing anything in writing.
6. The very first time I saw the judge's decision in writing was nearly two months later: on March 16, 2023. I read it and am still doing my best to understand how my rights could be denied.
7. There was no way to draft and submit the application until fully reading and analyzing the

Attorney General's Brief of Law. The application was constructed and submitted weeks before first seeing the judge's decision in writing, or understanding any of the reasoning behind it.

8. I say jointly with my fellow applicant: I have been railroaded as a defendant by the government. I did not know the government's legal arguments I had to meet until less than two days before the January 18 hearing. I did not have the judge's decision in writing to read and fully consider. I am being denied my rights and am not being permitted to fully defend myself.

9. The legal process I have been subjected to is completely one-sided, unfair and unjust. And any reasonable person following our case would find the same.

Erinn Knoll
Signature

Sworn by the said Erinn Knoll
Before me, Sarah Yellowega
at Regina, SK
on the 17 day of March, yr. 2023



Sarah Yellowega
(a commissioner, etc.)

TAB 6

PROVINCIAL COURT OF SASKATCHEWAN

BETWEEN:

Erinn L. Knoll and Christina Hagel

Applicants

-and-

His Majesty The King

Respondent

AFFIDAVIT

**I, Christina Hagel, of 5926 Ratner Crescent in Regina, Saskatchewan, MAKE
OATH AND SAY AS FOLLOWS:**

1. I am one of the applicants and defendants in this matter. I was charged on or about May 15th, 2021 for the offence of FAIL TO COMPLY WITH A PUBLIC HEALTH ORDER BY ATTENDING A GATHERING EXCEEDING 10 PERSONS, CONTRARY TO S. 61 OF THE *PUBLIC HEALTH ACT, 1994*.
2. My right to peacefully protest was cancelled. I was punished for doing so outside in Victoria Park. Other speakers were also specifically targeted by the police. We were protesting in a political capacity in a public park that has long held other political protests.
3. I have made this affidavit in support of an application that I have not given up my rights under sections 4, 5 and 6 of the **Bill of Rights** under the *Saskatchewan Human Rights Code, 2018*, or sections 2(b) or (c) of the *Canadian Charter of Rights and Freedoms*. In addition, I have waived no other statutory rights, or those under common law.

Christina Hagel
Signature

Sworn by the said CHRISTINA HAGEL
Before me, NANCY SHENHER
at REGINA, SK
on the 28 day of FEBRUARY, yr. 2023



[Signature]
(a commissioner, etc.)

TAB 7

PROVINCIAL COURT OF SASKATCHEWAN

BETWEEN:

Erinn L. Knoll and Christina Hagel

Applicants

-and-

His Majesty The King

Respondent

SUPPLEMENTARY AFFIDAVIT

**I, Christina Hagel, of 5926 Ratner Crescent in Regina, Saskatchewan, MAKE
OATH AND SAY AS FOLLOWS:**

1. I am one of the applicants and defendants in this matter. I am self-represented. I was charged on or about May 15th, 2021 for the offence of FAIL TO COMPLY WITH A PUBLIC HEALTH ORDER BY ATTENDING A GATHERING EXCEEDING 10 PERSONS, CONTRARY TO S. 61 OF THE *PUBLIC HEALTH ACT, 1994*.
2. I received the Attorney General's Brief of Law only two days before the January 18, 2023 hearing. As a result of having no time to read and consider it, I submitted nothing for the hearing.
3. I did not understand the point of the hearing, as I believed the issues would be resolved at trial. No one explained to me that I could possibly be forbidden from asserting my rights after it.
4. At the hearing, I asserted that I felt that the *Canadian Bill of Rights* and the *Saskatchewan Bill of Rights* applied. I did so without the benefit of any legal counsel, or any case law cited.
5. I listened to the decision made by the judge on January 18, but could only process so much of it. I did not understand the reasoning how my rights could be denied.
6. I only received a copy of the written decision from the Attorney General yesterday on March 16, 2023. That was the very first time I had ever seen it, and could read it and consider it.
7. The application submitted was made only after being able to fully consider the Attorney General's Brief of Law. Similarly, the application was drafted without seeing the judge's decision in writing, or understanding the legal reasoning behind it.

TAB 8

AFFIDAVIT

CRM No.: 242 of 2023

**IN THE COURT OF KING'S BENCH
JUDICIAL CENTRE OF REGINA**

BETWEEN:

ERINN L. KNOLL

Appellant/Respondent

-and-

HIS MAJESTY THE KING

Respondent/Applicant

AFFIDAVIT

I, Erinn L. Knoll, of 1346 McVeety Drive in Regina, Saskatchewan, MAKE OATH AND SAY AS FOLLOWS:

1. I am the appellant in this matter and respondent to the Crown's application. I am self-represented. I am of limited means, both monetarily and in terms of my time and resources. I have nothing to personally gain from undertaking this appeal. More than three dozen people who peacefully protested pandemic restrictions outdoors were convicted and heavily fined. Many more took plea deals, or just gave up fighting and paid. I am undertaking this appeal in the public interest because no one else will advance these arguments. I am doing it for them.

2. I was served the Crown's Notice of Application on December 29th, 2023 even though it was dated December 14, 2023. I am employed in the healthcare sector and am unable to adjust my schedule to attend the coming application hearing in chambers on January 23rd, 2024. I am more than content to continue to make submissions in writing and to have this matter heard and adjudicated in writing, just as has been indicated for the appeal, itself. Otherwise, this will have to be adjourned. I reserve the right of reply to my Notice of Constitutional Question.

Erinn Knoll

Signature

Sworn by the said Erinn Knoll
Before me, Hope Prost
at Regina, SK
on the 09 day of January, yr. 2024



HP Prost

(a commissioner, etc.)
Notary Public

TAB 9

NOTICE OF APPLICATION AND QUASI-CONSTITUTIONAL ISSUE

Offence Nos.: 85492794,
85492833

**PROVINCIAL COURT OF SASKATCHEWAN
(Regina)**

BETWEEN:

Erinn L. Knoll and Christina Hagel

Applicants

-and-

HIS MAJESTY THE KING

Respondent

NOTICE OF APPLICATION AND QUASI-CONSTITUTIONAL ISSUE

TAKE NOTICE that the Applicants will bring an application at **9:30 AM**, on the **20th of March, 2023** at **1815 Smith Street, Regina, Saskatchewan, Courtroom 10, in person** for an Order striking sections 1(d) and 4(c) of the Public Health Order of May 6, 2021 or, in the alternative, an Order granting a stay of the proceedings.

I. THE GROUNDS FOR THIS APPLICATION ARE:

1. That the Applicants were charged on or about May 15, 2021 with the offence of FAIL TO COMPLY WITH A PUBLIC HEALTH ORDER BY ATTENDING A GATHERING EXCEEDING 10 PERSONS, contrary to s. 61 of the *Public Health Act, 1994*.
2. That the Public Health Order (the “impugned Order”) made pursuant to s. 61 of the *Public Health Act* and enacted on May 6, 2021,¹ was one of 192 Public Health Orders made from March 17, 2020 through February 13, 2022.²
3. That the Provincial Court of Saskatchewan, presumably located at 1815 Smith Street, Regina, Saskatchewan, set a trial of this matter to be heard at 1815 Smith Street, Regina, Saskatchewan, Courtroom 10 and begin on March 20, 2023, at 9:30 AM in person.
4. That this is the first trial date set for this offence, presumably an offence notice ticket under the provisions of the *Summary Offences Procedure Act, 1990*.³
5. That the Applicants were punished for the exercise of their freedom of political expression and peaceful assembly that was unpopular at the time.
6. Such further and other grounds as the Applicants may advise, and this Honourable Court may permit.

II. THE QUASI-CONSTITUTIONAL AND OTHER ISSUES RAISED ARE:

7. That there have been no waivers by the Applicants of their rights under the *Bill of Rights* of the *The Saskatchewan Human Rights Code, 2018* (the “Code”), the *Charter of Rights and Freedoms*, nor any in statute or at common law.
8. That the police actions were guided by legislation and training that was unconstitutionally vague.⁴
9. That the Applicants were present strictly as a protesters conveying meaningful

¹ [Public Health Order – Provincial Order – May 6, 2021](#)

² [Public Health Orders Archive - Archive of Public Health Orders issued during the COVID-19 pandemic](#)

³ *The Summary Offences Procedure Act, 1990*, SS 1990-91, c S-63.1 at ss. 17 and 18

⁴ *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69 (CanLII), [2000] 2 SCR 1120 at paras. 104 and 269 (applied to s. 2(b) of the *Charter* by both sides of a split court)

messages of dissent within the context of a political protest.⁵

10. That the Applicants were peaceful at all times in their protest.⁶

11. That the actions of the police and the government via the impugned Order and its enforcement resulted in limiting the inalienable rights of the Applicants, breaching statutory provisions expressly prohibiting said conduct.⁷

III. THE QUASI-CONSTITUTIONAL PRINCIPLES AS ARGUED ARE:

A. The Attorney General's position

12. The Attorney General of Saskatchewan provided a submission, the *Respondent's Brief of Law Re "Bills of Rights" Challenges* (the "Opinion"), authored by Noah S. Wernikowski, which was presumably served and filed on or about January 16, 2023.

13. At para. 13 of the Opinion, the Attorney General cites *Forsberg v Saskatchewan* at para. 13 in a footnote in support of the jurisdiction of this Court to consider an alleged breach of the *Code*.⁸ The Applicants concur.

14. The Opinion further submits at paras. 24 and 25 that a *Charter* analysis should be undertaken due to a lack of jurisprudence regarding the *Saskatchewan Bill of Rights* and its previous incarnations. The Applicants concur.

15. The Attorney General submits at para. 31 regarding outdoor gatherings that the *Grandel* precedents apply.⁹ The Opinion thus necessarily concedes, as per *Grandel v Saskatchewan*, that the impugned Order violates section 2(b) and (c) of the *Charter*, but that it is saved by section 1.¹⁰ The Applicants concur with this view and with that of the Court of King's Bench in that decision.

⁵ *Montréal (City) v. 2952-1366 Québec Inc.*, [2005] 3 SCR 141, 2005 SCC 62 (CanLII) (the "Montreal case") at paras. 58, 60, 61, 73-78

⁶ *Ibid.* at paras 60 and 72

⁷ *The Saskatchewan Human Rights Code*, 2018, SS 2018, c S-24.2 at ss. 3-6 and 52

⁸ *Forsberg v Saskatchewan*, 2017 SKQB 326 (CanLII)

⁹ *R v Grandel*, 2022 SKPC 48 (CanLII) and *Grandel v Saskatchewan*, *infra*

¹⁰ *Grandel v Saskatchewan*, 2022 SKKB 209 (CanLII) at paras. 73-80

B. *Charter* analysis: section 2(b) and (c)

16. The Applicants' highly protected fundamental freedoms under the *Charter* were flagrantly breached. Moreover, the police specifically targeted those protesters present who were speakers.

17. The Applicants peacefully stood upon the grounds of Victoria Park and conveyed meaningful messages of political dissent that encapsulated their opinions, thoughts and beliefs.¹¹

18. Freedom of expression has long been protected in the common law pre-*Charter* as detailed in *Keegstra* at pages 725-728.¹² Quoting from *Ford v. Quebec*¹³:

The pre-*Charter* jurisprudence emphasized the importance of political expression because it was a challenge to that form of expression that most often arose under the division of powers and the "implied bill of rights", where freedom of political expression could be related to the maintenance and operation of the institutions of democratic government. But political expression is only one form of the great range of expression that is deserving of constitutional protection because it serves individual and societal values in a free and democratic society.

[Emphasis added.]

19. On pages 727 and 728 of *Keegstra*, they further reference *Irwin Toy*¹⁴:

...the Court has not lost sight of this broad view of the values underlying the freedom of expression, though the majority decision in *Irwin Toy* perhaps goes further towards stressing as primary the "democratic commitment" said to delineate the protected sphere of liberty (p. 971). Moreover, the Court has attempted to articulate more precisely some of the convictions fueling the freedom of expression, these being summarized in *Irwin Toy* (at p. 976) as follows: (1) seeking and attaining truth is an inherently good activity; (2) participation in social and political decision-making is to be fostered and encouraged; and (3) diversity in forms of individual self-fulfillment and human flourishing ought to be cultivated in a tolerant and welcoming environment for the sake of both those who convey a meaning and those to whom meaning is conveyed.

[Emphasis added.]

¹¹ *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927 at pp. 968-971; applied in *R. v. Spratt*, 2008 BCCA 340 at para. 24

¹² *R. v. Keegstra*, 1990 CanLII 24 (SCC), [1990] 3 SCR 697

¹³ *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712 at p. 764

¹⁴ *Irwin Toy Ltd. v. Quebec (Attorney General)*, 1989 CanLII 87 (SCC), [1989] 1 S.C.R. 927

20. The Applicants' protesting activities at Victoria Park on May 15, 2021 were the epitome of what was described by the Supreme Court of Canada in several cases. Fundamental freedoms are always contextual, but political speech is the most highly protected form of speech- particularly as made upon the grounds of a park known for political protests. See again the *Montreal* case at footnote 3, *supra*.

21. The Ontario Court of Appeal's unanimous decision in *Bracken* in 2017, which involves a ticketing offence in a political context, underscores this most fundamental and vital of freedoms. This decision exemplifies the critical importance of the freedom of expression in a contentious environment and standing one's ground.¹⁵

22. A persuasive authority in *Beaudoin* was penned by the Chief Justice of the BC Supreme Court. Public health orders were struck as being unconstitutional for infringing on said freedoms in the context of public protests outdoors, and were not saved by section 1.¹⁶

23. The Court is asked to adhere to longstanding precedent regarding fundamental freedoms as guaranteed by the *Charter*, *Grandel v Saskatchewan* in particular. Horizontal *stare decisis* is not binding, but the rest of the cited decisions are.¹⁷

24. History has demonstrated that the need for protest and political debate is greatest during times of peril and uncertainty. Subjecting the Applicants, and any other person who dares to dissent, to the threat substantial, punitive fines is utterly egregious, and is orthogonal to the notion of a free and democratic society. At a time when speaking one's mind in favour of freedom is fraught with the risk of alienating friends and family, adding the full force of the state against the few individuals who do, is unfair, unjust and undemocratic. Protests must be seen and heard, lest their impact be obviated and cast into irrelevancy. The ability to express unpopular views is not just a fundamental freedom, but forms the very basis for a free society.

¹⁵ *Bracken v. Fort Erie (Town)*, 2017 ONCA 668 at paras. 25-35

¹⁶ *Beaudoin v British Columbia*, 2021 BCSC 512 at paras. 249 and 251

¹⁷ *R. v. Comeau*, 2018 SCC 15 (CanLII), [2018] 1 SCR 342 at paras. 26, 27, 29 and 30

C. The impugned Order conflicts with the *Code* and its *Bill of Rights* and is inoperative to the extent of the conflict

25. The objects and purpose of the *Code* are stated at section 3:

3 The objects of this Act are:

(a) to promote recognition of the inherent dignity and the equal and inalienable rights of all members of the human family;

(b) to further public policy in Saskatchewan that every person is free and equal in dignity and rights and to discourage and eliminate discrimination

[Emphasis added.]

26. Sections 4 to 6 of the *Code* are substantially similar to section 2(b) and (c) of the *Charter*:

Right to freedom of conscience

4 Every person and every class of persons has the right to freedom of conscience, opinion and belief and freedom of religious association, teaching, practice and worship

Right to free expression

5 Every person and every class of persons has the right to freedom of expression through all means of communication, including the arts, speech, the press or radio, television or any other broadcasting device

Right to free association

6 Every person and every class of persons has the right to peaceable assembly with others and to form with others associations of any character under the law.

[Emphasis added.]

27. There is no reasonable limits clause contained within the *Code*, or any analogue to section 1 of the *Charter*.

28. Section 52 of the *Code* partially resembles the *Charter's* and is as follows:

Act takes precedence unless expressly excluded

52 Every law of Saskatchewan is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act unless:

(a) that law falls within an exemption provided by this Act; or

(b) that law is expressly declared by an Act to operate notwithstanding this Act.
[Emphasis added.]

29. There is no such exemption for the *Public Health Act, 1994* or any of its subordinate legislation as contained within the *Code*. Moreover, the *Public Health Act, 1994* does not contain any such declaration that it, or its subordinate legislation, operate notwithstanding the *Code* or its *Bill of Rights*, as is expressly required.

30. The impugned Order at sections 1(d) and 4(c) may be construed- and have been so construed by the government- as to authorize the banning of precisely the type of activities protected by sections 4-6 of the *Code* whose objects are stated at s. 3.

31. The Attorney General has conceded, and the Court of King's Bench has decided, that the restrictions imposed by the impugned Order and other Orders made from December 17, 2020 through May 30, 2021 breach section 2(b) and (c) of the *Charter*. Sections 4-6 of the *Code* are substantially similar to said section of the *Charter*. The *Charter* breaches were saved by section 1. There is no such provision in the *Code*, therefore the impugned Order is inoperable. *Quod erat demonstrandum*.

IV. THE OTHER LEGAL PRINCIPLES AS ARGUED ARE:

A. Statutory interpretation favours the *Code* and *Bill of Rights*

32. The entire point behind having an orderly legal and justice system is to promote both compliance, and fair and just enforcement. Absent an express statutory declaration by the legislature that the *Public Health Act, 1994*, or subordinate legislation made pursuant to it, are to operate notwithstanding the *Code* and its *Bill of Rights*, the *Code* must be upheld and the impugned Order is inoperative as is.

33. *The Legislation Act* at section 2-10 is as follows:¹⁸

Acts and regulations remedial

2-10(1) The words of an Act and regulations authorized pursuant to an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act and the intention of the Legislature.

(2) Every Act and regulation is to be construed as being remedial and is to be given the fair, large and liberal interpretation that best ensures the attainment of its

¹⁸ *The Legislation Act*, SS 2019, c L-10.2 at ss. 2-10 and 2-11

object
[Emphasis added.]

34. The legislature has also included a contextual analysis with respect to time:

Enactments apply in the present

2-11 An enactment is to be construed as applying to circumstances as they arise.
[Emphasis added.]

Not 2021. Not 2022. Not six months ago. The present time. The impugned Order is moot and has long expired. There are no circumstances which serve the public interest in proceeding with this prosecution or any other involving COVID measures.

35. The *Legislation Act* echoes the Supreme Court's jurisprudence in *Rizzo Shoes* and *Bell ExpressVu v. Rex*. A unanimous Supreme Court stated in the latter per Iacobucci J at para. 62:¹⁹

Statutory enactments embody legislative will. They supplement, modify or supersede the common law. More pointedly, when a statute comes into play during judicial proceedings, the courts (absent any challenge on constitutional grounds) are charged with interpreting and applying it in accordance with the sovereign intent of the legislator. In this regard, although it is sometimes suggested that “it is appropriate for courts to prefer interpretations that tend to promote those [Charter] principles and values over interpretations that do not” (Sullivan, supra, at p. 325), it must be stressed that, to the extent this Court has recognized a “Charter values” interpretive principle, such principle can only receive application in circumstances of genuine ambiguity, i.e., where a statutory provision is subject to differing, but equally plausible, interpretations.

[Emphasis added.]

This is a textbook case involving *Charter* values as expressed unambiguously by the legislature in the *Code* and its *Bill of Rights*. *Charter* values must necessarily prevail.

36. The Applicants submit that statutory interpretation favour the *Code* and its *Bill of Rights* in a conflict with the impugned Order as in keeping with the statutory language of the legislature, the legislative will as so described and its objects.

37. Section 52 of the *Code* leaves absolutely no room for interpretation. Words such as “inoperative”, “authorizes or requires”, “the doing of anything prohibited by this Act”, “exemption provided by this Act”, and “expressly declared by an Act to

¹⁹ *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para. 21; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), [2002] 2 SCR 559 at paras. 26 and 62

operate notwithstanding this Act” are crystal clear to the common man and woman.

B. Conflict of law favours the *Code* and *Bill of Rights*

38. Legislation and/or police action that runs counter to quasi-constitutional law, absent such an aforementioned, express, statutory, notwithstanding clause, conflicts with the law and frustrates its purpose. Supreme Court decisions *Rothmans, Benson & Hedges* from 2005²⁰ and *Lévis* from 2007²¹ illustrate the nature of a conflict of law, the result of which is the conflicting law becomes inoperable. The Ontario Court of Appeal rendered a similar decision in 2005, as did the Saskatchewan Court of Appeal in 2006 in *Platana v. Saskatoon*.²²

39. A unanimous Supreme Court expressed in *Lévis* at para. 47:

The starting point in any analysis of legislative conflict is that legislative coherence is presumed, and an interpretation which results in conflict should be eschewed unless it is unavoidable. The test for determining whether an unavoidable conflict exists is well stated by Professor Côté in his treatise on statutory interpretation:

According to case law, two statutes are not repugnant simply because they deal with the same subject: application of one must implicitly or explicitly preclude application of the other.

(P.-A. Côté, *The Interpretation of Legislation in Canada* (3rd ed. 2000), at p. 350)

...

Unavoidable conflicts, on the other hand, occur when two pieces of legislation are directly contradictory or where their concurrent application would lead to unreasonable or absurd results.

Further, at para. 56:

...this is not a case of one legislative regime imposing a higher standard than another. Rather, it is a case of one statute implicitly taking away what another statute has explicitly allowed. It is for this reason that whatever one thinks about which provision should prevail, the conflict is, in my opinion, unavoidable.

²⁰ *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005] 1 SCR 188, 2005 SCC 13 at paras. 11-14

²¹ *Lévis (City) v. Fraternité des policiers de Lévis Inc.*, [2007] 1 SCR 591, 2007 SCC 14 at paras. 47, 56, 90 and 92

²² *Croplife Canada v. Toronto (City)*, 2005 CanLII 15709 (ON CA) at paras. 59, 60, 62, 63 and 74; *Platana v. Saskatoon (City)*, 2006 SKCA 10 (CanLII) at paras. 43, 45, 46, 62, 89, 96, 102 and 106

Lastly, at para. 90:

A finding by a court that a conflict exists is necessarily founded on an assumption that the legislature has been inconsistent in enacting its laws. It is therefore only where conflict is unavoidable that a court must apply the principles of interpretation that give precedence to one law over the other, in which case the conflicting provision will be tacitly repealed or found to be partially inapplicable.
[Emphasis added.]

40. There is more. The Supreme Court held that human rights statutes are quasi-constitutional in *Quebec v. Bombardier*. Referring to the *Quebec Charter* at para. 30:

This Court has confirmed that the *Charter*, like the human rights legislation of the other provinces, has a special quasi-constitutional status: *Béliveau St-Jacques v. Fédération des employées et employés de services publics inc.*, 1996 CanLII 208 (SCC), [1996] 2 S.C.R. 345, at p. 402, reproduced in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, 2000 SCC 27, [2000] 1 S.C.R. 665 (“*City of Montréal*”), at para. 28; see also *de Montigny v. Brossard (Succession)*, 2010 SCC 51, [2010] 3 S.C.R. 64, at para. 45. Indeed, unless otherwise provided, ss. 1 to 38 of the *Charter* prevail over other Quebec statutes: s. 52 of the *Charter*. Furthermore, s. 53 of the *Charter* provides that, “[i]f any doubt arises in the interpretation of a provision of the Act, it shall be resolved in keeping with the intent of the *Charter*.”²³
[Emphasis added.]

41. The situation today mirrors itself as it did when the Supreme Court decided this case. It, too, has a strictly-worded section 52 as the *Code* and *Charter* do. The conflict must be resolved in favour of the *Code* by striking the impugned Order.

42. The combined government and police action, with this continued prosecution-along with all the others involving protest- constitute precisely that which is prohibited in sections 4-6 of the *Code*.

43. An indelible and irreconcilable conflict of law exists, which frustrates the purpose of the *Code*. The impugned Order and police action cannot stand in the context of the conflict as demonstrated.

44. The Attorney General is strongly urged to hold all remaining, related prosecutions in abeyance until such time that a section 96 court may render a decision in said matter of legislative conflict.

²³ *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39 (CanLII), [2015] 2 SCR 789 at para. 30

V. STATUTORY PROVISIONS OR RULES UPON WHICH THE APPLICANTS PLACE RELIANCE ARE:

45. The *Canadian Charter of Rights and Freedoms*, in particular, sections 2(b) and (c).

46. The *Saskatchewan Human Rights Code, 2018*, in particular, sections 3, 4, 5, 6 and 52.

47. The *Public Health Act, 1994* and the Public Health Orders, in particular, section 61 and the Public Health Order of May 6, 2021.

VI. IN SUPPORT OF THIS APPLICATION, THE APPLICANTS RELY UPON THE FOLLOWING:

48. The information, documentation and evidence before the Court;

49. The affidavits of the Applicants;

50. The Applicants may lead *viva voce* evidence in support of this application.

VII. THE RELIEF SOUGHT IS:

51. An Order striking sections 1(d) and 4(c) of the impugned Public Health Order of May 6, 2021 as inoperative per section 52 of the *The Saskatchewan Human Rights Code, 2018* due to an irreconcilable conflict of law.

52. In the alternative, an Order granting a stay of the proceedings due to the same.

ALL LEGAL ARGUMENTS OF THE APPLICANTS AS PREVIOUSLY SUBMITTED ARE HEREBY WITHDRAWN.

THIS APPLICATION, WHICH HAS BEEN FULLY REFERENCED FOR THE BENEFIT OF THE CROWN, AND TO DISPENSE WITH THE NEED FOR A FACTUM OR *VOIR DIRE* ON A QUESTION OF PURE LAW, MAY BE SERVED WITH DOCUMENTS PERTINENT TO IT.

IT IS REQUESTED THAT THIS APPLICATION BE HEARD IN WRITING.

ALL OF WHICH IS RESPECTFULLY SUBMITTED remotely on this 27th day of February, 2023



The Applicant, Erinn L. Knoll



The Applicant, Christina Hagel

TO:

Attorney General of Saskatchewan
1874 Scarth Street
900 - 1874 Scarth Street
Regina SK S4P 4B3
E-mail: max.bilson@gov.sk.ca

His Majesty The King
Minister of Justice
The Attorney General of Canada
Prairie Regional Office - Saskatoon
Department of Justice Canada
Saskatoon Square
410 – 22nd Street East, Suite 410
Saskatoon SK S7K 5T6
E-mail: agc_pgc_saskatoon@justice.gc.ca

Saskatchewan Provincial Prosecutor's Office
1815 Smith Street
Regina, SK S4P 2N5
E-mail: bryan.carter@gov.sk.ca

Offence Nos.: 85492794,
85492833

PROVINCIAL COURT OF SASKATCHEWAN

BETWEEN:

Erinn L. Knoll and Christina Hagel

Applicants

-and-

His Majesty The King

Respondent

AFFIDAVIT OF SERVICE

**I, Erinn L. Knoll, of 1346 McVeety Drive in Regina, Saskatchewan, MAKE
OATH AND SAY AS FOLLOWS:**

1. On Monday, February 27th, 2023, I served the Saskatchewan Provincial Prosecutor's Office, the Attorney General of Saskatchewan, and the Attorney General of Canada with a copy of the Notice of Application of Erinn L. Knoll and Christina Hagel hereto-annexed by sending an attachment via a single e-mail at 10:00 PM to bryan.carter@gov.sk.ca and at 10:48 PM a forwarded email to max.bilson@gov.sk.ca and agc_pgc_saskatoon@justice.gc.ca , respectively.
2. On Tuesday, February 28th 2023, I additionally served the Saskatchewan Provincial Prosecutor's Office, the Attorney General of Saskatchewan, and the Attorney General of Canada with copies of the Affidavits of Erinn L. Knoll and Christina Hagel hereto-annexed by sending attachments via a single e-mail at to bryan.carter@gov.sk.ca , max.bilson@gov.sk.ca and agc_pgc_saskatoon@justice.gc.ca, respectively.
3. On Tuesday, February 28th, 2023, I additionally served the Attorney General of Saskatchewan and the Attorney General of Canada with copies of the Notice of Application and Affidavits of Erinn L. Knoll and Christina Hagel hereto- annexed by sending letter mail to the following addresses, respectively:

Attorney General of Saskatchewan
1874 Scarth Street
900 - 1874 Scarth Street
Regina SK S4P 4B3



Attorney General of Canada
Prairie Regional Office- Saskatoon
Department of Justice Canada
Saskatoon Square
410 – 22nd Street East, Suite 410
Saskatoon SK S7K 5T6

Erinn Knoll
Signature

Sworn by the said ERINN L. KNOLL
Before me, NANCY SHENHER
at REGINA, SK
on the 28 day of FEBRUARY, yr. 2023



[Signature]
(a commissioner, etc.)

TAB 10

NOTICE OF APPLICATION AND CONSTITUTIONAL ISSUE

Offence Nos.: 85492794,
85492833

PROVINCIAL COURT OF SASKATCHEWAN
(Regina)

BETWEEN:

Erinn L. Knoll and Christina Hagel

Applicants

-and-

HIS MAJESTY THE KING

Respondent

NOTICE OF APPLICATION AND CONSTITUTIONAL ISSUE

TAKE NOTICE that the Applicants will bring an application at **9:30 AM**, on the **20th of March, 2023** at **1815 Smith Street, Regina, Saskatchewan, Courtroom 10, in person** pursuant to sections 11(d) and 24(1) of the *Charter of Rights and Freedoms* for an Order granting a stay of the proceedings.

I. THE GROUNDS FOR THIS APPLICATION ARE:

1. That the Applicants were charged on or about May 15, 2021 with the offence of FAIL TO COMPLY WITH A PUBLIC HEALTH ORDER BY ATTENDING A GATHERING EXCEEDING 10 PERSONS, contrary to s. 61 of the *Public Health Act, 1994*.
2. That the Public Health Order made pursuant to s. 61 of the *Public Health Act* and enacted on May 6, 2021,¹ was one of 192 Public Health Orders made from March 17, 2020 through February 13, 2022.²
3. That the Provincial Court of Saskatchewan, presumably located at 1815 Smith Street, Regina, Saskatchewan, set a trial of this matter to be heard at 1815 Smith Street, Regina, Saskatchewan, Courtroom 10 and begin on March 20, 2023, at 9:30 AM in person.
4. That this is the first trial date set for this offence, presumably an offence notice ticket under the provisions of the *Summary Offences Procedure Act, 1990*.³
5. That the Applicants were flagrantly denied their right to make full answer and defence.
6. Such further and other grounds as the Applicants may advise, and this Honourable Court may permit.

II. THE CONSTITUTIONAL AND OTHER ISSUES TO BE RAISED ARE:

7. That there have been no waivers by the Applicants of their rights under the *Bill of Rights* of the *The Saskatchewan Human Rights Code, 2018*, the *Charter of Rights and Freedoms*, nor any in statute or at common law.
8. That the Applicants have had their right to make full answer and defence severely impaired by the government's action, inaction, and conduct or misconduct, as it may be.
9. That the impairment of the right to make full answer and defence by the Applicants substantially and irreparably prejudiced this matter.

1 [Public Health Order – Provincial Order – May 6, 2021](#)

2 [Public Health Orders Archive - Archive of Public Health Orders issued during the COVID-19 pandemic](#)

3 [The Summary Offences Procedure Act, 1990](#), SS 1990-91, c S-63.1 at ss. 17 and 18

10. That the societal interest in this matter is minimal, and the interests of the Applicants are applicable in greater degree due to the nature and circumstances of the offence.

11. That such conduct by the government is fundamentally repugnant to a free and democratic society, fairness, the administration of justice- and confidence in all of it.

III. THE CONSTITUTIONAL PRINCIPLES TO BE ARGUED ARE:

Section 11(d) of the *Charter*: the right to make full answer and defence

12. That the Applicants received the Attorney General's Brief of Law only two days prior to the January 18, 2023 hearing. This flagrantly breached the most aggressive notice provisions in civil law, let alone those in a quasi-criminal proceeding.

13. That the Applicants, both being self-represented, were not apprised of the dire consequences affecting their rights of failing to make any substantive and well-referenced submissions at said hearing.

14. That the Applicants further believed that they could address the matters discussed at a latter date via reply arguments, or could otherwise raise them at trial, due to the judge not providing them any direction.

15. That the Applicants, having not seen a written decision of said hearing or even being aware of its existence for nearly two months, could not properly reply or formulate a legal defence.

16. That the two days of notice regarding the Attorney General's Brief of Law, and the near-two month delay in receiving the judge's written decision, irreparably prejudiced this matter and brought the administration of justice into disrepute.

17. That the government conduct in question was clearly wrong, in bad faith and an abuse of power.

IV. STATUTORY PROVISIONS OR RULES UPON WHICH THE APPLICANTS PLACE RELIANCE ARE:

18. The *Canadian Charter of Rights and Freedoms*, in particular, sections 11(d)

and 24(1).

19. The *Public Health Act, 1994* and the Public Health Orders, in particular, section 61 and the Public Health Order of May 6, 2021.

V. IN SUPPORT OF THIS APPLICATION, THE APPLICANTS RELY UPON THE FOLLOWING:

20. The information, documentation and evidence before the Court;
21. The affidavits of the Applicants;
22. **The Applicants may lead *viva voce* evidence in support of this application.**

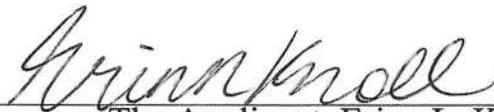
VI. THE RELIEF SOUGHT IS:

23. An Order granting a stay of the proceedings.

THIS APPLICATION MAY BE SERVED WITH DOCUMENTS PERTINENT TO IT.

IT IS REQUESTED THAT THIS APPLICATION BE HEARD IN WRITING IN CONJUNCTION WITH THE ENTIRE SUBMISSION OF THE APPLICANTS.

ALL OF WHICH IS RESPECTFULLY SUBMITTED remotely on this 17th day of March, 2023



The Applicant, Erinn L. Knoll



The Applicant, Christina Hagel

TO:

Attorney General of Saskatchewan
1874 Scarth Street
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Regina SK S4P 4B3
E-mail: theodore.litowski@gov.sk.ca

His Majesty The King
Minister of Justice
The Attorney General of Canada
Prairie Regional Office - Saskatoon
Department of Justice Canada
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Saskatchewan Provincial Prosecutor's Office
1815 Smith Street
Regina, SK S4P 2N5
E-mail: bryan.carter@gov.sk.ca

TAB 11

PROVINCIAL COURT OF SASKATCHEWAN

BETWEEN:

Erinn L. Knoll and Christina Hagel

Applicants

-and-

His Majesty The King

Respondent

AFFIDAVIT OF SERVICE

I, **Erinn L. Knoll**, of **1346 McVeety Drive in Regina, Saskatchewan**, **MAKE OATH AND SAY AS FOLLOWS:**

On Friday, March 17th, 2023, I served the Saskatchewan Provincial Prosecutor's Office, the Attorney General of Saskatchewan, and the Attorney General of Canada with copies of the Notice of Application and Supplementary Affidavits of Erinn L. Knoll and Christina Hagel hereto annexed by sending attachments via a single e-mail at 1:42 PM to bryan.carter@gov.sk.ca , theodore.litowski@gov.sk.ca, amiller@provcourt.ca , pcregina@gov.sk.ca, agc_pgc_saskatoon@justice.gc.ca, respectively.

Erinn Knoll

Signature

Sworn by the said Erinn Knoll
Before me, Sarah Yellowega
at Regina, Sk
on the 17 day of March , yr. 2023



Sarah Yellowega

(a commissioner, etc.)

NOTICE OF CONSTITUTIONAL QUESTION

CRM No.: 242 of 2023

IN THE COURT OF KING'S BENCH

JUDICIAL CENTRE OF REGINA

BETWEEN:

ERINN L. KNOLL

Appellant/Respondent

-and-

HIS MAJESTY THE KING

Respondent/Applicant

NOTICE OF CONSTITUTIONAL QUESTION

TAKE NOTICE that the Appellant will bring this Notice at **10:00 AM**, on the **23rd** of **January, 2024** at **2425 Victoria Avenue, Regina, Saskatchewan, *in camera*, in writing** pursuant to sections 92(13), 92(14), 92(15) and 96 of the *Constitution Act, 1867* for an Order striking the Crown's application in its entirety, and a declaration granting the Appellant public interest standing, pursuant to either subsection 24(1) of the *Canadian Charter of Rights and Freedoms*, or common law declaratory relief.

I. THE GROUNDS FOR THIS APPLICATION ARE:

1. That the Appellant was charged on or about *May 15, 2021* with the offence of FAIL TO COMPLY WITH A PUBLIC HEALTH ORDER BY ATTENDING A GATHERING EXCEEDING 10 PERSONS, contrary to s. 61 of the *Public Health Act, 1994*.
2. That the Public Health Order made pursuant to s. 61 of the *Public Health Act* and enacted on May 6, 2021,¹ was one of 192 Public Health Orders made from March 17, 2020 through February 13, 2022.²
3. That the Appellant with her co-defendant at the time brought both a Notice of Application and Quasi-Constitutional Issue (“First Application”), Notice of Application and Constitutional Issue (“Second Application”), and a supporting Reply Factum on March 20, 2023; and subsequent supporting Brief of Law – Reply to Attorney General of Saskatchewan on April 6, 2023.
4. That the First Application was denied and the Second Application dismissed in a final Order by the presiding judge Hinds of the Provincial Court of Saskatchewan rendered on April 20, 2023 that is the subject of this appeal.³
5. That this is an appeal within the scope of a summary conviction proceeding of a quasi-criminal provincial offence.
6. That the Order appealed does not concern an indictable offence, nor is it criminal in nature, nor is it interlocutory.
7. That the federal criminal law power has never been engaged in this proceeding.
8. That any reference to the *Criminal Code* in the *The Summary Offences Procedure Act* is procedural and is neither indicative, nor dispositive of any quasi-criminal appeal strictly involving a provincial offence.
9. That section 4(4)(b) of *The Summary Offences Procedure Act*, as cited by the Crown, specifically allows for appeals of “other orders made under summary conviction proceedings”.

1 [Public Health Order – Provincial Order – May 6, 2021](#)

2 [Public Health Orders Archive - Archive of Public Health Orders issued during the COVID-19 pandemic](#)

3 *R v Knoll*, 2023 SKPC 29

10. That section 813 of the *Criminal Code* begins with the qualifying language, “Except where otherwise provided by law”, which is provided for by section 4(4)(b) of *The Summary Offences Procedure Act*.

11. That the presiding judge's decision rendered on April 20, 2023 which is the subject of this appeal, expressly states and allows at para. 30: “They may wish to appeal this decision to a higher court.”

12. That this is a wholly provincial matter involving a quasi-criminal, regulatory, provincial offence established by a Public Health Order made pursuant to a provincial statute that has been challenged by the applicability of the Bill of Rights contained within *The Saskatchewan Human Rights Code, 2018*.

13. That this matter concerns the applicability of civil rights, the administration of justice within the province, and the imposition of penalty by provincial fines.

14. That this is a live controversy as more than three dozen defendants were convicted under similar provisions, and whose appeals are ongoing in the Saskatchewan Court of Appeal.

15. That this is a live controversy as the imposition of a penalty by fine is a debt owed to the Crown in perpetuity.

16. That the impugned Public Health Order is long-expired making any civil remedies moot and establishing this Honourable Court as the only feasible and practicable legal forum to dispose of said questions of law.

17. That the Appellant has public interest standing as she was not convicted, has nothing to gain personally from this appeal, and is necessarily undertaking it for the benefit of those convicted under similar provisions, or who otherwise took plea deals or did not contest their fines.

18. That the Appellant has raised substantial questions of pure law affecting the province as a whole that are well within the jurisdiction of this Honourable Court to hear and decide in a test case.

19. That the Crown's application subverts the supremacy of the legislature, and the power and authority of this Honourable Court, along with the constitutional division- and separation- of powers, in favour of long-expired executive orders.

20. That the Appellant was flagrantly denied her right to make full answer and defence by the conduct of the hearing on January 18, 2023 as raised in this appeal, the abuse of process of doing so, and the subsequent dismissal of both Applications.

21. That the dismissal of both Applications disposed of the Appellant's rights as raised, which substantially and directly concerns the rights of other defendants.

22. Such further and other grounds as the Appellant may advise, and this Honourable Court may permit.

II. THE CONSTITUTIONAL AND OTHER ISSUES AS RAISED ARE:

23. That there have been no waivers by the Appellant of her rights under the *Bill of Rights* of the *The Saskatchewan Human Rights Code, 2018*, the *Charter of Rights and Freedoms*, nor any in statute or at common law.

24. That this is an entirely provincial matter governed by sections 92(13), 92(14) and 92(15) of the *Constitution Act, 1867* as codified under *The Saskatchewan Human Rights Code, 2018*; *The King's Bench Act* and *The Summary Offences Procedure Act, 1990*; and *The Public Health Act, 1994*, respectively.

25. That the federal criminal law power under section 91(27) of the *Constitution Act, 1867* has never been engaged by nature, form or substance in this matter.

26. That there is no frustration of purpose or impossibility of dual compliance⁴ between the *Criminal Code* and *The Summary Offences Procedure Act*, rendering any concerns about the doctrine of federal paramountcy moot.

27. That this Honourable Court has the requisite power, authority and inherent jurisdiction to hear this appeal as vested in it by section 96 of the *Constitution Act, 1867* and as codified in *The King's Bench Act*.

28. That the division of powers between Parliament at section 91(27) and the legislature at sections 92(13), 92(14) and 92(15) of the *Constitution Act, 1867* is necessarily violated by the Crown's application, and provincial powers undermined.

29. That the separation of powers between the executive branch at sections 9-16 and 58-68, the legislative branch at sections 17-57 and 69-95, and the judicial branch at

⁴ *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, 2005 SCC 13 (CanLII), [2005] 1 SCR 188 at paras. 13, 14, 22-24

sections 96-101 of the *Constitution Act, 1867* is necessarily violated by the Crown's application, and the powers of the executive elevated over that of the legislature and this Honourable Court.

30. The statutory interpretation of the *Criminal Code*, *The King's Bench Act* and *The Summary Offences Procedure Act*, as governed by the federal *Interpretation Act*, *The Legislation Act* and the common law, is clear and unambiguous; the drafting choices of Parliament and the legislature must be respected.

31. That the societal and public interest in this matter is substantial as it raises questions of pure law that affect the rights of many people in the province as a whole in live controversies before the courts or by obligatory penalties by fines.

32. That the conduct by the government, and this subsequent attempt to prevent this appeal from being heard, is fundamentally repugnant to a free and democratic society, fairness, the administration of justice- and confidence in all of it.

III. THE CONSTITUTIONAL PRINCIPLES AS ARGUED ARE:

A. The Crown's application is *prima facie* unconstitutional

33. Whether one views the Crown's application through the lens of section 92(13), 92(14), 92(15), or 96 of the *Constitution Act, 1867* the result is the same: it does not pass muster in terms of conformity with, and respect for, the supreme law of Canada.

34. The subject of this appeal is the applicability of Bill of Rights in *The Saskatchewan Human Rights Code, 2018*. This is wholly provincial, concerns civil rights, is quasi-constitutional⁵ and is bound to the Constitution via section 92(13).⁶ The Court has the jurisdiction to hear this appeal.⁷

35. The provincial administration of justice and appellate procedure within the province in provincial offences matters are ultimately governed by *The Summary Offences Procedure Act* and *The King's Bench Act*. These statutes are bound

⁵ *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Bombardier Inc. (Bombardier Aerospace Training Center)*, 2015 SCC 39, [2015] 2 S.C.R. 789 at para. 30

⁶ *Murray-Hall v. Quebec (Attorney General)*, 2023 SCC 10 at paras. 65, 71 and 77

⁷ *King's Bench Act*, SS 2023, c 28 at ss. 3-1 and 3-2

to the Constitution via sections 92(14)⁸ and 96. Even more clearly, the Court has the jurisdiction to hear this appeal.⁹

36. The ability to impose fines for violating provincial law within the jurisdiction of the province is governed by *The Summary Offences Procedure Act* and, in this case, the *Public Health Act, 1994*. These statutes are bound to the Constitution via section 92(15).¹⁰ This is the most problematic section for the Crown's application.

37. In support of said application, the Crown cites *Yates* at paras. 38-40 and *Sears*, presumably at paras. 5-7, regarding there being no interlocutory right of appeal in criminal matters. The former involves manslaughter, the latter involves multiple drug offences, both of which are obviously *Criminal Code* matters. This is problematic for four reasons:

- the subject of this appeal is a provincial offence, not a federal offence
- the subject of this appeal is a final order, not an interlocutory order
- the subject of this appeal is a summary conviction proceeding, not an indictable offence
- the Supreme Court of Canada has held that indictable offences can never be classified as provincial offences

38. From a unanimous Supreme Court in *Maccooh* per Chief Justice Lamer:¹¹

This is due in part to the constitutional division of powers between Parliament and the provincial legislatures. Under s. 92(15) of the *Constitution Act, 1867*, provincial legislatures have jurisdiction to create offences, which often prove to be more serious than many of the offences falling in the category of indictable offences, and which may much more urgently require arrest in hot pursuit. Such offences can however never be classified as indictable offences, which are exclusively within the jurisdiction of the federal Parliament.

[Emphasis added.]

39. The case law cited is thus invalidated and rendered inapplicable to this appeal.

⁸ *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43, [2013] 3 S.C.R. 3 at paras. 32 and 35

⁹ *Ibid.* at paras. 18, 19, 32 and 39

¹⁰ *R. v. Wigglesworth*, [1987] 2 S.C.R. 541 at para. 18

¹¹ *R. v. Maccooh*, 1993 CanLII 107 (SCC), [1993] 2 SCR 802 at p. 819

40. Lastly, the order appealed is a final order. It is not interlocutory. Even the presiding judge agrees and states as such at para. 30 of the decision appealed. An order is generally considered final when it disposes of the substantive rights of the affected party. That is the nature of precisely what is being appealed.¹²

B. The Crown's application violates the division of powers

39. Said application turns the division of powers upside down in its attempt to dismiss this appeal.

40. The pith, substance and dominant character of the laws in question is to enforce provincial Public Health Orders under a provincial offences statute.¹³

41. The federal criminal law power is never invoked, despite the *Criminal Code* being employed in criminal and quasi-criminal procedure. There is some overlap in procedure, but that is fully permissible under the principle of cooperative federalism.¹⁴

42. The Crown's application necessarily undermines long-established provincial powers under section 92.

C. The Crown's application violates the separation of powers

43. Similarly, said application turns the separation of powers upside down in its attempt to dismiss this appeal.

44. Essentially, the government has concentrated all of its powers into the executive branch of government. The presiding provincial court judge deferred to the executive. The legislative branch has also remained mum and not asserted its legislative supremacy with respect to quasi-constitutional statute.¹⁵

45. COVID-19 has heavily politicized the legal realm, and our individual and collective lives. It is the role of the judiciary to remain apolitical and to judge each

¹² *Houle v. St. Jude Medical Inc.*, 2018 ONCA 88 at paras. 7 and 16-18; *Edgeworth v. Shapira*, 2020 ONCA 374 at para. 4; *Dynasty Furniture Manufacturing Ltd. v. Toronto-Dominion Bank*, 2015 ONCA 137 at paras. 5-7; *Deltro Group Ltd. v. Potentia Renewables Inc.*, 2017 ONCA 784 at paras. 3 and 5

¹³ *Murray-Hall v. Quebec (Attorney General)*, 2023 SCC 10 at paras. 22-24 and 26; *Reference re Genetic Non-Discrimination Act*, 2020 SCC 17 (CanLII), [2020] 2 SCR 283 at paras. 21-26 and 28-32

¹⁴ *Murray-Hall*, at paras. 67, 73 and 77; *Reference re Genetic Non-Discrimination Act* at para. 23

¹⁵ *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43 (CanLII), [2013] 3 SCR 3 at paras. 26-31

case before it according to the evidence and the law. Legislative supremacy must also be respected.¹⁶ Similarly, the Attorney General must enforce the law as it is written and preside over the administration of justice.¹⁷ This is substantially why this appeal was brought and why it should be heard.¹⁸

D. The Appellant has a statutory right of appeal

46. *The Summary Offences Procedure Act* at section 4(4) reads as follows:

(4) Subject to this Act, any other Act or any regulation, Parts XXII, XXVI and XXVII, other than section 840, and sections 20, 21, 22, 484, 508.1 and 527 insofar as it relates to a witness, sections 718.3, 719, subsection 732(1) and section 734.8 of the Criminal Code apply, with any necessary modification, to:

- (a) summary conviction proceedings before justices; and
- (b) appeals from convictions, acquittals, sentencing or other orders made under summary conviction proceedings.

[Emphasis added.]

47. This is worded very plainly, without any ambiguity. The right of appeal is clear.

E. The Appellant has public interest standing

48. While the rights of the Appellant are not directly at stake, a grant of public interest standing is sought. To qualify for public interest standing, it must be demonstrated that: (1) there is a serious issue as to the validity of the Public Health Order as challenged; (2) the Appellant has a genuine interest in the measure's validity; and (3) that this appeal is a reasonable and effective way to bring the matter before the court.¹⁹

49. There is no other way to bring such a challenge to court and no one else has challenged the Public Health Orders on the grounds brought in provincial court and upon appeal. This is being undertaken in writing to conserve judicial resources. It is

¹⁶ *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 (CanLII), [2018] 3 SCR 189 at paras. 55, 57 and 58

¹⁷ *Ontario v. Criminal Lawyers' Association of Ontario* at paras. 34-37

¹⁸ *Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I.*, 1997 CanLII 317 (SCC), [1997] 3 SCR 3 at paras. 131, 140-142, 146 and 239

¹⁹ *Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society*, 2012 SCC 45 (CanLII), [2012] 2 SCR 524 at paras. 2, 11, 18, 35 and especially 37; *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 at paras. 16, 28 and 90

also not permissible to be heard in civil court due to the doctrine of mootness.²⁰

F. The interpretation of the relevant statutes is clear and unambiguous

50. Statutory interpretation is governed by the federal *Interpretation Act*, *The Legislation Act* and common law principles long-established by the courts, particularly Driedger's modern approach.²¹

51. Section 813 of the *Criminal Code* begins with, “Except where otherwise provided by law”. It is expressly provided for in law at section 4(4) of *The Summary Offences Procedure Act*. Additionally, sections 3-1, 3-2 and 3-3 of *The King's Bench Act* could not be worded more plainly.²² The jurisdiction of this Honourable Court to hear this appeal is clear and established.

IV. STATUTORY PROVISIONS OR RULES UPON WHICH THE APPELLANT PLACES RELIANCE ARE:

52. *The Constitution Act, 1867*, in particular, sections 91(27), 92(13), 92(14), 92(15) and 96.

53. *The Saskatchewan Human Rights Code, 2018*, in particular, sections 3, 4, 5, 6 and 52.

54. *The King's Bench Act*, in particular, sections 3-1, 3-2 and 3-3.

55. *The Summary Offences Procedure Act, 1990*, in particular, section 4(4).

56. *The Legislation Act*, in particular, sections 2-10 and 2-11.

57. *The Interpretation Act*, in particular, sections 10-15.

58. *The Criminal Code*, in particular, sections 813, 814(2) and 815.

59. *The Public Health Act, 1994* and the Public Health Orders, in particular, section 61

²⁰ *Cimmer v Niessner*, 2022 SKCA 60 at para. 45

²¹ *Interpretation Act*, RSC 1985, c I-21 at ss. 8.1, 10-16, 43 and 45; *The Legislation Act*, SS 2019, c L-10.2 at ss. 2-10 and 2-11; *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27 at para. 21; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 (CanLII), [2002] 2 SCR 559 at paras. 26 and 62

²² *Reference re Impact Assessment Act*, 2023 SCC 23 at para. 193

and the Public Health Order of May 6, 2021.

V. IN SUPPORT OF THIS APPLICATION, THE APPELLANT RELIES UPON THE FOLLOWING:

60. The information, documentation and evidence before the Court;
61. The affidavits of the Applicants in provincial court;
62. The affidavit of the Appellant as Respondent to the application;
63. **The Appellant may lead *viva voce* evidence in support of this Notice.**

VI. THE RELIEF SOUGHT IS:

64. An Order striking the Crown's application in its entirety.
65. A declaration granting the Appellant public interest standing.

THIS NOTICE MAY BE SERVED WITH DOCUMENTS PERTINENT TO IT.

IT IS REQUESTED THAT THIS APPLICATION BE HEARD IN WRITING IN CONJUNCTION WITH AFFIDAVITS OF THE APPLICANTS IN PROVINCIAL COURT AND THE AFFIDAVIT OF THE APPELLANT AS RESPONDENT TO THIS APPLICATION.

ALL OF WHICH IS RESPECTFULLY SUBMITTED remotely on this 9th day of January, 2024



The Appellant, Erinn L. Knoll

TO:

The Court of King's Bench of the Judicial Centre of Regina
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AFFIDAVIT OF SERVICE

CRM No.: 242 of 2023

IN THE COURT OF KING'S BENCH

JUDICIAL CENTRE OF REGINA

BETWEEN:

ERINN L. KNOLL

Appellant/Respondent

-and-

HIS MAJESTY THE KING

Respondent/Applicant

AFFIDAVIT OF SERVICE

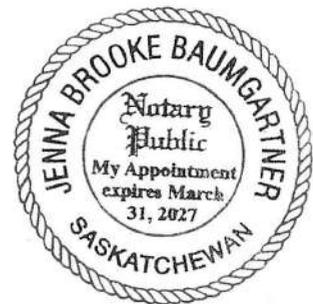
I, **Erinn L. Knoll**, of **1346 McVeety Drive in Regina, Saskatchewan**, **MAKE OATH AND SAY AS FOLLOWS:**

1. On Tuesday, January 9th, 2024, I served the Saskatchewan Provincial Prosecutor's Office, the Attorney General of Saskatchewan, and the Attorney General of Canada with copies of the Notice of Constitutional Question; provincial court affidavit and supplementary affidavit of Erinn L. Knoll; and accompanying affidavit as Respondent to the Crown's application hereto- annexed by sending attachments via an e-mail at 5:06 PM to bryan.carter@gov.sk.ca, noah.wernikowski@gov.sk.ca, and agc_pgc_saskatoon@justice.gc.ca, respectively.

2. On Wednesday, January 10th, 2024, I additionally served bryan.carter@gov.sk.ca and noah.wernikowski@gov.sk.ca with the provincial court Applicants' Notice of Application and Quasi-Constitutional Issue dated February 27th, 2023 hereto- annexed by sending an attachment via an e-mail at 12:09 PM and to agc_pgc_saskatoon@justice.gc.ca at 12:19 PM.

Erinn Knoll
Signature

Sworn by the said Erinn Knoll
Before me, _____
at Regina, Saskatchewan
on the 10 day of January, yr. 2024



Jenna Baumgartner
(a commissioner, etc.)
Notary

TAB 12

APPELLANT'S REPLY FACTUM

K.B.G. No. CRM-RG 242 of 2023

IN THE COURT OF KING'S BENCH

JUDICIAL CENTRE OF REGINA

BETWEEN:

ERINN L. KNOLL

Appellant

-and-

HIS MAJESTY THE KING

Respondent

APPELLANT'S REPLY FACTUM

Leave is requested

1. This Reply Factum is being submitted irrespective of there being any provision for it in the rules, in statute, or in the common law. The Appellant is self-represented and has long requested that this appeal be heard in writing in her Notice of Appeal.
2. Crown counsel has brought up points that have either not been addressed by the Appellant, or have been conceded and require a clarification. The purpose of this document is to address said points.
3. This is an exceptional appeal and leave is sought to admit this submission pursuant to this Honourable Court's inherent and statutory jurisdiction.

Exceptions re: interlocutory criminal and summary conviction appeals

4. The Appellant concedes that the common law establishes that the order being appealed is interlocutory, as it did not bring the proceedings to an end. This is different than what the common law defines as an interlocutory order in a civil context, as argued.
5. This shifts the analysis to whether the Court may entertain this appeal under the limited exceptions as defined by the Supreme Court of Canada in *Awashish*.¹ Errors of law as argued must necessarily undergo some clarification.

The presiding judge committed jurisdictional errors

6. The order being appealed is rooted in three jurisdictional errors:
 - the judge exceeded his jurisdiction by conducting the January 18, 2023 hearing (the “impugned hearing”) in contravention of, and without notice or respect to, the

1 *R v Awashish*, 2018 SCC 45, [2018] 3 S.C.R. 87 at para. 11

*Constitutional Questions Act*², as argued and cited in the Appellant's Memorandum of Argument at paras. 106 and 107

- the judge refused to exercise his jurisdiction to hear, or otherwise reconsider the Notice of Application of February 28, 2023³ irrespective of the principles outlined by the Supreme Court in *CBC v. Manitoba*⁴, as argued and cited in the Appellant's Memorandum of Argument at paras. 65-72
- the judge contravened the express, statutory language of the legislature in the *Saskatchewan Human Rights Code* at ss. 29(1) and 30(2)(c)⁵ ousting the jurisdiction of the Saskatchewan Human Rights Commission, as the Application had absolutely nothing to do with discrimination, as argued and cited in the Appellant's Memorandum of Argument at paras. 97-105

The principles of natural and fundamental justice were flagrantly breached

7. The Supreme Court cited various decisions made with respect to “acts contrary to the rules of natural justice” at para. 11 of *Awashish*.⁶ This has been strenuously argued in the Appellant's Memorandum of Argument at paras. 71, 72 and 78-94.

8. The presiding judge committed multiple jurisdictional errors, as have other judges in related proceedings, as argued in the Appellant's Memorandum of Argument at para. 106.

The presiding judge breached the principles of natural and fundamental justice in the

² [The Constitutional Questions Act](#), 2012, SS 2012, c C-29.01 at ss. 14 and 15

³ Appeal Book – Tab 11 – Notice of Application – Quasi-Constitutional Issue

⁴ [Canadian Broadcasting Corp. v Manitoba](#), 2021 SCC 33 ("*CBC v Manitoba*")

⁵ [The Saskatchewan Human Rights Code](#), 2018, SS 2018, c S-24.2 at ss. 29(1) and 30(2)(c)

⁶ *Patterson v. The Queen*, [1970 CanLII 180 \(SCC\)](#), [1970] S.C.R. 409, at p. 414, per Hall J.; *Forsythe v. The Queen*, [1980 CanLII 15 \(SCC\)](#), [1980] 2 S.C.R. 268, at p. 272; *Dubois v. The Queen*, [1986 CanLII 60 \(SCC\)](#), [1986] 1 S.C.R. 366, at p. 377; *R. v. Deschamplain*, [2004 SCC 76](#), [2004] 3 S.C.R. 601, at para. 17 [Excerpted]

impugned hearing, and thus necessarily breached the Appellant's right to make full answer and defence. Clearly, this Court possesses the jurisdiction to hear this appeal.

Notice under the *Constitutional Questions Act* was never sought or provided

9. It is conceded that s. 13.1 of the *Constitutional Questions Act* was not in force at the time of the impugned hearing. Nevertheless, sections 13, 14 and 15 were in force and their statutory interpretation⁷ requires that notice be served upon the Attorney General in the proper, prescribed form.

10. Notice was never provided, which the presiding judge knew, or ought to have known, rendering the impugned hearing an abuse of process, as argued. The hearing was setup to fail, as no remedy could be granted by law.

11. Crown counsel contends that notice was provided, but only the prosecution was served, not the Attorney General. This would be unacceptable in the context of a *Charter* application and could not be acceptable here, given the wording of the statute. In any case, regardless of what has been contended, any such notice was not in the prescribed form.

No transcripts pertinent to this appeal are missing

12. To be absolutely clear, the Appellant is appealing from the order made by the presiding judge on April 20, 2023⁸. The trial decision⁹ is not being appealed.

13. The Appellant and her co-Applicant at the time did not participate in the trial.

They were not examined or cross-examined. They did not examine or cross-examine any

⁷ *The Legislation Act*, SS 2019, c L-10.2 at ss. 2-10 and 2-11

⁸ *R v Knoll*, 2023 SKPC 29

⁹ *R v Apodaca*, 2023 SKPC 37

witnesses. They submitted no arguments, whatsoever orally or in writing. Due to the conduct of the impugned hearing, they refused to participate in the trial. They only asserted their rights by making statements in open court, which are fully captured by the transcripts as ordered and submitted.

14. Crown counsel was in attendance and is fully aware of these facts. Transcripts of trial proceedings, which are not being appealed and whose facts are not in dispute, are being demanded. A fulsome evidentiary record exists by way of the transcripts as ordered and submitted, as well as the five affidavits before the Court.

15. Crown counsel had two, separate opportunities to bring this up before Justices Keene and Currie, but failed to do so. Raising it now is disingenuous, impedes the administration of justice and denies the Appellant- particularly in her standing as a public interest litigant- access to justice.

Section 686 of the *Criminal Code* is inapplicable to this appeal

16. This falls under Part XXI of the *Criminal Code*, which concerns indictable offence appeals. This is a summary conviction appeal against an order made and not a conviction, which falls outside of the statutory interpretation of this provision.

17. Just as importantly, the Court's powers cannot be circumscribed by the federal criminal law power in dealing with provincial offences as that would necessarily violate the division of powers. The Court may hear this appeal and is only constrained by the legislature in its powers to do so.¹⁰

¹⁰ Appeal Book – Tab 13 – Notice of Constitutional Question

Binding precedent was ignored by the presiding judge and other judges

18. The relevant, binding precedents with respect to the merit of this appeal, and the February 28, 2023 Application, are *Forsberg* and *Whatcott*.¹¹ This was in the Attorney General's Brief of Law and somehow not applied. This is important, as Crown counsel has cited nearly 90 cases in response. Of course, these two are not among them.

19. Moreover, the same precedents were not applied by other judges in other, related proceedings. Instead, various analyses that don't consider legislative supremacy, or misapply statutory interpretation, were undertaken, or not apparently considered at all.¹²

Costs sought in this appeal are improper, unjust, unreasonable and untoward

20. Crown counsel is out of bounds by requesting costs, which are an extraordinary remedy, and are necessarily oppressive and punitive to discourage wasteful proceedings. The implication is that this appeal is frivolous, vexatious, or an abuse of process.

21. The one case cited involves tax evasion and pseudo law, with multiple references to “mass murder”. The agent was cited by the Court of Appeal as having “had no intention of making submissions on any questions of law that may have relevance to the case”.¹³ The agent was determined to be illegitimate, pursuant to the common law.¹⁴

22. The Appellant has, at all times, demonstrated the highest respect for the courts, legislative supremacy, the judicial process, the rules of procedure and evidence, the administration of justice, and the furtherance of it. Requesting costs is a low blow.

¹¹ *Forsberg v Saskatchewan*, 2017 SKQB 326 at paras. 12, 13 and 28; *R v Whatcott*, 2002 SKQB 399 at paras. 34-37

¹² Appellant's Memorandum of Law at para. 106

¹³ *R. v. Reddick*, 2002 SKCA 89 at paras. 5 and 6

¹⁴ *R. v. Romanowicz*, 1999 CanLII 1315 (ON CA) at paras 53-84; *The Law Society of Manitoba v. Pollock*, 2007 MBQB 51 at paras. 95-98; *Zielke v Law Society of Saskatchewan*, 2021 SKCA 156 at paras. 1 and 109-111

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



The Appellant, Erinn L. Knoll

DATED at Regina, Saskatchewan, this 20th day of February, 2025.

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Erinn L. Knoll

HIS MAJESTY THE KING

Appellant

Respondent

SASKATCHEWAN
COURT OF KING'S BENCH
PROCEEDINGS COMMENCED AT REGINA

APPELLANT'S REPLY FACTUM

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Court of Appeal File No. CACR3906

Erinn L. Knoll

HIS MAJESTY THE KING

Appellant

Respondent

THE COURT OF APPEAL FOR SASKATCHEWAN

PROCEEDINGS COMMENCED AT REGINA

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