

**APPELLANT'S MEMORANDUM OF ARGUMENT**

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

**IN THE COURT OF KING'S BENCH**

**JUDICIAL CENTRE OF REGINA**

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BETWEEN:

**ERINN L. KNOLL**

Appellant

-and-

**HIS MAJESTY THE KING**

Respondent

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**APPELLANT'S MEMORANDUM OF ARGUMENT**

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## **TABLE OF CONTENTS:**

PART I – INTRODUCTION.....	1
PART II – JURISDICTION AND STANDARD OF REVIEW.....	3
A.    Jurisdiction.....	3
B.    Standard of review.....	8
PART III – SUMMARY OF THE FACTS.....	9
A.    History of the prosecution.....	9
B.    The January 18, 2023 hearing.....	10
C.    Key points of the trial.....	13
D.    The affidavits of the Applicants.....	15
E.    History of the proceeding in this Court.....	16
PART IV – POINTS IN ISSUE.....	17
PART V – ARGUMENTS.....	17
A.    The impugned hearing amounted to an abuse of process.....	17
B.    Relitigation and reconsideration of the impugned hearing decision.....	18
C.    Accommodation of self-represented litigants.....	20
D.    The right to make full answer and defence.....	21
E.    Jurisdiction, stare decisis and access to justice.....	26
PART VI – RELIEF REQUESTED.....	29
PART VII – AUTHORITIES CITED.....	30
APPENDIX A – LEGISLATION CITED.....	33

## PART I – INTRODUCTION

1. The Appellant appeals from the Decision on Applications and final order (the "impugned Decision") made by His Honour, Judge Murray Hinds of the Provincial Court of Saskatchewan at Regina, Saskatchewan on April 20, 2023.<sup>1</sup>

2. The Appellant was charged with failing to comply with a Public Health Order (the "impugned Order")<sup>2</sup> 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.

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1 [R v Knoll, 2023 SKPC 29](#)

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*.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup> It pleads, *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.<sup>6</sup>

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

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

4 Appeal Book – Tab 12: Notice of Application – Constitutional Issue

5 Appeal Book – Tab 1: Notice of Appeal

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

Notice of Constitutional Question.<sup>7</sup> The Crown's application was dismissed.<sup>8</sup>

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**

#### **Provincial powers and mootness**

13. The Court derives its jurisdiction to hear this appeal from section 813 of the *Criminal Code*<sup>9</sup>, and section 4(4)(b) of *The Summary Offences Procedure Act*.<sup>10</sup> 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*. 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.<sup>11</sup> The jurisdiction of this Honourable Court to hear this appeal is clear and established.

14. At least three dozen people have been convicted of breaching Public Health

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<sup>7</sup> Appeal Book – Tab 13: Notice of Constitutional Question

<sup>8</sup> Appeal Book – Tab 3: Endorsement from Justice Keene

<sup>9</sup> *Criminal Code*, RSC 1985, c C-46 at s. 813

<sup>10</sup> *The Summary Offences Procedure Act*, 1990, SS 1990-91, c S-63.1 at s. 4(4)(b)

<sup>11</sup> *King's Bench Act*, SS 2023, c 28 at ss. 3-1, 3-2 and 3-3

Orders because they were engaged in political protesting activities outdoors.<sup>12</sup> The convictions were upheld on appeal, all the way to the Saskatchewan Court of Appeal.<sup>13</sup> Every fine imposed is a debt owing to the Crown in perpetuity and, thus, mootness doctrine does not apply in a quasi-criminal context. 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.<sup>14</sup> Legal certainty is required and the public interest is highly relevant, the public importance of which demands that this appeal be heard.<sup>15</sup>

15. The Crown has previously cited *Yates*<sup>16</sup> at paras. 38-40 and *Sears*<sup>17</sup> at paras. 5-7, regarding there being no interlocutory right of appeal in criminal matters. The former involves manslaughter, the latter involves multiple drug offences, both of which are obviously *Criminal Code* matters. This is problematic for four reasons:

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

16. From a unanimous Supreme Court in *Macooh* per Chief Justice Lamer:<sup>18</sup>

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

<sup>12</sup> *R v Bernier*, 2023 SKPC 62

<sup>13</sup> *Grandel v Government of Saskatchewan*, 2024 SKCA 53

<sup>14</sup> *Cimmer v Niessner*, 2022 SKCA 60 at para. 45

<sup>15</sup> *Borowski v Canada (Attorney General)*, [1989] 1 S.C.R. 342

<sup>16</sup> *R v Yates*, 2023 SKCA 47 at paras. 38-40

<sup>17</sup> *R v Sears*, 2014 SKCA 72 at paras. 5-7

<sup>18</sup> *R v Macooh*, 1993 CanLII 107 (SCC), [1993] 2 SCR 802 at p. 819

offences, which are exclusively within the jurisdiction of the federal Parliament.

[Emphasis added.]

17. 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*. The legislature's will is supreme and must be respected.

### **The impugned Decision is a final order**

18. **Critically, as a question of pure law, the order appealed is a final order. It is not interlocutory.** Even the presiding judge agrees and states as such at para. 30 of the impugned Decision appealed. An order is generally considered final when it disposes of the substantive rights or defence of the affected party. That is the nature of precisely what is being appealed.<sup>19</sup>

19. The Court of Appeal was very clear on this point in *Poffenroth*:<sup>20</sup>

[18]... The determination of whether an order is final or interlocutory in nature turns on whether the order effectively disposes of the rights of the parties, in a final and binding way, with respect to a substantive issue. If it does, the order is a final order (see, for example, *PCL Construction Management Inc. v Saskatoon (City)*, [2020 SKCA 12](#) at paras [59–65](#) [*PCL Construction*]; *Stevenson Estate v Bank of Montreal*, [2011 SKCA 51](#) at para [10](#), 371 Sask R 198 [*Stevenson Estate*]; and *D.B. v M.C.*, [2001 SKCA 129](#) at para [8](#), 213 Sask R 272 [*D.B.*]).

[19] But how does one determine whether an order disposes of the rights of the parties, on a substantive issue, in a final and binding way? In *Van de Wiel v Blaikie*, [2005 NSCA 14](#), 230 NSR (2d) 186 [*Van de Wiel*], Cromwell J.A. (as he then was) had this to say:

[12] In general, an order is interlocutory which does not dispose of the rights of the parties in the litigation but relates to matters taken for the purpose of advancing the matter towards resolution or for the purpose of enabling the conclusion of the proceedings to be enforced; see *Cameron v. Bank of Nova Scotia et al.* (1981), [1981 CanLII 4762 \(NS CA\)](#), 45 N.S.R. (2d) 303 (S.C.A.D.).

[13] In *Irving Oil Ltd. v Sydney Engineering Inc.* (1996), [1996 NSCA 5 \(CanLII\)](#), 150 N.S.R. (2d) 29 (C.A. Chambers), Bateman, J.A. considered the distinction between interlocutory and final orders. Although finding it unnecessary to conclusively determine the nature of the order in the case before her, she cited with approval the first edition of *The Conduct of an Appeal* by Sopinka and Gelowitz

<sup>19</sup> *Houle v St. Jude Medical Inc.*, 2018 ONCA 88 at paras. 7 and 16-18; *Edgeworth v Shapira*, 2020 ONCA 374 at para. 4; *Dynasty Furniture Manufacturing Ltd. v Toronto-Dominion Bank*, 2015 ONCA 137 at paras. 5-7; *Deltro Group Ltd. v Potentia Renewables Inc.*, 2017 ONCA 784 at paras. 3 and 5

<sup>20</sup> *Poffenroth Agri Ltd. v Brown*, 2020 SKCA 68 at paras. 18, 19, 20 and 22

(1993) at p. 15 which described the distinction as follows:

Where such orders have a terminating effect on an issue or on the exposure of a party, they plainly “dispose of the rights of the parties” and are appropriately treated as final. Where such orders set the stage for determination on the merits, they do not “dispose of the rights of the parties” and are appropriately treated as interlocutory.

(Emphasis added)

[20]... That is to say, an order need not bring the entire dispute between the parties to an end to constitute a final order; an order can be final if it finally determines the particular proceeding before the court, notwithstanding that there may be some other issues left to be determined in some other proceeding or by some other process.

[...]

[22] Without putting too fine a point on things, an order that does not finally resolve the action may constitute a final decision when it impacts on the substantive merits of a cause of action or a substantive defence (see, for example, *D.B.; PCL Construction; Ball v Donais* (1993), [1993 CanLII 8613 \(ON CA\)](#), 64 OAC 85 (CA); *Abbott v Collins* (2002), [2002 CanLII 41457 \(ON CA\)](#), 165 OAC 271 (CA); *M.J. Jones Inc. v Kingsway General Insurance Co.* (2003), [2003 CanLII 37356 \(ON CA\)](#), 233 DLR (4th) 285 (Ont CA); *Hopkins v Kay*, [2014 ONCA 514](#))...

[Emphasis added.]

### **The Appellant has private interest standing**

20. Per Cameron J.A. of the Saskatchewan Court of Appeal in *Superbar*:<sup>21</sup>

[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

<sup>21</sup> [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 ("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 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.]

21. 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*.
22. 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*.<sup>22</sup> The Appellant engaged this process by properly bringing an application two years ago, that has yet to be heard. It is time.<sup>23</sup>

### **The Appellant has public interest standing**

23. 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 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.<sup>24</sup>

24. 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 in this Court.<sup>25</sup> A grant of public interest standing is sought on these grounds.

### **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.<sup>26</sup> All the questions raised are

<sup>22</sup> *The Constitutional Questions Act*, 2012, SS 2012, c C-29.01 at ss. 13-15, especially 13.1

<sup>23</sup> Appeal Book – Tab 11: Notice of Application – Quasi-Constitutional Issue

<sup>24</sup> *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

<sup>25</sup> Appeal Book – Tab 10 – Affidavit of Erinn Knoll (Court of King's Bench)

<sup>26</sup> *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

those of pure law for which there is no deference to the trial judge.<sup>27</sup> Additionally, the 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.<sup>28</sup>

### 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 Order<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup> Ms. Hagel terminated her retainer on or about December 29, 2022.<sup>32</sup> This occurred because their counsel would only plead the *Charter*, which had been rendered all but powerless by this Court in *Grandel*.<sup>33</sup>

There was no willingness to bring an application under *The Constitutional Questions Act* to

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27 *Housen v Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235 at paras. 8 and 27; *Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.*, 2016 SCC 37 (CanLII), [2016] 2 SCR 23 at paras. 36 and 115

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

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

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

31 Trial Transcript – p. T12 at lines 22-31

32 *Ibid.* - p. T22 at lines 13-31

33 *Grandel v Saskatchewan*, 2022 SKKB 209

challenge the impugned Order.

29. After being notified on December 2, 2022,<sup>34</sup> 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.<sup>35</sup>

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.<sup>36</sup>

31. The Appellant served and filed applications and accompanying affidavits with her co-Applicant on February 28 and March 17, 2023.<sup>37</sup>

31. The Appellant's trial took place on March 20, 23 and 30, 2023.<sup>38</sup>

32. The impugned Decision being appealed was rendered on April 20, 2023.<sup>39</sup>

33. The trial decision was rendered on May 25, 2023 which acquitted the Appellant and co-Applicant. Everyone else, except Ms. Apodaca, were convicted.<sup>40</sup>

## **B. The January 18, 2023 hearing**

### **The Appellant**

34. The Appellant's oral submission is found at pp. T18-37. On p. T19 she pleaded ss. 2 and 4-6 of the *Code*.<sup>41</sup> On p. T23 she went over some of the history of the

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34 Trial Transcript – p. T21 at lines 33-41

35 Transcript – Jan. 18, 2023 – p. T1 at lines 13-16

36 *Ibid.* – p. T62 at lines 13-36

37 Appeal Book – Tab 6 - Affidavit of Erinn Knoll; Appeal Book – Tab 7 - Supplementary Affidavit of Erinn Knoll; Appeal Book – Tab 8 - Affidavit of Christina Hagel (co-Applicant); Appeal Book – Tab 9 - Supplementary Affidavit of Christina Hagel; Appeal Book – Tab 11 - Notice of Application – Quasi-Constitutional Issue; Appeal Book – Tab 12 – Notice of Application – Constitutional Issue

38 Trial Transcript – p. i – Table of Contents

39 *R v Knoll*, 2023 SKPC 29

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

41 Transcript – Jan. 18, 2023 – p. T19 at lines 2-4

*Saskatchewan Bill of Rights*.<sup>42</sup> On p. T24 she read s. 5 of the *Code* verbatim and mentioned how the Commission failed to make any progress advancing the rights of defendants.<sup>43</sup>

35. On p. T28 she mentioned her motion to dismiss.<sup>44</sup> 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.

36. 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.

37. 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**

38. 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".

39. 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:<sup>45</sup>

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.

<sup>42</sup> *Ibid.* – p. T23 at lines 2-29

<sup>43</sup> *Ibid.* – p. T24 at lines 25-39

<sup>44</sup> *Ibid.* – p. T28 at lines 39-40

<sup>45</sup> *Ibid.* – p. T41 at lines 20-22

40. 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.

41. 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:<sup>46</sup>

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.]

42. 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**

43. 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.<sup>47</sup>

<sup>46</sup> *Ibid.* -- p. T43 at lines 11-19

<sup>47</sup> *Ibid.* -- p. T8 at lines 12-26

44. 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 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**

45. 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.

46. 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.

47. 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**

48. The opening statement of the Applicants is as follows:<sup>48</sup>

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

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<sup>48</sup> Trial Transcript – pp. T24-25 at lines 34-41 and 1-22, respectively

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 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.

49. A closing statement was made and is as follows:<sup>49</sup>

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.

50. 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.<sup>50</sup>

51. 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

<sup>49</sup> *Ibid.* – p. T51 at lines 16-20

<sup>50</sup> *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;

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.

[Emphasis added.]

52. 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.<sup>51</sup>

53. 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:<sup>52</sup>

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**

54. 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.<sup>53</sup>

55. 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.<sup>54</sup>

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<sup>51</sup> *Ibid.* – p. T38, lines 18-40

<sup>52</sup> *Ibid.* – p. T39, lines 31-35

<sup>53</sup> Appeal Book – Tabs 6, 8 and 11

<sup>54</sup> Appeal Book – Tabs 7, 9 and 12

56. 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 be lost prior to trial. They jointly asserted in conclusion:<sup>55</sup>

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 this Court**

57. 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.

58. 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.<sup>56</sup>

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

60. 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.

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<sup>55</sup> Appeal Book – Tabs 7 and 9 at paras. 9 for both

<sup>56</sup> Appeal Book – Tabs 10 and 13

## PART IV – POINTS IN ISSUE

61. They are as follows:

- The impugned hearing amounted to an abuse of process
- Relitigation and reconsideration of the impugned hearing decision
- Accommodation of self-represented litigants
- The right to make full answer and defence
- Jurisdiction, *stare decisis* and access to justice

## PART V – ARGUMENTS

### A. The impugned hearing amounted to an abuse of process

62. The Supreme Court of Canada most recently opined upon the doctrine of abuse of process almost exactly a year ago in *Brunelle*:<sup>57</sup>

[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.]

63. 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

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<sup>57</sup> *R v Brunelle*, 2024 SCC 3 at paras. 27-29

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.]

64. 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**

65. 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.<sup>58</sup> The Applicants concur that this is the correct and most applicable case, but disagree on the specific citation.

66. 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.

67. 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.

68. 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

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<sup>58</sup> *Canadian Broadcasting Corp. v Manitoba*, 2021 SCC 33 ("*CBC v Manitoba*")

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.<sup>59</sup>

69. 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.]

70. The public interest plays a critical role in reconsideration, per para. 38<sup>60</sup>:

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.]

71. 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. 44<sup>61</sup>:

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.]

<sup>59</sup> *Ibid.* at paras. 1-7, 19, 36 and 39, with special attention to paras. 60 and 61

<sup>60</sup> *Ibid.* see additional mentions at paras. 6, 37, 71, 76 and 116

<sup>61</sup> *Ibid.* see also paras. 23, 27, 42, 43, 48, 52, 59, 67, 68, 72, 75 and 84; and paras. 119 and 120 in dissent

72. 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 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.<sup>62</sup>

### C. Accommodation of self-represented litigants

73. 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.

74. From the Canadian Judicial Council's Criminal Law Notebook for Self-Represented Accused<sup>63</sup>:

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.

75. From the Canadian Judicial Council's Statement of Principles on Self-represented Litigants and Accused Persons<sup>64</sup>:

When one or both parties are proceeding without representation, non-prejudicial and engaged

<sup>62</sup> Appeal Book – Tab 11 – Notice of Application – Quasi-Constitutional Issue

<sup>63</sup> [Criminal Law Handbook](#) at page 6

<sup>64</sup> [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

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
- (f) question witnesses.

[Emphasis added.]

76. There are various appellate decisions which recognize these principles. From the Ontario Court of Appeal in *Morwald-Benevides v Benevides*<sup>65</sup>:

[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.]

77. 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

<sup>65</sup> *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

Applicants, and the other defendants, were laid to waste before, during, and after said impugned hearing.

**D. The right to make full answer and defence**

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

79. 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.

80. As the Alberta Court of Appeal put it succinctly in *Quintero-Gelvez* in 2019<sup>66</sup>:

[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.]

81. The right to make full answer and defence, as a principle of fundamental justice, is substantive and not merely procedural.<sup>67</sup>

82. 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*<sup>68</sup>:

[5] The test respecting the fairness of the trial process is similar. The question is not whether

<sup>66</sup> *R v Quintero-Gelvez*, 2019 ABCA 17 (CanLII) at paras. 7-9

<sup>67</sup> *Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486, 1985 CanLII 81 (SCC) at paras. 7, 17, 18, 21, 99 and especially 124

<sup>68</sup> *R v Switzer*, 2014 ABCA 129 (CanLII) at para. 5

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.

[Emphasis added.]

83. 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.

84. From the Nova Scotia Court of Appeal in *Sandeson*<sup>69</sup>:

[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.]

85. 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.<sup>70</sup>

<sup>69</sup> *R v Sandeson*, 2020 NSCA 47 (CanLII) at paras. 73, 76, 80, 81, 88 and 125

<sup>70</sup> *R v Grant*, [2009] 2 SCR 353, 2009 SCC 32 (CanLII) (“*Grant*”) at paras. 68 and 72-75

86. Substantial submissions were made previously in the Reply Factum 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 three cases, chief among them the recent Supreme Court of Canada decision, *R v JJ*, 2022 SCC 28 at paras. 123-125.<sup>71</sup>

87. 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.

88. 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.]

89. 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.

90. 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.]

91. Rowe J makes reference in dissent to “the right to fair procedures” at para. 335, “certain

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<sup>71</sup> *R v JJ*, 2022 SCC 28

procedural guarantees” at para. 339 and “protecting the rights of the accused” at para. 417.

92. A unanimous Supreme Court stated succinctly in *Underwood* in 1998<sup>72</sup>:

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

93. Binnie J opined similarly in the previously cited *Grant*<sup>73</sup>:

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.]

94. 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

<sup>72</sup> *R v Underwood*, 1998 CanLII 839 (SCC), [1998] 1 SCR 77 at para. 6

<sup>73</sup> *R v Grant*, 2009 SCC 32, [2009] 2 S.C.R. 353 at para. 178

power imbalance between the state and individual has been in full display throughout the provincial court proceeding.

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

95. As the written reasons of decision following the impugned hearing have only been made available four days ago, the Applicants are rightfully afforded the opportunity to respond.

96. On page 7 of the Brief of Law, 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*. 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.

97. 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”.

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

99. *Rowley*<sup>74</sup>, 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*<sup>75</sup>, at para. 52 states the the court's “jurisdiction is only engaged after the processes mandated

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<sup>74</sup> *Rowley v Can-West Agencies Ltd.*, 2018 SKQB 224 at para. 8

<sup>75</sup> *Lawless v Conseil scolaire Fransaskois*, 2014 SKQB 23 at para. 52

by the *Code* have first been complied with.” *Forsberg*<sup>76</sup>, 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*.”

100. 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*.

101. Para. 12 of *Forsberg* is even more relevant and references *Whatcott*<sup>77</sup> 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 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.]

102. At para. 36 of *Whatcott*, this 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

<sup>76</sup> *Forsberg v Saskatchewan*, 2017 SKQB 326 at paras. 12, 13 and 28

<sup>77</sup> *R v Whatcott*, 2002 SKQB 399 at paras. 34-37

conflict with the quasi-constitutional *Code*. The latter must necessarily prevail.

103. Notwithstanding para. 23 of *Forsberg* which notes that the *Code* lacks exclusive jurisdiction, the *Code*, itself, contains the following clearly worded provisions:<sup>78</sup>

### 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.]

104. 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?<sup>79</sup>

105. 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

<sup>78</sup> *The Saskatchewan Human Rights Code, 2018*, SS 2018, c S-24.2 at ss. 29 and 30

<sup>79</sup> *Hryniak v. Mauldin*, 2014 SCC 7 (CanLII), [2014] 1 SCR 87 at paras. 1, 2, 23-29

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.

106. 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*.<sup>80</sup> And Justice Scherman erred in the *Repo* summary conviction appeal.<sup>81</sup> This is inexcusable and is now a matter of repeated and flagrantly erroneous precedent that undermines legislative supremacy<sup>82</sup> and basic, statutory interpretation. This Court is asked to correct it forthwith.

107. The Court is asked to apply vertical *stare decisis*<sup>83</sup> 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 law, or some relevant statute was not considered.”<sup>84</sup> It has been so demonstrated. Swapping vertical *stare decisis* for horizontal *stare decisis* and judicial comity in these circumstances is a error of law.

## PART VI – RELIEF REQUESTED

108. A grant of public interest standing.

109. 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*

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<sup>80</sup> *R. v Drebit*, 2023 SKPC 8 at para. 5; *R v Repo*, 2023 SKPC 46 at para. 7

<sup>81</sup> *R v Repo*, 2024 SKKB 46 at para. 39

<sup>82</sup> *Reference re Pan-Canadian Securities Regulation*, 2018 SCC 48 (CanLII), [2018] 3 SCR 189 at paras. 54-56

<sup>83</sup> *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

<sup>84</sup> *Sullivan, Ibid.* at para. 73

*Code, 2018* due to an irreconcilable conflict of law.

## PART VII – AUTHORITIES CITED

- 604598 *Saskatchewan Ltd. (c.o.b. Great Canadian Superbar) v Saskatchewan (Liquor and Gaming Authority)*, 1998 CanLII 12308 (SK CA) at paras. 107-110
- 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
- Cimmer v Niessner*, 2022 SKCA 60 at para. 45
- Criminal Code*, RSC 1985, c C-46 at s. 813
- Deltro Group Ltd. v Potentia Renewables Inc.*, 2017 ONCA 784 at paras. 3 and 5
- Dynasty Furniture Manufacturing Ltd. v Toronto-Dominion Bank*, 2015 ONCA 137 at paras. 5-7
- Edgeworth v Shapira*, 2020 ONCA 374 at para. 4
- 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
- Houle v St. Jude Medical Inc.*, 2018 ONCA 88 at paras. 7 and 16-18
- Housen v Nikolaisen*, 2002 SCC 33 (CanLII), [2002] 2 SCR 235 at paras. 8 and 27
- Hryniak v Mauldin*, 2014 SCC 7 (CanLII), [2014] 1 SCR 87 at paras. 1, 2, 23-29
- Lawless v Conseil scolaire Fransaskois*, 2014 SKQB 23 at para. 52
- Ledcor Construction Ltd. v Northbridge Indemnity Insurance Co.*, 2016 SCC 37 (CanLII), [2016] 2 SCR 23 at paras. 36 and 115
- Morwald-Benevides v Benevides*, 2019 ONCA 1023 at para. 34
- Pintea v Johns*, 2017 SCC 23, [2017] 1 S.C.R. 470
- 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 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
- R v Repo*, 2024 SKKB 46 at para. 39
- R v Sandeson*, 2020 NSCA 47 (CanLII) at paras. 73, 76, 80, 81, 88 and 125
- 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 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 28<sup>th</sup> day of January, 2025.

**TO: The Local Registrar of the Judicial Centre of Regina**  
 Regina Court of King's Bench  
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 Regina, SK S4P 4W6

**TO: The Respondent, Saskatchewan Provincial Prosecutor's Office**  
**Bryan Carter**  
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 Regina, SK S4P 2N5  
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**AND TO: The Respondent, The Attorney General of Saskatchewan**  
 Constitutional Law  
 820 – 1874 Scarth Street  
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## 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.

**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.