

APPELLANT'S FACTUM

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 FACTUM

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PART I – INTRODUCTION

1. The Appellant appeals from the Judgement and final order made by Her Honour, Judge Crystal Norbeck of the Court of King's Bench at Regina, Saskatchewan on March 24, 2025.¹
2. The Appellant was charged with failing to comply with a Public Health Order (the “impugned Order”)² made on May 6, 2021 under section 45(2) of the *Public Health Act, 1994*, with enforcement under s. 61, after engaging in a political protest outdoors in Victoria Park in Regina on or about May 15, 2021.
3. The Appellant attended a hearing (the “impugned hearing”) on January 18, 2023 regarding the applicability of the *Canadian Bill of Rights*, various iterations of the *Saskatchewan Bill of Rights*, and the *Saskatchewan Human Rights Code, 2018* (the “Code”). The three defendants present were all self-represented, as were the two no-shows.
4. The Appellant made a limited written submission, in the form of a motion to dismiss, referencing face coverings- not protesting- and asserted her rights orally by reading them out verbatim from the *Saskatchewan Bill of Rights*, contained within the *Code*. No duty counsel was present for the self-represented defendants to consult.
5. The Appellant first received the Attorney General of Saskatchewan's 92 page *Brief of Law Re “Bills of Rights” Challenges* (the “Brief of Law”) on January 16, 2023, two days before the impugned hearing. She was unable to fully read, comprehend, evaluate, properly consider and respond to it in time for the hearing two days later. All of the defendants were unprepared for the hearing, and unclear as to its purpose and finality.

¹ Appendix I - Judgment

² [Public Health Order – Provincial Order – May 6, 2021](#)

6. A decision was rendered shortly thereafter on the same day and was read aloud verbally. A written decision was also rendered, which the Appellant only first became aware of on March 16, 2023. The decision foreclosed upon the possibility of utilizing the *Code* and its Bill of Rights in her defence.
7. The Appellant and co-Applicant Christina Hagel (the "Applicants") served and filed a fulsome Notice of Application on February 28, 2023 to assert their quasi-constitutional rights pursuant to the Bill of Rights contained within the *Code*.³
8. The Applicants served and filed a second Notice of Application on March 17, 2023 to assert their constitutional rights under section 11(d) of the *Charter*, specifically the right to make full answer and defence, after not being able to properly respond to the government's case against them prior to, during, and following, the impugned hearing.⁴
9. The Applicants submitted that they have been railroaded by the government; that they have been denied their rights without being able to properly respond to their deprivation; that the legal process has been one-sided, unfair and unjust; and that a reasonable person viewing the situation would find, effectively, that justice has not been done, nor seen to be done.
10. After the impugned Decision was rendered in writing on April 20, 2023 an appeal was brought on May 19, 2023.⁵ It pleaded, *inter alia*, that the government's conduct was a clearly wrong, in bad faith, and an abuse of power and process. The Applicants were subsequently acquitted on May 25, 2023.⁶
11. The Crown would go on to serve an application to dismiss this appeal for want of jurisdiction on December 29, 2023. That, in turn, was responded to with a fulsome

3 Appeal Book – Tab 9: Notice of Application – Quasi-Constitutional Issue

4 Appeal Book – Tab 10: Notice of Application – Constitutional Issue

5 Appendix B – Notice of Appeal

6 [*R v Apodaca*](#), 2023 SKPC 37

Notice of Constitutional Question.⁷ The Crown's application was dismissed.⁸

12. This appeal was undertaken in the private interest to protect the Appellant's statutory and substantive rights, as a impending conviction- with no defence during trial- seemed inevitable. It was also undertaken in the public interest to protect the right of anyone to challenge the law by way of application under *The Constitutional Questions Act*, and to uphold legislative supremacy over executive fiat.

PART II – JURISDICTION AND STANDARD OF REVIEW

A. Jurisdiction

Leave to appeal requested

13. This Court derives its jurisdiction to hear this appeal from section 839 of the *Criminal Code*⁹ and a unanimous Supreme Court of Canada in *Awashish*.¹⁰

Leave to appeal is requested.

14. The original order appealed did not bring an end to the proceedings and was, therefore, interlocutory. This point is conceded and the voluminous case law supporting it need not be cited.

15. The analysis then necessarily shifts to whether this appeal falls under the limited exceptions described in *Awashish*, and whether the framework outlined by the Supreme Court fits.

16. It is strongly asserted that it does. First, three jurisdictional errors were committed by the application judge:¹¹

⁷ Appeal Book – Tab 11: Notice of Constitutional Question

⁸ Appeal Book – Tab 2: Endorsement from Justice Keene

⁹ *Criminal Code*, RSC 1985, c C-46 at s. 839; see also *The Court of Appeal Act, 2000*, SS 2000, c C-42.1 at ss. 7 and 12

¹⁰ *R. v. Awashish*, 2018 SCC 45, [2018] 3 S.C.R. 87 at para. 11

¹¹ Appeal Book – Tab 12: Appellant's Reply Factum at para. 6

- the judge exceeded his jurisdiction by conducting the January 18, 2023 hearing (the aforementioned “impugned hearing”) in contravention of, and without notice or respect to, the *Constitutional Questions Act*¹², as argued on appeal
- the judge refused to exercise his jurisdiction to hear, or otherwise reconsider the Notice of Application of February 28, 2023¹³ irrespective of the principles outlined by the Supreme Court in *CBC v. Manitoba*¹⁴, as argued on appeal
- the judge contravened the express, statutory language of the legislature in the *Saskatchewan Human Rights Code* at ss. 29(1) and 30(2)(c)¹⁵ ousting the jurisdiction of the Saskatchewan Human Rights Commission, as the Application had absolutely nothing to do with discrimination, as argued on appeal

17. Second, the Supreme Court cited various decisions made with respect to “acts contrary to the rules of natural justice” at para. 11 of *Awashish*.¹⁶ The rules of natural justice were breached by the conduct of the impugned hearing, which effectively resulted in an involuntary waiver of the rights of the defendants.

18. Third, and finally, the fundamental rights of the Appellant, as conferred under the quasi-constitutional *Saskatchewan Human Rights Code* and its encapsulated Bill of Rights, were flagrantly breached. The Supreme Court opined per Rowe J.¹⁷

[21] In *obiter*, Thibault J.A. stated that *certiorari* could be available where fundamental rights of an accused are irremediably affected by a ruling and where an appeal would offer no effective remedy. The example she gave was ordering an accused to remove her niqab while testifying. I leave for another day whether *certiorari* would be available in

¹² *The Constitutional Questions Act*, 2012, SS 2012, c C-29.01 at ss. 14 and 15

¹³ Appeal Book – Tab 9 – Notice of Application – Quasi-Constitutional Issue

¹⁴ *Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33 (“*CBC v. Manitoba*”)

¹⁵ *The Saskatchewan Human Rights Code*, 2018, SS 2018, c S-24.2 at ss. 29(1) and 30(2)(c)

¹⁶ *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]; Appeal Book – Tab 12: Reply Factum at paras. 7 and 8

¹⁷ *Awashish*, *supra*, at para. 21; *Awashish v. R.*, 2016 QCCA 1164 at paras. 33, 34, 38 and 39

such circumstances.

[Emphasis added.]

19. The damage done to the rights of the Appellant, and her fellow citizens to peacefully protest government policy, was irreparable. This was compounded by the various, related decisions that followed, *infra*, which substantially weakened the quasi-constitutional, statutory rights of the Appellant and would-be protestors. Only the intervention of this Court in the nature of *certiorari* may remedy this damage.

Mootness and provincial powers

20. At least three dozen people have been convicted of breaching Public Health Orders because they were engaged in political protesting activities outdoors.¹⁸ The convictions were upheld on appeal, all the way to the Saskatchewan Court of Appeal.¹⁹ Every fine imposed is a debt owing to the Crown in perpetuity and, thus, mootness doctrine does not apply in a quasi-criminal context.

21. Clearly, a live controversy exists, actual quasi-constitutional rights have been engaged, and questions of law affecting the legal system as a whole are worthy of being resolved by this Court.²⁰ Legal certainty is required and the public interest is highly relevant, the public importance of which demands that this appeal be heard.²¹

22. The Crown has previously cited *Yates*²² at paras. 38-40 and *Sears*²³ 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

18 *R v Bernier*, 2023 SKPC 62

19 *Grandel v Government of Saskatchewan*, 2024 SKCA 53

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

21 *Borowski v Canada (Attorney General)*, [1989] 1 S.C.R. 342

22 *R v Yates*, 2023 SKCA 47 at paras. 38-40

23 *R v Sears*, 2014 SKCA 72 at paras. 5-7

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

23. From a unanimous Supreme Court in *Macooh* per Chief Justice Lamer:²⁴

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.]

24. The legislature has seen fit to create a provincial offences regime governed by *The Summary Offences Procedure Act*, with an expressly worded right of appeal at s. 4(4)(b). This is not a federal matter; it is provincial. The word "appeals" appears only once in the entire *Act*. Also, per *Awashish*, the "legislative objective" of the provision matters;²⁵ in this case, summary convictions are not treated the same as indictable offences by the legislature.²⁶

B. Standard of review

25. The standard of review is correctness as this appeal raises general questions of law of central importance to the legal system as a whole.²⁷ All the questions raised are those of pure law for which there is no deference to the trial judge.²⁸ Additionally, the

²⁴ *R v Macooh*, 1993 CanLII 107 (SCC), [1993] 2 SCR 802 at p. 819

²⁵ *Awashish*, *supra*, at para. 16

²⁶ Tab 11 – Notice of Constitutional Question (division of powers)

²⁷ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 at paras. 17, 53, 58, 59, 62, 64 and 69

²⁸ *Housen v Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235 at paras. 8 and 27; *Ledcor Construction Ltd. v*

standard of review is correctness for issues of trial fairness. While deference is owed to the presiding judge upon appeal in "in determining how much assistance to provide to a self-represented accused", flagrant errors in law and principle were made and are to be demonstrated.²⁹

PART III – SUMMARY OF THE FACTS

A. History of the prosecution

26. As stated at the outset, the Appellant was charged with failing to comply with impugned Order³⁰ made on May 6, 2021 under section 45(2) of the *The Public Health Act, 1994*, with enforcement under s. 61, after engaging in a political protest outdoors in Victoria Park in Regina on or about May 15, 2021.³¹

27. Following receiving their offence notices on or about May 15, 2021, the Appellant and her co-Applicant engaged the Justice Centre for Constitutional Freedoms as their legal representatives in July, 2021. This is not properly before the Court as sworn evidence, but is not a controversial fact unless, of course, the Crown chooses to dispute it.

28. Ms. Knoll terminated her retainer on or about October 7, 2022.³² Ms. Hagel terminated her retainer on or about December 29, 2022.³³ This occurred because their counsel would only plead the *Charter*, which had been rendered all but powerless in *Grandel*.³⁴ There was no willingness to bring an application under *The Constitutional Questions Act* to challenge the impugned Order.

²⁹ *Northbridge Indemnity Insurance Co.*, 2016 SCC 37 (CanLII), [2016] 2 SCR 23 at paras. 36 and 115

²⁹ *R v Wilde*, 2022 SKCA 74 at para. 22

³⁰ [Public Health Order – Provincial Order – May 6, 2021](#)

³¹ *Public Health Act, 1994*, SS 1994, c P-37.1 at ss. 45(2) and 61

³² Appendix D – Trial Transcript – p. T12 at lines 22-31

³³ *Ibid.* - p. T22 at lines 13-31

³⁴ *Grandel v Saskatchewan*, 2022 SKKB 209

29. After being notified on December 2, 2022,³⁵ the Appellant attended the impugned hearing on January 18, 2023 regarding the applicability of the *Canadian Bill of Rights*, various iterations of the *Saskatchewan Bill of Rights*, and the *Code*. The three defendants present were all self-represented, as were the two no-shows.³⁶

30. The presiding judge dismissed the Appellant's motion to dismiss, along with that of her co-Applicant and the remaining defendant on the basis that no complaints under the *Code* were brought.³⁷

31. The Appellant served and filed applications and accompanying affidavits with her co-Applicant on February 28 and March 17, 2023.³⁸

32. The Appellant's trial took place on March 20, 23 and 30, 2023.³⁹

33. The impugned Decision being appealed was rendered on April 20, 2023.⁴⁰

34. The trial decision was rendered on May 25, 2023 which acquitted the Appellant and co-Applicant. Everyone else, except Ms. Apodaca, were convicted.⁴¹

B. The January 18, 2023 hearing

The Appellant

35. The Appellant's oral submission is found at pp. T18-37. On p. T19 she pleaded ss. 2 and 4-6 of the *Code*.⁴² On p. T23 she went over some of the history of the *Saskatchewan Bill of Rights*.⁴³ On p. T24 she read s. 5 of the *Code* verbatim and

35 Appendix D – Trial Transcript – p. T21 at lines 33-41

36 Appendix C – Impugned Hearing Transcript – p. T1 at lines 13-16

37 *Ibid.* – p. T62 at lines 13-36

38 Appeal Book – Tab 4 - Affidavit of Erinn Knoll; Appeal Book – Tab 5 - Supplementary Affidavit of Erinn Knoll; Appeal Book – Tab 6 - Affidavit of Christina Hagel (co-Applicant); Appeal Book – Tab 7 - Supplementary Affidavit of Christina Hagel; Appeal Book – Tab 9 - Notice of Application – Quasi-Constitutional Issue; Appeal Book – Tab 10 – Notice of Application – Constitutional Issue

39 Appendix D – Trial Transcript – p. i – Table of Contents

40 *R v Knoll*, 2023 SKPC 29

41 *R v Apodaca*, 2023 SKPC 37 at paras. 72-74

42 Appendix C – Impugned Hearing Transcript – p. T19 at lines 2-4

43 *Ibid.* – p. T23 at lines 2-29

mentioned how the Commission failed to make any progress advancing the rights of defendants.⁴⁴

36. On p. T28 she mentioned her motion to dismiss.⁴⁵ This is continued in an exchange with the judge on the next page at lines 14-21, and on p. T30 at lines 13-21.

37. On p. T37 at lines 1-4 she makes a critical distinction between the Bill of Rights contained within the *Code*, and the *Code*, itself:

I'd like to be clear, Your Honour, that I am not -- I am not enacting the Sask. Bill of Rights. I'm not enacting the Human Rights Code. I'm enacting the Sask. Bill of Rights within the Human Rights Code which is still very much in standing still.

38. On the same page, she concluded her oral submission by relying on her exercise of her rights to freedom of expression and association at lines 19-27.

The co-Applicant

39. Ms. Hagel, the co-Applicant, made her oral submission from pp. T41-46 and had various exchanges with the judge from T38-41. On p. T38 at lines 10-25 the judge brought up her notice regarding terminating her JCCF counsel and reliance upon non-Charter arguments. She agreed. Further, at lines 34, 35 and 39 she refers to a motion to dismiss as "a waste of time".

40. On p. T41, confusion as to the nature of the proceeding is plain and obvious at lines 20-22 just prior to the beginning of her oral submission:⁴⁶

I never attended a -- I don't know if this is called the case management. So I wasn't sure what I was supposed to be arguing. I thought this was all done in trial like my previous matters.

41. No attempt was made by the judge to explain the court's procedure, to adjourn the proceeding, or to allow for a subsequent submission to be made.

⁴⁴ *Ibid.* – p. T24 at lines 25-39

⁴⁵ *Ibid.* – p. T28 at lines 39-40

⁴⁶ *Ibid.* – p. T41 at lines 20-22

42. On p. T42 at lines 16-42 in an exchange with the judge, she asserted her rights- at least somewhat. This continued on the next page at lines 1-7. She then specifically mentioned the following at lines 11-19:⁴⁷

Freedom of speech by going out and gathering or holding a sign or whatever like the Black Lives Matter protests, like the Free Palestine protests, it's a part of freedom of speech because it's one way of vocalizing your opinions and beliefs, which this certain gathering that I allegedly attended was being treated differently than those two gatherings based on the fact there was only maybe two police officers at the Free Palestine gathering, while people were in the park, and there was over 12 cop cars watching the park. So equality before the law as far as I'm concerned has been -- has not been -- it's -- it hasn't been fair for all parties involved.

[Emphasis added.]

43. On page T45 at lines 19-41 she asserted her rights under ss. 4-6 of the *Code*, which follows onto lines 1-9 of the next page. Her submission was concluded shortly thereafter on the same page.

The remaining defendant

44. On page T8 at lines 12-26, Mr. Seitz and the judge had the following exchange:

THE ACCUSED SEITZ: I -- I'm not sure I understand why I'm here today even because... I've left a package here for my-

THE COURT: Not enough. You've got to -- you've got to tell me what it's about. Even -- even -- and I -- again, I don't expect, by the way, an argument like a lawyer would make, okay? I just need to be clear on your position, okay? So let's go -- come forward, if you will. And so, Mr. Seitz, I recall, like, you have the two matters before the Court, and in each you indicated that you with -- you are proceeding as a self-represented man who -- who -- whose rights were violated, of which those rights are protected under the Canadian Bill of Rights, The Saskatchewan Bill of Rights, and The Saskatchewan Human Rights. I don't know if you meant to add "Code" there or not, but --

THE ACCUSED SEITZ: I never used -- I never stated the Bill of Rights or The Saskatchewan Bill of Rights or the Human Rights.⁴⁸

45. There was confusion regarding what was being pleaded. Mr. Seitz did not plead the *Saskatchewan Bill of Rights* or *Code*- only the *Canadian Bill of Rights*. Again, no

⁴⁷ *Ibid.* -- p. T43 at lines 11-19

⁴⁸ *Ibid.* -- p. T8 at lines 12-26

attempt was made by the judge to explain the court's procedure, to adjourn the proceeding, or to allow for a subsequent submission to be made.

Conclusion

46. The Attorney General's oral submission was made at pp. T47-59. On pp. T46, T48, T50, T51, T56 and T57 substantial reference is made to the AG's 92 page Brief of Law, served two days earlier upon the Appellant.

47. There is no evidence in the transcript that indicates the Appellant or any of the defendants were explained the court's procedure, were given an option to adjourn the proceeding, or to allow for a subsequent submission to be made. No duty counsel was present. Very little or no guidance was provided to the defendants.

48. There was never a mention of the legal requirement under *The Constitutional Questions Act* to make an application and serve it upon the Attorney General when questioning the validity of any legislation. By definition from the legislature, this hearing on January 18, 2023 could not "hold any law to be inoperative" or "to be invalid" pursuant to s. 13.1 and 14 without proper notice. What was the point, then, other than to impugn the defendants and remove their rights?

C. Key points of the trial

49. The opening statement of the Applicants is as follows:⁴⁹

Counsel for the respondent and the Court are both in possession of our two applications and their supporting materials. There is no need to revisit any of our submissions during this hearing. In addition to addressing our fulsome submissions in their totality the Attorney General and the Court need only answer a simple question. Do two days of notice by the government constitute fair and reasonable notice to us as applicants? Moreover, do two days of notice constitute fair and reasonable notice to self-represented litigants in a quasi-criminal proceeding?

The Attorney General provided only two days of notice to us as applicants of their

⁴⁹ Appendix D – Trial Transcript – pp. T24-25 at lines 34-41 and 1-22, respectively

brief of law previous to the impugned January 18th hearing as has been previously and abundantly demonstrated. The right to make full answer and defence as a principle of fundamental justice is enshrined in our right to a fair trial. Having fair and reasonable notice of the government submissions secures our right to make full answer and defence. The lack of such notice will necessarily impair this critical right and prejudice the entire proceeding.

Proper notice is a fundamental -- is fundamental to the rule of law, British common-law doctrine and practice. It is fundamental to the operation of an orderly and civil society. It governs our roads, it governs our contracts, it governs our employment, it governs our daily conversations and healthy relationships, and it governs our legislative, executive, and judicial processes and procedures. Fair and reasonable notice is almost a constitutional right. We never received fair and reasonable notice of the Attorney General's brief of law and have submitted our reply, as is our right, in the form of the first application. The second application secures this right under the *Charter*. A transcript of said impugned hearing on January 18th is forthcoming and will be furnished to the respondents and the Court as soon as it has been received.

50. A closing statement was made and is as follows:⁵⁰

Again, it's just brief. I'll just say that today -- we have done our best to transcribe the proceeding today, noting oral arguments from the Attorney General of all applicable caselaw, referenced paragraphs and/or pages and arguments made. We shall deliver our reply in writing per the Court's timeline. I thank you for hearing us today and the defence rests.

51. No oral arguments were made by the Applicants. There was a great deal of resistance on this point from both the judge and AG. The Applicants stood their ground.⁵¹

52. On one hand, the judge had a problem with the notion of an adjournment at p. T4, lines 38-41; and p. T26, lines 1-12. On the other, he had a problem with the Applicants *not* adjourning the January 18, 2023 hearing at p. T37, lines 11-41. The Appellant specifically stated at lines 33-39:

I perhaps did not understand the -- the process. That day, on January 18th, I brought what I had and that was -- that was all I had. I hadn't -- I hadn't prepared anything else further to the -- to the response given the -- to the brief of law. I had absolutely no capability of doing that. I only brought what I had on the table before that, and that was a few things that I brought up in asserting my rights, telling you what sections my rights were violated under. I hardly argued very much that day.

⁵⁰ *Ibid.* – p. T51 at lines 16-20

⁵¹ *Ibid.* – p. T3, lines 13-41; p. T4, entirety; p. T5, lines 1-23; p. T12, lines 26-34; p. T23, lines 14-40; p. T29, lines 34-41;

[Emphasis added.]

53. Blame is then heaped upon the Applicants from lines 18-40 of p. T38 by both the judge and AG for not knowing the court's process, not adjourning said hearing, not understanding their procedural and substantive rights, and then later asserting said rights.⁵²

54. Counsel for the AG then outright stated that fair notice is not a component of the right to make full answer and defence, or a fair trial:⁵³

MR. WERNIKOWSKI: Our -- our -- the position advancement for the Court is that the right to make full answer and defence does not encompass or does not guarantee the right to receive a respondent brief of the Crown -- a written respondent brief of the Crown earlier than two days before argument. That's not one of the entitlements under 11(d) and 7.

[Emphasis added.]

D. The affidavits of the Applicants

55. Both Applicants submitted accompanying affidavits with their first joint application of February 28, 2023 asserting their rights, and that said rights pursuant to the *Code's* Bill of Rights were breached by the government.⁵⁴

56. Both Applicants submitted accompanying supplementary affidavits with their second joint application of March 17, 2023. This immediately followed the AG's release of the transcribed Decision a day previous, following the January 18, 2023 hearing.⁵⁵

57. The affidavits are brief and describe a complete abrogation of their rights to fair notice, court procedure and other procedural rights, and substantive fair trial rights. They did not understand the finality of the hearing and that their rights could

⁵² *Ibid.* – p. T38, lines 18-40

⁵³ *Ibid.* – p. T39, lines 31-35

⁵⁴ Appeal Book – Tabs 4, 6 and 9

⁵⁵ Appeal Book – Tabs 5, 7 and 10

be lost prior to trial. They jointly asserted in conclusion:⁵⁶

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.

E. History of the proceeding in The Court of King's Bench

58. The appeal was brought on May 19, 2023. On December 29, 2023, the Crown brought an application to dismiss, scheduled to be heard on January 23, 2024. The hearing would be adjourned to February 27, 2024 due to the lack of availability of the Appellant.

59. On January 9, 2024 the Appellant served and filed a Notice of Constitutional Question upon the Crown, Attorney General of Saskatchewan, and the Attorney General of Canada. An accompanying, two paragraph affidavit was similarly submitted, which asserted her rights and public interest motivation for proceeding with her appeal.⁵⁷

60. The application was dismissed by Justice Keene on February 29, 2024.

61. Counsel for the AG intervened on September 3, 2024 pursuant to ss. 13.1 and 15(6) of *The Constitutional Questions Act*. A case conference was immediately requested to attempt to again dispose of this appeal, before it could actually be heard. That failed per Justice Currie's fiat Order of November 5, 2024.

PART IV – POINTS IN ISSUE

62. They are as follows:

- The impugned hearing amounted to an abuse of process
- Relitigation and reconsideration of the impugned hearing decision

⁵⁶ Appeal Book – Tabs 5 and 7 at paras. 9 for both

⁵⁷ Appeal Book – Tabs 8 and 11

- Accommodation of self-represented litigants
- The right to make full answer and defence
- Jurisdiction, *stare decisis* and access to justice
- There is standing to hear this appeal

PART V – ARGUMENTS

A. The impugned hearing amounted to an abuse of process

63. The Supreme Court of Canada most recently opined upon the doctrine of abuse of process almost exactly a year ago in *Brunelle*:⁵⁸

[27] The law on abuse of process is well settled. The “key point” is that abuse of process “refers to Crown conduct that is egregious and seriously compromises trial fairness and/or the integrity of the justice system” (R. v. Anderson, 2014 SCC 41, [2014] 2 S.C.R. 167, at para. 50). As the preceding passage suggests, two types of state conduct meet the threshold for establishing abuse of process: conduct that compromises trial fairness (“main category”) and conduct that, without necessarily threatening the fairness of the accused’s trial, nevertheless undermines the integrity of the justice system (“residual category”) (Canada (Minister of Citizenship and Immigration) v. Tobiass, 1997 CanLII 322 (SCC), [1997] 3 S.C.R. 391, at para. 89; R. v. Regan, 2002 SCC 12, [2002] 1 S.C.R. 297, at para. 55; R. v. Nixon, 2011 SCC 34, [2011] 2 S.C.R. 566, at para. 36; R. v. Babos, 2014 SCC 16, [2014] 1 S.C.R. 309, at para. 31; see also Brind’Amour v. R., 2014 QCCA 33, at para. 53).

[Emphasis added.]

64. It is submitted that what occurred at the January 18, 2023 hearing in terms of notice and conduct constituted an abuse of process per para. 50 of *Brunelle*:

[50] Indeed, under the residual category of abuse of process, “prejudice . . . is better conceptualized as an act tending to undermine society’s expectations of fairness in the administration of justice” (Nixon, at para. 41). As L’Heureux-Dubé J. noted in O’Connor, the residual category of abuse of process

does not relate to conduct affecting the fairness of the trial or impairing other procedural rights enumerated in the Charter, but instead addresses the panoply of diverse and sometimes unforeseeable circumstances in which a prosecution is conducted in such a manner as to connote unfairness or vexatiousness of such a degree that it contravenes fundamental notions of justice and thus undermines the integrity of the judicial process. [para. 73]

[Emphasis added.]

⁵⁸ *R v Brunelle*, 2024 SCC 3 at paras. 27-29

65. As the transcripts and affidavits have so amply demonstrated, the judge and Crown exhibited callous disregard for the rights of the Appellant, co-Applicant and other accused. Counsel for the AG simply maintains that fair notice is not included as an "entitlement" in the right to make full answer and defence, excerpted at para. 53, *supra*. This is not so and ought not be. Only the Court may correct it.

B. Relitigation and reconsideration of the impugned hearing decision

66. The presiding judge erred that the Applicants may not relitigate the outcome of the impugned hearing. Cited in support by the AG were two decisions from the Supreme Court, the latter of which was the recent *CBC v Manitoba*, rendered in 2021.⁵⁹ The Applicants concur that this is the correct and most applicable case, but disagree on the specific citation.

67. The judge ruled that there has been no material change in the circumstances of the Applicants and, therefore, the decision should stand. *R v Adams*, [1995] 4 SCR 707 at para. 32 was cited in support, along with *CBC v Manitoba* at para. 54.

68. The Applicants submit in reply that the Attorney General misses the mark in attempting to circumscribe the latter decision around a change in circumstances and to focus on the former, which does not weigh any other considerations.

69. The fact is, the Applicants did not get a chance to make a fulsome submission prior to the impugned hearing to submit actual arguments in favour of their rights, rather than simply and superficially asserting their rights. There is a world of difference between asserting one's rights and arguing in favour of their validity and application. For these reasons, the impugned hearing was not disposed of upon its merits and should have been reconsidered.⁶⁰

⁵⁹ *Canadian Broadcasting Corp. v Manitoba*, 2021 SCC 33 ("*CBC v Manitoba*")

⁶⁰ *Ibid.* at paras. 1-7, 19, 36 and 39, with special attention to paras. 60 and 61

70. Per *CBC v Manitoba* at para. 33:

...the court is understood only to have the power to amend the judgment in very limited circumstances... where the matter has not been heard on its merits (*Chandler*, at p. 861, citing *Paper Machinery Ltd. v. J.O. Ross Engineering Corp.*, [1934 CanLII 1 \(SCC\)](#), [1934] S.C.R. 186; *R. v. H. (E.)* (1997), [1997 CanLII 418 \(ON CA\)](#), 33 O.R. (3d) 202 (C.A.), at pp. 214-15, citing *The Queen v. Jacobs*, [1970 CanLII 143 \(SCC\)](#), [1971] S.C.R. 92; see also *R. v. Burke*, [2002 SCC 55](#), [2002] 2 S.C.R. 857, at para. 54).

[Emphasis added.]

71. The public interest plays a critical role in reconsideration, per para. 38⁶¹:

The need to attend to the appropriate balance between these fundamental public interests does not disappear merely because the order on the merits is final and could have been appealed.

...

Consider, for example, a case where no order... is made before the formal judgment on the merits is entered, and a need to protect an important public interest is later discovered. In my respectful view, to conclude that this power is wholly lost once the formal order on the merits is entered would risk undermining the proper administration of justice in service of a reading of the doctrine of *functus officio* unconnected with its purpose.

[Emphasis added.]

72. Notice and the ability to make proper submissions also play a vitally important role regarding reconsideration and deciding an issue upon its merits. Per para. 44⁶²:

Natural justice is understood to require that whenever a person is affected by a decision, they generally have the right to appropriate notice of that decision and an opportunity to be heard (*Supermarchés Jean Labrecque Inc. v. Flamand*, [1987 CanLII 19 \(SCC\)](#), [1987] 2 S.C.R. 219, at pp. 233-34). When an order is made without the submissions of an affected person because that person was not given proper notice, such as an *ex parte* order, the law recognizes that the court that made that order generally has authority to review it on motion of that affected person (*Wilson v. The Queen*, [1983 CanLII 35 \(SCC\)](#), [1983] 2 S.C.R. 594, at p. 607, citing *Dickie v. Woodworth* (1883), [1883 CanLII 51 \(SCC\)](#), 8 S.C.R. 192). This ensures that affected persons are not unfairly subjected to orders made without the benefit of their submissions

[Emphasis added.]

73. With only two days of notice from the Attorney General regarding its Brief of Law, and a delay of nearly two months before seeing written reasons of the decision following, the self-represented Applicants were unable to make a proper, fulsome submission for the impugned

⁶¹ *Ibid.* see additional mentions at paras. 6, 37, 71, 76 and 116

⁶² *Ibid.* see also paras. 23, 27, 42, 43, 48, 52, 59, 67, 68, 72, 75 and 84; and paras. 119 and 120 in dissent

hearing, and were unable to even consider an appeal, let alone undertake one. Given these circumstances, and the fact that the presiding judge was not *functus* at the time, the decision may be revisited by allowing the February 28 Notice of Application and granting the relief requested therein to correct the error.⁶³

C. Accommodation of self-represented litigants

74. The Court has a duty to accommodate self-represented defendants, to provide explanation where necessary, to inquire if defendants understand the process, and to otherwise engage in case management activities to protect the rights and interests of the defendants as early as possible. Failure to do so could amount to an involuntary waiver of one's rights.

75. From the Canadian Judicial Council's Criminal Law Notebook for Self-Represented Accused⁶⁴:

Depending on the circumstances and nature of the case, the presiding judge may:

- explain the process;
- inquire whether the accused understands the process and the procedure;
- make referrals to agencies able to assist the accused in the preparation of the case;
- provide information about the law and evidentiary requirements; and
- modify the traditional order of taking evidence.

76. From the Canadian Judicial Council's Statement of Principles on Self-represented Litigants and Accused Persons⁶⁵:

When one or both parties are proceeding without representation, non-prejudicial and engaged case and courtroom management may be needed to protect the litigants' equal right to be heard. Depending on the circumstances and nature of the case, the presiding judge may:

- (a) explain the process;
- (b) inquire whether both parties understand the process and the procedure;
- (c) make referrals to agencies able to assist the litigant in the preparation of the case;
- (d) provide information about the law and evidentiary requirements;
- (e) modify the traditional order of taking evidence; and

⁶³ Appeal Book – Tab 9 – Notice of Application – Quasi-Constitutional Issue

⁶⁴ [Criminal Law Handbook](#) at page 6

⁶⁵ [Statement of Principles on Self-represented Litigants and Accused Persons](#) at page 4; recognized by the Supreme Court in [Pintea v. Johns](#), 2017 SCC 23, [2017] 1 S.C.R. 470

(f) question witnesses.

[Emphasis added.]

77. There are various appellate decisions which recognize these principles. From the Ontario Court of Appeal in *Morwald-Benevides v Benevides*⁶⁶:

[34] It is no longer sufficient for a judge to simply swear a party in and then leave it to the party to explain the case, letting the party flounder and then subside into unhelpful silence. As this court has noted, "it is well-accepted that trial judges have special duties to self-represented litigants, in terms of acquainting them with courtroom procedure and the rules of evidence": *Dujardin v. Dujardin Estate*, [2018] O.J. No. 3545, [2018 ONCA 597](#), 423 D.L.R. (4th) 731, at para. 37, repeated in *Gionet v. Pingue*, [2018] O.J. No. 6661, [2018 ONCA 1040](#), 22 R.F.L. (8th) 55, at para. 30. The court added, at para. 31 of *Gionet*: "In ensuring that a self-represented litigant has a fair trial, the trial judge must treat the litigant fairly and attempt to accommodate their unfamiliarity with the trial process, in order to permit them to present their case", citing *Dauids v. Dauids*, [1999 CanLII 9289 \(ON CA\)](#), [1999] O.J. No. 3930, 125 O.A.C. 375 (C.A.), at para. 36. See, also, *Manitoba (Director of Child and Family Services) v. A. (J.)*, [2006] M.J. No. 171, [2006 MBCA 44](#), at paras. 19-20.

[Emphasis added.]

78. The presiding judge failed miserably in upholding these principles. Nothing was explained. There was no inquiry as to whether anyone understood the process and procedure of the court. There was no information provided as to requirements in arguing the law, or citation of case law. There was no information provided regarding the gravity and finality of the impugned hearing. There was no information provided regarding the right to make full answer and defence, the right of reply, or the right to appellate review of a final order of the Court. The interests and rights of the Applicants, and the other defendants, were laid to waste before, during, and after said impugned hearing. Given this reality, being given more time is completely irrelevant and makes the aforementioned two days of notice even more intolerable.

⁶⁶ *Morwald-Benevides v Benevides*, 2019 ONCA 1023 (CanLII) at para. 34; See also *Sanzone v Schechter*, 2016 ONCA 566 (CanLII) at para. 21, *Gionet v Pingue*, 2018 ONCA 1040 (CanLII) at paras. 30 and 31; and [Ethics of Dealing with Self-Represented Litigants](#) by Kendra Jacobs and Gerrand Rath Johnson, Law Society of Saskatchewan, 2013

D. The right to make full answer and defence

79. The right to trial fairness in section 11(d) of the *Charter* encompasses the right to make full answer and defence.

80. The right to make full answer and defence is one of the principles of fundamental justice and is “inextricably intertwined” between sections 7 and 11(d) of the *Charter*, unqualified by the engagement, or deprivation, of the life, liberty or security interests of the person.

81. As the Alberta Court of Appeal put it succinctly in *Quintero-Gelvez* in 2019⁶⁷:

[7] ... The principles of fundamental justice include the right to a fair trial and to make full answer and defence. A fair trial must be one which is perceived to have been conducted fairly; see *R v Switzer*, 2014 ABCA 129 at para 5.

[8] The principles of fundamental justice in s 7 of the *Charter of Rights and Freedoms* and the requirements of s 11(d) are “inextricably intertwined”; see *R v Rose*, 1998 CanLII 768 (SCC), [1998] 3 SCR 262, at para 95 citing *R v Seaboyer*, 1991 CanLII 76 (SCC), [1991] 2 SCR 577 at p 603.

[9] Where no valid reason exists to limit the right to cross-examine a witness, the limitation of the exercise of the right cannot be justified where the result is to deny full answer and defence; see *R v Colling*, 2017 ABCA 286 at para 18 [*Colling*].

[Emphasis added.]

82. The right to make full answer and defence, as a principle of fundamental justice, is substantive and not merely procedural.⁶⁸

83. Trial fairness must be viewed through the eyes of a reasonably minded person who had been present throughout the trial. Again, from the Alberta Court of Appeal in *Switzer*⁶⁹:

[5] The test respecting the fairness of the trial process is similar. The question is not whether the appellant was in fact prejudiced by the interventions. Rather we must ask whether the accused “might reasonably consider that he had not had a fair trial or whether a reasonably minded person who had been present throughout the trial would consider that the accused had not had a fair trial”: *R v Valley* (1986), 1986 CanLII 4609 (ON CA), 26 CCC (3d) 207 at 232, 13 OAC 89.

⁶⁷ *R v Quintero-Gelvez*, 2019 ABCA 17 (CanLII) at paras. 7-9

⁶⁸ *Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486, 1985 CanLII 81 (SCC) at paras. 7, 17, 18, 21, 99 and especially 124

⁶⁹ *R v Switzer*, 2014 ABCA 129 (CanLII) at para. 5

[Emphasis added.]

84. The Applicants should have not only been able to respond to the Attorney General's Brief of Law upon its merits- which they could not due to the lack of notice- but also to make a process-oriented challenge to the proceedings in order to properly assert, and submit arguments in favour of, the validity of their rights.

85. From the Nova Scotia Court of Appeal in *Sandeson*⁷⁰:

[75] By determining the materiality of the undisclosed information using the yardstick of whether that evidence related to the case against the appellant, the judge restricted the meaning of “full answer and defence” to the ability of an accused to respond to the merits of the Crown’s case.

[76] In my view, such limiting is a legal error. The right to make full answer and defence includes not only the ability to challenge the Crown’s case on the merits but also the ability to advance reasonable *Charter* and/or other process-oriented responses to the charges.

...

[88] The trial judge’s assessment of the materiality of the undisclosed information, the consequent impact of its late disclosure, and the possible abuse of process concerns should have focused on Sandeson’s reasonable opportunities to investigate and advance a *Charter* or other process-oriented response.

[Emphasis added.]

86. All of the same apply to the case of the Applicants. Their right to make full answer and defence has been irreparably compromised and prejudiced. In totality, the conduct of the impugned hearing without direction from the presiding judge and without duty counsel present; the lack of notice from the Attorney General; and the delay in notice of the written reasons following the hearing, constituted an abuse of process that should have never occurred, bringing the administration of justice into plain, obvious and embarrassing disrepute.⁷¹

87. Substantial submissions were made in provincial court regarding the right to make full answer and defence as a principle of fundamental justice under section 7 of the *Charter*, as well as a component of a fair trial in s. 11(d). The AG has responded in oral arguments with

⁷⁰ *R v Sandeson*, 2020 NSCA 47 (CanLII) at paras. 73, 76, 80, 81, 88 and 125

⁷¹ *R v Grant*, [2009] 2 SCR 353, 2009 SCC 32 (CanLII) (“*Grant*”) at paras. 68 and 72-75

three cases, chief among them the recent Supreme Court of Canada decision, *R v JJ*, 2022 SCC 28 at paras. 123-125.⁷²

88. The Supreme Court makes reference to “procedural principles of fundamental justice” at paras. 116 and 123, which are substantive compared to the lower standard of procedural fairness under natural justice. See para. 6, *supra* and ample references in the Reply Factum.

89. The majority quoted *Stinchcombe* at para. 185:

...fairness to the witness may require that a trap not be laid by allowing the witness to testify without the benefit of seeing contradictory writings which the prosecutor holds close to the vest. The principle has been accepted that the search for truth is advanced rather than retarded by disclosure of all relevant material.

[Emphasis added.]

90. A trap was laid for the self-represented Applicants the moment the AG's Brief of Law was admitted right on the filing deadline, with an utterly unreasonable two days of notice. The submission contained “contradictory writings”, were held “close to the vest” in its 11th hour service, and impaired the truth-seeking function of the court.

91. Brown J also quotes *Stinchcombe* in dissent at para. 250:

...the presumption of innocence and the power imbalance between the state and the individual are at the root of this principle and the procedural and evidentiary protections to which it gives rise

[Emphasis added.]

92. Rowe J makes reference in dissent to “the right to fair procedures” at para. 335, “certain procedural guarantees” at para. 339 and “protecting the rights of the accused” at para. 417.

93. A unanimous Supreme Court stated succinctly in *Underwood* in 1998⁷³:

...the balance must reflect that the ultimate goal of the procedural and substantive

⁷² *R v JJ*, 2022 SCC 28

⁷³ *R v Underwood*, 1998 CanLII 839 (SCC), [1998] 1 SCR 77 at para. 6

protections in the criminal justice system are to ensure that trials are scrupulously fair. Our criminal process is based upon the principle that before the accused calls evidence in his own defence, he must have knowledge of the case to be met. The extent to which his criminal record will be admissible against him will encompass part of that case. The “case-to-meet” principle is a fundamental tenet of the criminal justice system, firmly rooted in the common law and an integral part of the principles of fundamental justice (R. v. S. (R.J.), 1995 CanLII 121 (SCC), [1995] 1 S.C.R. 451), which are protected by s. 7 of the Canadian Charter of Rights and Freedoms. It is part of the broader principle against self-incrimination, which has its roots in the presumption of innocence and the power imbalance between the state and the individual.

[Emphasis added.]

94. Binnie J opined similarly in the previously cited *Grant*⁷⁴:

It is the adversarial relationship together with the “stop” that generates the need for counsel. At that point, the power imbalance is significant. The unsuspecting suspect may fatally compromise his or her position simply through ignorance of his or her rights and the fact the police have now adopted an adversarial position. At that point, as Le Dain J. put it in *Therens*, “a person may reasonably require the assistance of counsel” (pp. 641-42), but may not have any idea of the perilous turn of events.

[Emphasis added.]

95. Nothing about how the impugned hearing was conducted was fair to the Applicants, or protected their rights. Said hearing was conducted in such a way as to promptly and permanently dispose of their rights. They did not know the case they had to meet. They were told by both the AG and the presiding judge that they should have simply adjourned the matter due to the last minute notice, while also necessarily breaching the filing deadline. This absurd and repugnant suggestion in hindsight makes an absolute mockery of fundamental justice. The power imbalance between the state and individual has been in full display throughout the provincial court proceeding.

⁷⁴ *R v Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353 at para. 178

E. Jurisdiction, *stare decisis* and access to justice

96. The Court of King's Bench derived its jurisdiction to hear the original appeal from section 813 of the *Criminal Code*, which deferred to section 4(4)(b) of *The Summary Offences Procedure Act*.⁷⁵ The former 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*.

97. The legislature expressly and unambiguously allows for appeals of “other orders made under summary conviction proceedings”. The impugned Decision is precisely that type of order. Additionally, sections 3-1, 3-2 and 3-3 of *The King's Bench Act* could not be worded more plainly.⁷⁶ This is all in addition to *Awashish*, as argued at the outset.

98. On page T61 of the Impugned Hearing Transcript, the presiding judge opines that section 52 of the *Saskatchewan Bill of Rights* (which one would assume was meant to be the *Code*) does not apply to part 2 of the *Code*.⁷⁷ In view of the principles of statutory interpretation and *The Legislation Act* as previously submitted in the February 28 Notice of Application, this need not be revisited, other than to say that this, with respect, is a clear error of law.

99. On page 8, the presiding judge exercised judicial comity via horizontal *stare decisis* by citing precisely one case where one of the defendant's arguments regarding the *Saskatchewan Bill of Rights* “tended to appeal to emotions rather than the law”.

100. On the following page, the judge noted three cases that were brought to his attention:

⁷⁵ *The Summary Offences Procedure Act*, 1990, SS 1990-91, c S-63.1 at s. 4(4)(b)

⁷⁶ *King's Bench Act*, SS 2023, c 28 at ss. 3-1, 3-2 and 3-3; see also *The Court of Appeal Act, 2000* at ss. 7 and 12

⁷⁷ Appendix C – Impugned Hearing Transcript at T61, lines 4-9

Rowley, Forsberg, and Lawless. He then came to the conclusion that said cases “make categorical statements that remedies under the *Human Rights Code* should be first brought to the commission, and I adopt that statement of law.”

101. *Rowley*⁷⁸, at para. 8, states that “complaints of discrimination under the *Code* are to be made in the first instance to the Saskatchewan Human Rights Commission.” *Lawless*⁷⁹, at para. 52 states the the court's “jurisdiction is only engaged after the processes mandated by the *Code* have first been complied with.” *Forsberg*⁸⁰, at para. 28, states “I conclude that this Court has no jurisdiction to adjudicate alleged infractions of the *Code* outside the process directed by the *Code*.”

102. The only problem with the above is that all three cases dealt exclusively with discrimination. There is no connection to the Bill of Rights. Previously cited in the Application of February 28 was *Forsberg* at para. 13, which was first cited by the Attorney General in the Brief of Law. It was conceded that the presiding judge had the jurisdiction to hear a challenge under the *Code*.

103. Para. 12 of *Forsberg* is even more relevant and references *Whatcott*⁸¹ from 2002:

[12] In *Whatcott*, Justice Ball rejected, *in obiter*, the argument that only a board of inquiry established under the *Code* has jurisdiction to declare a law to be inoperative by reason of it contravening the *Code*. Justice Ball found that, in certain circumstances, the court has jurisdiction to consider and apply provisions of the *Code* outside the process outlined therein. The court’s reasons for assuming jurisdiction in *Whatcott* are set out in para. 34 where Justice Ball states:

34 The situation here is quite different [from *Seneca*]. The appellant in this case is not pursuing a remedy against the University. On the contrary, the University is pursuing a remedy against the appellant. The University chose to charge the appellant with an offence under its Bylaw which specified that it was to be enforceable in Provincial Court. The appellant wishes to rely on the defence that the Bylaw is rendered inoperative by legislation, namely, s. 44 of The *Saskatchewan Human Rights Code*. He is not required to pursue his defence in

⁷⁸ *Rowley v Can-West Agencies Ltd.*, 2018 SKQB 224 at para. 8

⁷⁹ *Lawless v Conseil scolaire Fransaskois*, 2014 SKQB 23 at para. 52

⁸⁰ *Forsberg v Saskatchewan*, 2017 SKQB 326 at paras. 12, 13 and 28

⁸¹ *R v Whatcott*, 2002 SKQB 399 at paras. 34-37

another forum by filing a complaint with The Saskatchewan Human Rights Commission, nor to ask that a board of inquiry be established by the Commission to decide whether he has a defence to the charge being tried by the Court.

[Emphasis added.]

104. At para. 36 of *Whatcott*, the court found that it had the “jurisdiction to consider and apply the provisions... of *The Saskatchewan Human Rights Code*” and struck the impugned provision in the Bylaw as inoperative in the next paragraph. This is the same situation. It is identical in that subordinate legislation is in irreconcilable conflict with the quasi-constitutional *Code*. The latter must necessarily prevail.

105. Notwithstanding para. 23 of *Forsberg* which notes that the *Code* lacks exclusive jurisdiction, the *Code*, itself, contains the following clearly worded provisions:⁸²

Complaints

- 29(1) A person may file a complaint with the commission, in the form prescribed by the commission, if:
- (a) the complaint falls within the jurisdiction of the commission; and
 - (b) the person provides sufficient evidence that reasonable grounds exist for believing that a person has, with respect to a person or class of persons, contravened:
 - (i) this Act; or
 - (ii) any other Act administered by the commission

...

Dismissal and deferral of complaint

30(1) In this section, “**proceeding**” includes the following:

- (a) a proceeding authorized by another Act;
 - (b) a civil proceeding;
 - (c) a grievance under a collective agreement.
- (2) At any time after a complaint is filed or initiated pursuant to section 29, the Chief Commissioner may dismiss the complaint if, in his or her opinion:
- (a) the best interests of the person or class of persons on whose behalf the complaint was made will not be served by continuing with the complaint;
 - (b) the complaint is without merit;
 - (c) the complaint raises no significant issue of discrimination;
 - (d) the substance of the complaint has been appropriately dealt with pursuant to another Act or proceeding;

[Emphasis added.]

⁸² *The Saskatchewan Human Rights Code, 2018*, SS 2018, c S-24.2 at ss. 29 and 30

106. The Applicants are also statute-barred from bringing an SHRC claim per section 29(5) as more than one year has elapsed since they were charged for protesting. This begs the question: if the Applicants are (and were) not permitted to bring a non-discrimination-related complaint per the *Code*, and the provincial court will not hear a challenge under the Bill of Rights of the *Code*, what access to justice or recourse do they, or anyone else, have?⁸³

107. Clearly, this is an absurd and repugnant interpretation of statute that fails to comport with the most basic principles of statutory interpretation, or *The Legislation Act*. The constitutionally-guaranteed right to access to justice of the Applicants has been eviscerated by the apparent foreclosure of the presiding judge to hear a fulsome challenge involving the *Code* and its Bill of Rights.

108. There is more. The oft-cited *Constitutional Questions Act* at ss. 13-15 **requires** that the Attorney General be served with notice of a challenge of the validity of any legislation. At no time was this ever brought up prior to September 3, 2024 when the AG intervened. The presiding judge erred. Judge Agnew erred in *Drebit* and *Repo*.⁸⁴ And Justice Scherman erred in the *Repo* summary conviction appeal.⁸⁵ This is inexcusable and is now a matter of repeated and flagrantly erroneous precedent that undermines legislative supremacy⁸⁶ and basic, statutory interpretation. This Court is asked to correct it forthwith.

109. The Court is asked to apply vertical *stare decisis*⁸⁷ involving non-discrimination-related matters, especially as they relate to provincial offences. To quote one of the *Spruce Mills* exceptions from the Supreme Court: “it is demonstrated that some binding authority in case

83 *Hryniak v. Mauldin*, 2014 SCC 7 (CanLII), [2014] 1 SCR 87 at paras. 1, 2, 23-29

84 *R. v Drebit*, 2023 SKPC 8 at para. 5; *R v Repo*, 2023 SKPC 46 at para. 7

85 *R v Repo*, 2024 SKKB 46 at para. 39

86 *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 (CanLII), [2018] 3 SCR 189 at paras. 54-56

87 *R v Comeau*, 2018 SCC 15 (CanLII), [2018] 1 SCR 342 at paras. 26, 27, 29 and 30; *R v Sullivan*, 2022 SCC 19 (CanLII) at paras. 6, 44, 73, 75, 77 and 79

law, or some relevant statute was not considered.”⁸⁸ It has been so demonstrated. Swapping vertical *stare decisis* for horizontal *stare decisis* and judicial comity in these circumstances is a error of law.

F. There is standing to hear this appeal

The Appellant has private interest standing

110. Per Cameron J.A. of the Saskatchewan Court of Appeal in *Superbar*:⁸⁹

[107] To the extent the first ground of appeal suggests the owner's standing to claim that the impugned regulation was unconstitutional, having regard for [sections 2\(b\)](#) of the *Charter* and 52(1) of the *Constitution Act 1982*, was either brought into question in the Court of Queen's Bench or determined in error by Mr. Justice Hrabinsky, I have grave doubts about whether it should be entertained. I do not believe such standing, in the sense of *locus standi*, was brought into question. Nor do I believe Mr. Justice Hrabinsky determined any such matter. And so I rather think this ground of appeal is misconceived. In any event, however, I can see no tenable basis upon which this Court could set aside the order of the Court of Queen's Bench on the ground the owner lacked standing to claim that the impugned regulation was unconstitutional having regard for section 2(b) of the Charter

[108] The term *locus standi*, as it applies to legal proceedings, is succinctly defined in *Black's Law Dictionary* (5th ed.) to mean:

A place of standing; standing in court. A right of appearance in a court of justice...on a given question.

[109] Roughly speaking, this place of standing, enabling a person to appear before and be heard by a court in relation to a given question, may be acquired in one of two ways: As of right, in reliance upon one's own private interests in the question ("private interest standing"); or with leave of the court, in reliance largely upon the public's interest in the question ("public interest standing"). And standing may exist, or be granted, in both civil and criminal proceedings, proceedings of one sort or another involving claims of various kinds, including a claim that a law is unconstitutional.

[110] Standing in relation to claims that a law is unconstitutional rests upon a more extensive foundation of principle than usual, one that is more liberal because of some of the ideas underlying this branch of the law. This is explained with clarity by Professor Hogg in Chapter 56 of his text *Constitutional Law of Canada* (Loose-leaf Edition). He notes at p. 56-3:

The question whether a person has 'standing' (or *locus standi*) to bring legal proceedings is a

⁸⁸ *Sullivan, Ibid.* at para. 73

⁸⁹ *604598 Saskatchewan Ltd. (c.o.b. Great Canadian Superbar) v Saskatchewan (Liquor and Gaming Authority)*, 1998 CanLII 12308 (SK CA) at paras. 107-110

question about whether the person has a sufficient stake in the outcome to invoke the judicial process. The question of standing focuses on the position of the party seeking to sue, not on the issues that the lawsuit is intended to resolve.

He goes on to note that standing in constitutional cases rests upon an idea unique to this field--the idea of "constitutionalism (or rule of law), which dictates that remedies ought to be available when governments fail to abide by the law of the constitution":

This idea often suggests that a private litigant who, for public rather than private interest reasons, wishes to raise a constitutional question ought to be allowed to do so. This is probably the reason for the remarkable relaxation in the Canadian law of public interest standing....

Then, in turning briefly to private interest standing, he adds:

Where a constitutional issue arises in the course of ordinary civil or criminal litigation, a question of standing is rarely controversial. The validity of a statute (or some other official instrument or act) must be determined in order to resolve the issue between the parties. It goes without saying that only the party who would be affected by the application of the statute has any right to raise the issue of its constitutionality. That person has standing to attack the validity of the statute.

[Emphasis added.]

111. While *Superbar* is a s. 2(b) *Charter* case, it parallels this appeal with respect to a question of standing and the fundamental freedoms enshrined at ss. 4-6 of the *Code*. The Appellant has private interest standing according to the *Superbar* criteria, *supra*.

112. The legislature has seen fit to establish a legal process to assert one's rights and to challenge impugned laws in the province by way of *The Constitutional Questions Act*.⁹⁰ The Appellant engaged this process by properly bringing an application two years ago, that has yet to be heard. It is time.⁹¹

The Appellant has public interest standing

113. The test for public interest standing is the Supreme Court of Canada's *Downtown Eastside* test. While the rights of the Appellant are not currently and

⁹⁰ *The Constitutional Questions Act*, 2012, SS 2012, c C-29.01 at ss. 13-15, especially 13.1

⁹¹ Appeal Book – Tab 9: Notice of Application – Quasi-Constitutional Issue

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.⁹²

114. 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 the Appellant brought in provincial court and upon appeal. This is being undertaken in writing to conserve judicial resources. It is also not permissible to be heard in civil court due to aforementioned mootness. The motivations of the Appellant are crystal clear in her affidavit brought in response to the Crown's application to dismiss her appeal.⁹³ A grant of public interest standing is sought on these grounds.

PART VI – RELIEF REQUESTED

115. That the judgment of the Court of King's Bench be overturned and this appeal allowed.

116. That the Appellant receive a grant of public interest standing.

117. That the Notice of Application – Quasi-Constitutional Issue⁹⁴ be finally heard and allowed.

118. 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.

⁹² *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

⁹³ Appeal Book – Tab 8 – Affidavit of Erinn Knoll (Court of King's Bench)

⁹⁴ Appeal Book – Tab 9

PART VII – AUTHORITIES CITED

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- Awashish v. R.*, 2016 QCCA 1164 at paras. 33, 34, 38 and 39
- Borowski v Canada (Attorney General)*, [1989] 1 S.C.R. 342
- British Columbia (Attorney General) v Council of Canadians with Disabilities*, 2022 SCC 27 at paras. 16, 28 and 90
- 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
- Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII), [2019] 4 SCR 653 at paras. 17, 53, 58, 59, 62, 64 and 69
- Canadian Broadcasting Corp. v Manitoba*, 2021 SCC 33
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- Dynasty Furniture Manufacturing Ltd. v Toronto-Dominion Bank*, 2015 ONCA 137 at paras. 5-7
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- Ethics of Dealing with Self-Represented Litigants by Kendra Jacobs and Gerrand Rath Johnson, Law Society of Saskatchewan, 2013
- Gionet v Pingue*, 2018 ONCA 1040 at paras. 30 and 31
- Grandel v Government of Saskatchewan*, 2024 SKCA 53
- Grandel v Saskatchewan*, 2022 SKKB 209
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- Hryniak v Mauldin*, 2014 SCC 7 (CanLII), [2014] 1 SCR 87 at paras. 1, 2, 23-29
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- Morwald-Benevides v Benevides*, 2019 ONCA 1023 at para. 34
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- Poffenroth Agri Ltd. v Brown*, 2020 SKCA 68 at paras. 18, 19, 20 and 22
- Public Health Order – Provincial Order – May 6, 2021* at ss. 1(d) and 4(c)
- R v Apodaca*, 2023 SKPC 37
- R. v. Awashish*, 2018 SCC 45, [2018] 3 S.C.R. 87 at paras. 11, 16 and 21
- R v Bernier*, 2023 SKPC 62
- R v Brunelle*, 2024 SCC 3 at paras. 27-29
- R v Comeau*, 2018 SCC 15 (CanLII), [2018] 1 SCR 342 at paras. 26, 27, 29 and 30
- R v Drebit*, 2023 SKPC 8 at para. 5
- R v Grant*, [2009] 2 SCR 353, 2009 SCC 3 at paras. 68 and 72-75
- R v J.J.*, 2022 SCC 28
- R v Knoll*, 2023 SKPC 29
- R v Macooh*, 1993 CanLII 107 (SCC), [1993] 2 SCR 802 at p. 819
- R v Quintero-Gelvez*, 2019 ABCA 17 (CanLII) at paras. 7-9
- R v Repo*, 2023 SKPC 46 at para. 7
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- R v Sears*, 2014 SKCA 72 at paras. 5-7
- R v Sullivan*, 2022 SCC 19 at paras. 6, 44, 73, 75, 77 and 79
- R v Switzer*, 2014 ABCA 129 (CanLII) at para. 5
- R v Underwood*, 1998 CanLII 839 (SCC), [1998] 1 SCR 77 at para. 6
- R v Whatcott*, 2002 SKQB 399 at paras. 34-37

R v Wilde, 2022 SKCA 74 at para. 22
R v Yates, 2023 SKCA 47 at paras. 38-40
Re B.C. Motor Vehicle Act, [1985] 2 SCR 486, 1985 CanLII 81 (SCC) at paras. 7, 17, 18, 21, 99 and especially 124
Reference re Pan-Canadian Securities Regulation, 2018 SCC 48 (CanLII), [2018] 3 SCR 189 at paras. 54-56
Rowley v Can-West Agencies Ltd., 2018 SKQB 224 at para. 8
Sanzone v Schechter, 2016 ONCA 566 at para. 21
 Statement of Principles on Self-represented Litigants and Accused Persons at page 4
The Constitutional Questions Act, 2012, SS 2012, c C-29.01 at ss. 13-15, especially 13.1
The Court of Appeal Act, 2000, SS 2000, c C-42.1 at ss. 7 and 12
The King's Bench Act, SS 2023, c 28 at ss. 3-1, 3-2 and 3-3
The Public Health Act, 1994, SS 1994, c P-37.1 at ss. 45(2) and 61
The Saskatchewan Human Rights Code, 2018, SS 2018, c S-24.2 at ss. 3-6, 29, 30 and 52
The Summary Offences Procedure Act, 1990, SS 1990-91, c S-63.1 at s. 4(4)(b)

ALL OF WHICH IS RESPECTFULLY SUBMITTED.



 The Appellant, Erinn L. Knoll

DATED at Regina, Saskatchewan, this 23rd day of May, 2025.

TO: The Local Registrar of the Judicial Centre of Regina
 Regina Court of King's Bench
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Appendix A

APPENDIX A – LEGISLATION CITED

The Constitutional Questions Act, 2012, SS 2012, c C-29.01

Notice to Attorneys General required for constitutional questions

13 No court shall hold any law to be invalid, inapplicable or inoperable if a constitutional question is raised nor shall it grant any remedy unless notice is served on the Attorney General of Canada and on the Attorney General for Saskatchewan in accordance with this Part.

2012, c.C-29.01, s.13.

Notice to Attorney General for Saskatchewan required for a challenge to a law pursuant to section 52 of *The Saskatchewan Human Rights Code, 2018*

13.1 No court shall hold any law to be inoperative pursuant to section 52 of The Saskatchewan Human Rights Code, 2018 unless notice is served on the Attorney General for Saskatchewan in accordance with this Part.

2023, c3, s.6.

Notice to Attorney General for Saskatchewan required for a challenge to regulations

14 If, in any court, the validity of a proclamation, regulation or order in council made or purportedly made in the execution of a power given by an Act is brought into question on grounds other than those mentioned in section 13, the court shall not hold the proclamation, regulation or order in council to be invalid unless notice is served on the Attorney General for Saskatchewan in accordance with this Part.

2012, c.C-29.01, s.14.

Notice requirements

15(1) Subject to subsection (2), a notice mentioned in section 13, 13.1 or 14 must be served at least 14 days before the day of argument.

(2) The court may, on an application without notice made for the purpose, order an abridgement of the time for service of a notice mentioned in section 13, 13.1 or 14.

(3) A notice mentioned in section 13, 13.1 or 14 must include: (a) the name of the action, cause, matter or proceeding in which the question arises or application is made;

(b) the law or provision in question, if any; (c) the basis for the challenge; (d) the right or freedom alleged to be infringed or denied, if any; (e) the day and place for the argument of the question; and (f) the facts that will be relied on in argument. (4) The Attorney General for Saskatchewan is entitled as of right to be heard in any action, cause, matter or proceeding to which section 13, 13.1 or 14 applies.

(5) The Attorney General of Canada is entitled as of right to be heard in any action, cause, matter or proceeding to which section 13 applies.

(6) If the Attorney General of Canada or the Attorney General for Saskatchewan appears in an

action, cause, matter or proceeding to which section 13, 13.1 or 14 applies, that Attorney General is a party for the purposes of appeal from an adjudication respecting the validity, applicability or operability of a law or respecting entitlement to a remedy

(7) If the Attorney General of Canada or the Attorney General for Saskatchewan is not given proper notice pursuant to section 13, 13.1 or 14 as the case may be, that Attorney General has the right to appeal an adjudication and is a party for the purpose of an appeal.

(8) If any administrative tribunal considers it appropriate in any matter, the tribunal may require that notice be given to the Attorney General for Saskatchewan in accordance with this section.

2012, c.C-29.01, s.15; 2018, c 43, s.5; 2023, c 3,

The King's Bench Act, SS 2023, c 28

Jurisdiction of the court

3-1(1) The court has original jurisdiction throughout Saskatchewan, with full power and authority to consider, hear, try and determine actions and matters.

(2) Subject to this Act and the rules of court, the court may be held before one or more judges.

(3) Judges have jurisdiction throughout Saskatchewan.

(4) Every judge has jurisdiction to hear and determine any action or matter in the court, including actions or matters in the Family Law Division.

(5) On the direction of the Lieutenant Governor in a particular case, the court may exercise the jurisdiction and powers of the Lieutenant Governor as a visitor.

2023, c 28, s.3-1.

Powers of judge in chambers sitting in court

3-2(1) If a judge sitting in chambers announces that the judge is sitting in court, the judge has all the powers, authorities, rights, privileges, immunities and incidents of the court.

(2) Any judgment, decision, determination, rule, order or decree made by a judge while sitting as described in subsection (1) with respect to any issue lawfully brought before the judge is subject to appeal to the Court of Appeal.

2023, c 28, s.3-2.

Declaratory judgments and orders

3-3 A judge may make binding declarations of right whether or not any consequential relief is or can be claimed, and no action or matter is open to objection on the ground that a mere declaratory judgment or order is sought.

2023, c 28, s.3-3.

Right of appeal

7(1) In this section and section 9, “enactment” means:

(a) an Act; (b) an Act of the Parliament of Canada; or (c) a regulation made pursuant to an Act or an Act of the Parliament of Canada;

but does not include this Act. (2) Subject to subsection (3) and section 8, an appeal lies to the court from a decision: (a) of the Court of King’s Bench or a judge of that court; and (b) of any other court or tribunal where a right of appeal to the court is conferred by an enactment.

(3) If an enactment provides that there is no appeal from a decision mentioned in subsection (2) or confers only a limited right of appeal, that enactment prevails.

2000, c.C-42.1, s.7; 2023, c 28, s.17-13.

[...]

Powers of the court

12(1) On an appeal, the court may:

(a) allow the appeal in whole or in part; (b) dismiss the appeal; (c) order a new trial; (d) make any decision that could have been made by the court or tribunal appealed from;

(e) impose reasonable terms and conditions in a decision; and (f) make any additional decision that it considers just. (2) Where the court sets aside damages assessed by a jury, the court may assess any damages that the jury could have assessed.

2000, c.C-42.1, s.12.

Orders

45(1) The minister may make an order described in subsection (2) if the minister 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 serious public health threat.

(2) An order pursuant to this section may:

- (a) direct the closing of a public place;
- (b) restrict travel to or from a specified area of Saskatchewan;
- (c) prohibit public gatherings in a specified area of Saskatchewan;
- (d) in the case of a serious public health threat that is a communicable disease, require any person who is not known to be protected against the communicable disease:
 - (i) to be immunized or given prophylaxis where the disease is one for which immunization or prophylaxis is available; or

- (ii) to be excluded from school until the danger of infection is past where the person is a pupil;
- (e) establish temporary hospitals;
- (f) require a local authority, a medical health officer or a public health officer to investigate matters relating to the serious public health threat and report to the minister the results of the investigation;
- (g) require any person who, in the opinion of the minister or medical health officer, is likely to have information that is necessary to decrease or eliminate the serious public health threat to disclose that information to the minister or a medical health officer;
- (h) authorize public health officers, peace officers or prescribed persons to confiscate substances or other materials found in any place, premises or vehicle, if those substances or materials are suspected by the public health officer, peace officer or prescribed person of causing or contributing to a serious public health threat or packages, containers or devices containing or suspected of containing any of those substances or materials;
- (i) in the case of a serious public health threat that is a communicable disease, require any person to be isolated from other persons until a medical health officer is satisfied that isolation is no longer necessary to decrease or eliminate the transmission of a communicable disease.

[...]

Offence and penalty

61 Every person who contravenes any provision of this Act or a regulation, bylaw or order made pursuant to this Act is guilty of an offence and liable on summary conviction:

- (a) in the case of an individual:
 - (i) for a first offence:
 - (A) to a fine of not more than \$75,000; and
 - (B) to a further fine of not more than \$100 for each day during which the offence continues; and
 - (ii) for a second or subsequent offence:
 - (A) to a fine of not more than \$100,000; and
 - (B) to a further fine of not more than \$200 for each day during which the offence continues; and
- (b) in the case of a corporation:
 - (i) for a first offence:
 - (A) to a fine of not more than \$100,000; and
 - (B) to a further fine of not more than \$1,000 for each day during which the offence continues; and
 - (ii) for a second or subsequent offence:
 - (A) to a fine of not more than \$250,000; and
 - (B) to a further fine of not more than \$5,000 for each day during which the offence continues.

1994, c.P-37.1, s.61.

The Saskatchewan Human Rights Code, 2018, SS 2018, c S-24.2

Objects

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.

2018, c S-24.2, s.3.

PART 2

Bill of Rights

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.

2018, c S-24.2, s.4.

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.

2018, c S-24.2, s.5.

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.

2018, c S-24.2, s.6.

[...]

Complaints

29(1) A person may file a complaint with the commission, in the form prescribed by the commission, if:

- (a) the complaint falls within the jurisdiction of the commission; and
- (b) the person provides sufficient evidence that reasonable grounds exist for believing that a person has, with respect to a person or class of persons, contravened:
 - (i) this Act; or
 - (ii) any other Act administered by the commission.

(2) If a complaint is made by a person other than the person who it is alleged was dealt with contrary to this Act or any other Act administered by the commission, the commission may refuse to act on the complaint unless the person alleged to be offended against consents.

(3) The commission may initiate a complaint if the commission has reasonable grounds for believing that a person has, with respect to a person or class of persons, contravened:

- (a) this Act; or
- (b) any other Act administered by the commission.

(4) One or more grounds of discrimination may be alleged in any complaint.

(5) Subject to subsection (6) but notwithstanding any other provision of this Act, the commission shall refuse to accept a complaint, and shall not initiate a complaint, if the complaint is made more than one year after the person making the complaint became aware, or should have been aware, of the alleged act of discrimination.

(6) The commission may accept or initiate a complaint after the one-year period mentioned in subsection (5) if, in the Chief Commissioner's opinion, it is appropriate in the circumstances to do so.

2018, c S-24.2, s.29.

Dismissal and deferral of complaint

30(1) In this section, "proceeding" includes the following:

- (a) a proceeding authorized by another Act;
- (b) a civil proceeding;
- (c) a grievance under a collective agreement.

(2) At any time after a complaint is filed or initiated pursuant to section 29, the Chief Commissioner may dismiss the complaint if, in his or her opinion:

- (a) the best interests of the person or class of persons on whose behalf the complaint was made will not be served by continuing with the complaint;
- (b) the complaint is without merit;
- (c) the complaint raises no significant issue of discrimination;
- (d) the substance of the complaint has been appropriately dealt with pursuant to another Act or proceeding;

(e) the complaint:

- (i) is made in bad faith or for improper motives; or
- (ii) is frivolous or vexatious;

(f) there is no reasonable likelihood that an investigation or further investigation will reveal evidence of a contravention of this Act or any other Act administered by the commission; or

(g) having regard to all the circumstances of the complaint, a hearing of the complaint is not warranted.

(3) At any time after a complaint is filed or initiated, the Chief Commissioner may defer further action if, in the Chief Commissioner's opinion, another proceeding is more appropriate having regard to:

- (a) the nature of the allegations; and
- (b) the remedies available in the other proceeding. 2018, c S-24.2, s.30.

[...]

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.

2018, c S-24.2, s.52.

The Summary Offences Procedure Act, 1990, SS 1990-91, c S-63.1

Procedure generally

4(1)

Subject to this Act, any other Act or any regulation, proceedings to enforce an Act, regulation or bylaw by fine, penalty or imprisonment may be brought summarily before a justice under the summary conviction provisions of the *Criminal Code*

...

(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.

Criminal Code, RSC 1985, c C-46

Appeal by defendant, informant or Attorney General

813 Except where otherwise provided by law,

- (a) the defendant in proceedings under this Part may appeal to the appeal court
 - (i) from a conviction or order made against him,
 - (ii) against a sentence passed on him, or
 - (iii) against a verdict of unfit to stand trial or not criminally responsible on account of mental disorder; and
- (b) the informant, the Attorney General or his agent in proceedings under this Part may appeal to the appeal court
 - (i) from an order that stays proceedings on an information or dismisses an information,
 - (ii) against a sentence passed on a defendant, or
 - (iii) against a verdict of not criminally responsible on account of mental disorder or unfit to stand trial,

and the Attorney General of Canada or his agent has the same rights of appeal in proceedings instituted at the instance of the Government of Canada and conducted by or on behalf of that Government as the Attorney General of a province or his agent has under this paragraph.

- R.S., 1985, c. C-46, s. 813
- R.S., 1985, c. 27 (1st Supp.), s. 180

- 1991, c. 43, s. 9

Public Health Order – Provincial Order – May 6, 2021 at s. 1(d) and 4(c)

1. I hereby ORDER and DIRECT:

...

(d) Subject to 4(c), public and private outdoor gatherings are permitted up to 10 persons. Persons in attendance must ensure that physical distancing of at least two metres between households is maintained. This subsection does not apply to events and activities to the extent that the guidelines applicable in the Re-Open Saskatchewan Plan, as amended from time to time, on the Government of Saskatchewan website (saskatchewan.ca) explicitly permits or requires an alternative gathering size. In such a case, the gathering size explicitly permitted or required shall not be exceeded, and specified physical distancing shall be maintained.

[...]

4. I hereby ORDER and DIRECT for the Regina Region:

...

(c) In the Regina Region, public and private outdoor gatherings are permitted up to 10 persons. Persons in attendance must ensure that physical distancing of at least 2 metres between households is maintained. This subsection does not apply to events and activities to the extent that the guidelines applicable in the Re-Open Saskatchewan Plan, as amended from time to time, on the Government of Saskatchewan website (Saskatchewan.ca) explicitly permits or requires an alternative gathering size. In such a case, the gathering size explicitly permitted or required shall not be exceeded and specified physical distancing shall be maintained.

Appendix B

NOTICE OF APPEAL

K.B.G. No.:

IN THE COURT OF KING'S BENCH

JUDICIAL CENTRE OF REGINA

BETWEEN:

ERINN L. KNOLL

1346 McVeety Drive

Regina, SK S4N 7C8

missunnydays1976@gmail.com

Appellant

-and-

HIS MAJESTY THE KING

Respondent

NOTICE OF APPEAL

TAKE NOTICE that ERINN L. KNOLL intends to appeal and does hereby appeal from the decision rendered by His Honour Judge Murray Hinds of the Provincial Court of Saskatchewan at Regina, Saskatchewan on April 20, 2023.

I. INFORMATION ABOUT THIS APPEAL:

1. The appealed decision dismissed a *Charter* application made under section 11(d) on March 17, 2023 asserting the right to make full answer and defence.
2. This application is dispositive of an earlier application that was made on February 27, 2023 concerning the applicability of the *Bill of Rights* contained within the *The Saskatchewan Human Rights Code, 2018*.
3. Said earlier application, in turn, is dispositive of the statutory rights of the Appellant and the outcome of her trial. A decision awaits on May 25, 2023 regarding said trial held during the week of March 20, 2023.
4. The second application was dismissed and the presiding judge refused to revisit or otherwise reconsider the first application.
5. The Appellant 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. This was due to her participation in a political protest outdoors.
6. The applicable Public Health Order made on May 6, 2021 under section 61 of the *Public Health Act, 1994* established the offence in question. Said Public Health Order was challenged pursuant to the *Bill of Rights* contained within the *The Saskatchewan Human Rights Code, 2018*.

II. THE GROUNDS FOR THIS APPEAL ARE:

7. That the presiding judge refused to revisit or reconsider the first application, contrary to the evidence and the law.
8. That the presiding judge dismissed the second application, contrary to the evidence and the law.
9. That the conduct of the hearing of January 18, 2023 that gave rise to both applications, constituted an abuse of process.
10. That the last minute notice provided by the Attorney General of Saskatchewan on January 16, 2023 constituted an abuse of process.
11. That the Appellant's right to make full answer and defence has been irreparably compromised and prejudiced by these events and those that followed.

12. That the administration of justice has been brought into disrepute.
13. That justice has not been done, nor seen to be done.
14. That the government conduct in question was clearly wrong, in bad faith and an abuse of power.
15. Such further and other grounds as the Appellant may advise, and this Honourable Court may permit.

III. ORDER REQUESTED:

16. That the decision to dismiss the second application be overturned and the application allowed.
17. That the decision to refuse to revisit or otherwise reconsider the first application be overturned and the application allowed.

IT IS REQUESTED THAT THIS APPEAL BE HEARD IN WRITING BY MEMORANDUM OF ARGUMENT.

The Appellant's address for service is:

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DATED at the City of Regina, in the province of Saskatchewan, this 19th day of May, 2023.



The Appellant, Erinn L. Knoll

TO:

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Appendix C

IN THE PROVINCIAL COURT OF SASKATCHEWAN
REGINA, SASKATCHEWAN

BETWEEN

HIS MAJESTY THE KING

and

ERINN L. KNOLL, CHRISTINA O. HAGEL, GEORGE SEITZ,
TAMARA LEE LAVOIE and TANYA APODACA

Accused

DECISION
Volume 1
(Pages T1 - T66)

January 18, 2023
Regina, Saskatchewan

Veritext Legal Solutions
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1 Proceedings taken in the Provincial Court, Regina, Saskatchewan

2

3

4 January 18, 2023

Morning Session

5

6 The Honourable Judge

The Provincial Court of Saskatchewan

7 M. J. Hinds

8

9 N. Wernikowski

For the Attorney General of
Saskatchewan

10

11 D. Brûlé

For the Crown

12 B. Carter

For the Crown

13 (No counsel)

For the Accused Knoll

14 (No counsel)

For the Accused Hagel

15 (No counsel)

For the Accused Seitz

16 (No Appearance)

For the Accused Lavoie and Apodaca
Court Clerk

17 K. Brown

18

19

20 **Discussion**

21

22 THE COURT:

Good morning.

23

24 MR. CARTER:

Good morning, Your Honour.

25

26 MR. WERNIKOWSKI:

Good morning, Your Honour.

27

28 MR. BRÛLÉ:

Good morning, Your Honour.

29

30 THE COURT:

All right. Let's get underway. Today was
set aside for certain self-represented accused in *Public Health Act* tickets who are
applicants on *Canadian Bill of Rights* argument, *Saskatchewan Bill of Rights* and or
via *The Saskatchewan Human Rights Code* arguments.

34

35 So I just want to take a little roll call about who amongst those people are here.

36

37 As I understood it, Tamara Lavoie was -- had put this matter in issue on several of
38 her tickets. Is Tamara Lavoie present? Okay.

39

40 MR. BRÛLÉ:

Your Honour, the Crown would ask that

41 she be paged just out --

1
2 THE COURT: Yeah.
3
4 MR. BRÛLÉ: -- of an abundance of caution.
5
6 THE COURT: Yes, absolutely.
7
8 MR. BRÛLÉ: As I am counsel for all of her trial matters
9 that are on the bench.
10
11 THE COURT: Now, I note that I had asked the case
12 manager of the court, Ms. Miller, who the lawyers may be familiar with, to send --
13 she would have -- and is required to keep herself apprised of court matters
14 concerning her own matters, but I did have my -- Ms. -- case manager send her an
15 email at an address she provided in her notice to the Court on these arguments on
16 December 5th, advising her of today's date, and also yesterday advising her of this
17 date.
18
19 Now, there was no reply, but I just wanted to put that on the record.
20
21 So it looks like Ms. Lavoie is not present for this matter. Is George Seitz present? Is
22 it Seitz or Seitz?
23
24 THE ACCUSED SEITZ: Seitz.
25
26 THE COURT: Seitz. Okay. Thank you, Mr. Seitz. Erinn
27 Knoll? Ms. Knoll, thank you. And then lastly Christina Hagel? Okay. Thank you.
28
29 Now, the other thing I wanted to indicate on the record before we begin is Tanya
30 Apodaca has two matters before the Court, Information ending -- long-form
31 Information ending in 2860 with an accompanying ticket ending 2450, and
32 long-form Information ending 2882 with an accompanying ticket ending 2652.
33 Now, yesterday Ms. Anderson appeared on the record for Ms. Apodaca. She advised
34 the Court in writing later that -- yesterday after court that Ms. Apodaca does not
35 wish to make argument regarding the *Canadian Bill of Rights, Saskatchewan Bill of*
36 *Rights, Sask. Human Rights Code*, so accordingly her matters are adjourned to
37 tomorrow, January 19th, 2023, 9:30, number 10, for what I've indicated in short
38 form is the *vires* arguments.
39
40 So I want to thank the applicants for coming today. Now, I just wanted to go over a
41 couple of things. So, Mr. Seitz, Ms. Knoll, Ms. Hagel have each been charged with

1 a number of offences under s. 61 of *The Public Health Act, 1994*. I want my clerk
2 to please provide a document that I have prepared which I understand sets out the
3 offences against each of them. So if you could do that now and give a copy.
4

5 THE COURT CLERK: Is this yours?
6

7 THE COURT: Yes, that's mine. And then give a copy to
8 the Crown as well.
9

10 THE COURT CLERK: Yes, Your Honour.
11

12 THE COURT: And anybody else that wants one. And I'd
13 just like the -- in particular each of the accused to have a look at that to make sure
14 -- and the Crown to make sure I have not -- I'm -- if I've missed something or
15 misstated something, please let me know. So you can look for your name, and of
16 course a number of these long-form Informations there are co-accused, but of course
17 they're not before the Court today on this argument. So just have a look and make
18 sure that it accords with your understanding of what you're charged with, because
19 of course, you know, there's in some cases, not all of you of course, there's some
20 multiple tickets. But I think for the majority of them -- I think, Ms. Hagel, you may
21 have three, Mr. Seitz I think two, and I think Ms. Knoll two, if I'm not mistaken.
22

23 So I'll start with you, Mr. Seitz. I mean, I've indicated in my review on page 2 it
24 looks like you're -- on Information ending 2860, a long-form Information, whether
25 you're charged with others, you -- your long-form Information relates to count 2 on
26 this matter where it's said that you -- on April 24th, 2021, you failed to comply with
27 a public health order by attending a gathering exceeding ten people or ten persons,
28 contrary to s. 61 of *The Public Health Act, 60* (sic) -- 1994. And then secondly, in
29 long-form Information ending in 2864, there is the -- you've been charged on May
30 8th, 20 -- 2021, failing to comply with a public health order by attending a gathering
31 exceeding ten persons, contrary to s. 61 -- or s. 61 of *The Public Health Act, '94*.
32 Those are your matters, correct?
33

34 THE ACCUSED SEITZ: I believe so, yes.
35

36 THE COURT: Okay. I don't know of any other. Does the
37 Crown know of any? I'm just asking with Mr. Seitz I just want a list of his two
38 offences that I'm aware that he's before the Court on, and those are the Information
39 2860 and 2864 on the second page.
40

41 MR. CARTER: Two eight six zero, Seitz.

1
2 THE COURT: I'm doing this, by the way, just so my
3 clerk can properly endorse what's happening here, otherwise there are a number of
4 people with a number of charges, so we're just --
5
6 MR. CARTER: Yes.
7
8 THE COURT: -- on this argument.
9
10 MR. CARTER: Your Honour, with respect to Mr. Seitz,
11 there are just the two matters in court today that you've mentioned.
12
13 THE COURT: Okay.
14
15 MR. CARTER: They're -- they're -- with respect to
16 Information 2864, there's also another Information that refers to the same incident.
17
18 THE COURT: Oh, yes, right.
19
20 MR. CARTER: That's 3623, but they both relate to the
21 same incident.
22
23 THE COURT: Right.
24
25 MR. CARTER: And they'll --
26
27 THE COURT: In that new Information ending 3623, I
28 think Mr. Wintringham was added, so that, oh, there's a -- yes. Great. Okay.
29
30 So let's then go on to Ms. Hagel. So I have you, according to my records -- I just
31 wanted to confirm. You're charged on long-form Information 2834, and that's an
32 offence from March 27, 2021, fail to comply with a public health order by attending
33 a gathering exceeding ten persons, contrary to s. 61 of *The Public Health Act, '94*,
34 correct?
35
36 THE ACCUSED HAGEL: Yeah.
37
38 THE COURT: Okay. Then as well, I have you charged in
39 page 1 -- that's just at the bottom there -- Information ending 2835, an offence from
40 April 3rd, 2021, a same -- same offence -- well, same type of offence. And that's
41 correct?

1
2 THE ACCUSED HAGEL: Yes.
3
4 THE COURT: And then I think the last one I have for
5 you is on the second page at the bottom, Information ending 2882, and that's a May
6 15th public health -- or a gathering offence as well?
7
8 THE ACCUSED HAGEL: Correct.
9
10 THE COURT: Okay. Good. Any others that you're
11 aware?
12
13 THE ACCUSED HAGEL: Not that I know.
14
15 THE COURT: No. Neither am I. And then finally for Ms.
16 Knoll I have you before the Court on Information ending 2860, an -- a gathering
17 offence from April 24th, 2021?
18
19 THE ACCUSED KNOLL: M-hm.
20
21 THE COURT: And then I also have you on Information
22 2882, a gathering offence from May 15th, 2021. Those are the matters that you're
23 here before -- for?
24
25 THE ACCUSED KNOLL: Just the 2860 is a failing to wear a face
26 covering.
27
28 THE COURT: Yeah. Oh, I'm sorry. You're right.
29
30 THE ACCUSED KNOLL: But otherwise, correct.
31
32 THE COURT: -- I -- I keep on doing that too. You're
33 right. One -- the 2860 is indeed a face covering charge.
34
35 THE ACCUSED KNOLL: Right.
36
37 THE COURT: And then the other is a gathering charge.
38 Okay. Right. Okay. So that's what we're dealing with just so this will make it easier
39 for my clerk as well as me.
40
41 So the other thing I wanted to do before I start to hear your arguments -- and we will

1 take as much time as necessary to do this today from each of you. You don't have
2 to -- you don't have lawyers making arguments for you, all of you, so you each may
3 have a different perspective. And they may be on these matters that I've mentioned
4 or any other matters you wish to raise.

5
6 I wanted to ask each of you whether you wish to be -- make argument or be involved
7 with the application happening tomorrow, and this would have been brought by your
8 former legal counsel, either Ms. Anderson or Ms. Coupal, alleging that the
9 legislation, in particular subsection 25.2 of *The Disease Control Regulation*, which
10 is now repealed, on which the public health orders were authorized is *ultra vires* not
11 authorized or not valid of *The Public Health Act*. And so that's happening tomorrow,
12 and I just wanted to know so that when we deal with tomorrow's proceeding I either
13 will expect you to be there to advance your own arguments on this, or you may wish
14 to -- we -- due to your notice, it's not altogether clear whether you're abandoning
15 that argument. And I just need to know, and that would be helpful. So, Mr. Seitz,
16 will you be taking part in this argument tomorrow?

17
18 THE ACCUSED SEITZ: No.

19
20 THE COURT: Okay. And you don't wish to be bound by
21 that decision or be part of it in any way? Okay. You are shaking your head. Okay,
22 Ms. Knoll?

23
24 THE ACCUSED KNOLL: I'm not sure how to answer that, to be
25 honest.

26
27 THE COURT: Well --

28
29 THE ACCUSED KNOLL: I --

30
31 THE COURT: Okay.

32
33 THE ACCUSED KNOLL: I feel unclear as to what --

34
35 THE COURT: Tomorrow is?

36
37 THE ACCUSED KNOLL: Yeah. I don't know. I -- I'm -- obviously
38 I'm not represented by anybody there, so I don't know that I would be included in
39 all that.

40
41 THE COURT: Well, here's the -- the rub or the problem

1 is that you -- it's clear that none of you are represented by legal counsel, okay? They
2 withdrew on you, and that was prompted in part by your change in representation
3 and abandonment of the section -- the *Charter* arguments. Okay, that's clear. But
4 they had previously -- your lawyers had previously listed you as being part of that
5 argument, and I was not clear whether you were abandoning that challenge to the
6 underlying validity of the public health orders which are the basis of your charges.
7 So that's why I'm asking. I mean, you're welcome to be part of things tomorrow if
8 you wish or not. It's entirely up to you. Well, I'll turn to you, Ms. Knoll. Where are
9 you at on that?

10

11 THE ACCUSED HAGEL: Ms. Hagel.

12

13 THE COURT: I'm sorry. Ms. Hagel.

14

15 THE ACCUSED HAGEL: No. I will not be here
16 (INDISCERNIBLE).

17

18 THE COURT: Okay. And, Ms. Knoll, I'm going to need
19 an answer.

20

21 THE ACCUSED KNOLL: I won't be here.

22

23 THE COURT: Well, that's fine. You need not be here,
24 but I just want to know -- I mean, do you want to be bound by that decision whatever
25 the outcome? You won't be here, but it -- or do you want to have nothing to do with
26 it?

27

28 THE ACCUSED KNOLL: By being bound by it, do you mean that if
29 I came, I would need to present my own arguments on that --

30

31 THE COURT: No.

32

33 THE ACCUSED KNOLL: -- matter?

34

35 THE COURT: What I mean is is your name still part of
36 the application or not for tomorrow?

37

38 THE ACCUSED KNOLL: I'm not sure if it is, but ...

39

40 THE COURT: I'll consider it still part of the application.

41 You need not be here tomorrow, and we'll --

1

2 THE ACCUSED KNOLL: Okay.

3

4 THE COURT: -- go on that basis, all right? And I'm not
5 trying to be difficult. It's just I -- I need to know for clarity. So I'll say that you'll
6 be bound by that decision, but you won't be -- won't be here in court on January
7 19th and -- and won't be making representations or arguments, okay? Okay, thank
8 you. Now, Mr. Seitz, would you like to go first with your argument, sir?

9

10 **Submissions by the Accused Seitz**

11

12 THE ACCUSED SEITZ: I -- I'm not sure I understand why I'm
13 here today even because I am -- prepare -- I've -- I've left a package here for my --

14

15 THE COURT: Not enough. You've got to -- you've got
16 to tell me what it's about. Even -- even -- and I -- again, I don't expect, by the way,
17 an argument like a lawyer would make, okay? I just need to be clear on your
18 position, okay? So let's go -- come forward, if you will. And so, Mr. Seitz, I recall,
19 like, you have the two matters before the Court, and in each you indicated that you
20 with -- you are proceeding as a self-represented man who -- who -- whose rights
21 were violated, of which those rights are protected under the *Canadian Bill of Rights*,
22 *The Saskatchewan Bill of Rights*, and *The Saskatchewan Human Rights*. I don't
23 know if you meant to add "Code" there or not, but --

24

25 THE ACCUSED SEITZ: I never used -- I never stated the *Bill of*
26 *Rights* or *The Saskatchewan Bill of Rights* or the *Human Rights*.

27

28 THE COURT: Okay. Well, why don't I show you your
29 notice.

30

31 THE ACCUSED SEITZ: What is that from?

32

33 THE COURT: Oh, in fact -- oh, I see. There is -- you --
34 you make a point. I'm looking at the initial *Charter* challenge. You -- it's called
35 *Charter* challenge withdrawal.

36

37 THE ACCUSED SEITZ: Right. Yeah, okay.

38

39 THE COURT: Yeah. That's what I was reading from.

40

41 THE ACCUSED SEITZ: Right. Okay.

1
2 THE COURT: But what you have filed with the court --
3 and I don't know if the Crown has this -- is it was received December 30th, and it
4 was regarding your I believe February -- let's just see.
5
6 THE ACCUSED SEITZ: Yeah. It was delivered to --
7
8 THE COURT: Oh, the May 6 charge.
9
10 THE ACCUSED SEITZ: It was delivered to the Crown as well.
11
12 THE COURT: Yeah. Okay.
13
14 THE ACCUSED SEITZ: They have it.
15
16 THE COURT: Right. Well, I have this Form 1
17 application that you delivered with the court, and then you indicated in this case that
18 you want this -- I gather these charges dismissed on the grounds that there was a
19 violation of your rights under the *Canadian Bill of Rights*. You've narrowed it,
20 correct?
21
22 THE ACCUSED SEITZ: Correct.
23
24 THE COURT: Okay. And then this would apply to your
25 two *Public Health Act* charges before the Court or offences before the Court?
26
27 THE ACCUSED SEITZ: Yes.
28
29 THE COURT: Okay. And then just reading through it,
30 you say that you cite under Part I of the *Canadian Bill of Rights* 1(a): (as read)
31
32 the right of an individual to life, liberty, security of the
33 person and enjoyment of property, and the right not to be
34 deprived thereof except by due process of law.
35
36 We'll come back to that. Then you cite s. 1(e) of Part I of the *Canadian Bill of*
37 *Rights*, "freedom of assembly and association." And then you cite I believe Part II
38 -- from Part II of the *Canadian Bill of Rights*. And I just want to get my copy of the
39 *Bill of Rights*. Yeah. Yes, you cite s. 5(2), Laws of Canada defined. And then you
40 cite it looks like s. 2, s. 2(d), s. 2(e), and s. 'F'. I'm not sure if those are contained
41 in the *Bill of Rights*, but that's what you've cited. Oh, those are cited under Part I, I

1 believe. Section 2 -- yes, okay. So that's your -- those are the -- that's the basis of
2 your application today?

3

4 THE ACCUSED SEITZ: Yes.

5

6 THE COURT: Okay. And so let's just go back to your --
7 you say your right to your --

8

9 the right of the individual to life, liberty, security of the
10 person and enjoyment of property --

11

12 -- has been violated by these public health orders. Is it -- which one of those has
13 been violated from your perspective? I just need to know.

14

15 THE ACCUSED SEITZ: Well, property. I mean --

16

17 THE COURT: Property?

18

19 THE ACCUSED SEITZ: Well, not my property.

20

21 THE COURT: Okay.

22

23 THE ACCUSED SEITZ: Public property, right?

24

25 THE COURT: Okay. Who -- in what way? I'm just
26 trying to understand your argument.

27

28 THE ACCUSED SEITZ: Well, Wascana Park, for example, is
29 public property.

30

31 THE COURT: Yes.

32

33 THE ACCUSED SEITZ: Is that correct?

34

35 THE COURT: Well, I -- I believe, yes, I think it would
36 be public in the sense that it's -- I don't know the ownership. I expect it's the
37 property of the Government of Saskatchewan or under --

38

39 THE ACCUSED SEITZ: Okay. Victoria Park, who owns that?

40

41 THE COURT: I'm not here to answer your questions.

1
2 THE ACCUSED SEITZ: Well, okay. So we'll use Victoria Park as
3 an example. It's a public park.
4
5 THE COURT: Yes.
6
7 THE ACCUSED SEITZ: Owned by the citizens of Regina --
8
9 THE COURT: Yes.
10
11 THE ACCUSED SEITZ: -- because we pay taxes on it, for an
12 example.
13
14 THE COURT: Right.
15
16 THE ACCUSED SEITZ: I'm not sure if the City of Regina owns it.
17 It's -- it's owned by the citizens because of our tax money, and we are citizens of
18 Regina. So by attending a public area doesn't necessarily mean that I'm part of a
19 gathering that's happening in that area. I can be walking through that area.
20
21 THE COURT: Well, maybe we should take it away from
22 the Victoria Park which is your example.
23
24 THE ACCUSED SEITZ: Well, that's the --
25
26 THE COURT: But let's maybe take it to -- if I'm not
27 mistaken, don't -- I -- I haven't heard your trials, but I'm -- if it's like other trials
28 that I've dealt with, isn't this concern a -- a gathering of people at or near the
29 legislature?
30
31 THE ACCUSED SEITZ: Not my tickets.
32
33 THE COURT: Not your tickets, hey?
34
35 THE ACCUSED SEITZ: No.
36
37 THE COURT: Oh, okay. Okay.
38
39 THE ACCUSED SEITZ: No. They're both for Victoria Park.
40
41 THE COURT: Oh, they are? Okay.

1
2 THE ACCUSED SEITZ: Yeah.
3
4 THE COURT: Okay. There you go. Something I did not
5 know.
6
7 THE ACCUSED SEITZ: That's why I guess I was using it as a
8 reference there.
9
10 THE COURT: Oh, no, that's helpful because that's -- I
11 -- that clarifies it.
12
13 THE ACCUSED SEITZ: Yeah.
14
15 THE COURT: So -- so you're saying your enjoyment
16 of ...?
17
18 THE ACCUSED SEITZ: Public property.
19
20 THE COURT: Anything else under that, like, just so I
21 understand?
22
23 THE ACCUSED SEITZ: Well, freedom, I guess, to -- and to be --
24 use said public properties, the enjoyment of those public properties. I mean, I -- I've
25 gone through all the video footage provided, and I see no -- I see no evidence
26 whatsoever that would -- that would make me guilty of anything other than being in
27 the park on those said days.
28
29 THE COURT: Okay. What about liberty interest? Are
30 you claiming your liberty interest was --
31
32 THE ACCUSED SEITZ: I -- I've basically outlined it all in there,
33 and so it all --
34
35 THE COURT: Well, I'm trying to break it down so I
36 understand it. I mean, was your -- I mean, I'd be hard-pressed to understand how
37 these charges of public health orders affect your life, but, I mean, it's your argument.
38 I'm just trying to understand it. But does it affect your liberty interest in some way?
39
40 THE ACCUSED SEITZ: Well, it's affected every aspect of
41 everybody's life really. I mean being isolated, being mandated to stay in their houses

1 -- houses, being mandated to wear masks, being mandated to show vaccination
2 status, all those are -- or are an infringement on liberty.

3

4 THE COURT: Okay. But let's focus, if we may, today on
5 the charges that you face because you -- that's your challenge is on the basis of a --
6 and I -- again, I don't want to misstate it, but in both cases, then, they -- the -- the
7 offences before the Court deal -- Court deal with May 8th, '21, and May 15th, '21.
8 These are alleged violations of the outdoor gathering greater or exceeding ten
9 persons, and that you say happened in Victoria Park in your case?

10

11 THE ACCUSED SEITZ: Yes.

12

13 THE COURT: Okay. So you're saying it was a --
14 violated of your liberty in -- interest as well, okay? Because we're not going to get
15 into the broader. Like, you're not challenging -- I -- I can't deal with broader
16 challenges to all the -- the full extent of the public health orders in -- in question
17 here, if you're following. It's just relating to your gathering or your being in the
18 park on May 8th, May 10th, '21 -- or 15th, '21. Do you follow me?

19

20 THE ACCUSED SEITZ: Yeah.

21

22 THE COURT: Okay. You also cited "freedom of
23 assembly and association" under s. 1(e) of the *Canadian Bill of Rights*, right? And
24 I assume that that -- I mean, is there anything you'd like to add to that?

25

26 THE ACCUSED SEITZ: Well, if I am allegedly guilty of being in
27 the park that day --

28

29 THE COURT: No. No. I mean, that will be the case
30 against you at a later date when the trials comes.

31

32 THE ACCUSED SEITZ: Right.

33

34 THE COURT: I'm just trying to understand. You're
35 saying that your "freedom of assembly and association" was violated of the s. 1(a)
36 -- (e) of the *Bill of Rights* by being charged on these dates. Is that your argument?

37

38 THE ACCUSED SEITZ: Yes.

39

40 THE COURT: Okay. That's fine. And I'm -- I'm not
41 trying to be difficult. I'm just trying to understand.

1
2 THE ACCUSED SEITZ: Yeah. I am too, you know, because it's all
3 new to us, right?
4
5 THE COURT: Right. That's fine. And then I just want to
6 look here. Now, then you cite under s. 2 of the *Canadian Bill of Rights*, you cite it,
7 s. 2. I think it's sort of how to interpret the law of the *Canadian Bill of Rights*. Are
8 you alleging -- well, is there anything you'd like to add to what you've written in
9 on your notice?
10
11 THE ACCUSED SEITZ: What does s. 2 read there?
12
13 THE COURT: I'll -- I'll hand your notice to you.
14
15 THE ACCUSED SEITZ: I think basically this what I'm referring to
16 here is that the *Bill of Rights* is still in standing, and the *Charter* does not -- which
17 has not been endorsed or whatever, does not supersede the *Bill of Rights*. There is
18 no official stamp on the *Charter of Rights*. It's never been enacted in -- into
19 Parliament, the *Charter* I'm talking about.
20
21 THE COURT: And you said -- you say the *Charter*
22 hasn't been enacted, no stamp on it, and you say it doesn't did you say supersede
23 the -- the *Bill of Rights*, or how did you -- there was a --
24
25 THE ACCUSED SEITZ: Yeah.
26
27 THE COURT: Okay.
28
29 THE ACCUSED SEITZ: Yeah. It doesn't. The *Bill of Rights*
30 supersedes the *Charter*.
31
32 THE COURT: Okay.
33
34 THE ACCUSED SEITZ: It hasn't been given Royal assent.
35
36 THE COURT: Now, anything else to add on that, that
37 point?
38
39 THE ACCUSED SEITZ: I don't think so, no.
40
41 THE COURT: Okay. Now, if I can have -- oh, thank you

1 for the notice back. Now -- and then I -- I did note of course specifically you swore
2 an affidavit, and you said that your rights in -- I gather in relation to these charges
3 -- were violated under the *Canadian Bill of Rights* s. 1, 1(a), 1(b), 2, 2(e), and 2(f),
4 right?

5
6 THE ACCUSED SEITZ: I believe that's what I have in there, yes.

7
8 THE COURT: Well, that's certainly what it says. Yes,
9 okay. And I think insofar as 2(e) is concerned, I -- it says:

10
11 deprive a person of the right to a fair hearing in accordance
12 with the principles of fundamental justice for the
13 determination of his rights and obligations;

14
15 Are you alleging there's some deprivation of you having a fair hearing, that -- that
16 that's happened here?

17
18 THE ACCUSED SEITZ: I may have put that in there by mistake. I
19 don't know. I just -- I was throwing a few --

20
21 THE COURT: Okay.

22
23 THE ACCUSED SEITZ: -- different ones in there that may have
24 pertained to the situation.

25
26 THE COURT: Okay. Because I mean what this is all
27 about is to try and give you a fair hearing. I mean that's --

28
29 THE ACCUSED SEITZ: Right.

30
31 THE COURT: -- what I'm endeavouring to do.

32
33 THE ACCUSED SEITZ: Yeah.

34
35 THE COURT: And then 2(f): (as read)

36
37 deprive a person charged with a criminal offence of the
38 right to presume -- presumed innocent until proven guilty
39 -- proved guilty according to the law in a fair and public
40 hearing by an independent and impartial tribunal, or the
41 right to reasonable bail without just cause.

1
2 Is that -- are you alleging there's some violation of that here?
3
4 THE ACCUSED SEITZ: Well, I -- I guess what I'm stating there is
5 that I'm guilt -- I'm innocent until proven guilty.
6
7 THE COURT: I agree with you.
8
9 THE ACCUSED SEITZ: Right. So ...
10
11 THE COURT: Okay. Yeah. All right.
12
13 THE ACCUSED SEITZ: And due process I guess will determine.
14
15 THE COURT: Okay. And -- and in your notice, moving
16 away from your affidavit, you also cite or list some cases: *Beaudoin and British*
17 *Columbia, Bracken and Fort Erie (the Town)*, and *The King and Coldbick*
18 (phonetic), *Robertson and Rosetanni and The Queen*, the -- *The Queen and Harrold*,
19 and *Robertson and* -- oh, you cited that *Rosetanni* I think twice. Is there something
20 in those cases I should be looking at? Like, I mean, that any --
21
22 THE ACCUSED SEITZ: They're -- I believe they're all within
23 jurisdiction, like argument of jurisdiction, where the *Canadian Bill of Rights* has
24 jurisdiction even in -- in municipal or provincial matters.
25
26 THE COURT: Okay. Is there anything else you'd like to
27 say on your arguments before me today? I'm not here to restrict you. I'm just trying
28 to understand your arguments on this, on this matter--
29
30 THE ACCUSED SEITZ: I -- no, I think that pretty much sums it up.
31
32 THE COURT: So you're really then confining your
33 arguments to the *Canadian Bill of Rights*; is that right?
34
35 THE ACCUSED SEITZ: Yeah.
36
37 THE COURT: Okay.
38
39 THE ACCUSED SEITZ: Yes.
40
41 THE COURT: Because I -- in your original if I call it

1 notice, there was some indication of I think the -- oh, yes --

2

3 THE ACCUSED SEITZ: *Saskatchewan Bill of Rights* and the
4 *Human Rights* --

5

6 THE COURT: *Saskatchewan Bill of Rights* and the
7 *Saskatchewan Human Rights Code*.

8

9 THE ACCUSED SEITZ: Yeah. No. No, I've -- I'm not using those.

10

11 THE COURT: Okay.

12

13 THE ACCUSED SEITZ: I mean the *Canadian Bill of Rights* really
14 covers all Canadians, anybody living in -- in Canada, a citizen of -- of Canada.
15 There's no point in using *Saskatchewan* or -- *Human Rights Code*.

16

17 THE COURT: Okay. Well, I mean -- no, that's helpful
18 for me to understand. Now, if there's any -- I'm going to ask each of the other two
19 individuals here to tell me what their argument is about. If there's something when
20 they're speaking that you think of that you want to add to your arguments before
21 me, you just let me know at the -- when we're close to being concluded, okay?

22

23 THE ACCUSED SEITZ: Sure.

24

25 THE COURT: Thank you.

26

27 THE ACCUSED SEITZ: Okay. Thank you.

28

29 THE COURT: Okay. So, Ms. Knoll, did you want to
30 make your arguments now?

31

32 THE ACCUSED KNOLL: Yes.

33

34 THE COURT: Okay. Great. And by the way, I do want
35 to say that I appreciate each of you. You're unrepresented individuals, and it --
36 courtroom is probably not a very familiar place for all of you. And so I appreciate
37 you coming here and making your arguments as -- as best as you can, okay? So, Ms.
38 Knoll.

39

40 THE ACCUSED KNOLL: Yes.

41

1 THE COURT: Whenever you want to begin.
2
3 **Submissions by the Accused Knoll**
4
5 THE ACCUSED KNOLL: Do I use this?
6
7 THE COURT: Oh, yes, of course.
8
9 THE ACCUSED KNOLL: I'm here today requesting that the
10 provincial offence charges against me be dropped due to the actions of police in
11 issuing me a fine for not wearing a mask face covering in a public building, shopping
12 mall, market, which violates my rights under ss. 1(a), (b), (d), (e), (f) and s. 2(d),
13 (e), (f) of the *Canadian Bill of Rights*.
14
15 THE COURT: Let's go back. You -- I want you to -- so
16 *Canadian Bill of Rights*, and which are the sections you're relying on?
17
18 THE ACCUSED KNOLL: 'A', 'B' --
19
20 THE COURT: 'A' as in -- let me just double-check here.
21 Oh, like 1(a)?
22
23 THE ACCUSED KNOLL: One (a), sorry.
24
25 THE COURT: Okay.
26
27 THE ACCUSED KNOLL: One (b).
28
29 THE COURT: Okay.
30
31 THE ACCUSED KNOLL: One (d)
32
33 THE COURT: Okay.
34
35 THE ACCUSED KNOLL: One (e).
36
37 THE COURT: Yes.
38
39 THE ACCUSED KNOLL: And 1(f).
40
41 THE COURT: Okay. Okay. Continue. Sorry to interrupt.

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THE ACCUSED KNOLL: As well as ss. 4, 5, and 6 of *The Saskatchewan Bill of Rights -- Bill of Rights* which now forms Part 2 of *The Saskatchewan Human Rights Code*.

THE COURT: Okay. Stop just for a minute. So ss. 4, 5, and 6, *Sask. Bill of Rights*.

THE ACCUSED KNOLL: Part 2 of *The Sask. Human Rights Code*.

THE COURT: Part 2 of *The Sask. Human Rights Code*, okay. Go ahead.

THE ACCUSED KNOLL: Police are obligated to recognize and protect my rights under the *Canadian Bill of Rights* because all police, even if they are municipal officers, operate within the *Criminal Code of Canada* which is the federal legislation at the heart of Canada's criminal justice system. The federal legislation the *Regulations Prescribing Public Officers* states in s. 1(1): (as read)

A member of any of the following classes of persons, if employed in the public service of Canada or by the government of a province or municipality, is a public officer for the purposes of paragraph 117.07(2)(g) of the *Criminal Code*:

(b) employees of the police forces or other public service agencies are responsible for the acquisition, examination, inventory, storage, maintenance, issuance or transportation of firearms, prohibited weapons, restricted weapons, prohibited devices, prohibited ammunition or explosive substances.

The action of forcing face coverings, social distancing, and gathering sizes, as well as issuing tickets with a fine with a charge attached, is enforcing law through the use of force and is therefore subject to the regulations found in the *Criminal Code of Canada*, in particular s. 25.

Both of these Acts that I have quoted verify that police officers and peace officers are indeed federally regulated. Therefore, these matters are federal and fall under the provisions of the *Canadian Bill of Rights*.

- 1 THE COURT: Now, when you initially -- what did you
2 initially quote from?
3
- 4 THE ACCUSED KNOLL: I quoted from the *Regulations*
5 *Prescribing Public Officers*.
6
- 7 THE COURT: And is that a federal or a provincial
8 regulation? Where did you get it from? Who -- where does it come from? I'm not
9 familiar with it, but ...
10
- 11 THE ACCUSED KNOLL: Uhm.
12
- 13 THE COURT: If you know.
14
- 15 THE ACCUSED KNOLL: Where is it?
16
- 17 THE COURT: Just take your time. We're not in any rush.
18
- 19 THE ACCUSED KNOLL: Would you like to see it?
20
- 21 THE COURT: Sure. That might be easier. Oh, okay. So
22 this looks like a Canadian -- from the Government of Canada, and it's a
23 consolidation of regulations prescribing public officers. Okay. Right. And that's
24 current to November 28th, 2022, last amended November 17th of '22. Okay. Thank
25 you. You're welcome to have a look at it when you want, Mr. Wernikowski.
26
- 27 MR. WERNIKOWSKI: I've pulled it out. Thank you.
28
- 29 THE COURT: You have it? Okay. So if you can provide
30 that back to her.
31
- 32 THE ACCUSED KNOLL: Thank you. Oops. I see it.
33
- 34 THE COURT: Sorry. I interrupted your flow.
35
- 36 THE ACCUSED KNOLL: That's okay. Can I continue?
37
- 38 THE COURT: Of course.
39
- 40 THE ACCUSED KNOLL: According to s. 2 of the *Canadian Bill of*
41 *Rights*, the police cannot violate my rights without a federal act of Parliament that

1 expressly states that my rights are cancelled, including the following rights that were
2 infringed upon on April 24th and May 15th, I guess, 2021. So I already went through
3 s. 1 of the *Canadian Bill of Rights*.

4
5 Section 2: (as read)

6
7 Every law of Canada shall, unless it is expressly declared
8 by an Act of the Parliament of Canada that it shall operate
9 notwithstanding the *Canadian Bill of Rights*, be so
10 construed and applied as to not abrogate, abridge, or
11 infringe or to authorize the abrogation, abridgment, or
12 infringement of any of the rights or freedoms herein
13 recognized and declared, and in particular, no law of
14 Canada shall be construed or applied so as to ...

15
16 -- as, I guess, parts 'D', 'E', 'F' of s. 2 of the *Canadian Bill of Rights*.

17
18 There's no such act of Parliament as described in s. 2, therefore the actions of the
19 officers who ticketed me via provincial bylaws was unlawful.

20
21 I believe that there is no option for conviction because the justice of the peace falls
22 under the *Canadian Bill of Rights*. Also, because JPs are federally regulated in the
23 *Criminal Code of Canada* as well, I put forth that a guilty verdict would add to the
24 above-mentioned violations of my rights protected in the *Canadian Bill of Rights*.

25
26 Case law demonstrates a successful standing with the use of the *Canadian Bill of*
27 *Rights*. The Supreme Court of Canada ruled 1938 on the *Reference Re Alberta*
28 *Statutes*. It found that *The Accurate News and Information Act* along with others
29 submitted for its evaluation was *ultra vires* beyond the powers of the Alberta
30 Government.

31
32 In the case of *The Accurate News and Information Act*, the Court found that the
33 Canadian Constitution included an implied Bill of Rights that protected freedom of
34 speech as being critical to a parliamentary democracy. This determined that the
35 provinces cannot override fundamental rights. Provinces cannot create laws that
36 override our rights or civil liberties.

37
38 Another case law that supports the application of the *Canadian Bill of Rights* to
39 provincial matters is *Regina v Harrold*, 1970. This case law establishes that our civil
40 liberties are federal, and so municipalities and provinces cannot make by laws (sic)
41 that -- bylaws that violate our *Canadian Bill of Rights*.

1
2 Another case law that ties the *Canadian Bill of Rights* to provincial matters is
3 *Robertson and Rosetanni v Her Majesty the Queen*, 1963. This case law
4 demonstrated a federal matter because it was criminal law. Even though it was a
5 bylaw, it was a criminal law because it was prohibitive with a sanction and in the
6 public that there are fines for it. That makes it criminal even though it's provincial.
7 All COVID measures restrictions charges are criminal by the same definition as
8 being applied in this case law. The margin reference defines how courts define what
9 is criminal.

10
11 Rand J. outlined a test to determine if a law fell under the criminal law. He
12 determined that there were two requirements for a law to be criminal. The law must
13 be a prohibition with a penal sanction, which COVID restrictions were, and the law
14 must be directed towards a public purpose. Legitimate public purposes were defined
15 as public peace, order, security, health, and morality.

16
17 THE COURT: When you're --

18
19 THE ACCUSED KNOLL: I'd like to quote from the preamble to the
20 *Canadian Bill of Rights*. It states, "The Parliament of Canada" --

21
22 THE COURT: Hang on.

23
24 THE ACCUSED KNOLL: (as read)

25
26 ... affirming that the Canadian Nation is founded upon
27 principles that acknowledge the supremacy of God, the
28 dignity and worth of the human person and the position of
29 the family in a society free -- of free men and free
30 institutions;

31
32 Affirming also that men and institutions remain free only
33 when freedom is founded upon respect for moral and
34 spiritual values and the rule of law;

35
36 And being desirous of enshrining these principles and the
37 human rights and fundamental freedoms derived from
38 them, in a Bill of Rights which shall reflect the respect of
39 Parliament for its constitutional authority and which shall
40 ensure the protection of these rights and freedoms in
41 Canada.

1

2 I'd like to also strengthen my case by pointing out that *The Saskatchewan Bill of*
 3 *Rights* was the first legislation of its kind in North America and in fact the world.
 4 The bill was born two years after World War II, one year before the General
 5 Assembly of the United Nations adopted the *Universal Declaration of Human*
 6 *Rights* and at that time was revolutionary.

7

8 *The Saskatchewan Human Rights Code* came into effect in 1972, and because
 9 human rights are so important, the *Code* takes precedence over provincial laws, i.e.
 10 *The Public Health Act* legislation that seems to contradict itself and aim to violate
 11 human rights, particularly in the case of communicable diseases and forced medical
 12 procedures such as vaccines, although there is no mention of restricting breathing
 13 via masks.

14

15 *The Saskatchewan Bill of Rights* very much still exists and is now Part 2 of *The*
 16 *Saskatchewan Human Rights Code*. The *Code* very strongly states that: (as read)

17

18 The objects of this Act are:

19

20 to promote recognition of the inherent dignity and the equal
 21 and inalienable rights of all members of the human family;
 22 and

23

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

27

28 *The Saskatchewan Bill of Rights* states that I have the right, every person has "the
 29 right to freedom of conscience."

30

31 THE COURT: Where -- you're -- just to make sure I find
 32 you here. So we're at *The Sask. Bill of Rights* --

33

34 THE ACCUSED KNOLL: *Saskatchewan Bill of Rights.*

35

36 THE COURT: Yeah.

37

38 THE ACCUSED KNOLL: Four, Freedom of Conscious (sic) --
 39 Conscience: (as read)

40

41 Every person and every class of persons shall enjoy the

1 right to freedom of conscience, opinion and belief ...
2
3 Part 5 --
4
5 THE COURT: What section are you quoting from, just
6 so I --
7
8 THE ACCUSED KNOLL: Part 2 of the *Human Rights Code* --
9
10 THE COURT: Okay.
11
12 THE ACCUSED KNOLL: -- *The Saskatchewan Bill of Rights* --
13
14 THE COURT: Just hang on. I'll get there.
15
16 THE ACCUSED KNOLL: -- ss. 4 --
17
18 THE COURT: Okay, Part 2, yes. And s. 4?
19
20 THE ACCUSED KNOLL: Section 4, "Right to freedom of
21 conscience."
22
23 THE COURT: Okay. Thank you.
24
25 THE ACCUSED KNOLL: Part 5: (as read)
26
27 Right to free expression. Every person and every class of
28 persons has the right to freedom of expression through all
29 means of communication, including the arts, speech, the
30 press or radio, television or any other broadcasting device.
31
32 And the right to free association, part 6. Every person and
33 every class of persons has the right to peaceable assembly
34 with others and to form with other associations of any
35 character under the law.
36
37 It is important to note that *The Saskatchewan Human Rights Code* -- Commission,
38 sorry, has failed to help the people of Saskatchewan when hundreds of complaints
39 were filed, making it inevitable for cases to end up in court proceedings.
40
41 THE COURT: Did you file a complaint?

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THE ACCUSED KNOLL: No.

THE COURT: With -- and I'm -- specifically with the Saskatchewan Human Rights Commission?

THE ACCUSED KNOLL: No. I -- I didn't.

THE COURT: Okay.

THE ACCUSED KNOLL: But I know people that had.

THE COURT: Okay. Thank you.

THE ACCUSED KNOLL: I would like to quote also from the preamble of the Canadian *Emergencies Act*: (as read)

And whereas the Governor in Council, in taking such special temporary measures, would be subject to the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights* and must have -- must have regard to the *International Covenant on Civil and Political Rights*, particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency.

THE COURT: And that's -- you're quoting from just --

THE ACCUSED KNOLL: The preamble of the Canadian *Emergencies Act*.

THE COURT: Okay. Yes. Sorry to interrupt you.

THE ACCUSED KNOLL: Nothing supersedes the *Canadian Bill of Rights*, not even in a national emergency.

Case law that I'd like to quote in support of my freedom to assemble: *Fleming v Ontario*, Supreme Court of Canada on the powers of police officers under the common law. The Court unanimously held that police officers did not have the authority to arrest someone engaging in lawful conduct to prevent a breach of peace.

1 *Bracken v The Town of Fort Erie; Beaudoin v BC*, March 2021, in which a judge
2 ruled the COVID-19 public health order prohibiting outdoor protests was
3 unconstitutional. I recognize that this is a *Charter* precedence. I am not invoking the
4 *Charter*, just to be clear, but I wish to use this case law as a precedence example.
5

6 Peaceful protest is an essential pillar of the democratic society. It's called making
7 your opinions known. Our rights and freedoms are the boundaries that protect us
8 against government overreach. We have the right to freedom of conscience,
9 expression, speech, et cetera. The forcing of mask wearing violates our freedom of
10 conscience by not allowing humans to be scene, which is part of expression. This is
11 also a violation of freedom of expression. It is a violation of 1(a) of the *Canadian*
12 *Bill of Rights*, our right to life, liberty, and security of person which protects our
13 right to personal bodily integrity and autonomy, choice, and our right to informed
14 consent, and the right to refuse any medical treatment. These aspects are deeply
15 enshrined in Canadian law. Preventative medical treatment is one definition of
16 medical treatment, and mask use is a preventative medical treatment.
17

18 According to the public health order on face coverings, they were ordered to
19 prevent, reduce, and control transmission of Sars-CoV-2 so therefore a -- are a
20 preventative medical treatment.
21

22 Since Dr. Shahab was acting as a physician for the Saskatchewan people, making
23 his patient -- making us his patients, we have the right to refuse preventative medical
24 treatment without penalty.
25

26 According to the section titled "Informed refusal" in the document "Consent: A
27 guide for Canadian physicians" it states: (as read)
28

29 Our courts have reaffirmed repeatedly a patient's right to
30 refuse treatment even when it's clear treatment is necessary
31 to preserve the life or health of the patient. Justice Robins
32 of the Ontario Court of Appeal explained:
33

34 "The right to determine what shall, or shall not, be done
35 with one's own body, and to be free from
36 non-consensual medical treatment, is a right deep
37 rooted in our common law. This right underlines the
38 doctrine of informed consent. With very limited
39 exceptions, every person's body is considered inviolate,
40 and, accordingly, every competent adult has the right to
41 be free from unwanted medical treatment. The fact that

1 serious risks or consequences may result from a refusal
2 of medical treatment does not vitiate the right of
3 medical self-determination. The doctrine of informed
4 consent ensures the freedom in individuals to make
5 choices about their medical care. It is the patient, not the
6 physician, who ultimately must decide if treatment --
7 any treatment -- is to be administered.”
8

9 Not only do we have the right to refuse medical treatment, we also have the right to
10 informed consent, to be informed of the risks as well as to be allowed to make
11 choices free of pressure or coercion.
12

13 Since 1980, the Supreme Court of Canada made it the right of every patient to be
14 given full, informed consent before any medical treatment or procedure.
15

16 A quote from the famous Supreme Court *Hopp v Lepp* states: (as read)
17

18 The underlying principle is the right of a patient to decide
19 what, if anything, should be done with his or her body.
20

21 Every health professional has a duty to uphold informed consent. Informed consent
22 is required before all treatment can be administered. Treatment includes anything
23 that is done for therapeutic, preventive, palliative, diagnostic, cosmetic, or any other
24 health-related purpose.
25

26 In order to obtain full informed consent, a person must be given the following
27 information: (as read)
28

29 Number 1. The nature of the treatment.
30

31 Number 2. The expected benefits of the treatment.
32

33 Number 3. The material risks of the treatment.
34

35 Number 4. The material side effects of the treatment.
36

37 No matter how small or if long-term effects are unknown, that should be stated.
38

39 In regards to mask wearing, the people of Saskatchewan were not informed by Dr.
40 Shahab of the risk associated with mask wearing, nor the potential side effects, nor
41 the long-term use and side effects. We were not informed about the material, the

1 fabric the masks were made of, any fibres or chemicals involved that could
2 potentially have health side effects. SHA even released a masking toolkit
3 acknowledging the fact that there are issues associated with mask wearing and the
4 management of same.

5
6 I also have a long list of research studies by the CDC and PubMed, both credible
7 sources, that acknowledge the ineffectiveness of masks as well as the side effects
8 and health implications of masks.

9
10 Lastly, it is important to note that the *Charter of Rights and Freedoms* never
11 received Royal assent in Canada. The *Canadian Bill of Rights* did receive Royal
12 assent which strengthens the use of it in that it supersedes the *Charter*. Furthermore,
13 the Queen did not sign the *Charter*. She signed the agreement, the proclamation for
14 Canada to create the *Charter* and amend 58 of the *Canada Act*.

15
16 Aside from this hidden information read above, the *Charter of Rights and Freedoms*
17 did not, nor does not, supersede the *Canadian Bill of Rights* as per s. 26 of the
18 *Charter*, and that section reads the following, s. 26:

19
20 The guarantee in this *Charter* of certain rights and freedoms
21 shall not be construed as denying the existence of any other
22 rights or freedoms that exist in Canada.

23
24 Those rights and freedoms exist under the *Canadian Bill of Rights* and under natural
25 law.

26
27 I again ask that this case against me be dismissed, that the charges be withdrawn by
28 the prosecution based on my presentation here today, and the fact that I have
29 reviewed my disclosure in full, and I do not feel that there are -- is any evidence to
30 substantiate the charges that are being brought against me.

31
32 THE COURT: Well, that's a different matter for a trial.

33
34 THE ACCUSED KNOLL: M-hm.

35
36 THE COURT: But I appreciate your argument today. Is
37 there anything else you'd like to add? Okay. Thank you very much.

38
39 THE ACCUSED KNOLL: Thank you. I have a motion to dismiss
40 application. Shall I leave it with you today and the appropriate people?
41

1 THE COURT: Well, you've -- you're -- you're making a
2 motion to dismiss the charges against you?
3
4 THE ACCUSED KNOLL: M-hm.
5
6 THE COURT: I understand that.
7
8 THE ACCUSED KNOLL: Okay. Do you --
9
10 THE COURT: So --
11
12 THE ACCUSED KNOLL: I have --
13
14 THE COURT: Oh, you have a written motion?
15
16 THE ACCUSED KNOLL: I have my affidavit and my application.
17
18 THE COURT: Oh, yes, you should file with me. And is
19 there a copy for the prosecutor?
20
21 THE ACCUSED KNOLL: Yeah.
22
23 THE COURT: Okay. Well, then what we'll do is we'll
24 make that --
25
26 THE ACCUSED KNOLL: So --
27
28 THE COURT: It's not really an exhibit.
29
30 THE ACCUSED KNOLL: The original goes to the prosecution?
31
32 THE COURT: No, to me.
33
34 THE ACCUSED KNOLL: To you?
35
36 THE COURT: To the Court, yeah.
37
38 THE ACCUSED KNOLL: Okay. So -- okay.
39
40 THE COURT: Madam clerk will take it. So you have a
41 motion dismiss.

1
2 THE ACCUSED KNOLL: So it's for each --
3
4 THE COURT: And that'll be filed --
5
6 THE ACCUSED KNOLL: Okay. I get --
7
8 THE COURT: -- with the Court.
9
10 THE COURT CLERK: Okay. So there should -- you just have one
11 copy today?
12
13 THE ACCUSED KNOLL: I have three copies.
14
15 THE COURT CLERK: Okay. So this is for the judge --
16
17 THE ACCUSED KNOLL: So, like, yeah.
18
19 THE COURT CLERK: Okay.
20
21 THE ACCUSED KNOLL: So I have two other copies. I think I need
22 to give one to the prosecution and one to the clerk of the court?
23
24 THE COURT CLERK: This will go to the judge.
25
26 THE ACCUSED KNOLL: Okay.
27
28 THE COURT CLERK: And then if you have a copy, I can give
29 that to the prosecutor.
30
31 THE ACCUSED KNOLL: Okay. I think my cat jumped on that one.
32
33 THE COURT CLERK: Okay. And then that is that one? Okay.
34 Let's just (INDISCERNIBLE).
35
36 THE ACCUSED KNOLL: Thank you, Your Honour.
37
38 THE COURT: Okay.
39
40 THE COURT CLERK: (INDISCERNIBLE).
41

1 THE COURT: Yeah. I just need one copy of this.
2
3 THE COURT CLERK: But they're -- it's only the --
4
5 THE COURT: But are there --
6
7 THE COURT CLERK: -- (INDISCERNIBLE) that involve
8 tickets or Informations?
9
10 THE COURT: Oh, I see. Let's just see. Yeah.
11
12 THE ACCUSED KNOLL: Sorry, Your Honour?
13
14 THE COURT: Yes.
15
16 THE ACCUSED KNOLL: Would you like a copy of my legal
17 argument, or is that something that would --
18
19 THE COURT: Oh, it -- no, that --
20
21 THE ACCUSED KNOLL: Okay.
22
23 THE COURT: I mean that's fine.
24
25 UNIDENTIFIED SPEAKER: (INDISCERNIBLE)?
26
27 THE COURT: Yes.
28
29 UNIDENTIFIED SPEAKER: Hmm.
30
31 THE COURT: Yeah. If you have a copy.
32
33 THE ACCUSED KNOLL: You do want it?
34
35 THE COURT: Well, now, do you have your own?
36
37 THE ACCUSED KNOLL: Yeah.
38
39 THE COURT: Okay. Then I will take it. That will help
40 me follow along.
41

1 THE ACCUSED KNOLL: I -- I have -- I have two because I -- I
2 wrote them -- like, they're similar. There was just added things for the mask issue.
3
4 THE COURT: Okay.
5
6 THE ACCUSED KNOLL: So they essentially read the same, but
7 there's added information in regards to the mask in one. So, like, yeah.
8
9 THE COURT: Okay.
10
11 THE ACCUSED KNOLL: Yeah.
12
13 THE COURT: So is there just -- are you handing madam
14 clerk one of your arguments or two of them?
15
16 THE ACCUSED KNOLL: It's both of them. They're essentially the
17 same.
18
19 THE COURT CLERK: Is this the amended one?
20
21 THE ACCUSED KNOLL: Should I ...
22
23 THE COURT: Maybe just give me the one that you read
24 today.
25
26 THE ACCUSED KNOLL: Okay.
27
28 THE COURT: Okay? And then you have a copy for your
29 own record of yours?
30
31 THE ACCUSED KNOLL: Yes. So I just -- because the thing is I
32 wrote them in relation to each, like, matter.
33
34 THE COURT CLERK: Okay.
35
36 THE ACCUSED KNOLL: But I think both of them should just --
37
38 THE COURT CLERK: You want to just file both?
39
40 THE ACCUSED KNOLL: Yeah. Yeah.
41

- 1 THE COURT: Thank you. All right. Thank you. Now,
2 just going through this then, so you're -- both in your oral argument and then with
3 the materials you filed with me, you're saying that your rights under s. 1(a), right to
4 -- of the Bill of -- *Canadian Bill of Rights* "life, liberty, security of the person and
5 enjoyment of property" has been violated. Which one of those do you say has been
6 violated by these acts? And you can just come forward. Make yourself comfortable
7 where you were.
8
- 9 THE ACCUSED KNOLL: Oops. Okay.
10
- 11 THE COURT: I mean -- and again, it -- you know, I'm
12 just trying to understand which -- which or maybe you're saying all of those. I'm
13 not sure. Because it's s. 1(a) of the *Bill of Rights*:
14
15 ... right of the individual to life, liberty, security of the
16 person and enjoyment of property ...
17
- 18 And then the --
19
- 20 THE ACCUSED KNOLL: Okay.
21
- 22 THE COURT: -- the rest about not being -- "Right not to
23 be deprived ... except by due process of law." Are you saying all of your -- those
24 rights have been violated?
25
- 26 THE ACCUSED KNOLL: Yes. In regards to 1(a) --
27
- 28 THE COURT: Yeah.
29
- 30 THE ACCUSED KNOLL: -- in regards to the mask issue, I believe I
31 addressed -- I've -- I've -- believe that my right to informed consent and right to
32 refuse medical treatment or be free of unwanted medical treatment falls under 1(a),
33 the right of the individual to life, liberty, and security of person.
34
- 35 THE COURT: Okay. So that's the -- you say the right to,
36 first, informed consent?
37
- 38 THE ACCUSED KNOLL: Informed consent, and the right to refuse
39 medical treatment being medical treatment defined as preventative treatment.
40
- 41 THE COURT: Okay.

1
2 THE ACCUSED KNOLL: Uhm.
3
4 THE COURT: And this has to do more with the mask
5 covering?
6
7 THE ACCUSED KNOLL: Yes. That's in regards to the mask. So, as
8 I said, masks are a preventative medical treatment which cannot be mandated in
9 regards to it goes against my bodily autonomy and integrity.
10
11 In regards to gathering, again, my right to gather in any public space free from police
12 force or harassment or with threat of being ticketed.
13
14 THE COURT: And that's under what? The same
15 section?
16
17 THE ACCUSED KNOLL: Same section.
18
19 THE COURT: Okay. Right to gather publicly?
20
21 THE ACCUSED KNOLL: My right to gather and to enjoy and utilize
22 public spaces free from threat, I guess, or police force or harassment.
23
24 THE COURT: Okay. And then you cite 'D', "freedom of
25 speech"?
26
27 THE ACCUSED KNOLL: I also said 'B' because "the right of the
28 individual to equality before the law and the protection of the law" --
29
30 THE COURT: I'm sorry. Yeah.
31
32 THE ACCUSED KNOLL: -- you know, by definition, that means
33 that -- that it ensures all laws, policy are applied equally and do not have a
34 discriminatory effect, while all COVID restriction mandates had a discriminatory
35 effect. That's for sure.
36
37 Also in regards to that not being able to access a public space, building, or any
38 services without a mask is discriminatory.
39
40 THE COURT: Okay.
41

1 THE ACCUSED KNOLL: And not -- is not respecting my right to
2 equality. In regards to gathering, our gatherings -- or sorry, other gatherings -- sorry,
3 I will -- I will bring light to the fact that other gatherings were allowed to proceed
4 without any police force harassment nor tickets given. I'd like to use the example
5 of a BLM gathering in Regina as well as a Free Palestine gathering which
6 coincidentally occurred on the same day as these alleged charges on May 15th. In
7 fact, the Free Palestine gathering was allowed to proceed on the same day -- sorry,
8 I just said that -- and time as the gathering that the defendant, myself, is being
9 charged with allegedly attending, yet no one was ticketed to my knowledge, or no
10 police force was shown at those gatherings. So I think that addresses the equality
11 issue under 1(b). And the Free Palestine gathering was quite large from what I
12 remember --

13

14 THE COURT: Okay

15

16 THE ACCUSED KNOLL: -- hearing about. One (d): (as read)

17

18 Freedom of speech. The right to express any opinion
19 without censorship or mask.

20

21 Well, I think that speaks for itself. In regards to a mask wearing, it limits, you know,
22 my ability to communicate and/or connect with other human beings which ties into,
23 you know, freedom expression as well. It's difficult to express oneself when you
24 can't see one's face or connect with another human.

25

26 In regards to gathering, again, my right to attend a public space and make my
27 opinions or beliefs known without police force or harassment.

28

29 One (e): (as read)

30

31 Freedom of assembly. The individual right or ability of
32 people to come together, collectively express, promote,
33 pursue, and defend the collective.

34

35 Well, I think that speaks for itself in regards to the gathering. Again, my right to
36 attend a public space --

37

38 THE COURT: Okay.

39

40 THE ACCUSED KNOLL: -- and -- and gather with people of my
41 choice. And then 1(f): (as read)

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Freedom of press to seek, receive, and impart info and ideas
of all kinds, whether orally or written or in print or through
any other media choice.

Well, I feel that rights were violated under this section in regards to the use of social
media posts and/or photos as evidenced against a person.

THE COURT: Okay. Of course that hasn't happened in
your trial yet, but --

THE ACCUSED KNOLL: Right.

THE COURT: -- but you're anticipating that?

THE ACCUSED KNOLL: But I'm anticipating that because I've
seen the full disclosure.

THE COURT: Okay.

THE ACCUSED KNOLL: And that is definitely an issue.

THE COURT: Okay. Now, I think that covers the bill --
Canadian Bill of Rights. And then let's just make sure. I'm just going to look at *The
Sask. Human Rights Code* in a moment. And you're also claiming --

THE ACCUSED KNOLL: I --

THE COURT: -- violation of s. 4, right to freedom of
conscious -- conscience? And I think you limited that in your application to
everyone -- (as read)

Every person and class of persons has the right to freedom
of conscience, opinion and belief and freedom.

Oh, and I think you then scratched out "freedom of religion"?

THE ACCUSED KNOLL: Yes.

THE COURT: Yeah. Okay. Okay.

- 1 THE ACCUSED KNOLL: I'd like to be clear, Your Honour, that I
2 am not -- I am not enacting the *Sask. Bill of Rights*. I'm not enacting the *Human*
3 *Rights Code*. I'm enacting the *Sask. Bill of Rights* within the *Human Rights Code*
4 which is still very much in standing still.
5
- 6 THE COURT: When you say "enact," I think maybe
7 that's the --
8
- 9 THE ACCUSED KNOLL: Or maybe that's not the --
10
- 11 THE COURT: Relying on?
12
- 13 THE ACCUSED KNOLL: Relying, sure. That's maybe not --
14
- 15 THE COURT: Okay.
16
- 17 THE ACCUSED KNOLL: -- the right word, but ...
18
- 19 THE COURT: Okay. All right. And then you're relying
20 on the freedom -- "right of free expression" as set out in *Human Rights Code*?
21
- 22 THE ACCUSED KNOLL: Yes.
23
- 24 THE COURT: And "right to free association" as set out
25 in *The Sask. Human Rights Code*?
26
- 27 THE ACCUSED KNOLL: Right.
28
- 29 THE COURT: Okay. Good. Thank you. I think those are
30 my questions. Thank you very much.
31
- 32 THE ACCUSED KNOLL: Thank you, Your Honour.
33
- 34 **Discussion**
35
- 36 THE COURT: Madam clerk, do you have a clip? I just
37 want to make sure that all of Ms. Knoll's -- the application and the argument are all
38 in one place. Okay. Thank you. So now I'm going to turn to you, Ms. --
39
- 40 UNIDENTIFIED SPEAKER: She --
41

1 THE COURT: Oh.

2

3 UNIDENTIFIED SPEAKER: She just went to the washroom.

4

5 THE COURT: Okay. Well, then maybe we'll take a short
6 break, and we'll -- when Ms. Hagel is ready, I'll hear from her. Thank you.

7

8 (ADJOURNMENT)

9

10 THE COURT: So, Ms. Hagel, it's your turn if you'd like.
11 And I'm just going to turn to your notice. So in this when you -- the document called
12 "*Charter* challenge withdrawal and change in representation" that brought about the
13 withdrawal of your lawyer, then you also say: (as read)

14

15 I'll be proceeding -- now proceeding as a self-represented
16 woman whose rights were violated, of which those rights
17 are protected under both the *Canadian Bill of Rights* and
18 *The Saskatchewan Bill of Rights* by the *Human Rights*
19 *Code*.

20

21 So is that -- is that where we're going today, *Bill of Rights, Canadian Bill of Rights,*
22 as others have, and then *Saskatchewan Bill of Rights* by *The Saskatchewan Human*
23 *Rights Code*?

24

25 THE ACCUSED HAGEL: Yes.

26

27 THE COURT: Okay.

28

29 THE ACCUSED HAGEL: That is correct.

30

31 THE COURT: So whenever you're ready. And is there
32 anything you wanted to file with me? I should have asked that before.

33

34 THE ACCUSED HAGEL: No. I am not filing a motion to dismiss. I
35 think it's --

36

37 THE COURT: No.

38

39 THE ACCUSED HAGEL: -- a waste of time --

40

41 THE COURT: That's fine.

1
2 THE ACCUSED HAGEL: -- as previous matters.
3
4 THE COURT: Okay. So you can stand or be seated when
5 you make your argument.
6
7 THE ACCUSED HAGEL: I guess -- well, for -- I -- I can only speak
8 on ticket ending 480 and 749, as I have not received any disclosure for ticket number
9 833.
10
11 THE COURT: Oh. Well, no, I expect you to proceed on
12 all of them. This is a general argument, and let's just talk about that for a moment,
13 though. So on your ticket ending 833, that relates to the long-form Information
14 ending in 2882, an alleged offence from May 15th, 2021?
15
16 THE ACCUSED HAGEL: M-hm.
17
18 THE COURT: Okay. And that has to do with an outdoor
19 gathering offence?
20
21 THE ACCUSED HAGEL: Yeah.
22
23 THE COURT: Okay. So has -- I'll just check with the
24 Crown. Has disclosure been sent to -- to Ms. Knoll (sic) on that --
25
26 THE ACCUSED HAGEL: Hagel.
27
28 THE COURT: -- matter?
29
30 MR. CARTER: Your Honour, I didn't -- I didn't bring the
31 file with me.
32
33 THE COURT: Okay.
34
35 MR. CARTER: I can't -- I can't represent to the Court that
36 it has or has not.
37
38 THE COURT: Okay. Well, you say you haven't received
39 it?
40
41 THE ACCUSED HAGEL: No, not yet.

1
2 MR. CARTER: I -- I do note, however, that Ms. Hagel
3 only recently became self-represented.
4
5 THE COURT: Well, that's true.
6
7 MR. CARTER: So I -- I delivered the stack of files to my
8 assistant and asked that the disclosure be sent. I -- I will -- I will speak to her later
9 and ensure that it is done.
10
11 THE COURT: Okay.
12
13 MR. CARTER: I would surmise that we may have sent out
14 the matters that are set for trial sooner first.
15
16 THE COURT: Right. Because I see this matter is set for
17 trial, as we saw in that little summary I provided, in March 20th to 24th and 27th,
18 so that's --
19
20 THE ACCUSED HAGEL: March 20th or 23rd?
21
22 THE COURT: Twentieth through 24th and then also
23 27th is reserved of March. But anyhow, I'm looking at the very last entry on page 2
24 of the document I provided.
25
26 THE ACCUSED HAGEL: It says, January 23rd to 25th.
27
28 THE COURT: I think we're looking at something
29 different.
30
31 THE ACCUSED HAGEL: Or --
32
33 THE COURT: What are you looking at?
34
35 THE ACCUSED HAGEL: The second bottom point here.
36
37 THE COURT: Yeah. And I'm looking at the second page
38 of that document and the very --
39
40 THE ACCUSED HAGEL: Oh, March 20th. Got you.
41

1 THE COURT: Yeah.
2
3 THE ACCUSED HAGEL: Okay.
4
5 THE COURT: Because you were saying that you
6 -- you're -- you haven't received disclosure on your -- your ticket --
7
8 THE ACCUSED HAGEL: M-hm.
9
10 THE COURT: -- ending in 833 which is part of this
11 long-form Information 2882.
12
13 THE ACCUSED HAGEL: Correct.
14
15 THE COURT: So what I would say is I think you should
16 make all -- your arguments on all of them today. I expect they're much the same,
17 are they not?
18
19 THE ACCUSED HAGEL: Well, actually I -- from previous matters,
20 I never attended a -- I don't know if this is called the case management. So I wasn't
21 sure what I was supposed to be arguing. I thought this was all done in trial like my
22 previous matters.
23
24 THE COURT: No.
25
26 THE ACCUSED HAGEL: Okay.
27
28 THE COURT: Today is the day.
29
30 THE ACCUSED HAGEL: Okay.
31
32 THE COURT: And the -- I mean today is the day that I'll
33 hear arguments on *Canadian Bill of Rights*, *Saskatchewan Bill of Rights*, and *The*
34 *Saskatchewan Human Rights Code*. Okay, now I've heard from others: Mr. Seitz,
35 Ms. Knoll, and now it's your turn, okay?
36
37 **Submissions by the Accused Hagel**
38
39 THE ACCUSED HAGEL: Okay. Well, as I can see from the
40 disclosure for the first two fines, the Crown has no evidence that I broke any -- or
41 public health violations or orders, which I guess that's going to be dealt with in trial.

1
2 THE COURT: Yeah. That will be dealt in trial.
3
4 THE ACCUSED HAGEL: Yeah.
5
6 THE COURT: Because at trial, we -- the Crown brings
7 forward witnesses to testify about what happened on each of those respective dates.
8
9 THE ACCUSED HAGEL: Okay.
10
11 THE COURT: And then you can challenge that, the
12 witnesses and what they say or do -- well, what they say in court.
13
14 THE ACCUSED HAGEL: Okay.
15
16 THE COURT: And then you can always choose to testify
17 yourself or call other evidence, but that's a different matter. Today is argument on
18 why you say that your rights were violated under the *Bill of Rights, Sask. Bill of*
19 *Rights* by the *Human Rights Code*.
20
21 THE ACCUSED HAGEL: Okay. Well, I guess freedom of
22 expression under the Canadian -- sorry, I don't have this stuff in front of me --
23 *Canadian Bill of Rights*.
24
25 THE COURT: So that would be then you're saying that
26 your freedom of expression -- I'm just -- just want to make sure. I'm not sure
27 that's --
28
29 THE ACCUSED HAGEL: Or is that *The Sask. Bill of Rights*?
30
31 THE COURT: It might be *Sask. Bill of Rights*. I don't --
32 unless I'm mistaken, I don't see freedom of expression in the *Bill of Rights*, but
33 there are other rights:
34
35 ... life, liberty, security of the person and enjoyment of
36 property --
37
38 -- which has been talked about. There is the right to: (as read)
39
40 equality before the law... protection of the law;
41 freedom of religion;

1 freedom of speech;
2 freedom of assembly and association;
3 freedom of the press.
4

5 Any of those?
6

7 THE ACCUSED HAGEL: Well, freedom of speech, they're ...
8

9 THE COURT: Yeah?
10

11 THE ACCUSED HAGEL: Freedom of speech by going out and
12 gathering or holding a sign or whatever like the Black Lives Matter protests, like
13 the Free Palestine protests, it's a part of freedom of speech because it's one way of
14 vocalizing your opinions and beliefs, which this certain gathering that I allegedly
15 attended was being treated differently than those two gatherings based on the fact
16 there was only maybe two police officers at the Free Palestine gathering, while
17 people were in the park, and there was over 12 cop cars watching the park. So
18 equality before the law as far as I'm concerned has been -- has not been -- it's -- it
19 hasn't been fair for all parties involved.
20

21 THE COURT: Okay.
22

23 THE ACCUSED HAGEL: And the right to peacefully assemble for
24 obvious reasons. People weren't allowed to gather due to these public health orders
25 which if you're not causing any harm to anyone, I'm not understanding how they
26 can pick and choose who they're going to fine. Only certain people received fines
27 at these gatherings. And like George has said, it's a public property, so anyone has
28 the right to be there.
29

30 THE COURT: Now, in -- in the alleged cases before the
31 Court in your case --
32

33 THE ACCUSED HAGEL: Yes.
34

35 THE COURT: -- is it was there one area? Like, I've heard
36 on previous -- some cases it was at the legislature in Regina. Was yours involving
37 some other place?
38

39 THE ACCUSED HAGEL: No. I believe two of them were Victoria
40 Park. I believe the third one was as well.
41

- 1 THE COURT: Okay. And so you're saying that violated
2 your right to enjoy public property?
3
- 4 THE ACCUSED HAGEL: Correct.
5
- 6 THE COURT: Okay.
7
- 8 THE ACCUSED HAGEL: As well as the Crown has stated that *The*
9 *Sask. Bill of Rights* is technically still in force, so I will be standing on that or
10 bringing that evidence forward in trial.
11
- 12 Now, they also state that, sorry, that the statutory *Bill of Rights* protect property
13 rights while the *Charter* is silent on the subject.
14
- 15 Now, my body is my property. So as far as I understand, that gives me every right
16 to use the *Canadian Bill of Rights*. I know they're trying to say that I cannot use it
17 due to it being a provincial matter, but my body is my property unless they are trying
18 to say that Province of Saskatchewan owns -- has property rights over my own body.
19
- 20 THE COURT: Well, I'll hear from them on that.
21
- 22 THE ACCUSED HAGEL: So --
23
- 24 THE COURT: I don't know what they're saying on that,
25 but ...
26
- 27 THE ACCUSED HAGEL: Oh. So pretty much, I guess, the past two
28 years we have been discriminated against, and people have put in claims with the
29 *Sask. Human Rights Code*. And they have denied I'll say most of those cases
30 because of prohibited grounds, sex, religion, race, whatever the list is. So that's why
31 there was no complaint to the Sask. Human Rights Commission.
32
- 33 THE COURT: Okay. So in your case you didn't make a
34 complaint?
35
- 36 THE ACCUSED HAGEL: No.
37
- 38 THE COURT: Okay.
39
- 40 THE ACCUSED HAGEL: So because of the past few years, people
41 have lost their jobs, myself included, because of not injecting the substance into our

1 body we do not feel is a benefit to our own self. So people in Canada took to the
2 streets and peacefully assembled to advocate for their rights not to have something
3 injected into their body or have some kind of preventative treatment put on their
4 face that, as Erinn has stated, has side effects, which doesn't really matter to this
5 case. But I'm just saying this is part of the reason why Canadians went to the streets,
6 which like in the *Canadian Bill of Rights* it does say we have the right to assemble
7 peacefully.

8
9 So pretty much I don't really have anything else to say. It's pretty much basically
10 that. And I will bring other evidence for my trial on January 23rd.

11
12 THE COURT: Okay. Now, I think we covered the
13 *Canadian Bill of Rights* into your arguments. And then the *Sask. Human Rights*
14 *Code*, I gather then, all right, there's a couple of rights that others have relied on. I
15 don't want to put words in your --

16
17 THE ACCUSED HAGEL: M-hm.

18
19 THE COURT: -- mouth. There's the freedom under s. 4,
20 Part 2 of the Bill. It says: (as read)

21
22 Bill of Rights. The freedom of every person and every class
23 of persons has the right to freedom of conscience, opinion
24 and belief and freedom of religious association, teaching,
25 practice and worship.

26
27 Are you relying on s. 4?

28
29 THE ACCUSED HAGEL: Yes. Because my -- because based on my
30 belief, I was fined for gathering which was a way of expressing myself.

31
32 THE COURT: Okay. And then there's also the "Right to
33 free expression" under s. 5 of the *Human Rights Code*. Are you claiming that was
34 violated?

35
36 THE ACCUSED HAGEL: Yes, because gathering is a form of
37 expression in my opinion.

38
39 THE COURT: Okay. And then others may have -- have
40 claimed -- and this may be what you're saying as well -- is under s. 6. It's entitled
41 "Free to" -- (as read)

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Right to free association. Every person and every class of persons has the right to peaceful assembly with others and to form other -- with others associations of any character under the law.

So that you're claiming that was violated --

THE ACCUSED HAGEL: Yeah.

THE COURT: And then s. 7 doesn't seem to be applicable. It's the right to freedom of arbitrary imprisonment --

THE ACCUSED HAGEL: No.

THE COURT: -- but that's not what we're talking about. So 4, 5, and 6 under the *Sask. Human Rights Code*. Okay. Anything else you'd like to say?

THE ACCUSED HAGEL: No. I guess I was just wondering do I get a witness list of who will be at trial --

THE COURT: Oh.

THE ACCUSED HAGEL: -- or is that a matter that I need to deal with the prosecutor?

THE COURT: Yeah. You'd have to talk to the prosecution. If you talk to Mr. Brûlé or Carter, you can certainly ask them about that. They usually will tell you who they're planning on calling.

THE ACCUSED HAGEL: Okay.

THE COURT: But that is for another day.

THE ACCUSED HAGEL: Yeah. All right.

THE COURT: All right. Thank you very much. Okay, now I think at this time then, Mr. Wernikowski, would you like to make your argument? And I -- I know you've filed a brief. I've read it, but I haven't memorized it. So you can go through it at -- as you want.

1

2 **Submissions by Mr. Wernikowski**

3

4 MR. WERNIKOWSKI: Thank you, Your Honour. So I'm -- I'm
5 here to present today the Crown's -- or the Attorney General's position with respect
6 to the *Bill of Rights* challenges, both *The Saskatchewan Bill of Rights*, which has
7 been incorporated into the current *Saskatchewan Human Rights Code*, and the
8 *Canadian Bill of Rights* with the -- the challenges that -- that these people have
9 levied against their respective public health orders.

10

11 My submission today I'm going to break into -- into four parts. I -- the first part will
12 just talk about the methodology for rights claims adjudication more generally. The
13 second part I will focus on the *Canadian Bill of Rights*, and the third part I will focus
14 on *The Saskatchewan Bill of Rights* or more accurately ss. 4 to 8 of *The*
15 *Saskatchewan Human Rights Code*. And the fourth part will be a little bit of a
16 mishmash where I will want to address several arguments and other points that have
17 surfaced in -- in the hearing here today that don't kind of fit cleanly into the three
18 previous sections but -- but are nonetheless relevant to the adjudication of those.

19

20 THE COURT: Okay.

21

22 MR. WERNIKOWSKI: Starting now with -- with the first section,
23 I -- I want to make a few points with the Court about -- about methodologies for --
24 for addressing rights claims generally, whether they be *Charter Rights* claims or --
25 or *Bill of Rights* claims. Specifically, it's -- it -- it's important to start by identifying
26 with precision the state action or the law that is in issue in this particular case and
27 identifying with precision the effect of that state action or that law.

28

29 In this instance, we are dealing only with public health order -- two different public
30 health orders, one of which forbid outdoor gatherings in groups of ten or larger and
31 required social distancing at gatherings that were smaller than that limit. Public
32 health order two required the wearing of face masks in certain instances in certain
33 locations. It's with those public health orders and the effects of those public health
34 orders that the rights-based analysis must -- is concerned and must -- and -- and it
35 must proceed based on -- based only on those effects.

36

37 Collateral consequences of those public health orders that incorporate a lot of other
38 occurrences and personal choices are not necessarily relevant to the consideration.

39

40 So that established, I'll -- I'll move into the next part of my submissions now which
41 will focus on the *Canadian Bill of Rights* on which, if I heard correctly, they all --

1 all -- everyone who has spoken so far relies on.

2

3 THE COURT: Yes.

4

5 MR. WERNIKOWSKI: So as outlined at paragraph 6 to 8 of my
6 brief, our position is that the *Canadian Bill of Rights* has no application to provincial
7 statutes or laws like *The Public Health Act, 1994* and the public health orders made
8 thereunder. This is according to s. 5 of the same document which very specifically
9 tie -- defined the scope of its application.

10

11 THE COURT: So in effect, you're saying that *Bill of*
12 *Rights* applies to federal laws, not provincial law?

13

14 MR. WERNIKOWSKI: Yes, Your Honour.

15

16 THE COURT: Okay.

17

18 MR. WERNIKOWSKI: Specifically s. 5(2) defines "Law of
19 Canada" as it appears in -- in the rights -- the sections that guarantee the rights under
20 the *Bill of Rights*. And that definition is a matter that does not -- that does not cover
21 these public health orders made under *The Public Health Act*.

22

23 This reality is unaffected by s. 25 of the *Criminal -- Criminal Code* which merely
24 establishes certain legal protections from prosecution under the *Criminal Code* for
25 peace officers enforcing provincial statutes, nor is it affected by s. 117 of the
26 *Criminal Code* and the elucidating regulations which merely establishes
27 exemptions, again exemptions for police officers with respect to the *Criminal Code*,
28 some of the -- its firearms provisions -- prohibitions. These -- these sections of the
29 *Criminal Code* do not transmute provincial law into federal law such that it brings
30 provincial laws under the purview of the *Canadian Bill of Rights*. It is therefore our
31 submission that -- that these provincial laws cannot be invalidated based on any
32 conflict with the *Canadian Bill of Rights* and is unnecessary to go into asking what
33 the scope of those guarantees are with respect to the *Canadian Bill of Rights*.

34

35 The -- I'll move on to the next part of my submissions now which focuses on
36 *Saskatchewan Bill of Rights*. On this point, I'd like to advance two -- two arguments
37 in favour of the position that -- that these public health orders ought not to be
38 invalidated based on any conflict with *The Saskatchewan Bill of Rights*.

39

40 The first argument which -- which is not present in -- in my brief, it's based on the
41 wording of the supremacy clause present at s. 52 of the *Human Rights Code*. I have

1 provided --

2

3 THE COURT: Let me get there.

4

5 MR. WERNIKOWSKI: -- the -- madam clerk with -- with a copy
6 of the *Human Rights Code*.

7

8 THE COURT: Okay. I have it here. Actually I'll just use
9 mine.

10

11 MR. WERNIKOWSKI: Okay.

12

13 THE COURT: So you're at s. 52?

14

15 MR. WERNIKOWSKI: Yeah.

16

17 THE COURT: Let me get there.

18

19 MR. WERNIKOWSKI: Coincidentally, like in the *Constitution*
20 *Act*, the supremacy clause is located at s. 52.

21

22 THE COURT: Oh, right. Yes.

23

24 MR. WERNIKOWSKI: And -- and there, this -- this is -- this is the
25 -- the supremacy clause that -- that gives the *Human Rights Code* supremacy over
26 all aspect -- all -- all other laws unless explicitly stated otherwise. And this is what
27 allows in -- laws that are inconsistent or state action that is authorized by law but is
28 inconsistent with the *Human Rights Code* to be invalidated on the basis of that
29 inconsistency.

30

31 And s. 52 reads:

32

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

36

37 And then it lays out exceptions.

38

39 Note that -- that the supremacy clause speaks only about acts prohibited by the Act
40 and not about the provisions of the Act in a more general sense, which is something
41 the drafters very easily could have done. Use of the word "prohibition" rather than

1 the totality of the Act seems intentional, in my submissions. And when you look at
2 the -- the Act more broadly, specifically what I'm referencing here is the way that
3 Part 2 and Part 3 are outlined in the -- in the index of the Act. Only Part 3 speaks
4 about prohibitions and uses the language of prohibition. Part 3 is where
5 discriminatory practices are prohibited.

6

7 THE COURT: So you said only Part 3 uses --

8

9 MR. WERNIKOWSKI: Speaks of prohibitions, uses the language
10 prohibitions.

11

12 THE COURT: Okay.

13

14 MR. WERNIKOWSKI: In contrast, Part 2 where the Bill of Rights
15 is located does not speak about prohibitions. Therefore, in my submissions, the
16 supremacy clause present in s. 52 of *The Saskatchewan Human Rights Code, 2018*
17 only applies to Part 3 of that Act and does not apply to the Bill of Rights that's
18 located in Part 2.

19

20 Therefore, otherwise valid provincial laws such as *The Public Health Act, 1994* and
21 regulations and public health orders made thereunder cannot be invalidated based
22 on inconsistency with the *Code* by operation of that supremacy clause.

23

24 So argument 2, which is in the alternative, if the Court -- if you can invalidate the
25 public health orders based on a conflict with the Bill of Rights at ss. 4 to 8 of the
26 *Code*, that should not happen in this instance because the impugned public health
27 orders are consistent with the guarantees of the Bill of Rights. This position is
28 outlined at paragraphs 15 to 25 of my brief.

29

30 The test for determining whether a breach of a guarantee of the *Code* ought to be
31 the same or largely informed by the test for determining whether a law breaches a
32 sister guarantee in the *Charter*. That's the position I'm advancing before the Court.
33 This -- as outlined in the brief, this position is informed by a -- it's in my submission
34 Peter Hogg's view of it. That's not determinative, but that's -- that's something that
35 can be borne in mind. And -- and particularly it's what's apparent on the face of the
36 cases applying *The Saskatchewan Human Rights Code* provisions and also is
37 apparent on the face of the cases applying Alberta's human rights code, which is --
38 which is one of the few other provincial human rights codes that are still on the
39 books.

40

41 Reading these cases, an -- a unique individualistic methodology for determining the

1 scope of these rights does not emerge. Rather, what we see is an analysis that's
2 largely informed by the *Charter* jurisprudence.

3
4 In Saskatchewan, the cases I set out in my brief are *Geller and Reimer* and also
5 *Community Awareness Project and Saskatoon*, which relied on -- which -- which
6 relied on *Charter* cases to determine whether breaches of the *Human Rights Code's*,
7 Bill of Rights provisions were infringed, and Alberta cases as well: *Goddard and*
8 *Day*; *Peter and Public Health Board of Alberta*; and *Lewis and Alberta Health*
9 *Services*, which is a very recent case that also relates to COVID restrictions.

10
11 In *Lewis and Alberta Health Services*, the Alberta Court of Queen's Bench said the
12 following at para. 46 which I'll quote: (as read)

13
14 Since the advent of the *Charter*, Courts have looked to the
15 *Charter* to determine if constitutionally protected rights are
16 affected by the *Charter* can -- protected rights are affected
17 as the *Charter* can be interpreted more generously than the
18 Provincial *Bill of Rights*. There is no need to consider the
19 claim under the *Alberta Bill of Rights* because if the *Charter*
20 claims fail, her claim under the *Alberta Bill of Rights* will
21 necessarily fail as well.

22
23 This methodology for assessing *Bill of Rights* claims I submit is also consistent with
24 the Supreme Court's direction in the cases where it said interpreting human rights
25 provisions in harmony must be done where possible and also where it said that s. 15
26 *Charter* jurisprudence, the anti-discrimination guarantee in the *Charter*, is relevant
27 to the interpretation of statutory human rights issues. That's at paragraph 15,
28 outlined in paragraph 15 in my brief.

29
30 So I submit to the extent that this Court finds itself in a very unique position of
31 determining the scope of *The Saskatchewan Bill of Rights*, provisions that I describe
32 in my brief as largely anachronistic, technically on the books but seldom litigated.
33 And the test that ought to be applied is the freedom of expression and assembly test
34 under the *Charter* to determine whether those guarantees under the *Code* are
35 violated. And when this happens, the *Grandel* decision disposes of the challenges
36 to all outdoor gathering restrictions --

37
38 THE COURT: Right.

39
40 MR. WERNIKOWSKI: -- as discussed at paragraphs 31 to 32 of
41 my brief.

- 1
2 THE COURT: I want just to recap. In that case, I think
3 the Crown conceded that certain sections of the *Charter*, including in particular
4 freedom of expression, were violated by the public health orders, but they were
5 justified under s. 1?
6
- 7 MR. WERNIKOWSKI: Yes, Your Honour.
8
- 9 THE COURT: Right.
10
- 11 MR. WERNIKOWSKI: And the *Keough*, *Schultz* (phonetic) and
12 *Fray* (phonetic) decisions disposes of the challenges to the mask mandate.
13
- 14 THE COURT: Right.
15
- 16 MR. WERNIKOWSKI: Your Honour brought up the question of
17 s. 1 in -- in the *Grandel* decision?
18
- 19 THE COURT: Right.
20
- 21 MR. WERNIKOWSKI: And, yes, our -- our position is that the
22 justification that is present and the test that was applied to determine whether that
23 justification was present is also dispositive of the scope of the rights in *The*
24 *Saskatchewan Bill of Rights*.
25
- 26 I will flag for the Court that neither *The Saskatchewan Bill of Rights* nor the *Alberta*
27 *Bill of Rights* contains an obvious equivalent to s. 1 of the *Charter*. However, in
28 interpreting those -- those rights, section -- the courts have applied section one-like
29 considerations in determining the threshold issue of whether that right is infringed.
30 So it's less obviously a two-step process. It's all kind of joined into determining the
31 scope of that right.
32
- 33 THE COURT: Okay.
34
- 35 MR. WERNIKOWSKI: On this point, I'll -- I'll direct the Court to
36 the following cases which clearly made it -- clearly established that the *Bill of Rights*
37 guarantees are not absolute, notwithstanding the provisions, not the lack of an
38 obvious s. 1. That's *Geller* at para. 45:
39
- 40 Freedoms of expression and peaceable assembly are not
41 absolute rights. These freedoms do not automatically

1 provide for the unrestricted use of public property.

2

3 *Community Awareness Project* at para. 46, Clearly s. 5 does not give an absolute
4 right to freedom of expression.

5

6 THE COURT: You're referring to the *Geller* decision at
7 para. 40 --

8

9 MR. WERNIKOWSKI: *Geller* decision at para. 45.

10

11 THE COURT: Yeah. And ...?

12

13 MR. WERNIKOWSKI: *Community Awareness Project* decision
14 at para. 46. *Peter and The Public Health Appeal Board of Alberta* decision at
15 para. 86, there the Court said:

16

17 The rights recognized in the Bill of Rights are not absolute.

18 There are limits to freedom and the enjoyment of property.

19 As with the *Charter*, rights are subject to justifiable

20 limitations having regard to the rights and interests of

21 others and the public in general.

22

23 So the point that I'm making here is -- is really just a continuation of the point that
24 I made earlier and that's that the methodology for determining the scope of the
25 provincial *Bill of Rights* ought to be the same as the *Charter*. And when that
26 methodology is applied, I submit that it's dispositive of the *Bill of Rights* issues
27 before the Court based on the *Charter* decisions that have already come out of this
28 court and the Court of Queen's Bench of Saskatchewan.

29

30 Unless the Court has any questions on -- on that position, I'll move to the final part
31 of my submissions here today where I want to address a number of other issues that
32 -- that arose this morning, some of which I -- I heard for the first time today. But I
33 -- I would like to -- like to get -- get our position on -- on the record. Some of the --
34 some of the material contained affidavits.

35

36 THE COURT: Yes.

37

38 MR. WERNIKOWSKI: My -- my cursory review of those
39 affidavits has led me to the position that the affidavits are not admissible as
40 evidence. They seem to be largely statements about law or statements of argument.
41 However, I -- I would suggest to the Court that -- that they're properly considered

1 part of -- of the legal argument that's -- that -- that's been -- that that -- that's been
2 put before the Court today.

3

4 THE COURT: It's a framework for me.

5

6 MR. WERNIKOWSKI: Some of the material filed or that I've
7 seen today, there -- there's a request for a jury.

8

9 THE COURT: Oh, yes. I'll address that now. This is a
10 *Public Health Act* offence under the provincial legislation *The Public Health Act,*
11 *1994.* It's a summary offence. There can be no jury. It -- the law does not permit a
12 jury. So, I mean, I can say that now unequivocally. You don't have to make an
13 argument on that.

14

15 MR. WERNIKOWSKI: Thank you, Your Honour. The -- the cases
16 that -- that my friends submitted here today, I -- I have scanned some of them. I
17 understand they were submitted largely to advance the proposition that the
18 *Canadian Bill of Rights* applies to provincial legislation. Based on my read of the
19 cases, the -- that -- that's not -- that's not what they stand for. They largely seem to
20 be federalism decisions dealing with the scope of the federal criminal law power.

21

22 There's also a case submitted, a *Re Alberta Statutes* from 1938. It -- which -- which
23 is a fascinating decision. In -- in that decision, as well as another one that isn't before
24 the Court called *Switzman and Elbling* -- citation for that is 1957 SCC 285 -- we're
25 talking in the '30s and the '50s, the Supreme Court opined that there was an implied
26 Bill of Rights in the *Constitution Act, 1867.* And this, however, has been entirely
27 superseded since the advent of a non-implied Bill of Rights, specifically the *Charter*
28 *of Rights and Freedoms.* I'm not aware of any post-*Charter* case that has explicitly
29 referenced an implied Bill of Rights, and certainly Professor Hogg -- cite for that is
30 34-14 of a simple textbook -- has said since s. 2 of the *Charter* explicitly guarantees
31 freedom of expression, it's now even harder to argue that an implicit guarantee is to
32 be derived from the *Constitution Act, 1867.* So the implied Bill of Rights historically
33 interesting, not jurisprudentially a live issue post the *Charter.*

34

35 I would also like to flag for the Court that these Bill of Rights arguments have been
36 advanced in other locations. Based on, to the best of my knowledge, these -- those
37 locations and occurrences are as follows: The first is *The Queen and Silzer*, S-I-L-
38 Z-E-R. That was a proceeding that went through Saskatoon Traffic Court. My
39 understanding there is that the justice of the peace dismissed a challenge based on
40 the two Bills of Rights without written or substantial reasons on the 30th of
41 November, 2022.

1
2 Similar arguments were advanced in two matters that were heard together, *The*
3 *Queen and Hagel* and *The Queen and Holmes*, which were argued before Regina
4 Traffic Court at beginning of December I believe. The justice of the peace in the
5 matter reserved until March 2023.

6
7 And most recently, there's a decision *The Queen and Drebit, et al.*, which is a
8 decision of Judge Agnew's. The citation for that is 2023 SKPC 8, and it was just
9 released yesterday.

10
11 THE COURT: Yeah. I've read it.

12
13 MR. WERNIKOWSKI: There he dismissed *The Saskatchewan*
14 *Bill of Rights* challenge because he concluded that complaints under the *Code* need
15 to be taken to the Human Rights Commission and that the *Code*, and I quote, "does
16 not give him any power to address those issues here," end quote.

17
18 This raises a question of jurisdiction that I want to flag for the Court. The Attorney
19 General is not taking a position on the question of jurisdiction here, but I would like
20 to flag this question for the Court for its consideration. The question of court
21 jurisdiction to adjudicate alleged breaches of the *Human Rights Code*, including the
22 Bill of Rights contained therein, outside of the processes outlined in the *Code* is one
23 of some uncertainty.

24
25 The Court of King's Bench does have case law that says remedies under the *Code*
26 need to be brought -- requests for remedies under the *Code* need to be brought to
27 the commission first, and the courts have no jurisdiction to adjudicate alleges of --
28 alleged breaches of the *Code* in such instances. At times, these statements have
29 seemed pretty categorical. I'll -- I'll flag three examples for the Court here. There's
30 a case called *Rowley and Can-West Agencies Limited*. The citation for that is 2018
31 SKQB 224 at para. 8.

32
33 THE COURT: At what? At 228?

34
35 MR. WERNIKOWSKI: Sorry, 2018 SKQB 224 at --

36
37 THE COURT: Two two four.

38
39 MR. WERNIKOWSKI: -- at para. 8.

40
41 THE COURT: Okay.

1
2 MR. WERNIKOWSKI:

There the Court said:

3
4 ... complaints of discrimination under the *Code* are to be
5 made in the first instance to the Saskatchewan Human
6 Rights Commission.

7
8 A second example is a -- the *Forsberg* case which was cited in one of the footnotes
9 of my brief. At para. 28 there, the Court said: (as read)

10
11 ... based on the *Seneca/Lawless* line of cases, I conclude
12 that this Court has no jurisdiction to adjudicate alleged
13 infractions of the *Code* outside the processes directed by
14 the *Code*. (The only qualifier, as subsequently discussed, is
15 if the matter relates to a claim for injunctive relief made
16 pursuant to ss. 38(3) of the *Code*.)

17
18 Another case is -- is the *Lawless* decision. The citation there is 2014 SKQB 23 at
19 para. 54. And the Court said there:

20
21 The proposition that the only way to enforce the provisions
22 of the *Code* is to follow the process set out in the *Code* itself
23 has been consistently applied by courts in Saskatchewan.

24
25 So in these three statements, the -- the Court of King's Bench has offered what
26 seemed like kind of categorical -- categorical statements. And you have a complaint
27 under the *Code*. Go to the Human Rights Commission. We don't have jurisdiction
28 until that process has run its course.

29
30 THE COURT:

saying in *Drebit*?

But isn't that really what Judge Agnew is

31
32
33 MR. WERNIKOWSKI:

Yes, Your Honour.

34
35 THE COURT:

Right.

36
37 MR. WERNIKOWSKI:

38 So I -- however, I would also like to flag
39 for the Court that there's some contrary case law, and this is discussed at footnote
40 11 of my brief. It seems like there's an exception to this general proposition where
41 accused persons plead breaches of the *Code* as defences to criminal and
quasi-criminal charges.

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In *Forsberg* -- that's 2017 SKQB 326 -- which is also cited in my brief --

THE COURT: So the exception is where defendants plead ...?

MR. WERNIKOWSKI: Breaches of the *Code* as defences to criminal charges, where they're not coming to the Court asking for a remedy under the *Code*. They're raising it as a shield, as a defence --

THE COURT: Right.

MR. WERNIKOWSKI: -- based on the -- the supremacy clause at s. 52, whatever its scope may be. As (sic) para. 13 of *Forsberg*, Justice Ball said -- said the following: (as read)

I am satisfied that *Whatcott* is of no assistance to the plaintiffs. To the contrary, the explicitness of Justice Ball's reasons for distinguishing *Whatcott* from *Seneca* and thereby assuming jurisdiction supports Saskatchewan's position that *Whatcott* cannot stand and should not be broadly construed. The essence of *Whatcott* is that the court has jurisdiction to consider and apply provisions of the *Code* outside the process outlined by the *Code* where such adjudication is necessary to assess a defence. The decision is based on the important distinction the plaintiff in *Whatcott* was not pursuing a remedy under the *Code*, and in such circumstances, it was up to the court and not the Sask. Human Rights Commission to determine if the defence was valid.

So *Forsberg* at para. 13 and then *Whatcott* cited therein seems to have a bit of a contrary position. And the origin of the jurisdiction to consider in such instances arises from the *Code*'s supremacy clause under s. 52, and -- and the effect of the supremacy clause is in -- to proceedings outside of human rights proceedings, is -- is discussed in the Supreme Court decision called *Tranchemontagne*.

THE COURT: But isn't your argument based on s. 52, it does not apply to Part II of the *Bill of Rights*?

MR. WERNIKOWSKI: Yes, Your Honour. That -- that is -- that is

1 -- that is my -- that -- that is my -- that is one of the arguments, and that's argument
2 one for why this cannot be invalidated.

3

4 THE COURT: Okay.

5

6 MR. WERNIKOWSKI: Argument 2 is that applying the scope of
7 the rights, there is nothing. If you apply the -- applying the proper test to the scope
8 of these rights, they're not infringed.

9

10 THE COURT: Right. Because --

11

12 MR. WERNIKOWSKI: And I'm just -- I -- I just want to flag for
13 the Court that there is a lot of jurisprudential ambiguity on this question of
14 jurisdiction. That's -- that's -- and I probably have gone into it in much greater detail
15 than necessary, but this is something that the -- this -- I -- I wanted to flag that for
16 the Court.

17

18 THE COURT: Well, as an officer of the court, you're
19 informing me of this.

20

21 MR. WERNIKOWSKI: Yes, Your Honour. And the other case
22 that was relevant was -- was 22 -- 2006 SCC 14. We're taking no position on the
23 question of jurisdiction. It's just something that has popped up in some of the case
24 law, so I want to make sure that the Court has all the tools necessary to address that
25 issue should the Court decide that that issue need to be addressed.

26

27 THE COURT: Thank you.

28

29 MR. WERNIKOWSKI: A couple -- a couple other points that --
30 that I would like to address in I believe it was Ms. Knoll's argument, she -- she
31 characterized the masking as forced medical treatment. It is very true that one has a
32 right to be free from forced medical treatment in Canada. This is -- this is protected
33 under s. 7.

34

35 THE COURT: Of the *Charter*?

36

37 MR. WERNIKOWSKI: Of the *Charter*. The -- being that, one,
38 security of the person interest is engaged by the need to -- if -- if they're being forced
39 to undertake medical treatment and based on the model of the Bill of Rights that
40 I've advanced for the Court today would also be protected under the equivalence of
41 s. 7 in -- in the Bill of Rights.

1
2 I would like to say that, however, in *Keough*, the Court firmly concluded that merely
3 wearing a mask is not forced medical treatment within the meaning of s. 7. So that
4 decision is dispositive of that argument in this instance.

5
6 The Court also heard arguments about discrimination. The discrimination argument
7 was essentially that other actions did not result in charges, whereas these ones did,
8 and that was discriminatory. Within discrimination guarantees in the *Charter*, it's
9 not a right to equal treatment. It's a right to equal treatment or not unequally
10 treatment based on protected grounds. That's -- in the *Charter* you have the
11 enumerated analogous grounds, race, and the unequal treatment that was
12 complained of today does not break along those lines. In -- and it certainly has not
13 been articulated that way, therefore there's no -- to the extent we have to get to a
14 discrimination argument, it's -- it's not -- it -- it's not obviously engaged there.

15
16 We've also heard that the -- some arguments suggesting the *Charter* is not valid.
17 My submissions are that we have over 40 years of case law from all levels of court
18 applying it suggesting that it is. Furthermore, the question of the *Charter's* validity
19 is a bit of a red herring for the Court I would suggest. The -- there are no *Charter*
20 claims before the Court on this application, and to the extent that the *Charter's*
21 validity has been brought into issue in an effort to distinguish between the case law
22 applying the *Charter* and the -- and the -- and the claim that's before the Court, my
23 response is that none of that case law dismissed the *Charter* claims based on a
24 finding that the *Charter* was invalid, therefore --

25
26 THE COURT: The *Charter* is valid.

27
28 MR. WERNIKOWSKI: Thank you, Your Honour. I -- that -- that's
29 certainly my -- my understanding of the legal landscape of Canada.

30
31 And -- and to the extent that my friends argue freedom of conscious, if -- if we -- if
32 it can be established or -- or other s. 2 rights that -- that were not perhaps explicitly
33 referenced in -- in *Keough*, I submit that the analysis is the same and is dispositive
34 in -- in the same manner. Subject to any questions the Court might have, that's --
35 those are the extent of my submissions.

36
37 THE COURT: No. That's fine. I'm going to take about
38 ten minutes, and then I'll provide a decision. Thank you.

39
40 (ADJOURNMENT)

41

1 **Decision**

2

3 THE COURT:

4 Thanking everyone for their helpful
5 submissions before me, that includes, obviously, the applicants and, of course, the
6 Crown.

7

8 The applicants argued that they cannot be convicted of the offences before the Court
9 under *The Public Health Act, 1994* or with respect to the impugned public health
10 orders because they violate the *Canadian Bill of Rights*.

11

12 With respect to review of the *Canadian Bill of Rights* reveals it is a federal statute
13 enacted by the Parliament of Canada on August 10th, 1960.

14

15 Today the *Bill of Rights*, as been indicated, remains in effect notwithstanding the
16 1982 adoption of the *Canadian Charter of Rights and Freedoms*. And while the
17 *Canadian Bill of Rights* is still enforced today, it only applies to federal legislation.

18

19 The matters before this Court do not pertain to any federal legislation or statute, and
20 as a result, the *Canadian Bill of Rights* is not applicable to these matters.

21

22 Now, I do -- I've come to that conclusion, I rely, in part, on the brief and the sections
23 paragraphs -- paragraph 7 and 8 of the Crown's brief of law, which is before me,
24 and I simply agree with the conclusion set out in paragraph 8 of that brief is that: (as
25 read)

26

27 *The Public Health Act, 1994* is not subject to be repealed,
28 abolished, or altered by the Federal Government, nor is *The*
29 *Public Health Act, 1994* a matter within the legislative
30 authority of the Federal Government.

31

32 The *Canadian Bill of Rights*, accordingly, does not apply to
33 *The Public Health Act, 1994* or the enactments made there
34 under -- including the public health orders.

35

36 The impugned public health orders, therefore, cannot be
37 invalidated based on a conflict with the *Canadian Bill of*
38 *Rights*.

39

40 I agree with that.

41

42 I'm now going to turn to the argument based on *The Saskatchewan Human Rights*

1 *Code*, or as, I suppose, put *Saskatchewan Bill of Rights*, then as has now been
2 incorporated in *The Saskatchewan Human Rights Code*.

3
4 I will begin by saying I agree with the position put forward by the Attorney General
5 Saskatchewan that, based on the look of Section 52 of the *Saskatchewan Bill of*
6 *Rights*, I agree with them, with the Attorney General Saskatchewan that that does
7 not apply to Part 2 of the Bill of -- *Saskatchewan Bill of Rights*. And -- which deals
8 with Sections 4 to 6 dealing with the *Bill of Rights*, the right -- A, B, C, and D, E
9 and F. So I accept that argument.

10
11 And I also note that in a recent decision of a colleague Judge Agnew, released
12 yesterday, January 17th, 2003 (sic), he states as follows in relation to Ms. Chipsiea
13 (phonetic), who is one of the defendants in that claim. He states at para. 5 he allowed
14 her free reign to make whatever argument she wished.

15
16 Going on, "She spoke at length eloquently and thoughtfully" -- which I found that
17 the applicants did today as well -- (as read)

18
19 She was calm and collected throughout, but clearly felt
20 strongly about the position she put forward. Her arguments,
21 however, tended to appeal to emotions rather than the law,
22 and the Court must be bound by law.

23
24 He then -- my brother Judge said: (as read)

25
26 To the extent that she offered a legal argument, it was based
27 on *The Saskatchewan Human Rights Code, 2018* --

28
29 And he stated: (as read)

30
31 However, the *Code* is, as its name -- name indicates, a code:
32 a complete set of laws for those matters which it governs.
33 A person who believes that their rights under the *Code*,
34 which have been violated, must bring the matter to the
35 Saskatchewan Human Rights Commission, which has the
36 power to investigate and bring a complaint before the Court
37 of Queen -- King's Bench.

38
39 That Court -- being the Court of King's Bench -- if it
40 concludes a breach has occurred, has the power set out in
41 s. 39. However, as Ms. Chipsiea has not followed that

1 process, and as this Court is not the Court of Queen's (sic)
2 Bench, the *Code* does not give me --

3
4 -- that is Judge Agnew -- (as read)

5
6 -- any power to address her issues, even if there was
7 evidence to support them; which there was not.

8
9 In this case, I find that I'm exercising judicial comity, I feel I'm bound by horizontal
10 *stare decisis*, or in other words, I'm bound by the decision of my brother Judge
11 Agnew.

12
13 And for the reasons as I've set out, I dismiss any arguments and any motions to
14 dismiss the offences before this court, based on alleged violations of *The*
15 *Saskatchewan Human Rights Code*.

16
17 Now, I note that there are some differences in the case, Mr. Seitz, he was relying on
18 the *Canadian Bill of Rights* solely, and I've addressed that.

19
20 In the case of Ms. Knoll and Ms. Hagel, they were relying both on the *Canadian*
21 *Bill of Rights*, and on *The Saskatchewan Human Rights Code*, and I noted when I
22 asked them when they were making their presentations, they have not made any
23 complaints to the Human Rights Commission, nor am I requiring them to. I'm just
24 saying that that would have been the process to follow.

25
26 And it may well be that other complaints were dismissed. I know nothing of that.
27 And perhaps that was discouraging to you, but I find that was where the process to
28 follow, in effect, for those complaints.

29
30 And I -- the only thing I would say is I -- I feel that I'm -- the Crown has brought
31 me to my attention those three cases, the *Rowley*, *Forsberg*, and *Lawless* decisions,
32 which, in effect, make categorical statements that remedies under the *Human Rights*
33 *Code* should be first brought to the commission, and I adopt that statement of law.

34
35 So for those reasons, I am denying any motion based on these arguments before me
36 to dismiss the offences before the Court for these accused.

37
38 Thank you for your submissions today, and you did so in a respectful and -- I thought
39 you'd presented your case well, so thank you.

40
41 So then that concludes these arguments, and that's my decision today.

1

2 And I think the only person then -- if we're talking about tomorrow on the *Vires*
3 arguments, will be -- Ms. Knoll, you said you can't be here, but you want to be
4 bound by that decision -- or at least, that's what I decided on your behalf, and you're
5 nodding your head in agreement, so that's fine.

6

7 And then otherwise, I wouldn't be expecting Mr. Seitz or Ms. Hagel tomorrow, and
8 as -- and I as -- as I understand, you've abandoned any arguments that were
9 previously made on your behalf on the *Vires* issue. Thank you.

10

11 Now, is there anything else?

12

13 **Discussion**

14

15 MR. BRÛLÉ: Your Honour, if I might just address the
16 Court on the Lavoie matters.

17

18 THE COURT: Yes. Why don't we -- if -- so insofar as
19 these -- these applicants are before the Court, you're free to go.

20

21 MR. BRÛLÉ: Yes, this would not apply to any of the
22 other applicants.

23

24 MR. CARTER: Your Honour, to be clear, they -- Ms.
25 Hagel and Mr. Seitz will both be required at their trials.

26

27 THE COURT: Oh, yes. Make no mistake about that in
28 that, you know, it's the trial of the matter, you're contesting the charges, and so you
29 should be at your trials. You're required to be there. All right? So thank you.

30

31 MR. BRÛLÉ: Your Honour, as it related to the two
32 Lavoie matters that were up on the Bench today, I am aware of the fact that
33 Ms. Miller --

34

35 THE COURT: Hang on. We're still in court, sir.

36

37 UNIDENTIFIED SPEAKER: Excuse me.

38

39 THE COURT: That's fine.

40

41 MR. BRÛLÉ: That Ms. Miller had corresponded in

1 relation to the *Vires* argument.

2

3 THE COURT: Yes.

4

5 MR. BRÛLÉ: It had been the Crown's intention on
6 bringing the request for default convictions.

7

8 In light of that communication, I just want to clarify for the Court if the Court is also
9 of the view that Ms. Lavoie matters cannot be dealt with until tomorrow in light of
10 that correspondence from the Court.

11

12 THE COURT: That's right, because Ms. Lavoie -- or
13 Lavoie, rather, initially there were notices provided by previous counsel to --

14

15 MR. BRÛLÉ: Sure.

16

17 THE COURT: -- Ms. Lavoie, challenging the *Vires* of the
18 underlying legislation and public health orders.

19

20 So it must be carried over to -- Ms. Lavoie's matter will be carried over to tomorrow
21 by order of the Court.

22

23 MR. BRÛLÉ: Thank you. Just wanted to confirm that,
24 Your Honour.

25

26 THE COURT: No, that's fine. Thank you. All right. You
27 can close court.

28

29

30

31 PROCEEDINGS ADJOURNED UNTIL 9:30 AM JANUARY 19, 2023

32

T65
FORM D
[Section 4]

IN THE MATTER OF THE KING v. ERINN L. KNOLL, CHRISTINA O. HAGEL,
GEORGE SEITZ, TAMARA LEE LAVOIE, and TANYA APODACA,

Certification of Transcript

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1. To the best of my knowledge, skill and ability, I transcribed the record that was recorded by a sound recording device.
2. The foregoing typewritten pages numbered T One (T1) to T Two (T2), and T Sixty (T60) to T Sixty-Four (T64) inclusive, are a complete and accurate transcript of the contents of the recording marked as Regain Provincial Court, January 18, 2023, which has been certified in (*check one*):

- Form A – Court Official’s Written Certification of Recording.
- Form B – Alternate Court Official’s Written Certification of Recording.
- Form C – Oral Certification of Recording.

Dated the 25th day of February, 2023, at Regina, Saskatchewan.


(signature)

T66
FORM D
[Section 4]

IN THE MATTER OF THE KING v. ERINN L. KNOLL, CHRISTINA O. HAGEL,
GEORGE SEITZ, TAMARA LEE LAVOIE, and TANYA APODACA,

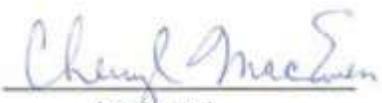
Certification of Transcript

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- Form A – Court Official’s Written Certification of Recording.
- Form B – Alternate Court Official’s Written Certification of Recording.
- Form C – Oral Certification of Recording.

Dated this 29th day of October, 2024, at Regina, Saskatchewan.


(signature)

FORM C
[Clause 3(1)(c)]

ORAL CERTIFICATION OF RECORDING

I, Kaylee Brown, Judicial Officer, certify that this recording is the record made of the evidence in the proceeding in the Regina Provincial Court, courtroom number 10, at Regina, Saskatchewan, taken before Judge Hinds on the 18th day of January, 2023.

I further certify that I, Kaylee Brown, was the court official in charge of the sound-recording machine during proceedings.

Appendix D

IN THE PROVINCIAL COURT OF SASKATCHEWAN
REGINA, SASKATCHEWAN

BETWEEN

HIS MAJESTY THE KING

and

ERINN L. KNOLL

Accused

TRIAL
(Excerpts)
Volume 1
(Pages T1 - T52)

March 20, 23, and 30, 2023
Regina, Saskatchewan

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1 Proceedings taken in the Provincial Court, Regina, Saskatchewan

2

3

4 March 20, 2023

Morning Session

5

6 The Honourable Judge

The Provincial Court of Saskatchewan

7 M.J. Hinds

8

9 B. Carter

For the Crown

10 T. Litowski

For the Attorney General

11 (No Counsel)

For the Accused

12 K. Brown

Court Clerk

13

14

15 **Discussion**

16

17 THE COURT:

Now, then, the other matter that's before

18 the Court is an application regarding -- that is by two of the self-represented

19 individuals before me on this matter, Ms. Erinn Knoll and Christina Hagel. And

20 you're both here, of course. Now, you are -- you filed a number of materials on this

21 but at one point -- well, I -- I want some clarification from you, if I may. You are

22 arguing that there have been some -- a breach -- or a violation of your rights under

23 the bill of rights and of the Saskatchewan Human Rights Code, 2018; is that right?

24

25 THE ACCUSED HAGEL:

Yes.

26

27 THE COURT:

Okay. And -- and then -- I just want to

28 look at the history of this, and I think, if I'm not mistaken, the Crown has set out

29 that history in a brief that I'll look at. Perhaps I could look at my own records to

30 (INDISCERNIBLE) on this. So if I'm not mistaken, Ms. Hagel, starting with you,

31 some time ago, that is on December 29th, 2022, you gave notice to the Court that

32 you would no longer be represented by the Justice Centre for Constitutional

33 Freedoms and you withdrew your *Charter* challenge, as I understand it -- *Charter*

34 challenges and you wanted to proceed, as you've stated in your notice, as a

35 self-represented woman whose rights were violated of who -- of which those rights

36 are protected under the Canadian Bill of Rights and the Saskatchewan Bill of Rights

37 by the Human Rights Code; is that correct?

38

39 THE ACCUSED HAGEL:

That's correct.

40

41 THE COURT:

And that, of course, applied to the -- the

1 summary offence ticket that you're charged on today and also then with respect to
2 the long form Information on which you're charged today, correct?

3

4 THE ACCUSED HAGEL: Yeah.

5

6 THE COURT: Yes?

7

8 THE ACCUSED HAGEL: Yeah.

9

10 THE COURT: Okay. And then likewise, Ms. Knoll, you
11 gave notice a little earlier than that. I believe you would have given notice, it looks
12 like, somewhere around November 10th, 2022 that you were likewise no longer
13 going to be represented by Mr. Coupal on your matters and that you withdrew your
14 *Charter* challenge, correct?

15

16 THE ACCUSED KNOLL: Correct.

17

18 THE COURT: And that you were proceeding as a
19 self-represented woman whose rights were violated and of which those rights are
20 protected under both the Canadian Bill of Rights and the Saskatchewan Bill of
21 Rights by the Human Rights Code, correct?

22

23 THE ACCUSED KNOLL: Correct.

24

25 THE COURT: Okay. Now, as I recall you were both
26 made aware of a day that the Court, I specifically, set aside for these arguments and
27 that date being January 18th, 2023, and you were both here that day, were you not?

28

29 UNIDENTIFIED SPEAKER: Yeah.

30

31 THE COURT: Okay. And I heard from each of you and
32 Mr. Seats (phonetic), who is another self-presented person on this same type of
33 argument, did I not? Ms. Hagel? Yes?

34

35 THE ACCUSED HAGEL: Yes.

36

37 THE COURT: Ms. Knoll?

38

39 THE ACCUSED KNOLL: Yes.

40

41 THE COURT: Okay. So I guess what I'm saying -- and

1 then I made a decision that same day on those arguments. I dismissed them. I gave
2 my reasons and, in fact, I think, if I'm not mistaken, those -- Mr. Litowski has in a
3 brief appended the -- the reasons that I gave that day. So my question to you is are
4 you not seeking to make the same arguments today that you made on January 18th,
5 2023 to me on these matters? And you're -- free feel to stand up and speak up.

6

7 THE ACCUSED KNOLL: Your Honour, all of our submissions that
8 we've put in recently were to be heard in writing alone.

9

10 THE COURT: Well, that's what you asked but I'm not
11 doing that.

12

13 THE ACCUSED KNOLL: We're not prepared to make oral
14 arguments on the fly, being self-represented.

15

16 THE COURT: Oh?

17

18 THE ACCUSED KNOLL: All of the submissions have been made
19 and have been asked to be heard in writing as well as supported affidavits have been
20 submitted.

21

22 THE COURT: Right. But, I mean, we don't have to go
23 through the hearing portion but I'm just asking, are you not making the same
24 arguments that you made before this Court on January 18th on your application
25 today, that is that the public health orders in question, in particular this one, but all
26 that are sort of applied to violate the bill of rights and The -- The Human Rights
27 Code?

28

29 THE ACCUSED KNOLL: Your Honour, I was not privy -- Christina
30 and I were not privy to your decision that day in writing at all. We heard your oral
31 decision that day. Mr. Litowski forwarded us the transcripts from that outcome on
32 Thursday, May -- sorry, March 17th.

33

34 THE COURT: Correct.

35

36 THE ACCUSED KNOLL: Before that we had not seen anything in
37 writing, which would have not allowed us to prepare anything in reply to that
38 response by Mr. Litowski, and we have the right to make full answer and defence.

39

40 THE COURT: Right. But -- my question's pretty
41 straightforward. Is there something new about the arguments you intend to make to

1 this Court on this issue?

2

3 THE ACCUSED KNOLL: Yes. It's all in writing, Your Honour, in
4 our applications.

5

6 THE COURT: Okay. Well, I mean, I -- you know, it's all
7 in writing but you're not really answering the question. And -- okay. So you want a
8 little more time to make oral representations, because I think this has to be on the
9 record, not just written arguments. I'm not going to accept simply written
10 arguments, I want to hear you both.

11

12 Now, you say you're not ready today, and that's fine. The -- I will add that the
13 decision that I gave, I mean -- was available to you to get a transcript of that decision
14 just as it was available to Mr. Litowski, but you may not have known that but you
15 now have it. So let me ask this, when would you be prepared to make oral arguments
16 on your -- contending that the public health order of May 6th, 2021 violated your
17 bills of rights and *The Saskatchewan Human Rights Code*, because we have next
18 Monday set aside for this.

19

20 THE ACCUSED KNOLL: No, Your Honour, we -- we are not going
21 to be speaking to -- to anything. It has all been submitted and was to be heard in
22 writing. We're not --

23

24 THE COURT: No, no. You said it was to heard in
25 writing. You asked for it to be heard in writing.

26

27 THE ACCUSED KNOLL: Yes, it was to be heard in writing.

28

29 THE COURT: No, you asked for it to be heard in writing.
30 You don't direct the Court as to whether it is heard or not. I want to hear it orally. If
31 you don't want to participate in an oral hearing, that's your choice.

32

33 THE ACCUSED KNOLL: Your Honour, we are self-represented
34 applicants with no legal training. We are not equipped to deal with a response from
35 the Crown in oral arguments. We need it in writing with sufficient notice. We're not
36 prepared to make oral arguments.

37

38 THE COURT: At all? Ever? I -- I mean, this can't -- I
39 can't adjourn this matter to some day in the distant future that you choose. I have to
40 deal with the matter and consider your arguments and the -- the response by the
41 Crown.

1

2 THE ACCUSED KNOLL: And you'd consider our arguments that
3 are in written form?

4

5 THE COURT: I can, if you don't -- if you don't wish to
6 make any oral arguments, but I -- I need to know that because if you have no desire
7 to make oral submissions, then I will, so you know -- if you decide you do not wish
8 to make oral submissions, I'm not going to force you. I would prefer you do that but
9 I can't force you nor would I. I will permit Mr. Litowski as AG -- or solicitor for the
10 AG to make oral arguments in addition to the written brief he's filed. That's part of
11 procedural fairness. I'm -- so what I'm asking is although you want to confine your
12 arguments, I've heard you, to the written arguments you've made, and Mr. Litowski
13 has done the same -- I have invited each of you to make oral arguments. If you
14 decline, I want it on the record, and then I'll give Mr. Litowski an opportunity to
15 make oral arguments. So where are we at? And I'm not trying to trick you or rush
16 you into any decision, but we have to have some finality to this case.

17

18 (DISCUSSION OFF RECORD)

19

20 THE ACCUSED KNOLL: Yeah. We -- we don't wish to make any
21 oral arguments, Your Honour. We don't wish to make any further submissions or
22 evidence, et cetera. We will neither confirm nor deny the allegations against us.
23 We're not -- we're not speaking (INDISCERNIBLE)

24

25 THE COURT: Okay. So let me then -- because you've
26 filed a number of things, let's then have on the record -- I know precisely what
27 you've filed. I have in your names as applicants, Erinn Knoll and Christina Hagel
28 versus Her -- His Majesty the King. These are on summary offence tickets 85492794
29 and 85492833, a notice of application and constitutional issue, and I believe that is
30 dated the 17th of March, so that is your -- your notice of application, correct -- your
31 written notice of application?

32

33 UNIDENTIFIED SPEAKER: (INDISCERNIBLE)

34

35 THE COURT: Correct? Okay.

36

37 UNIDENTIFIED SPEAKER: (INDISCERNIBLE)

38

39 THE COURT: So you're saying yes. Okay. And then I
40 have a -- an Affidavit of Christina Hagel on this same matter -- or on the same
41 summary offence ticket matters and it's a three-paragraph affidavit. It's -- I don't

1 believe it's -- oh. Well, it's -- it's sworn before a Nancy Shanher (phonetic) --
2 Shanher on February 28th, 2023?

3

4 THE ACCUSED HAGEL: M-hm. Yes, it is.

5

6 THE COURT: So that's your affidavit, Ms. Hagel?

7

8 THE ACCUSED HAGEL: Yeah.

9

10 THE COURT: Okay. And then likewise I have an
11 affidavit by Erinn Knoll, Ms. Knoll, it's a three-paragraph affidavit sworn before
12 the notary public Nancy Shanher dated February 28th, 2023?

13

14 THE ACCUSED KNOLL: Correct.

15

16 THE COURT: Okay. Thank you. Now, then you have
17 some affidavits of service that you served. I think, Ms. Knoll, you swore this again
18 on February 28th, 2023 that you served, Saskatchewan Provincial Prosecutor's
19 office, Attorney General, Attorney General for Saskatchewan with a notice of
20 application of Erinn Knoll and Christina Hagel. And you also served -- oh, that --
21 that was via email?

22

23 THE ACCUSED KNOLL: Right.

24

25 THE COURT: And then there was another -- saying --
26 you've sworn that you -- paragraph 2 on February 28th you additionally served the
27 Saskatchewan Provincial Court -- or Provincial Prosecutor's office, the Attorney
28 General of Saskatchewan, Attorney General of Canada with copies of affidavits of
29 -- oh, so one was the notice of application, the second one was the Affidavit of Erinn
30 Knoll and Christina Hagel and then a -- a third paragraph swearing -- it seems that
31 you're doing the same again. Oh -- oh, no. This was in respect to the AG of
32 Saskatchewan. Okay. Fine. So that's what you've filed, right?

33

34 THE ACCUSED KNOLL: Right.

35

36 THE COURT: Okay. Now, then there's something a
37 little different, I think, that's been filed. I just want to confirm -- let me just
38 double-check here, please. I have another document, same sort of style of cause or
39 jurat, but it's a notice of application quasi-constitutional issue. The first one was
40 four pages and now this next one that I have is a total of twelve pages. That's
41 something you've also filed?

1
2 THE ACCUSED KNOLL: The first application was the --
3
4 (DISCUSSION OFF RECORD)
5
6 THE ACCUSED KNOLL: The first application was the notice of
7 application and quasi-constitutional issue, which is 12 pages, correct. The
8 second --
9
10 THE COURT: No. The first one I was referring to was
11 four pages long. I -- I didn't --
12
13 THE ACCUSED KNOLL: Yeah, the --
14
15 THE COURT: -- make that clear.
16
17 THE ACCUSED KNOLL: -- the first one was the notice of --
18 application of constitutional issue was four pages.
19
20 THE COURT: Oh, I see. Maybe I -- I see. So there's two
21 notices of application of quasi-constitutional issues, correct, that you filed? One is
22 dated --
23
24 THE ACCUSED KNOLL: Yes.
25
26 THE COURT: -- I see February 27th --
27
28 THE ACCUSED KNOLL: Yes.
29
30 THE COURT: -- 2023, which you both signed?
31
32 THE ACCUSED KNOLL: Yes.
33
34 THE ACCUSED HAGEL: Yes.
35
36 THE COURT: And then a second one -- that was the
37 12-pager and then this one, a 5-page one dated March 17th.
38
39 THE ACCUSED KNOLL: Correct.
40
41 THE COURT: Okay. Was there a new affidavit with

1 respect to that?

2

3 THE ACCUSED KNOLL: Yes. There were supplementary affidavits
4 submitted with that notice.

5

6 THE COURT: Okay. So let's get to those. So I have the
7 same style of cause, Supplementary Affidavit of Christina Hagel, and it's -- consists
8 of nine paragraphs sworn March 17th, 2023 --

9

10 THE ACCUSED HAGEL: Yes.

11

12 THE COURT: -- before a notary public, correct?

13

14 THE ACCUSED HAGEL: Yes.

15

16 THE COURT: Okay. And then I have a Supplementary
17 Affidavit of Erinn Knoll, nine pages in length -- or nine paragraphs in length sworn
18 by Ms. Knoll on March 17th, 2023 before notary public Sarah
19 Delawaga (phonetic)?

20

21 THE ACCUSED KNOLL: Yes.

22

23 THE COURT: Correct? Okay. And are there any other
24 materials that you filed in support of this application because, I mean, you're saying
25 I should read them. Would you --

26

27 THE ACCUSED KNOLL: We did file a reply *factum* early this
28 morning.

29

30 THE COURT: Right. Let me just try and find that. Do
31 you have another copy of it by chance? I thought I saw something to that effect but
32 my filing system may not be what it should. Do you have another copy or a copy
33 that madam clerk could make of it?

34

35 THE ACCUSED KNOLL: Yeah.

36

37 THE COURT: Okay. Why don't you give that to madam
38 clerk. Madam clerk, can you -- we'll take a few minutes. That would be the last
39 document?

40

41 THE ACCUSED KNOLL: Yes.

- 1
2 THE COURT: Okay. Of your written materials?
3
- 4 THE ACCUSED KNOLL: Correct.
5
- 6 THE COURT: All right. So we're going to adjourn for a
7 few minutes. Where -- where this is heading, just so people know -- I think -- we've
8 got some time set aside today. We'll deal with the trial itself. I want to make sure,
9 Mr. Litowski, you see and are aware of all the written materials they intend to file.
10 I believe you have filed with the Court a -- a letter dated March 16th, 2023? Okay.
11 And then --
12
- 13 MR. LITOWSKI: Yes, Your Honour.
14
- 15 THE COURT: -- we'll maybe set aside a time maybe
16 later, not today, for oral argument by you on that and then -- or how long do you
17 think it will be perhaps? Do you have -- you are -- can you reply today on this -- all
18 of this material in an oral fashion?
19
- 20 MR. LITOWSKI: I think in large part I can, Your Honour.
21 Insofar as in -- in writing, Mr. Wernikowski briefed all these issues in -- in January
22 of 2023, so far as all the substantive issues are concerned.
23
- 24 THE COURT: Right.
25
- 26 MR. LITOWSKI: And the Court's already decided that
27 question. The only live issue, I think, is whether the Court should go back and revisit
28 that old decision (INDISCERNIBLE) and I'm prepared to speak to that
29 (INDISCERNIBLE) issue's fairly straightforward. In terms of the actual substance,
30 if the Court does want to go back and go into the quasi-constitutional issues, so to
31 speak, I would want Mr. Wernikowski's help for that and -- but if that's not -- not
32 doable then I can probably respond some time later this week. I'm afraid he's in the
33 Supreme Court of Canada this week arguing another issue so he's not present here
34 today.
35
- 36 THE COURT: Okay.
37
- 38 MR. LITOWSKI: So that -- that's my view of it, Your
39 Honour. I think the Court can dismiss the constitutional argument -- or, sorry, the
40 quasi-constitutional argument on the basis that you've already decided it and it's not
41 appropriate to revisit, and I can speak to that today, certainly.

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THE COURT: Okay. Well, we may be dealing with that a little later today. But why don't we adjourn so I make sure I have every -- all the materials on this -- this application. So we'll adjourn for a few minutes.

(ADJOURNMENT)

THE COURT: I had my clerk make a copy of a document entitled reply *factum* by -- provided by Ms. Knoll and Ms. Hagel and it looks like it consists of about a total of 18 pages; is that right?

THE ACCUSED KNOLL: Yes. Correct.

THE COURT: Yeah. All right. And it's dated March 20th, 2023. I've not read it, okay, so I'm not in a position to hear from you, Mr. Litowski. Have you read this reply *factum*?

MR. LITOWSKI: It was served at about 1:30 in the morning, Your Honour. I've had a chance to skim it.

THE COURT: Oh, no, that's fine. What I'm proposing we do on this is that -- as follows. Now, this trial is set for the whole of this week and then Monday of next. What I'm proposing is we deal with this Wednesday at 9:30 AM. Is that a good chance that -- or are you available?

MR. LITOWSKI: Your Honour, I might suggest Thursday. I believe --

THE COURT: Thursday?

MR. LITOWSKI: -- I misspoke earlier when I said Mr. Wernikowski's is in the Supreme Court today. He's in the Court, I believe, Tuesday and Wednesday --

THE COURT: M-hm.

MR. LITOWSKI: -- so Thursday he will be free. Whether it will be he or I that argue this perhaps --

THE COURT: Sure.

- 1 MR. LITOWSKI: -- remains to be seen. But it's set for
2 Thursday. That means Mr. Wernikowski has the opportunity, depending on his
3 workload.
4
- 5 THE COURT: Sure.
6
- 7 MR. LITOWSKI: In terms of the papers that we received,
8 we were inundated with documents over the last few weeks. I think it would be
9 appropriate to have some argument in -- orally on this matter, Your Honour. I worry
10 that the procedure that they -- the applicants are sort of foisting on the Court here,
11 which is a written only procedure, may be concealing the participation of someone
12 whose not a lawyer and who is essentially providing legal advice on these
13 matters --
14
- 15 THE COURT: Oh.
16
- 17 MR. LITOWSKI: -- based on the materials that I've
18 reviewed, Your Honour. I believe it may be one Christopher Weisdorf, but that
19 remains to be seen. So I think there is a sort of -- lurking in the weeds, Your Honour,
20 is an issue about providing legal advice. Obviously if -- if the applicants claim to be
21 self-represented and are prepared to argue it, then we'll have argument on -- on the
22 24th, but I suspect I'll launch into something orally and perhaps also in writing. That
23 remains to be seen.
24
- 25 THE COURT: Well, what we can do is -- I have -- again,
26 I have not read the reply *factum*. I -- of course, as a result I have no idea -- it's
27 purported to be prepared and -- did you -- oh, page 12 is unsigned. Did you want to
28 sign my copy of it, Ms. Knoll and Ms. Hagel?
29
- 30 (DISCUSSION OFF RECORD)
31
- 32 THE COURT: I think you signed the --
33
- 34 THE ACCUSED KNOLL: Well, it's not in the back of the document?
35
- 36 THE COURT: Well, it is actually.
37
- 38 THE ACCUSED KNOLL: (INDISCERNIBLE)
39
- 40 THE COURT: That's why I'm confused.
41

1 THE ACCUSED KNOLL: It's on page 12.
2
3 THE COURT: Okay. So it's an 18-page document but
4 the -- page 12 is reproduced twice, one with a signed copy and one unsigned. Is that
5 how it -- I'm to understand it?
6
7 THE ACCUSED KNOLL: Yeah.
8
9 THE ACCUSED HAGEL: Yeah.
10
11 THE COURT: Okay. So you signed this?
12
13 THE ACCUSED KNOLL: Yes.
14
15 THE COURT: Okay. What we'll do then -- are you
16 available, Ms. Hagel and Ms. Knoll, on Thursday, March the 23rd --
17
18 UNIDENTIFIED SPEAKER: (INDISCERNIBLE)
19
20 THE COURT: -- at 9:30?
21
22 THE ACCUSED HAGEL: Yes.
23
24 THE ACCUSED KNOLL: Yeah.
25
26 THE COURT: Okay. Then that's when we'll deal with
27 this notice of application of quasi-constitutional issue. I'm urging you, as I have, to
28 make oral argument, but if you don't want to make an oral argument, I can't force
29 you to do that nor would I, as I've said, but then the AG's department is -- I'm, you
30 know, saying, Yes, you can make an oral argument if you wish, and then you might
31 say, Well, we have more to say. We -- we want to reply to that, and if you want to
32 make an oral argument at that time, I'll let you do that, okay? So I'm trying to keep
33 this as fair as possible. You don't have to make an oral argument, but if you want to
34 in response to some matters, then by all means.
35
36 So I'm adjourning the notice of application of quasi-constitutional issue to March
37 24th, 9:30, this courtroom.
38
39 UNIDENTIFIED SPEAKER: (INDISCERNIBLE)
40
41 THE COURT: Okay?

1
2 UNIDENTIFIED SPEAKER: 3rd or --
3
4 MR. LITOWSKI: 24th.
5
6 UNIDENTIFIED SPEAKER: 3rd?
7
8 MR. LITOWSKI: I think (INDISCERNIBLE)
9
10 THE COURT: Let me get this straight. Thursday 23rd.
11 Sorry for the confusion. And I do believe that you'd served the Feds on this and they
12 didn't want to participate; is that correct?
13
14 THE ACCUSED KNOLL: Sorry? I missed that.
15
16 THE COURT: Did you serve the Federal Crown with
17 these notices and they said they didn't want to participate?
18
19 THE ACCUSED KNOLL: The Attorney General of Canada?
20
21 THE COURT: Yes.
22
23 THE ACCUSED KNOLL: Correct.
24
25 THE COURT: Yes. Okay. That's fine. Okay. So we'll set
26 those aside.
27
28 _____
29
30 PROCEEDINGS ADJOURNED UNTIL 9:30 AM, MARCH 23, 2023
31 _____
32

1 March 23, 2023

Morning Session

2

3 The Honourable Judge

The Provincial Court of Saskatchewan

4 M.J. Hinds

5

6 B. Carter

For the Crown

7 T. Litowski (by telephone)

For the Attorney General

8 (No Counsel)

For the Accused

9 K. Brown

Court Clerk

10

11

12 **Discussion**

13

14 THE COURT:

So I think then we're set -- thank you,

15 everyone.

16

17 THE ACCUSED HAGEL:

Just one question.

18

19 THE COURT:

Yeah.

20

21 THE ACCUSED HAGEL:

With me being on the phone --

22

23 THE COURT:

Yes.

24

25 THE ACCUSED HAGEL:

-- is Erinn able to record with her phone?

26 I don't know the rules on that.

27

28 THE COURT:

Oh, no, anything that's said in a

29 courtroom is recorded on -- we have recording equipment --

30

31 THE ACCUSED HAGEL:

Yeah.

32

33 THE COURT:

-- and so that -- you can order a transcript

34 of whatever is --

35

36 THE ACCUSED HAGEL:

Are we able to get that within, like, a short

37 period of time or --

38

39 THE COURT:

You'd have to check with Transcript

40 Services on that.

41

1 THE ACCUSED HAGEL: Okay. Just because it might be a little
2 difficult to take notes, especially while I'm on the phone so I just --
3
4 THE COURT: Oh, I see.
5
6 THE ACCUSED HAGEL: Yeah.
7
8 THE COURT: Yeah.
9
10 THE ACCUSED HAGEL: (INDISCERNIBLE)
11
12 THE COURT: Well --
13
14 THE ACCUSED KNOLL: If I might just add -- sorry, Your Honour.
15
16 THE COURT: M-hm.
17
18 THE ACCUSED KNOLL: That Transcripts indicate that they could
19 take up to 20 plus business days. That's not going to enable us to formulate a
20 response or reply in any kind of deadline -- to meet any kind of deadline, and being
21 that we aren't lawyers and we are self-representing it may prove challenging to take
22 really good notes.
23
24 THE COURT: Right.
25
26 THE ACCUSED KNOLL: I guess that's why Ms. Hagel and I are --
27 are requesting that we could record for our own purposes --
28
29 THE COURT: M-hm.
30
31 THE ACCUSED KNOLL: -- which would not be --
32
33 THE ACCUSED HAGEL: Shared or --
34
35 THE ACCUSED KNOLL: -- used or shared or anything. It would be
36 just strictly to augment our note-taking abilities in that we probably don't have the
37 same note-taking abilities as a lawyer.
38
39 THE COURT: All right. Well, Mr. Litowski, do you have
40 any position on that?
41

1 MR. LITOWSKI: Yes, Your Honour. I would oppose any
2 application to record things more (INDISCERNIBLE) the Court certainly aren't
3 preceded to my knowledge. There are specific practice directives when that can
4 be done and, to my knowledge, this doesn't fit within any of them. And I mentioned
5 before at the earlier hearing, Your Honour, one of the concerns I have with the
6 applicants attempts to foist a written (INDISCERNIBLE) procedure because I
7 believe it's being done (INDISCERNIBLE) contrivance to facilitate participant of a
8 non lawyer advocate who's -- who's been (INDISCERNIBLE) these material --
9

10 THE COURT: M-hm.

11

12 MR. LITOWSKI: -- arguing in contravention of *The Legal*
13 *Profession Act, 1990*. If you check the metadata of some of the documents of this
14 file you can see the name of the author on -- I guess, one of them is Mr. Chris
15 Weisdorf, an activist from Ontario who's spoken against Covid measures there and
16 claims to be engaged in litigation against the government in that jurisdiction. So I
17 don't want to do anything, Your Honour, that facilitates the representation of a
18 non-lawyer advocate in a way that's contrary to *The Legal Professions Act*. I don't
19 think we should, in general, be -- be condoning that kind of conduct. And certainly
20 the -- the odds that this -- the -- that any recording would be distributed in
21 contravention to a court order would have to be taken into account, and I strongly
22 suspect that any recording that is taken will be immediately distributed to third
23 parties and used for, you know, their purpose (INDISCERNIBLE)
24

25 THE COURT: You said that within the materials there's
26 some reference to an individual?
27

28 MR. LITOWSKI: It's in the metadata, Your Honour, which
29 is the (INDISCERNIBLE) I suppose, conceptualized as hidden data. It's -- it's data
30 that Adobe will record if the (INDISCERNIBLE) leaves -- the identity of the author
31 is generally based on -- provides (INDISCERNIBLE) information for whoever has
32 -- has created a document from Microsoft Word, for instance. And at least one of
33 the documents I've received the metadata indicates that the document was created
34 by Mr. Chris Weisdorf and a quick Google search suggests that Mr. Weisdorf is not
35 a member of the Law Society of Ontario. He is an activist in these circles. He's
36 spoken at freedom rallies and (INDISCERNIBLE) seminars on the issue of human
37 rights and Covid measures.
38

39 So this -- this written only application procedure, which has sort of been sort of
40 foisted on the Court by the applicants, is -- in my view, it happened from the
41 beginning, attempts to conceal the involvement of some third party ghost writer, or

1 at least that's what it seems to be to me. Now, the applicants are free to engage in
2 whatever help they like, I suppose, but we are treading very close to a violation --
3 or a possible violation of *The Legal Professions Act* and I don't want to condone
4 that more than we already have.
5

6 THE COURT: Maybe we could do it this way. I mean,
7 you're going to be making oral representations on March 30th at 9:30. Can you
8 speak slowly?
9

10 MR. LITOWSKI: I can certainly try, Your Honour.
11

12 THE COURT: Okay. Because what we'll try and do is
13 we'll all try and speak slowly so that Ms. Knoll or Ms. Hagel can make accurate
14 notes.
15

16 UNIDENTIFIED SPEAKER: (INDISCERNIBLE)
17

18 THE COURT: And, as I say, the transcript is available
19 via Transcript Services but I appreciate that wouldn't be in your hands for many
20 weeks perhaps after the fact. So if we all speak slowly -- I don't think it's a -- I -- I
21 think that may be the way to deal with this, all right?
22

23 THE ACCUSED HAGEL: Could we just speak to -- we do have
24 Chris as someone that is helping us.
25

26 THE COURT: Okay.
27

28 THE ACCUSED HAGEL: He is not a lawyer.
29

30 THE COURT: Right.
31

32 THE ACCUSED HAGEL: We are not paying him. There was
33 nothing like that. It's just another acquaintance that is helping self-represented
34 litigants out. That's all that is.
35

36 THE COURT: Okay. Well, that -- that's fine.
37

38 THE ACCUSED KNOLL: He has never presented himself as such
39 either.
40

41 THE ACCUSED HAGEL: No.

1
2 THE ACCUSED KNOLL: He is not being compensated in any
3 way --
4
5 THE ACCUSED HAGEL: Yeah.
6
7 THE ACCUSED KNOLL: -- and he has helped us in -- in light of --
8 we -- we are -- he's only -- the only person that's really been able to help us actually.
9 We haven't really been able to get a lot of help. And, you know, in regards to the
10 applications and *factums*, did we write them? Of course not. We -- we are not
11 lawyers, and -- and I'm sure that you recognize that. Thank you.
12
13 THE COURT: All right. Well, I just want to make sure
14 though that the applications -- because this, you know, could be a concern. You say
15 you didn't write them. Did Mr. Weisdorf write them?
16
17 THE ACCUSED HAGEL: Yes, he did.
18
19 THE COURT: Okay. Well, be careful, particularly Mr.
20 Weisdorf. I mean, you -- you've signed them, I gather.
21
22 THE ACCUSED HAGEL: Yes.
23
24 THE COURT: But you're saying that he's not a lawyer
25 and he's not trying to present himself -- he's --
26
27 THE ACCUSED HAGEL: That's right.
28
29 THE COURT: -- essentially assisting you in --
30
31 THE ACCUSED HAGEL: Yes.
32
33 THE COURT: -- presenting your case.
34
35 THE ACCUSED HAGEL: That's right.
36
37 THE ACCUSED KNOLL: And --
38
39 THE COURT: Okay. Well --
40
41 THE ACCUSED KNOLL: -- and we have been in -- in contact with

1 him and he has been assisting us and we have been reviewing with him all -- all the
2 things that he has brought forward to help us

3

4 THE COURT: Okay. Any concerns about that, Mr.
5 Litowski?

6

7 MR. LITOWSKI: Well, it -- it certainly confirms my
8 suspicions, Your Honour. It's not my place to say whether or not what Mr. Weisdorf
9 is or is not doing is a violation of *The Legal Professions Act*. It's -- I guess that's for
10 Mr. Weisdorf to -- to consider --

11

12 THE COURT: Right.

13

14 MR. LITOWSKI: -- but it -- it does, I guess, underscore that.
15 I -- I don't think the -- the application to record and transmit the proceedings should
16 be granted. I think the applicants -- if they are still not represented, are entitled to --
17 to be in court and to listen and to make notes as they -- as they see fit. I don't think
18 we need to facilitate Mr. Weisdorf's participation by having out of court recordings
19 made and distributed.

20

21 THE COURT: Well, I would agree with that. I mean,
22 we'll just -- I'll try and speak slowly and then -- you know, agents can assist people.
23 I mean, that -- and I don't think -- I'm not going to cross over to whether this should
24 be a complaint to the Law Society. I think that these self-reps are getting some help.
25 They've been very candid, saying it is Mr. Chris Weisdorf that's been helping them
26 so that's -- that's good. It's now out in the open, in that sense, and they can make
27 what representations they want on March 30th or file further materials based on their
28 note-taking at the hearing on March 30th, okay?

29

30 UNIDENTIFIED SPEAKER: Okay.

31

32 THE COURT: I think that's everything then. We'll see
33 everyone on March 30th. Anything else? Anyone?

34

35 MR. CARTER: Your Honour, just -- just so you're aware,
36 I will -- I will arrange for an agent to appear on my behalf that day. It maybe Mr.
37 Litowski, but I'll speak with him about that as --

38

39 THE COURT: Very well.

40

41 MR. CARTER: -- I'm -- I can't be here.

1
2 THE COURT: Okay. Thank you, everyone.
3
4 UNIDENTIFIED SPEAKER: Thank you.
5
6 THE COURT CLERK: All rise.
7
8 MR. LITOWSKI: Thank you, Your Honour.
9
10 THE COURT: You can close court.
11

12 _____
13
14 PROCEEDINGS ADJOURNED UNTIL 9:30 AM, MARCH 30, 2023
15 _____

16
17 March 30, 2023 Morning Session
18
19 The Honourable Judge The Provincial Court of Saskatchewan
20 M.J. Hinds
21
22 C. Golding For the Crown
23 N. Wernikowski For the Attorney General
24 (No Counsel) For the Accused
25 K. Brown Court Clerk

26 _____
27
28 **Discussion**

29
30 THE COURT: All right. So this morning is set aside for
31 a notice of application and quasi-constitutional issue on ticket numbers 85492794,
32 which corresponds to a ticket issued against Erinn Knoll from May 15th, 2021 on a
33 breach of the -- s. 61 of *The Public Health Act* regarding being involved in a public
34 or private gathering greater than ten people. That, of course, is -- ticket is included
35 in Information 991192882 where she is the named defendant. And we are still in
36 trial on this matter. There is this matter to be argued and -- as there is another matter
37 by Mr. Coupal on behalf of some of the defendants.

38
39 There is also -- this application is related to a ticket in relation to Christina Hagel,
40 85492833, ticket from May 15th, 2021, breach of s. 61 of *The Public Health Act*,
41 being involved in a public or private outdoor gathering of people that exceeds ten

1 persons. And, of course, Ms. Hagel is one of the named defendants in Information
2 991192882.

3
4 So what has happened to date, to recap, originally this Court heard an application
5 by these two defendants on all of their Informations regarding matters dealing with
6 -- or challenges and motions for dismissal of all the charges against them based on
7 alleged violation of their bill of rights and -- and -- or -- I guess, Canadian Bill of
8 Rights, their Saskatchewan Bill of Rights via the Human Rights Code. Those
9 matters were heard and reserved to be heard on January 18th, 2023.

10
11 So we are here again to here these arguments. And I want it to be clear that -- just in
12 terms of some of the background to this, as I recall, Ms. Knoll, you were originally
13 represented by Mr. Coupal --

14
15 THE ACCUSED KNOLL: Right.

16
17 THE COURT: -- and then I believe the Court received a
18 -- a fax regarding this ticket 2794 on or about October 11th, '22 and that document
19 was entitled Charter Challenge Withdrawal and Change of Representation. The
20 document states: (As read)

21
22 Please note I, Erinn Knoll, effective October 7th, '22 --
23 2022 will no longer be proceeding with a *Charter* challenge
24 under the representation of Luke Coupal in the case
25 pertaining to ticket ending 2794. I've withdrawn the
26 *Charter* challenge with both the Attorney General of
27 Canada and the Attorney General of Saskatchewan as I will
28 now be proceeding as a self-represented woman whose
29 rights were violated of which those rights are protected
30 under both the Canadian Bill of Rights and the
31 Saskatchewan Bill or Rights by the Human Rights Code.

32
33 On November 1st Mr. Coupal sought and was granted leave to withdraw as your
34 counsel, Ms. Knoll, and then on December 2nd you appeared in this -- in courtroom
35 number on this matter and other matters and on that particular day the Court advised
36 you, Ms. Knoll, and Mr. Seats, who was also self-represented at that time, that any
37 arguments they wished to make before the Court involving the violations of their
38 rights, including those under the Canadian Bill of Rights, the Saskatchewan Bill of
39 Rights by the Human Rights Code are to take place on January 18th, 2023, 9:30,
40 courtroom number 10. And then as -- as I recall, you, in fact, filed some material
41 with the Court prior to that date -- written material that is.

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41

And then -- Ms. Hagel, you're on the phone, are you?

THE ACCUSED HAGEL: Yes, I am.

THE COURT: Okay. With respect to Ms. Hagel, a somewhat -- a similar but somewhat different situation. You were initially represented by Ms. Anderson. A *Charter* challenge based on s. 2 of the *Charter* was filed on your behalf. The Crown brought a motion to dismiss the *Charter* challenge based on s. 2 and that *Charter* challenge was summarily dismissed by this Court on December 2nd, 2022 and you were bound by that decision.

Then on December 30th, 2022 the Court received a document entitled *Charter Challenge Withdrawal and Change in Representation* regarding ticket ending 2833 and you stated: (As read)

Please note, I, Christina Hagel, that effective December 29th, 2022 will no longer be proceeding with the *Charter* challenge under the legal representation of the Justice Centre for Constitutional Freedoms in the case pertaining to ticket number ending 2833.

I've abbreviated that.

I have drawn the *Charter* -- withdrawn The *Charter* challenge with both the Attorney General of Canada and the Attorney General of Saskatchewan as I will now be proceeding as a self-represented woman whose rights were violated of which those rights are protected under both the Canadian Bill of Rights and the Saskatchewan Bill of Rights by the Human Rights Code.

Now, on January 4th your matter was brought forward and you were here. You may have been by telephone but you were certainly present. Ms. Anderson was granted leave to withdraw as counsel for you, you were representing yourself, and the matter was adjourned to January 18th for you to make arguments on this matter. And, of course, the both of you both made arguments -- verbal arguments on the -- the violation of your rights, including rights under the Canadian Bill of Rights, Sask Bill of Rights by the Human Rights Code. Mr. Seats did as well. Ms. Lavoie (phonetic), who was a self-represented individual, chose not to attend court.

1 That's where we're at today. So now I've received and read your notice of
2 application, Ms. Knoll and Ms. Hagel. I have a (sic) application of quasi-
3 constitutional question. You've both filed affidavits in support of that and some
4 affidavits of service have been filed. Then there was a (sic) additional document
5 filed. Notice of Application and Constitutional Issue. That was -- and I should say
6 the first matter was filed the 27th of February, 2023. Notice of Application and
7 Constitutional Issue was filed on March 17th, 2023. There was a supplementary
8 affidavit by -- filed by both of you and a reply *factum* was filed on -- well, I have --
9 it's dated March 20th, 2023. And then, of course, the Crown had -- or Mr. Litowski,
10 a senior Crown counsel with the Attorney General, filed a letter dated March 16th,
11 2023 addressing the notice of application and related materials of Ms. Hagel and
12 Ms. Knoll.

13

14 So today was set aside for these -- these -- well, I will call it the application by Ms.
15 Knoll and Ms. Hagel and, as I recall, but please correct me if I'm wrong, Ms. Hagel
16 and Ms. Knoll, you have stated previously that you do not wish to make oral
17 submissions on this; is that correct?

18

19 THE ACCUSED KNOLL: Correct.

20

21 THE COURT: Okay. Is that correct, Ms. Hagel?

22

23 THE ACCUSED HAGEL: Correct.

24

25 THE COURT: Okay. That's fine.

26

27 THE ACCUSED HAGEL: Yeah.

28

29 THE COURT: And as I said, I can't force anyone to
30 make oral submissions nor do I intend to, but there is a long history in this court of
31 people making oral submissions and written submissions, and in this instance, of
32 course, the Crown has made a written submission by way of their letter of March
33 16th, 2023, of course -- and -- so that is before me. And I also noted that -- of course,
34 the Crown has -- AG has the perfect right to make oral representations today, which
35 I invite you to do in a moment.

36

37 At the conclusion of those oral submissions I will obviously permit a reply by Ms.
38 Knoll and Ms. Hagel. It can be in the form of a (sic) oral reply, just -- or I would
39 permit a brief time for a written reply, but it's not going to be months. It'll be, like,
40 less than a week. Is that an agreed upon procedure today?

41

1 THE ACCUSED KNOLL: Yes.

2

3 THE ACCUSED HAGEL: Yes.

4

5 THE COURT: Okay. So with that, Mr. Wernikowski,
6 were you going to carry the ball for the AG?

7

8 MR. WERNIKOWSKI: Thank you, Your Honour.

9

10 THE ACCUSED KNOLL: Can I just ask one question, Your
11 Honour?

12

13 MR. WERNIKOWSKI: Oh, yeah.

14

15 THE ACCUSED KNOLL: Excuse me.

16

17 THE COURT: Yes.

18

19 THE ACCUSED KNOLL: I do have an opening statement as well as
20 a closing statement. I'm just not sure when that would be appropriate for me to -- to
21 voice those things for the record.

22

23 THE COURT: Oh, well, now, it seems to me is the time
24 for your opening statement on your application.

25

26 THE ACCUSED KNOLL: Okay.

27

28 THE COURT: So when you're ready.

29

30 THE ACCUSED KNOLL: Thank you.

31

32 **Submissions by The Accused Knoll**

33

34 THE ACCUSED KNOLL: Counsel for the respondent and the Court
35 are both in possession of our two applications and their supporting materials. There
36 is no need to revisit any of our submissions during this hearing.

37

38 In addition to addressing our fulsome submissions in their totality the Attorney
39 General and the Court need only answer a simple question. Do two days of notice
40 by the government constitute fair and reasonable notice to us as applicants?
41 Moreover, do two days of notice constitute fair and reasonable notice to

1 self-represented litigants in a quasi-criminal proceeding?

2

3 The Attorney General provided only two days of notice to us as applicants of their
4 brief of law previous to the impugned January 18th hearing as has been previously
5 and abundantly demonstrated. The right to make full answer and defence as a
6 principle of fundamental justice is enshrined in our right to a fair trial. Having fair
7 and reasonable notice of the government submissions secures our right to make full
8 answer and defence. The lack of such notice will necessarily impair this critical right
9 and prejudice the entire proceeding.

10

11 Proper notice is a fundamental -- is fundamental to the rule of law, British common-
12 law doctrine and practice. It is fundamental to the operation of an orderly and civil
13 society. It governs our roads, it governs our contracts, it governs our employment,
14 it governs our daily conversations and healthy relationships, and it governs our
15 legislative, executive, and judicial processes and procedures.

16

17 Fair and reasonable notice is almost a constitutional right. We never received fair
18 and reasonable notice of the Attorney General's brief of law and have submitted our
19 reply, as is our right, in the form of the first application. The second application
20 secures this right under the *Charter*. A transcript of said impugned hearing on
21 January 18th is forthcoming and will be furnished to the respondents and the Court
22 as soon as it has been received.

23

24 THE COURT: Well, wait a sec.

25

26 THE ACCUSED KNOLL: This transcript --

27

28 THE COURT: Hold on. What are you talking about?

29

30 THE ACCUSED KNOLL: I'm talking about the transcript from
31 January 18th.

32

33 THE COURT: Well, it's already before the Court. The
34 AG has filed it.

35

36 THE ACCUSED KNOLL: It was just the decision -- it was just a
37 portion of the transcript --

38

39 THE COURT: Oh, you want --

40

41 THE ACCUSED KNOLL: It was just a portion. I've requested the

1 entire transcript.
2
3 THE COURT: I see. Well, when will that be produced to
4 the Court?
5
6 THE ACCUSED KNOLL: When it's received. I've -- I've put in the
7 -- the form --
8
9 THE COURT: I'm not adjourning this for two -- four
10 months?
11
12 THE ACCUSED KNOLL: That's okay. We're prepared to reply.
13
14 THE COURT: Okay.
15
16 THE ACCUSED KNOLL: I'm just saying there's a transcript --
17
18 THE COURT: That's fine.
19
20 THE ACCUSED KNOLL: -- forthcoming.
21
22 THE COURT: Fine.
23
24 THE ACCUSED KNOLL: We're still prepared to reply.
25
26 THE COURT: Okay.
27
28 THE ACCUSED KNOLL: This transcript will allow the respondent
29 and the Court to refresh their memories regarding what happened on that day. The
30 rest has already been properly sworn as evidence in our affidavits. We ask the Court
31 to wait until receiving the transcript before ruling on this case and issuing
32 subsequent written reasons of decision. Thank you.
33
34 THE COURT: Well, I'll be very clear. I'm not waiting
35 for the full, entire transcript. I am not sitting on appeal of my own decision.
36
37 THE ACCUSED KNOLL: I understand that and we are prepared to
38 reply without the transcripts. I'm just letting you know that there's a transcript
39 forthcoming if -- if memories need to be refreshed in making a decision.
40
41 THE COURT: I made lots of notes on January 18th. I

1 might add, for the record, that I had set January 16th as a day -- as a deadline day
2 for the materials -- any materials to be filed by anyone on the January 18th return
3 date.

4

5 THE ACCUSED KNOLL: Your Honour, I just wanted to make a
6 slight correction to what you had said earlier. I hadn't submitted anything that day
7 prior to January 18th. I believe I had --

8

9 THE COURT: It was on the day --

10

11 THE ACCUSED KNOLL: -- submitted it on court.

12

13 THE COURT: Yes, you're quite right, and thank you for
14 correcting me on that. You're right. Yes, because I -- just want to look at that for a
15 moment. Yes. You filed materials on January 18th, 2023 and then you swore an
16 affidavit dated -- and filed with the Court dated January -- or December 15th, 2022,
17 so that's -- two affidavits were filed by you that -- so, yes, the -- the Court did receive
18 some materials from you.

19

20 All right. So thank you for your opening statement.

21

22 THE ACCUSED KNOLL: Thank you.

23

24 THE COURT: And now I'll hear from Mr. Wernikowski.

25

26 MR. WERNIKOWSKI: Thank you, Your Honour. Before --
27 before I begin, I'd like to introduce my colleague to the Court. Mr. Corbin Golding,
28 who's a student at law and currently with Public Prosecutions.

29

30 THE COURT: All right. Good morning, sir.

31

32 MR. GOLDING: (NO AUDIBLE RESPONSE)

33

34 **Submissions by Mr. Wernikowski**

35

36 MR. WERNIKOWSKI: My understanding is that Ms. Hagel and
37 Ms. Knoll advised this Court on an early occasion that all the recent material was
38 -- was written by a Chris Weisdorf out of Ontario.

39

40 THE COURT: Yes.

41

1 MR. WERNIKOWSKI: He's not a lawyer and he's been
2 concealing his involvement and -- but they had requested that argument proceed
3 only in writing to facilitate his continued involvement.
4

5 THE COURT: Right.
6

7 MR. WERNIKOWSKI: I understand that SOPA (phonetic) and
8 the relevant portions of the *Criminal Code* allow for Ms. Hagel and Ms. Knoll to --
9 to have an agent --
10

11 THE COURT: Right.
12

13 MR. WERNIKOWSKI: -- but if this is an agent relationship is --
14 is another -- is another question. But I want to make it very clear that I'm not taking
15 any -- any issue with that --
16

17 THE COURT: Okay.
18

19 MR. WERNIKOWSKI: -- or with his involvement, whatever it
20 may -- may be. I'm happy to address all arguments that -- that they
21 (INDISCERNIBLE) intend, whatever their origin may be.
22

23 THE COURT: All right.
24

25 MR. WERNIKOWSKI: I do, however, want to draw this Court's
26 attention to a series of cases that speak of the right of the Court to control the
27 appearance or role of an agent to protect the integrity of the trial process, specifically
28 a case called *Zielke v the Law Society of Saskatchewan*. The citation for that is 2021
29 SKCA 156 at paragraph 109.
30

31 THE ACCUSED KNOLL: Can you repeat that case so that I may --
32

33 MR. WERNIKOWSKI: Yeah, the citation is --
34

35 THE ACCUSED KNOLL: -- be clear on --
36

37 MR. WERNIKOWSKI: -- 2-0-2-1 --
38

39 THE ACCUSED KNOLL: 2-0-2-1?
40

41 MR. WERNIKOWSKI: Yes. SKCA 1-5-6 at paragraph 1-0-9.

1
2 THE ACCUSED KNOLL: And the name of the case again? *Zielke* --
3
4 MR. WERNIKOWSKI: *Zielke v the Law Society of Saskatchewan.*
5 And -- and two other cases cited therein -- I'm not going to provide the citations but
6 that -- that pinpoint gets you there.
7
8 THE COURT: Okay.
9
10 MR. WERNIKOWSKI: The *Queen v Romanowicz*, which is a case
11 of the Ontario Court of Appeal.
12
13 THE COURT: And that's contained within --
14
15 MR. WERNIKOWSKI: Within that --
16
17 THE COURT: To *Zielke*?
18
19 MR. WERNIKOWSKI: -- pinpoint to *Zielke*, correct. And -- and
20 the second being *Manitoba v Pollock*.
21
22 THE COURT: How's that spelled -- *Pollock*?
23
24 MR. WERNIKOWSKI: Like -- like, the -- the fake crab, P-O-L-L-
25 O-C-K.
26
27 THE ACCUSED: And would you be able to spell the first?
28 *Queen v* --
29
30 MR. WERNIKOWSKI: R-O-M-A-N zero 'W' -- O-W-I-C-Z.
31
32 THE ACCUSED: ... I-C-Z.
33
34 MR. WERNIKOWSKI: The reason I present these -- these cases
35 to the Court, just to demonstrate that agents -- an agent's role in these proceedings
36 are -- are obviously at the Court's leisure and that -- that the Court can make
37 decisions to -- to control the integrity of the -- the process. It's -- it's somewhat trite.
38 All this is to say that -- that this involvement is at the Court's leisure and odd
39 procedural demands such as receiving -- to refusing the Crown in terms -- structured
40 as to refuse the Crown the right of oral submissions shouldn't be indulged unless
41 it's this Court's will.

1
2 THE COURT: Okay. Well, it hasn't.
3
4 MR. WERNIKOWSKI: Thank you, Your Honour.
5
6 THE COURT: Yeah.
7
8 MR. WERNIKOWSKI: Clearly. So Ms. Hagel and Ms. Knoll
9 have filed a number of documents since their bill of rights challenge was dismissed
10 on January 19th, and this Court went into those in some detail this morning so I
11 don't -- I don't intend to recount those, other than to say the Court's list is the same
12 as the Attorney General's list. We have been served with all of those documents and
13 we've had a chance to review all of those documents.
14
15 Viewed in the aggregate these filings raise the following issues. One, should this
16 Court revisit its January 18th decision? Two, has there been a breach of s. 11(d)
17 and/or the right to make full answer and defence? Finally, if this Court decides to
18 revisit its January 18th decision, is the outdoor gathering restriction compliant with
19 the Saskatchewan Bill of Rights? Those are the three issues raised.
20
21 THE COURT: Let me just direct those
22 (INDISCERNIBLE) more --
23
24 MR. WERNIKOWSKI: Thank you, Your Honour.
25
26 THE COURT: -- slowly. We did say actually this
27 morning that we would be going actually quite slowly because I wouldn't be waiting
28 for a -- a written transcript of these proceedings to be prepared, so I just ask you to
29 bear with us and go slow.
30
31 MR. WERNIKOWSKI: I will do -- I -- I will do my best. I often
32 tend to go too fast so --
33
34 THE COURT: So you said it's --
35
36 MR. WERNIKOWSKI: -- I -- I appreciate -- I appreciate the
37 direction.
38
39 THE COURT: So if the Court --
40
41 THE ACCUSED KNOLL: Can you just repeat the last --

- 1
2 THE COURT: Yes.
3
4 THE ACCUSED KNOLL: -- issue you brought up?
5
6 MR. WERNIKOWSKI: Finally, if this Court decides to revisit its
7 January 18th decision, is the outdoor gathering restriction compliant with the
8 Saskatchewan Bill of Rights?
9
10 As this Court is well aware, the bill of rights issue that Ms. Hagel and Ms. Knoll
11 seek to litigate here today has already been decided in this very proceeding, therefore
12 the issue (INDISCERNIBLE) this decision be revisited. And I'll address that first
13 issue now.
14
15 Following extensive case management, this Court determined that the bill of rights
16 and other similar legal arguments raised by self-represented litigants in the context
17 of various public health order prosecutions would be argued at a combined hearing
18 on January 18th. Filing deadlines were set. Ms. Hagel and Ms. Knoll were both
19 given notice of these filing deadlines and this hearing and they both attended and
20 made oral argument at the hearing, and Ms. Knoll filed written submissions as well.
21 Their argument was rejected and an oral decision rendered that day and they now
22 want to relitigate that decision.
23
24 Courts such as this one do have the power to, and I quote, "reconsider, vary or revoke
25 a ruling, order or judgment if they are not *functus*," see, for example, a case from
26 the Supreme Court called the *Queen v DeSousa*. That's D-E-S-O-U-S-A and the
27 citation for that is [1992] 2 Supreme Court Reports 944 at page 132.
28
29 THE ACCUSED KNOLL: I'm going to get you to repeat that for me,
30 please.
31
32 MR. WERNIKOWSKI: [1992] 2 Supreme Court Reports 944 at
33 page 132.
34
35 THE ACCUSED KNOLL: And the name of the case, please?
36
37 MR. WERNIKOWSKI: Can I -- can I suggest that perhaps
38 afterwards I -- I can give -- give the applicants the cases rather than in the context
39 of -- of my submissions. It -- it -- if --
40
41 THE COURT: It interrupts the flow, but it's *DeSousa* --

1
2 THE ACCUSED KNOLL: *DeSousa.*
3
4 THE COURT: D-S -- or E-S-O-U-S-A.
5
6 THE ACCUSED KNOLL: Okay.
7
8 THE COURT: And then counsel can give you the legal
9 citation after court.
10
11 MR. WERNIKOWSKI: I'm happy to go over afterwards --
12
13 THE COURT: Yeah.
14
15 MR. WERNIKOWSKI: -- and make sure that's all fully ironed out
16 for -- for --
17
18 THE COURT: Sure.
19
20 MR. WERNIKOWSKI: -- the applicant.
21
22 THE COURT: Okay.
23
24 MR. WERNIKOWSKI: There are -- there are cases -- I am going
25 to be providing citations through -- throughout these submissions so -- so I think
26 that -- that that's an efficient process.
27
28 THE COURT: Okay.
29
30 MR. WERNIKOWSKI: *Res judicata* does not apply during a
31 hearing to decisions reached by a judge during the hearing and a judge is not *functus*
32 when a voir dire has ended. The case for that is the *Queen v Farrah*, F-A-R-R-A-H,
33 2011 MBCA 49.
34
35 So the power exists. It's not an entire non-starter off the bat. Such a power, however,
36 is to be exercised only in very limited circumstances, according to the *CBC v*
37 *Manitoba*. The citation for that is 2021 SCC 33, and I believe this case was -- was
38 also mentioned in -- in my colleague Mr. Litowski's letter to the Court.
39
40 THE COURT: It was, yes.
41

- 1 MR. WERNIKOWSKI: And I'll -- I'll refer to that case just as
2 *CBC* going forward.
3
- 4 THE COURT: And I think he highlighted paragraph 54.
5
- 6 MR. WERNIKOWSKI: Correct. Yeah. And I will be getting to
7 that shortly. The key point here is finality is important and helps stabilize judgments
8 subject to review while ensuring an orderly appellant procedure. Re-litigation is
9 discouraged. It's very exceptional circumstances. The power exists but it's -- it's --
10 it's exceptional, and it's exceptional for good policy reasons, as outlined in that *CBC*
11 decision.
12
- 13 Some examples of the limited circumstances that might make a reconsideration in
14 the interest of justice include whether the circumstances that dictated that result or
15 the result of that order have materially changed, changed in a way that affects the
16 validity of that order. That's the *CBC* at paragraph 54. Or the order was made with
17 no notice being given to an affected party. *CBC* at paragraph 42. The issue here was
18 where a publication ban was issued without notice to the media.
19
- 20 A third one mentioned in -- in a different case is where a judge needs to correct a --
21 a previous decision after discovering a glaring error. The case there is 2018 ONCA
22 547 at paragraph 103.
23
- 24 THE COURT: Try that again? What was the citation
25 again?
26
- 27 MR. WERNIKOWSKI: 2018 ONCA 547 at paragraph 103. The
28 decision was ultimately overturned but -- but not -- not on -- not on this point.
29
- 30 THE COURT: What was the case name though in that
31 2018 Ontario Court of Appeal decision?
32
- 33 MR. WERNIKOWSKI: Unfortunately I do not have it.
34
- 35 THE COURT: That's all right. So that was 2018 ON --
36
- 37 MR. WERNIKOWSKI: CA ...
38
- 39 THE COURT: -- 547?
40
- 41 MR. WERNIKOWSKI: 547 --

1
2 THE COURT: At --
3
4 MR. WERNIKOWSKI: -- at paragraph 1-2-3 (sic).
5
6 THE COURT: At 1-2-3.
7
8 THE ACCUSED KNOLL: 1-2-3?
9
10 THE COURT: 1-2-3.
11
12 MR. WERNIKOWSKI: 1-0-3, sorry, my --
13
14 THE ACCUSED KNOLL: 1-0 -- 1-0-3.
15
16 THE COURT: 1-0-3. Okay. Thank you.
17
18 MR. WERNIKOWSKI: If the Court will indulge me for one
19 moment, I --
20
21 THE COURT: No, that's fine.
22
23 MR. WERNIKOWSKI: Okay.
24
25 THE COURT: I have the citation. That's fine.
26
27 MR. WERNIKOWSKI: So these are some of the examples where
28 courts have said that this -- this rare power can be justified. Put simply. No
29 compelling reason exists here to justify the revisitation of a prior ruling. One, the
30 resolution of the bill of rights issue was not fact dependant. More or less took place
31 in a factual vacuum based on an analysis of the -- the -- what's on the face of the
32 legislation, the public health order and the bill of rights, so a rehearing cannot be
33 justified on the basis of a change in circumstance.
34
35 Two, Ms. Hagel and Ms. Knoll certainly had -- had notice of the January 18th
36 hearing. They both attended and made oral argument. Ms. Knoll even filed written
37 argument. I suggest to the Court that the level of participation was robust.
38
39 Third, there's no compelling reason to think that an error has occurred that needs to
40 be corrected outside of the normal process for (INDISCERNIBLE) legal errors,
41 appeals, and -- and earlier this -- the -- Your Honour characterized some of this

1 material as inviting the Court to sit in appeal of its own decision and -- and I suggest
2 that that is apt, and I will return to that point a little bit more later.

3

4 Really what has happened here is that the applicants are not happy with the initial
5 result. They've solicited some new assistance and they want a second kick at the
6 can. They think the result might be different. They argued the issue differently the
7 first time. This -- and this is not enough to justify a rehearing. I -- I seldom finish a
8 set of oral submissions without wishing I could have phrased it differently going
9 forward. That's -- that's not enough to justify a -- a rehearing.

10

11 So those -- those are our point -- those are our submissions on the first point, which
12 is should this Court revisit its January 18th decision.

13

14 THE COURT: Thank you. Now, you made some notes
15 there. Are you satisfied that -- and if you need Mr. Wernikowski to slow down he's
16 -- we can do that, but --

17

18 THE ACCUSED KNOLL: I think I'm --

19

20 THE COURT: You think you captured the --

21

22 THE ACCUSED KNOLL: -- I think I'm faring okay.

23

24 THE COURT: Okay. Thank you. Because we have lots
25 of time. So I think the second issue is, has there been a breach of s. 11(d)?

26

27 MR. WERNIKOWSKI: Yes, Your Honour, which, along with
28 s. 7, helps protect the right to make full answer and defence and procedural fairness
29 in -- in a general sense. So I'll move to this -- this issue now.

30

31 I have to admit that I had some trouble wrapping my head around this argument.
32 Procedural fairness issues are typically raised on appeal, and a lot of their argument
33 seems to be an invitation for you to set an appeal of your own decisions and your
34 own processes. Because of this, I -- I submit that the 11(d) argument is perhaps best
35 understood as an argument about a perspective breach. The applicants are
36 suggesting that the procedure so far has been constitutional deficient and are inviting
37 the Court to use its jurisdiction to control its own processes to address such a breach
38 before it actually manifests. That's how -- that's -- that's the frame that I -- that I
39 submit is -- that this -- this application is -- this component of this application is best
40 understood. Understood this way, the issue becomes should this Court oblige the
41 request for a rehearing to remedy -- to remedy a perspective breach of -- of s. 11(d).

1 And determining this issue necessarily requires an inquiry into what process 11(d)
2 and 7, both of which protect procedural fairness concerns, demand -- requires a look
3 at the content of what -- those demands.
4

5 Okay. So Ms. Hagel and Ms. Knoll impugned various aspects of the procedure
6 leading up to the January 18th hearing. For example, they take issue with, one,
7 receiving my respondent's brief on January 16th.
8

9 THE COURT: But I want to make it clear, that was the
10 date and the deadline I set -- the Court set.
11

12 MR. WERNIKOWSKI: Thank you, Your Honour. That's also my
13 recollection. Two, not receiving a transcript of the January 18th decision until I
14 provided it to them in March. And then they also allege that they did not understand
15 the purpose of the January 18th hearing and figured they would be allowed to argue
16 the issue again at their trial.
17

18 Many of these complaints are based on factual misunderstandings. For example, the
19 complaint that there was no written decision that was distributed to them. There was
20 no written decision prepared, as the Court is well aware. The Attorney General
21 ordered a transcript of the oral decision.
22

23 THE COURT: And let's be really clear on this point for
24 Ms. Knoll and Ms. Hagel's perspective. I gave what we call in this court, most courts,
25 an oral decision on January 18th after hearing from you, Ms. Knoll, Mr. Seats, and
26 then hearing from the Attorney General. An oral decision is just that. It's spoken
27 from the bench, and you heard it that day. I have never given a written decision on
28 this matter but it was, as the Attorney General obtained, a portion of the transcript
29 from that day, which is then in a written form, but it is not a written decision. It just
30 captures, in a transcript format, my -- the words that I spoke when I made my
31 decision. Do -- do you see the difference? I think you'd seen a few of my written
32 decisions along the way.
33

34 THE ACCUSED KNOLL: M-hm.

35
36 THE COURT: Okay. Anyhow.
37

38 MR. WERNIKOWSKI: Other than being based on -- on what I
39 would suggest are factual process misunderstandings, which I'm not faulting them,
40 of course, for, but the complaints are also odd in, like, the fact that neither Ms. Hagel
41 nor Ms. Knoll request an -- an adjournment on the January -- on January 18th.

- 1
2 THE COURT: That is my recollection.
3
- 4 MR. WERNIKOWSKI: That would of course, be -- be borne out
5 on the record, but that is -- that is the Attorney General's recollection. They both
6 proceeded to make oral argument and advance their positions. They clearly
7 understood that this was their opportunity to make their argument on the issue.
8
- 9 THE ACCUSED. KNOLL: Can I spoke to that for a moment, please?
10
- 11 THE COURT: Well, let's deal with the first one. Are you
12 saying that you requested an adjournment, you or Ms. Hagel, on January 23rd?
13
- 14 THE ACCUSED KNOLL: I did not request an adjournment but my
15 understanding -- I'm having a hard time understanding -- receiving a brief of law
16 two days before I'm to appear in court. I don't even know where that came from
17 initially. I never submitted anything before the Court in order for them to provide
18 that response to me, so I was completely railroaded by that brief of law, the way I
19 see it. I had no capable way of responding to that in two days in a proper matter.
20
- 21 THE COURT: That's what you say by way of affidavit
22 now. You said nothing to the Court about that on January 18th, did you?
23
- 24 THE ACCUSED KNOLL: I said nothing to what? Sorry.
25
- 26 THE COURT: You say that you -- I mean, I -- I'm sure
27 you received a brief by Attorney General -- the Attorney General's brief on this on
28 January 16th as did the Court. You -- you say that you didn't have time to read it,
29 you feel railroaded, but you did not say anything to that effect to the Court on
30 January 18th. You -- you didn't request an adjournment. You didn't say, I haven't
31 had time to review this, read it, understand it, and respond. You said nothing.
32
- 33 THE ACCUSED KNOLL: Correct, Your Honour. I perhaps did not
34 understand the -- the process. That day, on January 18th, I brought what I had and
35 that was -- that was all I had. I hadn't -- I hadn't prepared anything else further to
36 the -- to the response given the -- to the brief of law. I had absolutely no capability
37 of doing that. I only brought what I had on the table before that, and that was a few
38 things that I brought up in asserting my rights, telling you what sections my rights
39 were violated under. I hardly argued very much that day.
40
- 41 THE COURT: Well, you were given the whole day, as I

1 recall.

2

3 MR. WERNIKOWSKI: Thank you. Your Honour, I'd like to --
4 before I proceed with my argument --

5

6 THE COURT: Yes.

7

8 MR. WERNIKOWSKI: -- I'd like to speak a little bit about --
9 about the record in evidence in -- in this matter and on this application. My -- my
10 argument is referencing the record and my comments are inferences that I am
11 inviting the Court to draw from that record. I know that there were affidavits that
12 were received in tandem with this application. I haven't turned my mind about
13 whether those -- my position about their admissibility. I'm not going to make --
14 however, I -- I would like to note that if -- if either -- if the applicants are -- are
15 standing up in the context of this hearing and providing evidence, I suggest that
16 perhaps they might need to be sworn in and subject to cross-examination.

17

18 THE COURT: Right. Well, I mean, I have a recollection,
19 a very clear recollection, of the day, and if -- and, I mean, I made the assertion from
20 my memory that neither Ms. Knoll, Ms. Hagel or Mr. Seats requested an
21 adjournment on January 18th, 2023. If -- and although we haven't put Ms. Knoll or
22 Mr. Hagel -- Ms. Hagel in the box on that, I am not hearing any -- or contrary view
23 to that.

24

25 MR. WERNIKOWSKI: Thank you, Your Honour. So I -- I -- in
26 my submissions -- the place of my submissions I was speaking about -- about the
27 procedural complaints that the applicants have raised and I was drawing the Court's
28 attention that they -- they're odd in light of the fact that no adjournment was
29 requested or these issues were not raised that day, only months later after -- after
30 securing assistance from someone else.

31

32 And -- and, secondly, some of the materials reference complaints about not having
33 a lawyer, being self-represented -- or duty counsel -- not having duty counsel, as
34 they put it, and I -- I would like to draw the Court's attention to that the fact that the
35 record clearly demonstrate they had lawyers, they fired lawyers --

36

37 THE COURT: Right.

38

39 MR. WERNIKOWSKI: -- they never requested duty counsel and
40 never asked for an adjournment to find a new lawyer.

41

1 That said -- that said, the sum of the complaints, Your Honour, I submit do not
2 amount to a breach -- or perspective of breach of s. 11(d), and this is our position.

3
4 Section 11(d) and 7 together guarantee procedural fairness of rights, including the
5 right to make full answer and defence, as it -- as it's put, and the decisions and also
6 the applicant's application. There are a number of specific entitlements that fall
7 under the right to make full answer and defence, including the right to cross-examine
8 prosecution's witnesses, the right to call witnesses at trial. Disclosure rights are --
9 also fall into the purview of that section. It's a broad, encompassing idea that
10 manifests as specifically recognized rights.

11
12 The list of specifically recognized iterations are that this right, of course, are not
13 closed but typically when determining whether there's a breach of 11(d) or 7 of the
14 procedural fairness there's a reference made to kind of the existing bouquet of
15 specific procedural aspects that -- that it guarantees.

16
17 Before this Court I submit that the right to make full answer and defence does not
18 encompass the right to receive a respondent brief of the Crown earlier than two days
19 before argument, and -- and this is for -- for a few reasons.

20
21 THE COURT: Just -- just stop there. I just want to make
22 a note.

23
24 THE ACCUSED KNOLL: Can you just clarify what you just said
25 there? You said that a right to full answer and defence does not encompass --

26
27 MR. WERNIKOWSKI: Yeah.

28
29 THE ACCUSED KNOLL: -- a litigant to receive --

30
31 MR. WERNIKOWSKI: Our -- our -- the position advancement for
32 the Court is that the right to make full answer and defence does not encompass or
33 does not guarantee the right to receive a respondent brief of the Crown -- a written
34 respondent brief of the Crown earlier than two days before argument. That's not one
35 of the entitlements under 11(d) and 7.

36
37 First and foremost, a right to receive a respondent's written argument has not yet
38 been recognized as a component of 11(d). The applicants have presented no cases,
39 suggesting that it has and nor have I been able to -- to find any on this point. What
40 we do have is a bare assertion from them that this is within the scope of 11(d). And,
41 as will be demonstrated as I go through the remainder of my submissions on this

1 point, such an entitlement would fit uncomfortably within the scope of 11(d) and
2 the finding that such an entitlement would render many common practices
3 unconstitutional, seeing that there is typically no requirement to file written
4 submissions at all on such occasions.

5
6 Second -- second point is a little bit higher level. The caselaw's clear that the right
7 to make full answer and defence is not a right to, and I quote, "the most favourable
8 procedures imaginable," end quote, nor is its scope assessed solely from the
9 accused's perspective. The case here is a very recent one out of the Supreme Court
10 called the *Queen v J.J.*. The citation for that is 2-0-2-2 Supreme Court of Canada 28
11 at paragraphs 123 to 125.

12

13 THE COURT: Did you get that citation?

14

15 THE ACCUSED: Yes, I did, yeah.

16

17 THE COURT: Okay. Thank you.

18

19 MR. GOLDING: Third, such entitlement would be out of
20 step with the general purpose of the right to make full answer and defence, which is
21 generally oriented at protecting one's ability to know the evidence against them and
22 to call their own evidence. It's about the Crown's case.

23

24 For example, in the *Queen v Ford*, the citation for that is 78 CCC, it's 3rd edition,
25 so (3d) 481. And -- and this is a decision out of the British Columbia Court of Appeal
26 in 1993. There, at paragraph 63, the British Columbia Court of Appeal said the
27 following: (As read)

28

29 What then is "full answer and defence"? It is, first, the
30 ability to probe the evidence of the Crown so that the jury
31 can judge if it be credible by which I mean both honest and
32 accurate, "the truth, the whole truth and nothing but the
33 truth".

34

35 Secondly --

36

37 -- so it's the right to probe evidence.

38

39 Secondly, it's the right to adduce all evidence not known
40 to be false that may raise in the minds of jurors either a
41 conviction or innocence or a reasonable doubt of guilt.

1
2 Thirdly, it is the right to make submissions to the trier of
3 fact on the law and on the evidence. There are certain other
4 aspects of "full answer and defence" but it is not necessarily
5 -- necessary to write a treatise on the subject for the purpose
6 of this case.
7

8 The reason I'm bringing this passage to the Court's attentions is to demonstrate the
9 main thrust of that right, that its orientation is on evidence and the ability to make
10 argument and ability to meet the substantive arguments of the case.
11

12 The issue here is not that Ms. Hagel and Ms. Knoll didn't know the evidence against
13 them, didn't know the case to meet or that they were denied the opportunity to call
14 evidence or make argument. Their complaint is really that they did not have my
15 response to their argument well enough in advance of the hearing, an unusual
16 position considering, one, it was their burden to prove their claim and at the hearing
17 my sole role was to respond to their legal arguments. My argument is not part of the
18 case that they have to meet. It is rather a process of me meeting the quasi-
19 constitutional arguments and that aspect of the case that they raise.
20

21 My friend earlier mentioned to the Court that they filed their material on the 18th
22 after receiving my respondent's brief. The exercise of providing anything to the
23 Court, to my friends in advance as the role of respondent, I submit was -- was above
24 and beyond.
25

26 THE COURT: Well, it was really -- I wouldn't call it
27 quite courtesy. I simply said, and as I recall, I wanted to make the hearing as
28 meaningful as possible on the 18th. That's why I'd requested if there's going to
29 written material filed, they file it on the 16th so people have some notice but not
30 forever notice. Thank you.
31

32 MR. WERNIKOWSKI: Fourth, the caselaw that exists on the
33 point I -- I submit does -- does not support their position. On this point I want -- I
34 want to direct the Court to a Supreme Court case from 1998. That's the *Queen v*
35 *Rose*, R-O-S-E, and that's [1998] 3 Supreme Court Reports 262.
36

37 THE COURT: [1998] 2 SCC --
38

39 MR. WERNIKOWSKI: SCR, Supreme Court Reports.
40

41 THE COURT: SCR. I'm sorry. Yeah.

1

2 MR. WERNIKOWSKI: 262.

3

4 THE COURT: 262. Thank you.

5

6 MR. WERNIKOWSKI: It's not completely on point but I suggest
7 that analogies can be accurately drawn and that it shows the right to make full
8 answer and defence, does not entail the right to receive the Crown's argument in a
9 manner most favourable to the defence.

10

11 There the claimant argued that the *Criminal Code* provisions that allowed the Crown
12 to give the final closing address to the jury where the accused testifies -- they argue
13 that this reversed order violates the right to give full answer and defence. In
14 dismissing the challenge, the majority held that there is evidence -- that there was
15 no evidence that the order of the jury address significantly affects the knowledge of
16 the accused at the time regarding the Crown's theory of the case and the
17 interpretation of that evidence. And it shows that the -- that -- again, it really -- it
18 shows the orientation of this on knowledge of the case, not necessarily knowledge
19 of arguments, knowledge of the evidence, knowledge of the theory of conviction.

20

21 In a similar vein, Justice L'Heureux-Dubé's concurring opinion said the following
22 at paragraph 62: (As read)

23

24 Were the right to full answer and defence to include the
25 right to "answer" everything the Crown said, the defence
26 would have the constitutional right to have the Crown's
27 jury address take place before the defence introduced any
28 evidence. Such a change is not constitutionally necessary
29 or desirable.

30

31 The case is -- and -- the case, I suggest, stands for the notion that the right to full
32 answer and defence does not entail the right to receive the Crown's argument in a
33 manner most favourable to defence and the orientation of the right is on -- is on the
34 substance and not -- and not -- not the argument.

35

36 Here the alleged issue is that they didn't have sufficient time to respond to my
37 respondent's legal argument. This, however, does not mean that they were forced
38 into arguing the issues on it -- on its merits without knowing the Crown
39 (INDISCERNIBLE) the case or the interpretation of the evidence. And for these
40 reasons I submit that the complaints even viewed in the aggregate don't amount to
41 a perspective breach of 11(d). There's no reason to go where no other Court has

1 gone and find that 11(d) entitles an accused application to receive the respondent's
2 written material more than two days in advance of the argument and, accordingly,
3 there's no obligation for this Court to cater its procedures as to avoid a perspective
4 breach of 11(d) and 7.

5
6 THE ACCUSED KNOLL: May I just clarify quickly on that last case,
7 *Queen v -- sorry, Queen v Rose?* You mentioned a paragraph 62. Is that from that
8 case?

9
10 MR. WERNIKOWSKI: Yes.

11
12 THE ACCUSED KNOLL: Okay.

13
14 MR. WERNIKOWSKI: That's from Justice L'Heureux-Dubé's
15 concurring opinion on that case.

16
17 Finally, almost the third issue now, which is if this Court decides to revisit its January
18 18th decision, is the outdoor gathering restriction compliant Saskatchewan Bill of
19 Rights. If this Court decides to rehear and re-adjudicate the bill of rights issue, I'm
20 -- I'm not going to pound the table why my position is clearly as I outlined in the
21 last 45 minutes.

22
23 THE COURT: Right.

24
25 MR. WERNIKOWSKI: The legal test for rehearing is nowhere
26 near satisfied and the process so far has been procedurally fair.

27
28 I recognize that -- that a path through these various issues would -- would be to --
29 to rehear this issue and -- and, with respect, I will -- will address this briefly because,
30 with respect, this -- this argument -- the substance of this argument, I suggest to the
31 Court, has little merit. So I will briefly touch on the merits issue again. I won't take
32 too much time.

33
34 THE COURT: No, take the time you need.

35
36 MR. WERNIKOWSKI: But on this point I'd like to direct the
37 Court to my January 18th brief -- 16th brief at paragraphs 15 to 37. I'm not sure if
38 the --

39
40 THE COURT: Fifteen to thirty-seven?

41

1 MR. WERNIKOWSKI: It's 15 to 37. I'm not sure if the Court
2 has --
3
4 THE COURT: I do.
5
6 MR. WERNIKOWSKI: -- has that brief.
7
8 THE COURT: I do. I'll just reference it. Do you have that
9 brief?
10
11 THE ACCUSED KNOLL: I don't think I do on me today.
12
13 THE COURT: Do you have it in -- somewhere, like,
14 perhaps at home?
15
16 MR. WERNIKOWSKI: If you want to follow along you can --
17
18 THE ACCUSED KNOLL: I have it at home. Thank you.
19
20 MR. WERNIKOWSKI: -- for the purpose of my submissions?
21
22 THE ACCUSED KNOLL: Sure.
23
24 MR. WERNIKOWSKI: I will want that back.
25
26 THE ACCUSED KNOLL: Sure.
27
28 MR. WERNIKOWSKI: You're welcome.
29
30 THE ACCUSED KNOLL: Sure. Absolutely. I mine at home, yes.
31
32 MR. WERNIKOWSKI: Okay. So paragraphs 15 to 37 of the
33 January 18th brief.
34
35 THE COURT: Okay.
36
37 MR. WERNIKOWSKI: These paragraphs outline the crux of -- of
38 our position on this challenge, which, in bullet points, is as follows:
39
40 The test -- One: The test for determining infringement of a provision of the
41 Saskatchewan Bill of Rights is the same as determining an infringement of that

1 provision's sister provision under the *Charter*. Based on Ms. Hagel and Ms. Knoll's
2 March 17th brief, at paragraph 14, this is not in dispute.

3
4 Second: The Queen's Bench decision of *Grandel and Mills* binds this Court. Again,
5 based on Ms. Hagel and Ms. Knoll's March 17th brief at paragraph 15, this is also
6 not in dispute.

7
8 Third bullet point of our position. Finally, because *Grandel and Mills* decided that
9 the outdoor gathering strictions do not violate the *Charter's* freedom of expression
10 and assembly guarantees, this Court should conclude the same outdoor gathering
11 restrictions do not violate the Saskatchewan Bill of Rights freedom of expression
12 and assembly guarantees.

13
14 THE COURT: The only thing I'd put on that is *Grandel*
15 *and Mills* said they did violate s. 2 --

16
17 MR. WERNIKOWSKI: Yes.

18
19 THE COURT: -- but they were not demonstratively
20 justified --

21
22 MR. WERNIKOWSKI: Yes, Your Honour. And I will get to
23 that --

24
25 THE COURT: -- or not --

26
27 MR. WERNIKOWSKI: -- point shortly.

28
29 THE COURT: Yeah.

30
31 MR. WERNIKOWSKI: And -- and -- this -- this is -- this is a good
32 opportunity for me to -- for me to take a touch of a tangent.

33
34 THE COURT: Okay.

35
36 MR. WERNIKOWSKI: I want to -- moving forward, I'm going to
37 draw a distinction between the term "violate" and the term "infringement."

38
39 THE COURT: Okay.

40
41 MR. WERNIKOWSKI: So I -- I would suggest to the Court that

1 the *Grandel and Mills* case concluded that there was an infringement or a limit on
2 the rights guaranteed under the *Charter*, but on the whole, because of s. 1, it was
3 not violative of those guarantees. I recognize that *Grandel and Mills* used the term
4 violate in the decision itself, but I will -- I -- I --

5

6 THE COURT: I think -- I understand if you're making
7 the distinction, of course, the Saskatchewan Bill of Rights has no corresponding
8 s. 1.

9

10 MR. WERNIKOWSKI: Yes, Your Honour.

11

12 THE COURT: Okay.

13

14 MR. WERNIKOWSKI: So our last point -- so that's our last point
15 and this is where the applicants and our positions depart, for the reason he Court
16 just -- just identified. They argue in their March 17th brief that the fact the
17 Saskatchewan Bill of Rights, like, Alberta's, one of the few other provinces that still
18 maintain a statutory bill of rights, does not have a s. 1 equivalent and that this is
19 critical.

20

21 *Grandel Mills* concluded that the outdoor gather restrictions infringe s. 2 but that
22 section -- but that such infringements are saved under s. 1 therefore the *Charter*
23 wasn't violated. Because the bill of rights have no comparable saving provisions the
24 findings concerning infringement bind this Court, but the Court of Queen's Bench's
25 ultimate conclusion about validity does not. In fact, their argument continues, they
26 lead inescapably to a conclusion that the Public Health order incident is invalid
27 because we have -- we're bound on the question of infringement, but there is no
28 ability to save, therefore it's invalid based on the Sask Bill of Rights. That's -- that's
29 -- that's their argument. I think it's even topped off with a flourish of QED.

30

31 My response is, put rather rudely, that an *Oakes* like test is incorporated into the bill
32 of rights analysis, notwithstanding the absence of a textual equivalent to s. 1.

33

34 Under the *Charter* questions of infringement and justification/proportionality are
35 separated textually, but under the bill of rights, I suggest, they blend into a single
36 question, which is about whether that particularly guarantee is violated. In other
37 words, the bill of rights does not create absolute rights just because there's no s. 1
38 equivalent text drafted into its test.

39

40 Conceptually a rough parallel is the American guarantee of rights. There's no
41 proportionality s.1 equivalent in -- in the American bill of rights but rather these

1 questions, proportionality, justification have been incorporated as kind of a
2 threshold issue. They're combined. And I suggest to the Court that the same is true
3 for the Saskatchewan Bill of Rights. So when I suggest that the test for a violation
4 is the same as under the *Charter* as under the bill of rights, I mean a test that includes
5 both the question of infringement and a question of justification/proportionality.
6

7 Intellectually interesting though, why am I arguing this? This position's consistent
8 with the caselaw outlined in our brief which -- which is important.
9

10 THE COURT: Okay.

11
12 MR. WERNIKOWSKI: In these cases, the cases that I have
13 presented to the Court, that demonstrate the test should be the same, incorporates
14 this. In these cases, courts have refused to view rights under the bill of rights,
15 Saskatchewan, Alberta, which both lack this s. 1 equivalent as absolute, and have
16 applied general *Oakes* like analyses to determine whether such rights are violated,
17 notwithstanding that absence.
18

19 *Geller* at paragraph 45, which is one of the cases cited in -- in that January 16th
20 brief, I quote: (As read)

21
22 Freedoms of expression and peaceful assembly are not
23 absolute rights. These freedoms do not automatically
24 provide for the unrestricted use of public property.
25

26 That's *Geller* at 45.
27

28 THE COURT: And *Geller* is cited at paragraph 18 of that
29 brief (INDISCERNIBLE)

30
31 MR. WERNIKOWSKI: And is also in the -- in the table of
32 authorities at the back of it.
33

34 THE ACCUSED KNOLL: Okay.

35
36 THE COURT: Right.

37
38 THE ACCUSED KNOLL: Thank you.
39

40 MR. WERNIKOWSKI: Community awareness project at
41 paragraph 46, "Clearly s. 5 does not give an absolute right to freedom of

1 expression,” end quote.

2
3 And, finally, *Peter and the Public Health Appeal Board of Alberta* (phonetic), also
4 a Covid related case, at paragraph 86 -- and -- and this is -- this is the most direct
5 point. This -- this puts my point most directly: (As read)

6
7 The rights recognized in the bill of rights are not absolute.
8 There are limits to freedom and the enjoyment of property.
9 As with the *Charter*, rights are subject to justified
10 limitations, having regard to the rights and interests of
11 others and the public in general --

12
13 -- end quote.

14
15 So *Grandel's* conclusion that the outdoor gathering restrictions do not unjustifiably
16 infringe or violate the freedom of expression and assembly guarantees of the
17 *Charter* is dispositive of the question asked of this Court, whether the same outdoor
18 gathering restrictions violate the freedom of expression and assembly guarantees
19 under the Sask Bill of Rights. This is so, notwithstanding the difference in form
20 between the two pieces of legislation. Questions of justification and proportionality
21 are placed within s. 1 of the *Charter* and within the right themselves and the bill of
22 rights.

23
24 Subject to -- to any questions the Court might have, those -- those are the -- the
25 extent of my submissions.

26
27 **Discussion**

28
29 THE COURT: Thank you. Now, a question then for you,
30 Ms. Knoll, and for Ms. Hagel, who is on the line. Do you wish to make a written
31 reply to the Court based on the oral submissions of the Attorney General for
32 Saskatchewan?

33
34 THE ACCUSED HAGEL: Yes.

35
36 THE COURT: Okay.

37
38 THE ACCUSED KNOLL: Yes, we'll wish to make a written reply,
39 which would be, I'm hoping, delivered electronically the way we've been
40 communicating.

41

1 THE COURT: That's fine. That -- that -- I'm fine with
2 that. Is -- it could be sent to Ms. Miller of my office and, of course, it should go as
3 well to Mr. Wernikowski. Now, the question is when would that reply be available?
4 Yes.

5
6 THE ACCUSED KNOLL: I'll -- I'll leave it up to you to -- to decide.
7 I think you mentioned that it's not going to be a lengthy period of time, of course,
8 and -- and we don't expect that. I thought I heard you say somewhere between a few
9 days and a week would be, like, the max so --

10
11 THE COURT: I'm thinking that. I mean, what I was
12 thinking is giving you a week.

13
14 THE ACCUSED KNOLL: Okay.

15
16 THE COURT: Is that sufficient?

17
18 THE ACCUSED KNOLL: Yes, I believe that would be sufficient.

19
20 THE COURT: Are you in agreement, Ms. Hagel?

21
22 THE ACCUSED HAGEL: Yes, I am.

23
24 THE COURT: Okay. Because I -- I don't want you
25 coming toward -- to me afterwards saying that wasn't enough time. I mean, there
26 -- we're narrowing, I think, some of the issues here. And so I'm going to impose a
27 deadline for the submission of the applicants, Ms. Knoll and Ms. Hagel, written
28 reply to the Attorney General's oral submissions. And that would be April the 6th,
29 I believe, and I'll make it at '23 -- at 4 PM Saskatchewan time.

30
31 Now, if for any reason -- and it is my hope that it doesn't spawn a reply from the
32 AG, but if for any reason it did, I would expect that reply in writing, I would say,
33 by April the 11th. And I'm not inviting it, by the way. I mean --

34
35 MR. WERNIKOWSKI: Thank you.

36
37 THE COURT: -- I want to be clear. I think the AG has
38 put forth a -- an argument that I can follow and -- and as the AG knows, you don't
39 have to reply to everything at all times. But if there was another -- if the AG, I'll put
40 it, needs to reply, then that would be then April 11th, '23 at -- by 4 PM.

41

1 Then on this I will give my decision on April 21. And could you both be here -- that
2 is -- well, Ms. -- Ms. Knoll and Ms. Hagel, I was thinking of April 21. It's a Friday.
3 And it could be at 9:30 or it could be 2 PM. What -- is one better than the other?
4

5 THE ACCUSED HAGEL: Two PM would be better for me.
6 (INDISCERNIBLE) appear by (INDISCERNIBLE)
7

8 THE COURT: Yes.
9

10 THE ACCUSED HAGEL: Okay. Yeah. Thank you.
11

12 THE ACCUSED KNOLL: April 21st may prove to be slightly
13 challenging for me to attend. I potentially maybe out of town -- well, I know I'm
14 going to be that weekend for sure. I just don't know what time.
15

16 THE COURT: Okay. Well, then why don't we make it
17 April 20th?
18

19 THE ACCUSED KNOLL: Okay.
20

21 THE COURT: That's the Thursday --
22

23 THE ACCUSED KNOLL: That works for me, but --
24

25 THE COURT: -- April 20th.
26

27 THE ACCUSED KNOLL: -- I'll hear from --
28

29 THE COURT: And is -- is 2 PM still best for you, Ms.
30 Hagel?
31

32 THE ACCUSED HAGEL: Yes, that's (INDISCERNIBLE)
33

34 THE COURT: Is that acceptable to you, Ms. Knoll, and,
35 Mr. Wernikowski?
36

37 MR. WERNIKOWSKI: Yes, Your Honour.
38

39 THE ACCUSED KNOLL: Yes, Your Honour.
40

41 THE COURT: Okay. So my decision on this application,

1 April 20th, 2023, number 10, this courtroom, at 2 PM. Now, I want to, of course,
2 permit you, Ms. Knoll, or Ms. Hagel -- I think you had said, Ms. Knoll, you wanted
3 to make a final submission or a closing submission, I think, is how you put it.
4

5 THE ACCUSED KNOLL: Just today, Your Honour, you mean?
6

7 THE COURT: Yes.
8

9 THE ACCUSED KNOLL: Yeah. It's just short.
10

11 THE COURT: No. Well, it can be any length you wish.
12 So I'll hear your concluding submission.
13

14 **Submissions by The Accused Knoll**
15

16 THE ACCUSED KNOLL: Again, it's just brief. I'll just say that
17 today -- we have done our best to transcribe the proceeding today, noting oral
18 arguments from the Attorney General of all applicable caselaw, referenced
19 paragraphs and/or pages and arguments made. We shall deliver our reply in writing
20 per the Court's timeline. I thank you for hearing us today and the defence rests.
21

22 THE COURT: Okay. All right. Thank you very much.
23 Well, then, again, just to reiterate, I'll permit further written submissions from the
24 applicant -- applicants Ms. Knoll and Ms. Hagel by April 6th, 4 PM, and that can
25 be submitted electronically to both the Court, Ms. Miller for me, and to Mr.
26 Wernikowski. And if the AG needs to make a reply, then by April 11th, 2023. And
27 then my decision will be made on April 20th, 2 PM, in this courtroom. Anything
28 else for today's purposes then?
29

30 (NO AUDIBLE RESPONSE)
31

32 THE COURT: All right. Thank you, everyone. We stand
33 adjourned. You can close court.
34

35 _____
36
37 PROCEEDINGS ADJOURNED UNTIL 2:00 PM, APRIL 20, 2023
38 _____

T52
FORM D
[Section 4]

IN THE MATTER OF THE KING and ERINN L. KNOLL

Certification of Transcript

I, LINDA SAJEC, court transcriber appointed pursuant to *The Court Officials Act, 2012*, certify that:

1. To the best of my knowledge, skill and ability, I transcribed the record that was recorded by a sound recording device.
2. The foregoing typewritten pages numbered T One (T1) to T Fifty-one (T51), inclusive, are a complete and accurate transcript of the contents of the recording marked as Regina Provincial Court, March 20, 23 and 30, 2023, which has been certified in (*check one*):

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- Form B – Alternate Court Official’s Written Certification of Recording.
- Form C – Oral Certification of Recording.

Dated this 7th of May, 2024, at Regina, Saskatchewan.

A handwritten signature in blue ink, appearing to read "Linda Sajec", is written over a horizontal line.

FORM C
[Clause 3(1)(c)]

ORAL CERTIFICATION OF RECORDING

I, KEELY BROWN, Judicial Officer, certify that this recording is the record made of the evidence in the proceeding in the Regina Provincial Court courtroom number 10 at Regina, Saskatchewan taken before Judge Hinds on the 20th day of March, 2023.

I further certify that I, KEELY BROWN, was the court official in charge of the sound-recording machine during proceedings.

FORM C
[Clause 3(1)(c)]

ORAL CERTIFICATION OF RECORDING

I, KEELY BROWN, Judicial Officer, certify that this recording is the record made of the evidence in the proceeding in the Regina Provincial Court courtroom number 10 at Regina, Saskatchewan taken before Judge Hinds on the 23rd day of March, 2023.

I further certify that I, KEELY BROWN, was the court official in charge of the sound-recording machine during proceedings.

FORM C
[Clause 3(1)(c)]

ORAL CERTIFICATION OF RECORDING

I, MICHELLE MYCHAN, Judicial Officer, certify that this recording is the record made of the evidence in the proceeding in Regina Provincial Court courtroom 10 at Regina, Saskatchewan taken before Judge Hinds on the day of March 30th, 2023.

I further certify that I, MICHELLE MYCHAN, was the court official in charge of the sound-recording machine during these proceedings.

Appendix E

IN THE PROVINCIAL COURT OF SASKATCHEWAN
REGINA, SASKATCHEWAN

BETWEEN

HIS MAJESTY THE KING

and

ERINN L. KNOLL

Accused

EXCERPTS
Volume 1
(Pages T1 - T5)

April 20 & May 25, 2023
Regina, Saskatchewan

Veritext Legal Solutions
300 - 2010 - 11th Avenue
Regina, Saskatchewan S4P 0J3
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Fax: 306-757-7788

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Certificate of Transcript		1	T5

1 Proceedings taken in the Provincial Court, Regina, Saskatchewan

2

3

4 April 20, 2023

Afternoon Session

5

6 The Honourable Judge

The Provincial Court of Saskatchewan

7 M. Hinds

8

9 N. Wernikowski

For the Federal Crown

10 D. Werminski

For the Crown

11 (As Agent for B. Carter)

12 (No Counsel)

For the Accused

13 C. Stopanski

Court Clerk

14

15

16 **Discussion**

17

18 MR. WERNIKOWSKI:

Good afternoon.

19

20 MR. WERMINSKI:

Good afternoon, Your Honour.

21

22 THE COURT:

So, I had one matter to address. That was

23 the matter of the Erinn Knoll, Christina Hagel as applicants on a particular

24 Information 991192882, and their own individual *SOPA* tickets.

25

26 They have -- Ms. -- involves an offence from May 15th, 2021, where they along

27 with other individuals were charged with failing to comply with the Public Health

28 Order by attending a gathering exceeding ten people, contrary to Section 61 of the

29 *Public Health Act* 1994. I have reduced my decision to writing. And I believe -- is

30 Ms. Knoll here?

31

32 THE ACCUSED:

Yes.

33

34 THE COURT:

Oh, I'm sorry, Ms. Knoll. You have a

35 copy of it?

36

37 THE ACCUSED:

Yes, I do.

38

39 THE COURT:

And, Mr. Wernikowski, you have a copy

40 of the decision?

41

1 MR. WERNIKOWSKI: Yes, Your Honour.

2

3 **Decision**

4

5 THE COURT: I don't intend to read my decision aloud.

6 It -- it's written out. I have dismissed the application. It's my view that it's an attempt
7 to relitigate this in one instance, an issue that's already been decided by the Court,
8 and I don't see any basis to change that decision. And then, any application -- and
9 that would be the decision based on the *Canadian Bill of Rights*, the *Saskatchewan*
10 *Bill of Rights*, and the *Saskatchewan Human Rights Code*.

11

12 With respect to any allegations -- alleged violations under Section 2(c) and (d) of
13 *Charter*, I have previously dealt with a case earlier on that, which I've cited in the
14 decision. I followed the decision of Justice Konkin in *Grandel & Mills*. And I didn't
15 find there were any exceptions to the stare decisis that's -- I'm bound by in that case.
16 So, I adopt my decision as I provided in *Grandel*. The *Charter* challenge before the
17 Court is based on allegations of breaches of Section 2(b) and (c). The *Charter*
18 challenge just was previously dismissed in the *Grandel* decision, and I am once
19 again of the view that this matter has been previously decided by the Court and
20 cannot now be relitigated by Ms. Knoll or Hagel.

21

22 Then I have finally, there was an application alleging breach of the applicants rights
23 to make full answer and defence, as set out in Section 11(d). The applicants allege
24 that their rights to make full answer and defence has been breached, because they
25 were unable to fully read, comprehend, evaluate properly, consider and respond to
26 the Attorney General's brief that was submitted to the court on January 16th and to
27 them. And the applicants take the position that as a result they were unprepared for
28 the hearing of January 18th, 2023. And as I note in the decision, on December 2nd,
29 2022, the Court set aside the entire day of January 18th, 2023 for any arguments the
30 applicants wish to make involving violations of their rights under the *Bill of Rights*,
31 *Saskatchewan Bill of Rights*, and *Human Rights Code*.

32

33 Ms. Knoll and Mr. Seitz are not party to this application filed, materials with the
34 court in support of their application. Ms. Hagel also gave notice of her alleged
35 breach of rights, and although she didn't make any arguments that day, Mr. Seitz
36 did, and so did Ms. Erinn Knoll. And my recollection is simply that Mr. Knoll --
37 Ms. Knoll, Ms. Seitz (sic) and Ms. Hagel appeared on the 18th of January. The
38 applicants didn't indicate they didn't understand the purpose of the hearing, nor that
39 they were -- indicate they were unprepared for the hearing, nor did any of them
40 request and adjournment of the hearing. The hearing proceeded. I heard their
41 submissions, and I made a decision. So, in these circumstances, I find it difficult to

1 understand how the procedure determined by the Court on January 18th, 2023
2 hearing was unfair to the applicants or affected their ability to make full answer and
3 defence. And as I have stated from the Supreme Court decision in *J.J.*, Section 11(d)
4 doesn't guarantee the most favourable procedures imaginable for the accused. And
5 nor, I might add, can a Court read the minds of the applicants.

6

7 So, for these reasons, I find the applicants haven't established a breach of their rights
8 under Section 11(d). And so -- and in conclusion, the matters are dismissed -- the
9 applications are dismissed.

10

11 So, that's my decision on this matter. Now, of course, the trial on this matter, the
12 alleged offence of May 15th, 2021 is not at a conclusion. That has been reserved for
13 a decision on May 25th, 2023, which everybody should be aware of. Arguments
14 have been made in terms of that already, and I've reserved my decision to that date.

15

16 So -- and the only other thing I recall coming up on this matter is on April 25th, that
17 Mr. Coupal will be making an argument based on the *Charter* before me. And, of
18 course, anyone -- well, any one of the applicants -- or, the applicants and any of the
19 parties are welcome to be present for that. And then, of course, as I say, I'll be
20 reserving my decision to the May 25th.

21

22 I was asked on today's date to bring the *Tanya Apodaca* matter up. Is that something
23 anyone is prepared to speak to? Perhaps I got -- perhaps -- well, there's -- if there's
24 no one to speak to it, then I won't -- there's nothing -- no need to deal with that.

25

26 So, are there any questions, concerns? All right. Application is -- is dismissed and
27 adjourned to the 25th of April and May 25th respectively. Thank you.

28

29 MR. WERNIKOWSKI:

Thank you, Your Honour.

30

31

32

33 PROCEEDINGS ADJOURNED UNTIL 2:00 PM, MAY 25, 2023

34

35

36

1 May 25, 2023 Afternoon Session
2
3 The Honourable Judge The Provincial Court of Saskatchewan
4 M. Hinds
5
6 B. Carter For the Crown
7 (No Counsel) For the Accused
8 S. Lovas Court Clerk

9
10

11 **Decision**

12

13 THE COURT: Then turning to my second decision, it's
14 in relation to *R. v. Tanya Apodaca, Gerald S. Ferguson, Cindy Gall, Christina*
15 *Hagel, Jasmin Rayann Grandel, Errin Knoll, Brenda Kriese, Tamara Lavoie,*
16 *Edward Palmer Palchinski & John Slastukin*. I have provided a written decision, as
17 I say in citation 2023 SKPC 37. And I have determined -- the decision of course
18 speaks for itself.

19

20 As I state in paragraph 74 of my decision: (as read)

21

22 As a result of my determination of the issues, I find John
23 Slastukin and Cindy Gall guilty of the offence before the
24 Court. In addition, I find Tanya Apodaca, Erinn Knoll, and
25 Christina Hagel are not guilty of the offence before the
26 Court.

27

28 And of course, my reasons are contained in the judgment therein.

29

30 (WRITTEN JUDGMENT ON FILE)

31

32

33 EXCERPT CONCLUDED

34

T5
FORM D
[Section 4]

IN THE MATTER OF THE KING v. ERINN L. KNOLL

Certification of Transcript

I, SANDRA OVERTON, court transcriber appointed pursuant to *The Court Officials Act, 2012*, certify that:

1. To the best of my knowledge, skill and ability, I transcribed the record that was recorded by a sound recording device.
2. The foregoing typewritten pages numbered T One (T1) to T Four (T4), inclusive, are a complete and accurate transcript of the contents of the recording marked as Regina Provincial Court, May 25, 2023, which has been certified in (*check one*):

- Form A – Court Official’s Written Certification of Recording.
- Form B – Alternate Court Official’s Written Certification of Recording.
- Form C – Oral Certification of Recording.

Dated this 12th day of August, 2024, at Regina, Saskatchewan.

S. Overton.

FORM C
[Clause 3(1)(c)]

ORAL CERTIFICATION OF RECORDING

I, Carol Stopanski, judicial officer, certify that this recording is the record made of the evidence, in the proceeding in Regina Provincial Courtroom 2, at Regina, Saskatchewan, taken before Judge Hinds, on the day of April 20th, 2023.

I further certify that I, Carol Stopanski was the court official in charge of the sound-recording machine during proceedings.

FORM C
[Clause 3(1)(c)]

ORAL CERTIFICATION OF RECORDING

I, Sandy Lovas, judicial officer, certify that this is a recording of the record -- that this is the recording of the record made of the evidence, in the proceedings in Regina Provincial Court, courtroom 10, at Regina, Saskatchewan, taken before Judge Hinds, on May the 25th, 2023.

I further certify that I, Sandy Lovas, was the court official in charge of the sound-recording machine during proceedings.

Appendix F



IN THE PROVINCIAL COURT OF SASKATCHEWAN

Citation: 2023 SKPC 29

Date: April 20, 2023
Information: 991192882
SOPA Ticket No(s): 85492794, 85492833
Location: Regina

Between:

Erinn Knoll and Christina Hagel

Applicants

- and -

His Majesty the King and The Attorney General of Saskatchewan

Respondents

Appearing:

Erinn Knoll and Christina Hagel
Noah Wernikowski

Applicants
For the Respondents

DECISION ON APPLICATIONS

M. HINDS, J

INTRODUCTION

[1] Tanya Apodaca, Gerald Ferguson, Cindy Gall, Christina Hagel, Jasmine Grandel, Erinn Knoll, Brenda Kriese, Tamara Lavoie, Edward Palchinski, and John Slastukin are charged that on or about May 15, 2021 at Regina, Saskatchewan they did fail to comply with a Public Health Order by attending a gathering exceeding 10 people, contrary to section 61 of *The Public Health Act, 1994*, SS 1994, c P-37.1 [*The Public Health Act, 1994*].

[2] Each of the accused are also separately charged by way of *The Summary Offences Procedure Act, 1990*, SS 1990-91, c S-63.1 tickets arising from May 15, 2021 at Regina, Saskatchewan that they each did fail to comply with a Public Health Order (PHO) by attending a gathering exceeding 10 people, contrary to section 61 of *The Public Health Act, 1994*. The Crown combined all of the accused in a single Information 99119882 as set out in paragraph one.

[3] On April 7, 2022, trial dates were set for March 20-23 and 27, 2023. At that time, the accused Erinn Knoll was represented by legal counsel, Luke Coupal and the accused Christina Hagel was represented by legal counsel, Elaine Anderson. The trial took place on March 20 and 21, 2023. This decision concerns an application made by two accused Erinn Knoll, and Christina Hagel, within the trial.

[4] On or about October 11, 2022 **Erinn Knoll** filed two documents with the Court which contains the following:

Charter Challenge Withdrawal & Change in Representation
Court File/Ticket Numbers: 85492458 & 85492794
Location: Regina, Sk
Defendant: Erinn Knoll

Please note, I, Erinn Knoll, effective October 7th, 2022 will no longer be proceeding with a Charter Challenge under the legal representation of Luke Coupal in the case pertaining to ticket number 85492458 & 85492794

I have withdrawn the Charter Challenge with both the Attorney General of Canada and The Attorney General of Saskatchewan, as I will now be proceeding as a self represented woman, whose rights were violated, of which those rights are protected under the both the Canadian Bill of Rights and the Saskatchewan Bill of Rights via the Human Rights Code.

[5] On or about October 11, 2022 another accused, **George Seitz** filed a document with the Court which contains the following:

Charter Challenge Withdrawal
Court File/Ticket Numbers: 85462044 & 84592295
Location: Regina, Sk

Defendant: George Seitz

Please note, I, George Seitz, effective October 3rd, 2022 will no longer be proceeding with a Charter Challenge under the legal representation of the Justice Centre for Constitutional Freedoms in the case pertaining to ticket number: 85462044 & 84592295

I wish to withdraw the Charter Challenge, as I will now be proceeding as a self represented man, whose rights were violated, of which those rights are protected under the both the Canadian Bill of Rights, the Saskatchewan Bill of Rights and the Human Rights Code.

[6] On October 18, 2022, Elaine Anderson sought and obtained leave to withdraw as George Seitz's legal counsel. Mr. Seitz was present in court via telephone on this date.

[7] On November 1, 2022, Mr. Coupal sought and was granted leave to withdraw as Erinn Knoll's legal counsel. Erinn Knoll was present in court on this date.

[8] On December 2, 2022, Erinn Knoll appeared in court on her two matters, a failing to wear a face covering offence dated April 24, 2021 set out in Information 991192860, Count 1 (Ticket 85492458) and on a gathering exceeding 10 people offence dated May 15, 2021 set out in Information 991192882 (Ticket 85492794). George Seitz also appeared in court on December 2, 2022 on his two matters, a gathering exceeding 10 people offence dated April 24, 2021 set out in Information 991192860, Count 2 (Ticket 8542044) and a gathering exceeding 10 people offence dated May 8, 2021 set out in Informations 991192864 and 991213623 (Ticket 85492295). The Court advised Erinn Knoll and George Seitz that any arguments they wished to make before the Court involving violations of their rights, including those under the *Canadian Bill of Rights*, SC 1960, c 44 [*Canadian Bill of Rights*], *The Saskatchewan Bill of Rights Act*, RSS 1978, c S-9 [*Saskatchewan Bill of Rights*] and *The Saskatchewan Human Rights Code, 2018*, SS 2018, c S-24.2 [*Saskatchewan Human Rights Code, 2018*] were to take place on January 18, 2023, 9:30 a.m. in courtroom #10. I note that the *Saskatchewan Bill of Rights* was repealed in 1979 and incorporated into *The Saskatchewan Human Rights Code*, SS 1979, c S-24, which has been amended since that time.

- [9] On December 30, 2022 George Seitz filed the following documents with the Court:
- i) Application dated December 29, 2022.
 - ii) Affidavit of George Seitz dated December 30, 2022.
 - iii) Statement of Legal Argument, undated.
- [10] Prior to or on January 18, 2023 Erinn Knoll filed the following documents with the Court:
- i) Two Affidavits of Erinn Knoll, both dated December 15, 2022.
 - ii) Two Applications both dated January 17, 2023.
 - iii) Statement of Legal Argument, undated.
 - iv) Statement of Legal Argument, undated.
- [11] On December 30, 2022, **Christina Hagel** filed three documents with the Court which read in part:

Charter Challenge Withdrawal & Change in Representation
Court File/Ticket Numbers: 85391480, 85463749 & 85492833
Location: Regina, Sk
Defendant: Christina Hagel

Please note, I, Christina Hagel, effective December 30, 2022 will no longer be proceeding with a Charter Challenge under the legal representation of the Justice Centre for Constitutional Freedoms in the case pertaining to ticket numbers 85391480, 85463749 & 85492833.

I have withdrawn the Charter Challenge with both the Attorney General of Canada and The Attorney General of Saskatchewan, as I will now be proceeding as a self represented woman, whose rights were violated, of which those rights are protected under the both the Canadian Bill of Rights and the Saskatchewan Bill of Rights via the Human Rights Code.

- [12] On January 4, 2023, Elaine Anderson sought and obtained leave to withdraw as Christina Hagel's legal counsel. Christina Hagel was present in court via telephone when this occurred. The Court advised Christina Hagel that any arguments she wished to make before the Court involving violations of her rights, including those under the *Canadian Bill of Rights* and the

Saskatchewan Bill of Rights via the *Saskatchewan Human Rights Code, 2018*, were to take place on January 18, 2023, 9:30 a.m. in courtroom #10. In addition, the Court advised her that if she wished to file any written materials to the Court on this matter the materials were to be provided to the Court on or before January 16, 2023. Legal counsel for the Attorney General of Saskatchewan (AG Sask) was advised of the same. Ms. Hagel did not file any written materials with the Court.

[13] On January 16, 2023, legal counsel for the AG Sask provided Erinn Knoll, George Seitz and Christina Hagel with a document entitled Respondent’s Brief of Law Re “Bill of Rights” Challenges. This document was also filed with the Court on January 16, 2023.

[14] On January 18, 2023, the Court heard oral submissions by Erinn Knoll, George Seitz and Christina Hagel to have the Court dismiss all charges against them based on violations of their rights under the *Canadian Bill of Rights*, the *Saskatchewan Bill of Rights* and the *Saskatchewan Human Rights Code, 2018*. The AG Sask was represented by Noah Wernikowski, who made oral submissions in opposition to the application.

[15] At no time prior to or on January 18, 2023, did Erinn Knoll, George Seitz or Christina Hagel request an adjournment of the proceedings set for that day.

[16] On January 18, 2023, this Court provided an oral decision. The application to dismiss the offences before the Court based on violations of the *Canadian Bill of Rights*, the *Saskatchewan Bill of Rights* and the *Saskatchewan Human Rights Code, 2018* was dismissed.

[17] In the first place, the Court determined that while the *Canadian Bill of Rights* is still in force today, it only applies to federal legislation. The matters before the Court do not pertain to any federal legislation or statute. As a result, the *Canadian Bill of Rights* is not applicable in these matters. More specifically the Court determined that *The Public Health Act, 1994* is not subject to be repealed, abolished or altered by the Federal Government, nor is *The Public Health Act, 1994* a matter within the legislative authority of the Federal Government. The *Canadian Bill of Rights*, accordingly, does not apply to *The Public Health Act, 1994* or the enactments made thereunder

including the Public Health Orders. The impugned Public Health Orders, therefore, can not be invalidated based on a conflict with the *Canadian Bill of Rights*.

[18] Secondly, the Court determined it was bound by the decision of Judge Agnew dated January 17, 2023, in *R v Drebit*, 2023 SKPC 8 where, at paragraph 5, he considered the claim of Ms. Chipesia and stated as follows:

[5] ... To the extent that she offered a legal argument, it was based on *The Saskatchewan Human Rights Code, 2018*, SS 2018, c S-24.2 [Code]. However, the Code is, as its name indicates, a code: a complete set of laws for those matters which it governs. A person who believes that their rights under the Code have been violated must bring the matter to the Saskatchewan Human Rights Commission, which has the power to investigate and bring a complaint before the Court of King's Bench. That Court, if it concludes that a breach has occurred, has powers as set out in s. 39. However, as Ms. Chipesia has not followed that process, and as this Court is not the Court of King's Bench, the Code does not give me any power to address her issues even if there was evidence to support them; which there is not.

In this case, Ms. Knoll and Ms. Hagel also did not bring their matters to the Saskatchewan Human Rights Commission.

[19] On or about February 28, 2023 Erinn Knoll and Christina Hagel filed the following documents with the Court:

- i) Notice of Application and Quasi-Constitutional Issue. The application is dated February 27, 2023 and concerns the offence of a gathering exceeding 10 people dated May 15, 2021 set out in Information 991192882 (see also Ms. Knoll's Ticket 85492794 and Ms. Hagel's Ticket 85492833).
- ii) Affidavit of Erinn Knoll dated February 28, 2023.
- iii) Affidavit of Christina Hagel dated February 28, 2023.

[20] The relief sought in the application was 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 *Saskatchewan*

Human Rights Code, 2018 due to an irreconcilable conflict of law. The applicants relied upon (1) the *Charter*, in particular, sections 2(b) and (c), (2) the *Canadian Bill of Rights* and (3) the *Saskatchewan Human Rights Code, 2018*, in particular sections 3, 4, 5, 6 and 52.

[21] On March 16, 2023 Senior Crown Counsel, Theodore Litowski, served and filed a letter dated March 16, 2023 with the Court. Part of this letter addressed the Notice of Application and related materials filed by Erinn Knoll and Christina Hagel.

[22] On or about March 17, 2023 Erinn Knoll and Christina Hagel filed the following documents with the Court:

- i) Notice of Application and Constitutional Issue dated March 17, 2023. The application concerns the offence of a gathering exceeding 10 people dated May 15, 2021 set out in Information 991192882 (see also Ms. Knoll’s Ticket 85492794 and Ms. Hagel’s Ticket 85492833). The applicants sought a stay of proceedings pursuant to section 24(1) of the *Charter* on the basis that their section 11(d) of the Charter right to make full answer and defence was violated.
- ii) Supplementary Affidavit of Erinn Knoll dated March 17, 2023.
- iii) Supplementary Affidavit of Christina Hagel dated March 17, 2023.

[23] On or about March 20, 2023 Erinn Knoll and Christina Hagel filed the following document with the Court:

- i) Reply Factum dated March 20, 2023.

[24] The evidentiary portion of this trial of this offence took place on March 20 and 21, 2023. The argument respecting these applications took place on March 30, 2023. The applicant, Erinn Knoll made an opening statement to the Court. Ms. Hagel appeared by telephone. She did not make any statements. Counsel for the AG Sask, Noah Wernikowski made oral submissions to the Court. The Court granted the request of Erinn Knoll and Christina Hagel permitting them to file a written response to Crown Counsel’s oral submissions by April 6, 2023.

[25] On April 6, 2023, the applicants Erinn Knoll and Christina Hagel filed document entitled “Brief of Law, Reply to Attorney General of Saskatchewan”.

[26] On April 6, 2023, legal counsel for the AG Sask, Noah Wernikowski sent an e-mail to the Court's case manager, Amy Miller. Mr. Wernikowski requested that the following information be provided to the Court:

During the March 30th proceeding, I advised the Court that *R v DeSousa* [1992] 2 SCR 944] demonstrates that courts have jurisdiction to reconsider previous rulings in rare instances if they are not *functus*. This was an error that I seek to correct. The source for that proposition is *R v Adams* ([1995] 4 SCR 7070 at para 29), not *Desousa*.

ISSUES

[27] The issues before the Court are as follows:

1. Should the Court revisit its decision of January 18, 2023 where it dismissed the application before it based on violations of the *Canadian Bill of Rights*, the *Saskatchewan Bill of Rights* and the *Saskatchewan Human Rights Code, 2018*?
2. Have the applicants established there has been a breach of their right to make full answer and defence as set out in section 11(d) of the *Charter*?

Analysis

1. Should the Court revisit its decision of January 18, 2023 where it dismissed the application before it based on violations of the *Canadian Bill of Rights*, the *Saskatchewan Bill of Rights* and the *Saskatchewan Human Rights Code, 2018*?

[28] In *R v Adams*, [1995] 4 SCR 707 [*Adams*] the Supreme Court of Canada determined that courts have the jurisdiction to reconsider previous rulings in rare instances if they are not *functus*. In *Adams*, the Court stated as follows at paragraph 30:

[30] As a general rule, any order relating to the conduct of a trial can be varied or revoked if the circumstances that were present at the time the order was made have materially changed. In order to be material, the change must relate to a matter that justified the making of the order in the first place.

[29] In *Canadian Broadcasting Corp. v Manitoba*, 2021 SCR 33 the Supreme Court had occasion to discuss *Adams* as follows at paragraphs 54 -56:

[54] ... On my understanding, *Adams* dealt simply with the question as to when a judge could reconsider a previous order made in the course of trial. The impugned order, which purported to lift a publication ban previously made, was decided as the trial judge dismissed the charges against the accused (*Adams*, at para. 5). This Court concluded that the trial judge did not have the power to revoke the order because the circumstance that made the order mandatory had not changed (para. 31). Subsequent appellate jurisprudence has interpreted the judgment to provide a general rule about varying such orders, rather than a rule about *functus officio* (see, e.g., *BCTF*, at para. 22; *R. v. B. (H.)*, 2016 ONCA 953, 345 C.C.C. (3d) 206, at para. 51; *R. v. Le*, 2011 MBCA 83, 270 Man. R. (2d) 82, at para. 123). The principles in *Adams* balance finality and flexibility even when the court is not *functus officio*, by permitting the reconsideration of such orders where there has been a material change of circumstances.

[55] In deciding whether this rule from *Adams* applies, I do agree that a first question for the court will be whether there has been a material change in circumstances since the making of the initial order (para. 30). The burden of establishing this change falls to the party seeking a variation in the order (see, by analogy, *L.M.P. v. L.S.*, 2011 SCC 64, [2011] 3 S.C.R. 775, at para. 31). That party must establish both that a change of circumstances has occurred and that the change, if known at the time of the initial order, would likely have resulted in an order on different terms (*L.M.P.*, at para. 32; *Droit de la famille — 132380*, 2013 QCCA 1504, 37 R.F.L. (7th) 1, at paras. 75-76; *R. v. Baltovitch* (2000), 47 O.R. (3d) 761 (C.A.), at para. 6). The correctness of the initial order is presumed and is not relevant to the existence of a material change of circumstances (*L.M.P.*, at para. 33; *Droit de la famille — 132380*, at para. 78).

[56] Instances in which a court may reconsider a decision respecting its court record are distinct from an appeal or application for *certiorari* made to a higher court from such decisions (see, generally, *Dagenais*, at pp. 870-72). In a motion to reconsider on both grounds described above, the original court is not being asked to reconsider its decision because it is wrongly decided, but rather because it was made without relevant submissions from an affected

party or on the basis of a material change in the circumstances that justified the initial decision.

[30] I am of the view that the applicants have not established that a material change of circumstances has occurred since the Court's decision of January 18, 2023 respecting arguments based on the *Canadian Bill of Rights*, the *Saskatchewan Bill of Rights* and the *Saskatchewan Human Rights Code, 2018*. Simply put, no underlying facts have changed since January 18, 2023. The applicants had notice that their arguments would be considered well in advance of January 18, 2023. To that end, Erinn Knoll prepared and filed materials in support of her claim, as did George Seitz. Erinn Knoll, George Seitz and Christina Hagel fully participated in the hearing of January 18, 2023. They each made oral submissions in support of their arguments. It is apparent that Erinn Knoll and Christina Hagel are dissatisfied with the Court's decision of January 18, 2023. They may wish to appeal this decision to a higher court. However, they may not relitigate the issue a second time in this Court.

[31] As noted in paragraph 20 of this decision, the applicants also now rely upon ss. 2(b) and (c) of the *Charter*. This is a new argument not raised by the applicants on January 18, 2023. Indeed, prior to January 18, 2023 the applicants each specifically advised the Court in writing that they would be no longer be proceeding with a *Charter* challenge previously made by their former legal representatives.

[32] In *The Attorney General for Saskatchewan v Grandel*, 2022 SKPC 48 [*Grandel*] the accused alleged that certain Public Health Orders which imposed outdoor gathering limits (including the PHO set out in the present charges) were contrary to ss. 2(b), 2(c) and 2(d) of the *Charter*. In *Grandel*, the AG Sask provided a Notice of Intention asking the Court to summarily dismiss portions of Notice of Constitutional Questions (NCQ) relating to outdoor gathering restrictions based on ss. 2(b), (c), and (d) of the *Charter*. In *Grandel*, I determined that I was bound by the doctrine of vertical *stare decisis*. As a result, I followed the decision of Mr. Justice Konkin in *Grandel and Mills v Saskatchewan and Dr. Saqib Shahab*, 2022 SKKB 209, wherein he concluded at paragraph 117 as follows:

Did the PHOs violate s. 2(b) of the *Charter*?

Yes.

Did the PHOs violate ss. 2(c) and 2(d) of the *Charter*?

Sections 2(c) and 2(d) are subsumed into the analysis of section 2(b).

Has Sask provided sufficient evidence to demonstrably justify the PHOs under s. 1 of the *Charter*?

Yes.

[33] In *Grandel*, I determined that the narrow exceptions to the rule of *stare decisis* set forth in *Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101 and *R v Comeau*, 2018 SCC 15 at para 26, [2018] 1 SCR 342 were not made out. I was satisfied that the *Charter* applications filed by the accused persons had “no reasonable prospect of success”. As a result, I granted the AG Sask’s application for summary dismissal of any NCQ’s (or portions of NCQ) before the Court related to ss. 2(b), (c), or (d) of the *Charter*.

[34] I remain of the same view. I adopt the written reasons I provided in *Grandel*. The *Charter* challenge before the Court in this case is based upon ss. 2(b) and (c) of the *Charter*. Such a *Charter* Challenge was previously summarily dismissed in *Grandel*. I am of the view that as the *Charter* challenged based on ss. 2(b) and (c) has been previously decided by this Court and it cannot now be relitigated by Ms. Knoll or by Ms. Hagel.

2. Have the applicants established there has been a breach of their right to make full answer and defence as set out in section 11(d) of the *Charter*?

[35] In *R v J.J.*, 2022 SCC 28, 415 CCC (3d) 285 [J.J.] the Supreme Court set out the key principles of section 11(d) of the *Charter* as follows:

[123] Section 11(d) states that any person charged with an offence has the right "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal". The principles of trial fairness and the accused's right to make a full answer and defence are expressions of procedural principles of fundamental justice under s. 7, and are also embodied

in s. 11(d) (*R. v. N.S.*, 2012 SCC 72, [2012] 3 S.C.R. 726, at para. 15; *Mills*, at para. 69).

[124] The key principles of s. 11(d) that apply in the present case are as follows: (1) an individual must be proven guilty beyond a reasonable doubt; (2) the state must bear the burden of proof; and (3) criminal prosecutions must be carried out in accordance with due process (*R. v. Oakes*, [1986] 1 S.C.R. 103, at p. 121).

[125] Section 11(d) does not guarantee "the most favourable procedures imaginable" for the accused, nor is it automatically breached whenever relevant evidence is excluded (*Goldfinch*, at para. 30; *Quesnelle*, at para. 64). As this Court affirmed in *Darrach*, an accused is not "entitled to have procedures crafted that take only [their] interests into account. Still less [are they] entitled to procedures that would distort the truth-seeking function of a trial by permitting irrelevant and prejudicial material at trial" (para. 24). Nor is the broad principle of trial fairness assessed solely from the accused's perspective. Crucially, as this Court stated in *Mills*, fairness is also assessed from the point of view of the complainant and community (para. 72, citing *R. v. E. (A.W.)*, [1993] 3 S.C.R. 155, at p. 198). We now turn to consider the constitutionality of each of the impugned provisions.

[36] The applicants allege their right to make full answer and defence has been breached because they were unable to "fully read, comprehend, evaluate, properly consider and respond to" the AG Sask's Brief of Law Re "Bill of Rights Challenges" which was provided to them on January 16, 2023. The applicants take the position that as a result they were unprepared for the hearing of January 18, 2023. The applicants also take the position that they were unclear as to the purpose of the hearing of January 18, 2023.

[37] On December 2, 2022, the Court set aside the entire day of January 18, 2023 for any arguments the applicants Erinn Knoll and George Seitz wished to make before the Court involving violations of their rights, including those under the *Canadian Bill of Rights*, the *Saskatchewan Bill of Rights* and the *Saskatchewan Human Rights Code, 2018*. Ms. Knoll and Mr. Seitz filed written materials with the Court in support of their application. On December 30, 2022, Christina Hagel also gave written notice to the Court that her rights under the *Canadian Bill of Rights*, the

Saskatchewan Bill of Rights and the *Saskatchewan Human Rights Code, 2018* were violated. On January 4, 2023 the Court advised Ms. Hagel that any arguments she wished to make before the Court involving violations of her rights, including those under the *Canadian Bill of Rights* and the *Saskatchewan Bill of Rights* via the *Saskatchewan Human Rights Code, 2018* were to take place on January 18, 2023. All parties were required to submit written materials in support of their arguments by January 16, 2023.

[38] In keeping with the direction of the Court on January 16, 2023 legal counsel for the AG Sask served and filed a 15 page written document entitled Respondent’s Brief of Law Re “Bill of Rights” Challenges.

[39] On January 18, 2023, Ms. Knoll, Mr. Seitz, Ms. Hagel and legal counsel for the AG Sask, Mr. Wernikowski appeared in court. The applicants did not indicate that they did not understand the purpose of the hearing. Nor did they indicate that they were unprepared for the hearing. None of the applicants requested an adjournment of the hearing. As a result, the hearing proceeded. All of the applicants made oral submissions. Legal counsel for the AG Sask also made oral submissions. The Court provided an oral decision.

[40] Given the circumstances as set out above, it is difficult to understand how the procedure determined by the Court for the January 18, 2023 hearing was unfair to the applicants or affected their ability to make full answer and defence. The applicants wanted the Court to consider their applications. A day was set aside for the same. Written materials received from the applicants and the AG Sask were reviewed by the Court. The Court was not advised by the applicants that they were unprepared for the hearing. At no time did the applicants indicate they were unable to “fully read, comprehend, evaluate, properly consider and respond to” the AG Sask’s Brief of Law. Nor did the applicants request an adjournment of the hearing. The applications were heard and considered by the Court.

[41] As the Supreme Court stated in *J.J.*: “Section 11(d) does not guarantee “the most favourable procedures imaginable” for the accused.” Nor, I might add can a Court read the mind

of applicants.

[42] I find that the applicants have not established that there has been a breach of their rights under ss. 11(d) of the *Charter*.

[43] In conclusion, the application before the Court is dismissed.

M. Hinds, J

Appendix G

FORM A
[Rule 9]

CACR _____

THE COURT OF APPEAL FOR SASKATCHEWAN

BETWEEN: Erinn L. Knoll Appellant

AND: HIS MAJESTY THE KING Respondent

NOTICE OF APPEAL
(All Offenders)

A. THE APPELLANT WISHES TO APPEAL FROM:

- CONVICTION
- CONVICTION AND SENTENCE
- SENTENCE ALONE
- DANGEROUS OFFENDER OR LONG-TERM OFFENDER DESIGNATION
- OTHER Dismissal of appeal of interlocutory order; errors of law and jurisdiction
(nature of appeal other than above)

B. PARTICULARS OF APPELLANT

Name: Knoll Erinn Leah
Last name First name Middle name

Date of Birth: 1976 / 03 / 24
year month day

If the appellant is a corporation: _____
corporate name

If the appellant is in custody: _____
penal institution

If the appellant is not in custody: 1346 McVeety Drive
address
Regina
city
Saskatchewan
province
S4N 7C8
postal code

Telephone: (306) 541-7074
Email address: misssunnydays1976@gmail.com
Fax number: _____

C. PARTICULARS OF CONVICTION AND SENTENCE

1. Location of Conviction: Provincial Court
city or town
or
Court of King's Bench
Judicial Centre of Regina

2. Name of Judge: Norbeck

3. Offence(s) the offender was convicted of: The appellant was acquitted and is appealing the dismissal of an appeal of an earlier interlocutory order made in provincial court by Hinds J.

4. Sentence imposed: None - not applicable

5. Date of Conviction: 2025 / 03 / 24 Original interlocutory order appealed: 2023/04/20
Dismissal year month day

6. Date of Sentence: N/A / N/A / N/A
year month day

D. GROUNDS OF APPEAL

THE APPELLANT WISHES TO APPEAL FOR THE FOLLOWING REASONS:

the dismissal of appeal of interlocutory order;
errors of law and jurisdiction

(This section may be expanded or additional pages may be attached.)

E. LEGAL REPRESENTATION

1. The Appellant is represented on appeal by:

Name of Lawyer: _____
Last name First name

Address: _____
Address

City

Province

postal code

Telephone: _____

Email address: _____

Fax number: _____

-OR-

2. The appellant does not presently have a lawyer but intends to:

arrange for legal representation

or

be self-represented on appeal.

not sure presently.

F. PRESENCE AT APPEAL HEARING

At the appeal hearing, the Appellant wishes to:

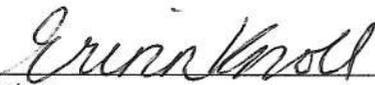
(mark one only)

- be personally present
- or
- appear by video conference connection
(if available at penal institution)
- or
- not be present.

G. IF A NEW TRIAL IS DIRECTED, THE APPELLANT WISHES TO BE TRIED:

- by judge and jury
- or
- by single judge.

Date: 2025 / 04 / 23
 year month day



Signature

(Please Note: The Registrar will provide a copy of this Notice of Appeal to the Crown.)

TO: REGISTRAR
COURT OF APPEAL FOR SASKATCHEWAN
2425 VICTORIA AVENUE
REGINA, SASKATCHEWAN
S4P 4W6
Telephone: 306-787-5382
Fax: 306-787-5815
e-file: <https://ecourt.sasklawcourts.ca>

Appendix H

FORM A
[Rule 9]

CACR _____

THE COURT OF APPEAL FOR SASKATCHEWAN

BETWEEN:

Appellant

AND:

HIS MAJESTY THE KING

Respondent

NOTICE OF APPEAL
(All Offenders)

A. THE APPELLANT WISHES TO APPEAL FROM:

- CONVICTION
- CONVICTION AND SENTENCE
- SENTENCE ALONE
- DANGEROUS OFFENDER OR LONG-TERM OFFENDER DESIGNATION
- OTHER _____
(nature of appeal other than above)

B. PARTICULARS OF APPELLANT

Name: _____
Last name First name Middle name

Date of Birth: ____/____/____
year month day

If the appellant is a corporation: _____
corporate name

If the appellant is in custody: _____
penal institution

If the appellant is not in custody: _____
address

city

province

postal code

Telephone: _____

Email address: _____

Fax number: _____

C. PARTICULARS OF CONVICTION AND SENTENCE

1. Location of Conviction: Provincial Court _____
city or town
or
Court of King's Bench
Judicial Centre of _____

2. Name of Judge: _____

3. Offence(s) the offender was convicted of: _____

4. Sentence imposed: _____

5. Date of Conviction: _____ / _____ / _____
year month day

6. Date of Sentence: _____ / _____ / _____
year month day

D. GROUNDS OF APPEAL

THE APPELLANT WISHES TO APPEAL FOR THE FOLLOWING REASONS:

(This section may be expanded or additional pages may be attached.)

E. LEGAL REPRESENTATION

1. The Appellant is represented on appeal by:

Name of Lawyer: _____
Last name First name

Address: _____
Address

City

Province

postal code

Telephone: _____

Email address: _____

Fax number: _____

-OR-

2. The appellant does not presently have a lawyer but intends to:

arrange for legal representation

or

be self-represented on appeal.

F. PRESENCE AT APPEAL HEARING

At the appeal hearing, the Appellant wishes to:

(mark one only)

- be personally present
or
 appear by video conference connection
(if available at penal institution)
or
 not be present.

G. IF A NEW TRIAL IS DIRECTED, THE APPELLANT WISHES TO BE TRIED:

- by judge and jury
or
 by single judge.

Date: 2025 / 05 / 23
year month day


Signature

(Please Note: The Registrar will provide a copy of this Notice of Appeal to the Crown.)

TO: REGISTRAR
COURT OF APPEAL FOR SASKATCHEWAN
2425 VICTORIA AVENUE
REGINA, SASKATCHEWAN
S4P 4W6
Telephone: 306-787-5382
Fax: 306-787-5815
e-file: <https://ecourt.sasklawcourts.ca>

Appendix I

KING'S BENCH FOR SASKATCHEWAN

Date: 2025 03 24
File No.: CRM-RG-00242-2023
Judicial Centre: Regina

BETWEEN:

ERINN L. KNOLL

APPELLANT

- and -

HIS MAJESTY THE KING

CROWN/RESPONDENT

- and -

ATTORNEY GENERAL FOR SASKATCHEWAN

INTERVENER

Appearing:

Brian Carter
Theodore Litkowski

for the Crown, respondent
for the intervener, Attorney General
for Saskatchewan

Erinn Knoll

self-represented appellant

JUDGMENT
March 24, 2025

NORBECK J.

Introduction

[1] Erinn Knoll [appellant] was acquitted after a trial of an offence under s. 61 of *The Public Health Act, 1994*, ss 1994, c P-37.1 [Act]. The decision was rendered

by a judge of the Provincial Court of Saskatchewan on April 20, 2023 (*R v Knoll*, 2023 SKPC 29 [*Decision*]).

[2] The appellant was charged with failing to comply with a May 6, 2021, public health order [PHO] pursuant to s. 45(2) of the *Act* after engaging in protests outdoors in Victoria Park in Regina, Saskatchewan, on or about May 15, 2021.

[3] Despite her acquittal, the appellant appeals a ruling made by the trial judge during the trial.

[4] Before the summary conviction appeal was heard, the Attorney General for Saskatchewan [AG] filed an application seeking summary dismissal of this appeal for lack of jurisdiction. In his Fiat dated February 29, 2024 (*R v Knoll* (29 February 2024) Regina, CRM-RG-00242-2023 (Sask KB) [*Keene Fiat*]), Justice Keene dismissed the AG's application noting:

[4] However, I am unable to find any source of 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* [RSC 1985, c C-46] or *The Summary Conviction Appeal Rules*.

[5] Justice Keene dismissed the summary dismissal application in civil chambers, with leave to the AG to raise the issue at the hearing of the summary conviction appeal. However, at para 3 of the *Keene Fiat*, Justice Keene notes:

[3] ... It is clear Ms. Knoll, after being acquitted, is not entitled to appeal from a judge's mid-trial ruling.

[Emphasis added]

[6] The AG then suggested that the within appeal be separated into two hearings, the first on the question of jurisdiction and the second, an argument on the appeal itself. In a Fiat dated November 4, 2024, and after hearing submissions from the

parties, Justice Currie declined the AG's request and ordered the matter be set down for a hearing (*R v Knoll* (4 November 2024) Regina, CRM-RG-00242-2023 (Sask KB)).

[7] The within appeal was heard on February 27, 2025. The Court heard from the appellant first. She chose to rely on her written materials previously filed with the Court. The Court then heard the AG's submissions in respect of jurisdiction and, in the alternative, on the appeal proper. The appellant made a short oral submission in reply.

[8] For the reasons that follow, the appeal is dismissed.

Issues

[9] The following issues arise:

- i) Does the Court have jurisdiction to hear this appeal?
- ii) If the Court does have jurisdiction to hear this appeal, should the Court interfere with the trial judge's decision?

Legal Framework

[10] Section 4(4) of *The Summary Offence Procedures Act, 1990*, SS 1990-91, c S-63.1 [*SOPA*], states:

Procedure generally

4(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.

Background

[11] This matter arose during the COVID-19 pandemic and while certain public health measures were in place. On March 18, 2020, the Government of Saskatchewan declared a state of emergency in response to the pandemic which was in place at all material times to this appeal.

[12] The appellant was acquitted of a charge of violating the May 6, 2021, PHO issued pursuant to *Act*. The PHO limited all public and private outdoor gatherings to 10 people or less and all those in attendance were required to maintain a two-metre physical distance between each other. On May 15, 2021, the appellant was identified by police as attending an outdoor protest gathering where more than 10 people were present.

[13] The appellant was issued a summary offence notice on May 15, 2021. Counsel for the appellant filed a Notice of Constitutional Question on November 8, 2021. The said Notice was amended on February 1, 2022, and alleged the PHO infringed ss. 2(c) and 7 of the *Canadian Charter of Rights and Freedoms* [*Charter*] due to its impact on gathering limits.

[14] On December 2, 2022, the AG was successful in an application to summarily dismiss the appellant's *Charter* notice. By that time, the appellant had discharged her legal counsel and chosen to self-represent on non-*Charter* issues. Also on December 2, 2022, scheduling of the appellant's and three other similar applications on non-*Charter* issues were discussed. The trial judge was concerned that the appellant would feel rushed and vacated a previously scheduled December 2022 date. The non-*Charter* applications were then set for January 18, 2023. The trial judge reiterated that he did not want the appellant to feel rushed and wanted to ensure a fair hearing. The appellant was present and took part in scheduling.

[15] The appellant's non-*Charter* application and arguments were heard on January 18, 2023. The appellant was given the opportunity to make oral argument and file written materials, and she chose to do so. The trial judge dismissed the appellant's application and the appellant's charge was adjourned back to the March 23, 2023, trial date. However, on February 7, 2023, the appellant filed a "Notice of Application and Quasi-Constitutional Issue" raising *The Saskatchewan Human Rights Code, 2018*, SS 2018, c S-24.2 [*Code*], and *Charter* issues.

[16] On March 17, 2023, the appellant filed a "Notice of Application and Constitutional Issue" alleging that the trial judge or Crown breached the appellant's s. 11(d) *Charter* right to a fair trial in the conduct of the January 18, 2023, hearing.

[17] On April 20, 2023 in the *Decision*, the trial judge determined that the appellant's s. 11(d) *Charter* rights had not been violated by the conduct of the January 18, 2022, hearing, and declined to reconsider his ruling. He noted that the *Canadian Bill of Rights*, SC 1960, c 44, only applied to federal legislation and therefore, did not apply to the PHO issued pursuant to provincial legislation. He states:

[8] ... The Court advised Erinn Knoll and George Seitz that any arguments they wished to make before the Court involving violations of their rights, including those under the *Canadian Bill of Rights*, SC 1960, c 44 [*Canadian Bill of Rights*], *The Saskatchewan Bill of Rights Act*, RSS 1987, c S-9 24.2 [*Saskatchewan Bill of Rights*] and *The Saskatchewan Human Rights Code, 2018*, SS 2018, c S-24.2 [*Saskatchewan Human Rights Code, 2018*] were to take place on January 18, 2023, 9:30 a.m. In courtroom #10. I note that the *Saskatchewan Bill of Rights* was repealed in 1979 and incorporated into *The Saskatchewan Human Rights Code*, SS 1979, c S-24, which has been amended since that time.

...

[14] On January 18, 2023, the Court heard oral submissions by Erinn Knoll, George Seitz and Christina Hagel to have the Court dismiss all charges against them based on violations of their rights under the *Canadian Bill of Rights*, the *Saskatchewan*

Bill of Rights and the Saskatchewan Human Rights Code, 2018.
...

[16] On January 18, 2023, this Court provided an oral decision. The application to dismiss the offences before the Court based on violations of the *Canadian Bill of Rights*, the *Saskatchewan Bill of Rights* and the *Saskatchewan Human Rights Code, 2018* was dismissed.

[18] Further, the learned trial judge determined he was bound by an earlier Provincial Court of Saskatchewan decision (*R v Drebit*, 2023 SKPC 8 at para 5) where the application of the *Code* was considered in similar circumstances. Like that case, the appellant had not followed the procedure set out in the *Code*. At paras 33-43 of the *Decision*, the learned trial judge states:

[33] In *Grandel* [*Saskatchewan v Grandel*, 2022 SKPC 48], I determined that the narrow exceptions to the rule of *stare decisis* set forth in *Canada (Attorney General) v Bedford*, 2013 SCC 72, [2013] 3 SCR 1101 and *R v Comeau*, 2018 SCC 15 at para 26, [2018] 1 SCR 342 were not made out. I was satisfied that the *Charter* [*Canadian Charter of Rights and Freedoms*] applications filed by the accused persons had “no reasonable prospect of success”. As a result, I granted the AG Sask’s [Attorney General of Saskatchewan] application for summary dismissal of any NCQ’s [Notice of Constitutional Questions] (or portions of NCQ) before the Court related to ss. 2(b), (c), or (d) of the *Charter*.

[34] I remain of the same view. I adopt the written reasons I provided in *Grandel*. The *Charter* challenge before the Court in this case is based upon ss. 2(b) and (c) of the *Charter*. Such a *Charter* Challenge was previously summarily dismissed in *Grandel*. I am of the view that as the *Charter* challenged based on ss. 2(b) and (c) has been previously decided by this Court and it cannot now be relitigated by Ms. Knoll or by Ms. Hagel.

2. Have the applicants established there has been a breach of their right to make full answer and defence as set out in section 11(d) of the *Charter*?

...

[36] The applicants allege their right to make full answer and defence has been breached because they were unable to “fully read, comprehend, evaluate, properly consider and respond to” the AG Sask’s Brief of Law Re “Bill of Rights Challenges” which was provided to them on January 16, 2023. The applicants take the position that as a result they were unprepared for the hearing of January 18, 2023. The applicants also take the position that they were unclear as to the purpose of the hearing of January 18, 2023.

[37] On December 2, 2022, the Court set aside the entire day of January 18, 2023 for any arguments the applicants Erinn Knoll and George Seitz wished to make before the Court involving violations of their rights, including those under the *Canadian Bill of Rights* [SC 1960, c 44], the *Saskatchewan Bill of Rights* [*The Saskatchewan Bill of Rights Act*, RSS 1978, c S-9 (since rep)] and *The Saskatchewan Human Rights Code, 2018* [SS 2018, c S-24.2]. Ms. Knoll and Mr. Seitz filed written materials with the Court in support of their application. On December 30, 2022, Christina Hagel also gave written notice to the Court that her rights under the *Canadian Bill of Rights*, the *Saskatchewan Bill of Rights* and the *Saskatchewan Human Rights Code, 2018* were violated. On January 4, 2023 the Court advised Ms. Hagel that any arguments she wished to make before the Court involving violations of her rights, including those under the *Canadian Bill of Rights* and the *Saskatchewan Bill of Rights* via the *Saskatchewan Human Rights Code, 2018* were to take place on January 18, 2023. All parties were required to submit written materials in support of their arguments by January 16, 2023.

...

[39] On January 18, 2023, Ms. Knoll, Mr. Seitz, Ms. Hagel and legal counsel for the AG Sask, Mr. Wernikowski appeared in court. The applicants did not indicate that they did not understand the purpose of the hearing. Nor did they indicate that they were unprepared for the hearing. None of the applicants requested an adjournment of the hearing. As a result, the hearing proceeded. All of the applicants made oral submissions. Legal counsel for the AG Sask also made oral submissions. The Court provided an oral decision.

[40] Given the circumstances as set out above, it is difficult to understand how the procedure determined by the Court for the January 18, 2023 hearing was unfair to the applicants or affected

their ability to make full answer and defence. The applicants wanted the Court to consider their applications. A day was set aside for the same. Written materials received from the applicants and the AG Sask were reviewed by the Court. The Court was not advised by the applicants that they were unprepared for the hearing. At no time did the applicants indicate they were unable to “fully read, comprehend, evaluate, properly consider and respond to” the AG Sask’s Brief of Law. Nor did the applicants request an adjournment of the hearing. The applications were heard and considered by the Court.

...

[43] In conclusion, the application before the Court is dismissed.

[19] After the trial was complete, and on May 25, 2023, the trial judge found that the Crown had not proven beyond a reasonable doubt that the appellant attended a gathering greater than 10 people. The gathering took place over a few hours and the size of the group fluctuated. As a result, the trial judge was uncertain whether the appellant was part of a gathering that exceeded 10 people, and she was acquitted.

[20] On July 5, 2023, the appellant filed a Notice of Appeal from the *Decision*. The stated grounds of appeal are as follows:

- i) That the presiding judge refused to revisit or reconsider the first application, contrary to the evidence and the law.
- ii) That the presiding judge dismissed the second application, contrary to the evidence and the law.
- iii) That the conduct of the hearing of January 18, 2023, that gave rise to both applications constituted an abuse of process.
- iv) That the last-minute notice provided by the AG on January 16, 2023, constituted an abuse of process.

- v) That the appellant's right to make full answer and defence has been irreparably compromised and prejudiced by these events and those that followed.
- vi) That the administration of justice has been brought into disrepute.
- vii) That justice has not been done, nor seen to be done.
- viii) That the government conduct in question was clearly wrong, in bad faith, and an abuse of power.

Analysis

[21] Despite Justice Keene's comment in the *Keene Fiat* that the appellant is not entitled to appeal from a judge's mid-trial ruling, the appellant chose to appeal the trial judge's mid-trial ruling anyway.

[22] The AG argued that the appellant has only furnished the Court with a small portion the transcripts. In its view, nothing turns on this omission, but the AG wanted the Court to be aware of what is not before it. The AG's point is noted.

[23] The procedure for summary conviction appeals is included in the *Criminal Code*, RSC 1985, c C-46, and applies to summary conviction proceedings per *SOPA*, ss. 4(4)(b).

[24] The relevant portions of ss. 813 and 830 of the *Criminal Code* state:

Appeal by defendant, informant or Attorney General

813 Except where otherwise provided by law,

(a) the defendant in proceedings under this Part may appeal to the appeal court

(i) from a conviction or order made against him,

(ii) against a sentence passed on him, or

(iii) against a verdict of unfit to stand trial or not criminally responsible on account of mental disorder; and

...

Appeals

830(1) A party to proceedings to which this Part applies or the Attorney General may appeal against a conviction, judgment, verdict of acquittal or verdict of not criminally responsible on account of mental disorder or of unfit to stand trial or other final order or determination of a summary conviction court on the ground that

(a) it is erroneous in point of law;

(b) it is in excess of jurisdiction; or

(c) it constitutes a refusal or failure to exercise jurisdiction.

Form of appeal

(2) An appeal under this section shall be based on a transcript of the proceedings appealed from unless the appellant files with the appeal court, within fifteen days of the filing of the notice of appeal, a statement of facts agreed to in writing by the respondent.

Rules for appeals

(3) An appeal under this section shall be made within the period and in the manner directed by any applicable rules of court and where there are no such rules otherwise providing, a notice of appeal in writing shall be served on the respondent and a copy thereof, together with proof of service, shall be filed with the appeal court within thirty days after the date of the conviction, judgment or verdict of acquittal or other final order or determination that is the subject of the appeal.

Rights of Attorney General of Canada

(4) The Attorney General of Canada has the same rights of appeal in proceedings instituted at the instance of the

Government of Canada and conducted by or on behalf of that Government as the Attorney General of a province has under this section.

[25] Section 813 prescribes this Court's jurisdiction on summary conviction appeals (*R v Sullivan*, 2022 SCC 19, [2022] 1 SCR 460; and *R v Laviolette*, 2005 SKQB 61, 260 Sask R 121 [*Laviolette*]). In *Laviolette*, the Court determined that s. 813 does not authorize interlocutory appeals (para. 18). The Court has consistently applied the same premise and dismissed interlocutory appeals as outside the scope of s. 813: see *Nadeau v Saskatchewan* 2008 SKQB 330, 325 Sask R 246; *R v Agecoutay*, 2009 SKQB 220, 335 Sask R 246; *R v Ironeagle*, 2000 SKQB 553, 202 Sask R 268; and *R v Carpenter*, 2005 SKQB 432, 272 Sask R 31).

[26] The AG argued that the *SOPA* and the *Criminal Code* do not provide for appellate jurisdiction arising from interlocutory appeals. I agree.

[27] The Decision under appeal was interlocutory and made during a trial where the appellant was ultimately acquitted. It did not determine the appellant's guilt or innocence, or otherwise bring an end to the proceeding. It was a decision made along the way with the final Decision (acquittal) issued on May 25, 2023.

[28] The AG's argument is supported by the Supreme Court of Canada in *R v Mills*, [1986] 1 SCR 863; and *R v Meltzer*, [1989] 1 SCR 1764. In both cases, the Court is clear that all criminal appeals are statutory, and an interlocutory appeal is without jurisdiction. The Courts in Saskatchewan agreed in *R v Ferrari*, 2002 SKCA 15, 213 Sask R 288; *R v Sears*, 2014 SKCA 72; and *R v Yates* 2023 SKCA 47, [2023] 7 WWR 565.

[29] The right to appeal is statutory. The appellant has not pointed the Court to any authority, statutory or otherwise, to suggest that this Court has jurisdiction to hear an interlocutory appeal.

[30] The AG argued that interlocutory appeals are not allowed in criminal matters for general policy reasons. The risk, they say, is that the interim decisions, if subject to appeal, could take on a life of their own, much like what has happened here. In the AG's view, allowing interlocutory appeals would burden the Courts with irrelevant and unnecessary hearings.

[31] I accept the AG's argument that this Court's jurisdiction to hear appeals from summary conviction matters is limited to final orders.

[32] I agree that the Court does not have jurisdiction to hear the within appeal. This is for general policy reasons and for the reasons referenced in the caselaw argued by the AG. Even if I am incorrect and the Court does have jurisdiction to hear the appeal, the appeal would be moot. Despite the appellant's lack of success on the interlocutory rulings, she was acquitted on the charges against her. The final order disposed of all issues and the final order is not under appeal.

[33] Further, the appellant sought public interest standing to bring the within summary conviction appeal. The AG argued the appellant confused standing with jurisdiction, noting that standing is about who may participate in a particular proceeding whereas jurisdiction is about who may decide the issue.

[34] The appellant has not pointed to a criminal proceeding where public interest standing has been used, nor has the appellant addressed the AG's argument that she is confusing standing with jurisdiction.

[35] I agree with the AG's argument and that standing is irrelevant where the Court does not have jurisdiction. The *Decision* under review is an interlocutory matter and therefore, this Court lacks jurisdiction to hear the within appeal. Public interest standing is not available to the appellant here.

[36] Given my disposition in respect of the first issue on appeal, there is no need to address the second issue. Further, nothing more needs to happen in respect of the missing transcripts.

Order

[37] The appeal is dismissed.


C.L. NORBECK