Court File No. CV-20-00652216-000

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Applicant/Respondent

AND

ADAMSON BARBECUE LIMITED
AND WILLIAM ADAMSON SKELLY

Respondents/Applicants

AMENDED AMENDED NOTICE OF CONSTITUTIONAL QUESTION

"*Problems are never solved by the consciousness that created them.*"

- Albert Einstein

The Respondents/Applicants in this Motion, Adamson Barbecue Limited and William Adamson Skelly, intend to question the constitutional validity and applicability of the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 and the *Reopening Ontario (AFlexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17 and claim a remedy under sections 24 (1) of the *Canadian Charter of Rights and Freedoms* and section 52(1) of the *Constitution Act, 1982* in relation to acts and omissions of the Government of Ontario.

The question is to be argued on June 28 and 29, 2021 before Justice Akbarali, of the Superior Court of Justice, 361 University Avenue, Toronto, Ontario M5G 1T3.

The following are the material facts giving rise to the constitutional question:

1. On March 11th, 2020, the WHO declared a pandemic due to Covid-19 communicable disease. On March 18th, 2020, the Federal cabinet implemented an Order-in-Council, invoking Federal powers under the *Quarantine Act* (S.C. 2005, c. 20), based on the following statement: "due to a pandemic declared by the WHO". There is no reference to any scientific or medical basis for this step to be taken.
2. On March 17th, 2020, the Ontario Government declared an emergency under the *Emergency Management Civil Protection Act*, R.S.O. 1990, c. E.9 ("EMCPA") invoking emergency orders under s. 7.0.2(4) by the Lieutenant-Governor pursuant to the emergency on the basis that, "… the outbreak of a communicable disease namely Covid-19 Coronavirus disease constitutes a danger of major proportions that could result in serious harm to persons."[1]
3. On March 19, 2020, the United Kingdom downgraded Covid-19 from an infectious communicable disease to an influenza.
4. The *Reopening Ontario (A Flexible Response to COVID-19) Act*, 2020, S.O. 2020, c. 17 ("ROA"), was assented to on July 21, 2020 and came into force July 24, 2020. By virtue of section 17 of that Act, it revoked the EMCPA and thus indicating that there was no longer a declared emergency.
5. On January 12, 2021 the Ontario Government once again invoked the EMCPA and declared another state of emergency on the basis that "Covid-19 constitutes a danger of major

[1] Order in Council 518/2020

proportions that could result in serious harm to persons" causing all of Ontario to go under a stay-at-home order.[2] That Order has been extended twice.[3] At the time of drafting this Notice, Ontario remains under the emergency stay-at-home Order pursuant to the remaining provisions of the EMCPA while concurrently being governed by the expansion and amending provisions of the ROA.[4]

6. Currently, the following EMCPA Regulations are in place and being enforced in Ontario:

    a. O. Reg. 8/21: Enforcement of COVID-19 measures
    b. O. Reg. 11/21: Stay-at-home order: O. Reg. 94/21 Amendment on Feb 8
    c. O. Reg. 13/21: Residential evictions: O. Reg. 62/21 Amendment on Feb 8
    d. O. Reg. 25/21: Extension of Orders: O. Reg. 95/21 & O. Reg. 106/21 & O. Reg. 113/21 Amendments on Feb 8, 10 & 12
    e. O. Reg. 55/21: Compliance orders for retirement homes
    f. O. Reg. 63/21: Stay-at-home order (York Regional Health Unit)
    g. O. Reg. 73/21: Stay-at-home order (Peel Regional Health Unit)
    h. O. Reg. 76/21: Stay-at-home order (North Bay Parry Sound District Health Unit)
    i. O. Reg. 89/21: Stay-at-Home Order (City of Toronto Health Unit)

7. The Applicants refer to the material facts set out in the Affidavit of William Adamson Skelly, sworn February 18, 2021, found in the Motion Record containing the Notice of Constitutional Question, providing an overview of the personal impact the actions of the

[2] O. Reg. 7/21: DECLARATION OF EMERGENCY
[3] O. Reg. 24/21: EXTENTSION OF EMERGENCY
[4] O. Reg. 116/21: Amending O. Reg. 363/20: Stages of Reopening; O. Reg. 117/21: Amending O. Reg. 82/20: Rules for areas in Stage 1; O. Reg. 114/21 & O. Reg. 118/21: Amending O. Reg. 263/20: Rules for areas in Stage 2; O. Reg. 115/21 & O. Reg. 119/21: Amending O. Reg. 364/20: Rules for areas in Stage 3;

Provincial Government have had on the Applicants. A further and more extensive analysis will be filed along with the Factum and corresponding materials, by way of Supplementary Affidavit.

The following is the legal basis for the constitutional question:

Overview

8. Pandemic is a word that, if misused can cause unreasonable fear, or unjustified implementation of lockdown protocols and measures, leading to unnecessary suffering and death. Science is designed to inform policy makers, but when it is manipulated or falsified for ulterior motives, humanity as a whole suffers.
9. In its response to the Covid-19 Virus, the Governments (Federal, Provincial and Municipal) have invoked extraordinary executive powers predicated on unsubstantiated scientific and legal grounds with catastrophic consequences to people in Ontario, Canada and indeed throughout the world.
10. During the period from January 2020 to present day, the population throughout the country are witnessing the eradication of individual and collective rights in the name of the protection of peoples' health. Evidence will demonstrate that the consequences of a lockdown are much more severe than the assumed pandemic. In the process, the rule of law has become the law of rule where inherent rights and freedoms have become privileges. At this moment it is very difficult to express that we all live in a free and democratic society.
11. By any standard, international customary law, *jus cogens* or Magna Carta protection, international human rights and constitutional protection are all being eliminated to accommodate controlling people, to vaccinate them, all by the World Health Organization

(WHO). The restrictions put in place by governments to impose draconian measures on its citizens without a scientific or medical rationale constitutes an abuse of human rights and a crime against humanity.

12. In this tapestry one must contemplate the censorship of ordinary people who have no place to express their opposition, and mainstream media does not make space for anyone who does not accord with this draconian agenda. Civil disobedience is the only avenue through which ordinary citizens can voice their concerns. Ordinary citizens, who hold opposite opinions of the conventional wisdom that fear should guide us, are being silenced. Important and emerging scientific evidence is being suppressed and those asking relevant and legitimate questions are being shamed, harassed and punished for speaking out.
13. The issues raised in this constitutional challenge are not necessarily confined to Ontario, as the same agenda is rolling out Canada wide, and world-wide, based on the statement "due to a pandemic declared by the WHO". Sound scientific or medical opinion must support the declaration of an infectious disease, the use of scientific testing equipment and its reliability (PCR test) and untested vaccinations unsupported by animal trials exposing each step of this process to scrutiny.
14. The Applicants intend to bring forward expert evidence which will delve into these elements of the agenda to demonstrate that the implementations of the preventative measures are not supported by sound science or medical evidence and have caused irreparable harm to all segments of the population throughout Ontario. The most vulnerable – the elderly, the youth, the special needs, the Indigenous communities all are suffering irreparable harm.

15. As the issues that arise in this constitutional challenge are international in scope and application, the Supreme Court of Canada in *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, recently observed at paras. 1 and 2, as follows

> ….the application of modern international human rights law, the phoenix that rose from the ashes of World War II and declared global war on human rights abuses. Its mandate was to prevent breaches of internationally accepted norms. Those norms were not meant to be theoretical aspirations or legal luxuries, but moral imperatives and legal necessities. Conduct that undermined the norms was to be identified and addressed.
>
> The process of identifying and responsively addressing breaches of international human rights law involves a variety of actors. Among them are courts, which can be asked to determine and develop the law's scope in a particular case. This is one of those cases"

16. The *British North America Act*, 1867, 30-31 Vict., c. 3 (U.K.) preamble states that our constitution is: "a constitution similar in principle to that of the United Kingdom" thereby incorporating all constitutional instruments since the Magna Carta of 1215 and all human rights instruments leading to the *Canada Act* of 1982, U.K.C.11, as the foundation forming the basis of this constitutional challenge.

Legal Basis

17. The Applicants submit that Canada is in a state of constitutional crisis. Fundamental rights and freedoms are being usurped by the Federal, Provincial and Municipal Governments, or member(s) thelrein, without constitutional authority or due process. Questionable and high-risk actions concerning the mind, body and health of the Canadian public are being supported and advanced by all levels of Government under the rubric of emergency response and preventative action to a global pandemic declared by the World Health Organization

18. The lawfulness and implications of these actions have yet to be reviewed on a constitutional basis. In that regard, the Applicants submit the following constitutional questions to the Court for consideration:

    a. Do the Federal, Provincial and Municipal Governments have lawful constitutional authority to unequivocally adopt, adhere and legislate in relation to the international recommendations and guidelines of the World Health Organization to declare a global pandemic without oversight and due process?;

    b. If it is found that the declaration of the Covid-19 pandemic and subsequent emergency measures were lawful despite the lack of oversight and due process, does the Provincial Government have constitutional jurisdiction and authority under s. 91 of the *Constitution Act, 1867* to legislate the suspension of rights and freedoms based on national and international emergency measures enacted to protect the health security of all Canadians based on Provincial preventative healthcare concerns?;

    c. If it is found that the Provincial Government has constitutional jurisdiction and authority to legislate preventative emergency measures in response to national and international Covid-19 concerns, are sections 7.1, 7.2, 7.0.2(4), 7.0.2.(7) of the *Emergency Management and Civil Protection Act* and sections 7, 9, 9.1, 10 and 10.1 of the *Reopening Ontario Act* unconstitutionally vague and open-ended constituting a constitutionally impermissible delegation of legislative power to public officials rendering the orders invalid and requiring a remedy pursuant to s. 52(1) of the *Constitution Act, 1982?*;

d. Did the application of s. 9 of the *Reopening Ontario Act* and the implementation and application of s. 7.0.2(4) emergency orders that restrict and suspend constitutional rights and freedoms under the *Emergency Management and Civil Protection Act*, violate the Applicants' sections 2, 7, 8, 9 and 15 rights and freedoms under the *Canadian Charter of Rights and Freedoms* and if so, is the infringement justified under s. 1? If not, the Applicants' seek remedies pursuant to s. 24(1) of the *Charter of Rights and Freedoms*; and

e. Finally, has the Provincial and Federal Government breached their constitutional commitment to promote equal opportunities pursuant to s. 36(1) of the *Constitution Act, 1982*, to specifically (a) promote equal opportunities for the well-being of Canadians, (b) furthering economic development to reduce disparity in opportunities, and (c) provide essential public services of reasonable quality to all Canadians?

A. Do the Federal, Provincial and Municipal Governments have lawful constitutional authority to unequivocally adopt, adhere and legislate in relation to the international recommendations and guidelines of the World Health Organization to declare a global pandemic without oversight and due process?

19. It is well-established law that the adoption and application of international treaties, covenants, agreements, principles, guidelines or recommendations have no legal basis in our domestic common law if they have not been directly legislated into law by due process; the foundation of the English common law prohibits it.

20. The English *Bill of Rights, 1689,* still constitutes one of the great landmarks defining the relationship of Parliament to the Crown in the British Commonwealth to this very day. This gives a clear understanding of the foundation in which our democratic underpinnings are rooted.
21. Considering the enduring powers of the British Constitutional framework in Canada, and recognizing that valid Canadian laws can, therefore, only be purported at the inception of the Parliament, the single-handed adoption, reliance and adherence of guidelines and recommendations by the World Health Organization without parliamentary debate and legislation, lacks legal authority and is unlawful under the Constitutional laws of Canada.
22. The World Health Organization is not a faction in the Canadian Parliament, part of the Constitutional Monarchy in Canada, or an institution governing the statutory or legal affairs in Canada. Thus, the World Health Organization has no authority to form the basis for the proposal or inception of any action or legislation in Canada without due process.
23. The Applicants submit that when politicians bypass Parliament and the Legislature to pronounce emergency measures based on "a pandemic declared by the World Health Organization", they commit acts designed to exempt parliamentary debate specifically forbidden by the English *Bill of Rights* in 1689.
24. The most troubling issue is the complete lack of due process which has resulted in the breakdown of the Applicants' confidence in the Governments, or member(s) therein, to uphold fundamental rights in a fair, transparent and constitutional manner as was intended by Canada's common law democratic system.

25. Due process is the foundation of democracy and the basis on which freedoms have, and continue to be, fought. It is the principle that makes the Courts arbiters of the rights and freedoms of the Canadian people as against the democratic system.

26. In this instance, due process is complex and involves a deep understanding of Canada's relationship to the British Empire, not only as a Commonwealth Nation but also as an 'Economic Ally' on the global stage. The Applicants will provide the Court with a full record of fact and although the facts may appear incomprehensible, that should not deter from the truth of the facts as submitted. History can be a puzzle, but sometimes the facts align and offer such a clear footprint that although it may seem untenable, the truth of which cannot be denied.

27. The Applicants rely on the English common law as prohibiting unilateral adoption of international treaties, covenants, guidelines and recommendations, without due process. In this instance, the Applicants submit that due process requires at the minimum, that international recommendations, guidelines and instruments relating to the health and welfare of the Canadian public, be put before a full assembly of Parliament for consideration and enactment of legislation, before there is legal authority to suspend, vary or deny the constitutional rights and freedoms of the Canadian public in the manner in which it has been.

28. The Applicants submit that the unilateral adoption by the Federal, Provincial and Municipal Governments, or member(s) therein, of the international guidelines and recommendations espoused by the World Health Organization, resulting in the suspension of fundamental rights and freedoms protected by the *Charter of Rights and Freedoms* and customary international law, unlawfully and without due process, is exactly the "conduct that undermines the norms" that the Supreme Court of Canada in *Nevsun Resources Ltd. v. Araya*

was stating needed identification and addressing. And it is this exact conduct that the Applicants have asked that this Honourable Court identify and address.

B. If it is found that the declaration of the Covid-19 pandemic and subsequentemergency measures were lawful despite the lack of oversight and due process, does the Provincial Government have constitutional jurisdiction and authority under s. 91 of the *Constitution Act, 1867* to legislate the suspension of rights and freedoms based on national and international emergency measures enacted to protect the health security of all Canadians based on Provincial preventative healthcare concerns?

29. If it is determined that lawful constitutional authority and due process have been adhered to by the aforementioned Governments in their Covid-19 response, it is submitted that the Province of Ontario is nonetheless, *ultra vires* its' constitutional authority to make health and welfare laws drastically suspending rights and freedoms with criminal enforcement sanctions outside of a declared emergency as set out in the ROA and its corresponding Regulations.
30. The Constitution of Canada is fundamentally defined by its federal structure and the division of powers, effected mainly by ss. 91 and 92 of the *Constitution Act, 1867*, is the "primary textual expression" of the federalism principle in the Constitution. The division of powers assigns spheres of jurisdiction to a central Parliament and to the provincial legislatures, distributing the whole of legislative authority in Canada. Within their respective spheres, the legislative authority of the Parliament and the provincial legislatures is supreme (subject to the constraints established by the Constitution, including the *Canadian Charter of Rights and Freedoms* and s. 35 of the *Constitution Act, 1982*).

31. The division of powers has evolved to embrace the possibility of intergovernmental cooperation and overlap between valid exercises of provincial and federal authority. In keeping with the movement of constitutional law towards a more flexible view of federalism that reflects the political and cultural realities of Canadian society, the principle of cooperative federalism has evolved. Despite this evolution, where the Constitution empowers one level of government to take unilateral action, cooperative federalism will not stand in its way.
32. Since the Constitution gives Parliament and the provincial legislatures the authority to "make Laws in relation" to certain "Matters", the pith and substance analysis that has been articulated by the judiciary aims to "identify the law's 'matter'".
33. The Applicants submit that the “pith and substance” of the ROA is to impose unprecedented transitional ‘emergency-like’ preventative measures on the Ontario public in response to the previously declared (and now revoked) Covid-19 emergency.
34. The true cause for concern, and understanding of the ROA’s purpose, is in the catastrophic effects of such measures on the Ontario public, and small business owners specifically in this instance. Both legal and practical effects are relevant to identifying a law's pith and substance. Legal effects flow directly from the provisions of the statute itself, whereas practical effects flow from the application of the statute but are not direct effects of the provisions of the statute itself.
35. In this instance, a cost-benefit analysis is essential in this undertaking, particularly in light of the new and ongoing information currently available concerning the impact of the response measures, the PCR testing and the vaccination rollout. When considering whether civil disobedience has a role in this situation, and the Province has authority to restrain an

individual from their livelihood in that regard, it is imperative that we revisit the cost-benefit analysis for a better understanding of how this impact is truly being absorbed.

36. Furthermore, in order to implement the purpose of the ROA, enforcement provisions were required to ensure compliance. In this case, the enforcement and penalties extend to significant fines and imprisonment for non-compliance. In extreme cases, pursuant to s. 9 of the ROA, there is authority, "despite any other remedy or any penalty" to restrain an individual or corporation for non-compliance.

37. The extent of the enforcement provisions coupled with the coercive purpose and effects of the legislation, places the 'pith and substance' of the Act into the arena of criminal law, which seems to underlie the tenure of the Act. It is this pith and substance which is beyond the authority of the Province to constitutionally legislate under the guise of transitional 'emergency-like' preventative measures in response to the previously declared (and now revoked) Covid-19 emergency.

38. Health is an "amorphous" field of jurisdiction, featuring overlap between valid exercises of the provinces' general power to regulate health and Parliament's criminal law power to respond to threats to health. The criminal law authority that Parliament exercises in the area of health does not prevent the provinces from regulating extensively in relation to health. However, it does not allow the Province to unilaterally apply Parliament's criminal law power by imposing sanctions, prohibitions, restrictions and suspensions of rights pursuant to its provincial field of jurisdiction.

C. <u>If it is found that the Provincial Government has constitutional jurisdiction and authority to legislate preventative emergency measures in response to national and international Covid-19 concerns, are sections 7.1, 7.2, 7.0.2(4), 7.0.2.(7) of the *Emergency Management and*</u>

Civil Protection Act* and sections 7, 9, 9.1, 10 and 10.1 of the *Reopening Ontario Act* unconstitutionally vague and open-ended constituting a constitutionally impermissible delegation of legislative power to public officials rendering the orders invalid and requiring a remedy pursuant to s. 52(1) of the *Constitution Act, 1982?

39. The *Emergency Management and Civil Protection Act* (formerly the *Emergency Management Act*) began its' evolution in the aftermath of the 2003 SARS outbreak in Toronto. The SARS outbreak and the lessons that were presenting, resulted in the Minister of Health and Long-Term Care and the Government of Ontario, appointing by Order-In-Council the Honourable Mr. Justice Archie G. Campbell on June 10, 2003 to establish a Commission to investigate the introduction and spread of SARS pursuant to s. 78 of the *Health Protection and Promotion Act.*

40. In his role as independent Investigator, Mr. Justice Campbell authored a 2104-page report covering the pertinent issues explored by the Commission relating to the public health sector and emergency management and preparedness. The five-volume SARS Commission Report included a three volume Final Report released December 2006 titled "Spring of Fear" and two Interim Reports titled, "SARS and Public Health in Ontario" (released April 15, 2004) and "SARS and Public Health Legislation" (released April 5, 2005) respectively. Each report concluded with a Summary of Recommendations.

41. Chapter 11 of Volume 5, "SARS and Public health Legislation" provides a 118-page review of emergency legislation, the latter half of which is dedicated to Bill 138, Emergency Management Statute Law Amendment Act, 2004 concluding with a list of recommendations. Bill 138 subsequently received royal assent and the *Emergency Management and Civil Protection Act* was born. In referring to Bill 138 Mr. Justice Campbell states,

> Bill 138 gives government officials unrestricted authority to override virtually every other Ontario law that gets in the way of any power they consider necessary to exercise in an emergency. It represents a profound change in our legal structure and raises issues that must be addressed whenever a statute is proposed that so fundamentally alters our system of government by law.[5]

42. The recommendations that followed appear to have fallen on deaf ears as the provisions which provided unrestricted authority to override every other Ontario law that, "gets in the way of any power they consider necessary to exercise in an emergency" surprisingly and concerningly, remains. Sections 7.1, 7.2, 7.0.2(4), 7.0.2(7) of the *Emergency Management and Civil Protection Act* appear almost unchanged since the concerns and recommendations were raised in April 2005.

43. Fast-forward to 2020 and we see how that unrestricted power and authority is being used. The declaration of an emergency was followed by a number of emergency orders suspending and infringing individual and collective rights, altering and overriding legislation and agreements. The *Reopening Ontario Act*, coming into force July 24, 2020, was pushed through the Legislature in three days from first reading July 7, 2020 through to Royal Assent on July 21, 2020 after the second and third reading and Royal Assent took place on the same day. The *Reopening Ontario Act* not only maintains the offending provisions of the EMCPA, it also introduces its own unrestricted and vague provisions that constitute a constitutionally impermissible delegation of legislative power to public officials and unjustifiably infringes the individual and collective rights of the Ontario public.

44. On that basis, section 52(1) of the *Constitution Act, 1982* is required in order to remedy the constitutional inconsistency that has been created by the unconstitutionally vague and open-

[5] SARS Commission Report, Vol.5, "SARS and Public Health Legislation", *Chapter 11: Emergency Legislation*, at p. 366.

ended delegation of statutory power and authority to public officials that is not constitutionally permissible.

D. Did the application of s. 9 of the *Reopening Ontario Act* and the implementation and application of s. 7.0.2(4) emergency orders that restrict and suspend constitutional rights and freedoms under the *Emergency Management and Civil Protection Act*, violate the Applicants' sections 2, 7, 8, 9 and 15 rights and freedoms under the *Canadian Charter of Rights and Freedoms* and if so, is the infringement justified under s. 1? If not, the Applicants' seek remedies pursuant to s. 24 of the Charter of Rights and Freedoms.?

Section 2(a) of the *Charter of Rights and Freedoms*

45. Section 2(a) of the Charter guarantees freedom of conscience and religion. During this time of lockdown and censorship, and with no medical or scientific evidence to justify these measures, a person must be guided by their own conscience as to the ability to express opposition to the draconian measures. One's livelihood, family security and ability to earna living are all compromised by these measures. Civil disobedience becomes the only course of action based on freedom of conscience.

Section 2(b) of the *Charter of Rights and Freedoms*

46. Section 2(b) freedom of thought, belief, opinion, and expression, including freedom of the press, are all guaranteed by Section 2(b) of the Charter but subject to justification under Section 1. The purpose of the guarantee is to permit the free expression in order to promote truth, political and social participation and self-fulfillment.

47. Section 2(b) is infringed if either i) the purpose of the impugned government regulation is to restrict expressive activity; or ii) the regulation has such an effect and the activity in question supports the principle and values upon which the freedom of expression is based.
48. Freedom of expression should only be restricted in the clearest of circumstances. Section 2(b) of the Charter also protects all forms of expression, whether oral, written or pictorial. Freedom of expression is entrenched in the Charter to ensure that anyone can manifest thoughts, opinions, beliefs and indeed all experience of the heart and mind however unpopular, distasteful or contrary to the mainstream.
49. Here, the activity engaged in by the Applicants is a form of expression and the Applicants have the right to be free from government interference. The right is grounded in a fundamental freedom of expression and the Applicants believe that the government action has the purpose of infringing freedom of expression under Section 2(b) and that the government is responsible for his inability to exercise this fundamental freedom.
50. The Supreme Court of Canada has recognized the substantial value of freedom of commercial expression. In *RJR-MacDonald v Canada* 1995 3SCR 199, the need for such an expression derives from the very nature of our economic system, which is based on the existence of a free market.

Section 2(c) of the *Charter of Rights and Freedoms*

51. Section 2(c) everyone has the right to freedom of peaceful assembly. Section 2(c) freedom of assembly rights are an integral part of Section 2(b) freedom of expression rights. Freedom of expression is the larger protected right from which the freedom of assembly derives its purpose. People assemble to demonstrate and advocate views or expressions. If the

expression is protected, it necessarily follows that the right to assemble to communicate this expression then is also protected. The freedom of assembly is generally considered to be a necessary and integral part of the freedom of expression in situations where political demonstrations are on public property.

Section 7 of the *Charter of Rights and Freedoms*

52. Everyone has the right to life, liberty and security of the person and the right to not be deprived thereof except in accordance with the principles of fundamental justice.
53. In a free and democratic society, the individual must be left room for personal autonomy to live his or her own life and to make decisions that are of fundamental personal importance. Unfortunately, under the prevalent draconian measures we no longer live in a free and democratic society. There is no freedom, and democracy has been overshadowed by arbitrary order and regulations depriving people of fundamental freedoms.
54. The most important factors in determining the procedural content of fundamental justice in this case, are the nature of the legal rights at issue and the severity of the consequences to the individuals concerned. Section 7 must be interpreted purposively, bearing in mind the interests it was designed to protect. A corporation can defend on the basis that the charging statute is void for offending Section 7. The ROA is actually a penal statute, with criminal and civil sanctions and as such is open to Section 7 Charter scrutiny.
55. The principle of fundamental justice provided by Section 7 must reflect a diversity of interests, including the rights of an individual as well as the interests of society. The principles are grounded in Canada's legal traditions and understanding of how the state must deal with its citizens. The principles are regarded as essential to the administration of justice.

56. Three principles of fundamental justice are implicated in cases where penal statutes are challenged on the basis of Section 7 of the Charter. These principles are inevitably drawing the court into an assessment of the merits of policy choices made by governments as reflected in legislation.
57. The principles of fundamental justice both reflect and accommodate the nature of the common law doctrine of abuse of process. The Charter has been the protection of undivided rights and the state must not engage in abuse of process. The imposition of draconian measures without scientific or medical opinion as the foundation for the measures amounts to abuse of process by the governments. The governments had a duty to its citizens to independently verify the existence of a communicable disease leading to the necessity of an invocation of emergency measures.

Section 8 of the *Charter of Rights and Freedoms*

58. Everyone has the right to be secure against unreasonable search and seizure.
59. There are several sections of the ROA which offend Section 8 of the Charter. Section 4(2)(a), 4(3)(6), 4(3)(2), 4(4) and 4(8) which restricts access to employment and management information, access to properties, public or private to determine activities. In the latter sections, there is a positive duty to act in compliance with public health officials directly affects a person's privacy as it relates to body autonomy and personal choice. In the result, the action under the advice of the section of the ROA encroaches on the fundamental rights in section 8.
60. The right under section 8 involves the citizen who has a reasonable expectation of privacy and what is the extent of the expectation. The doctrine of "implied invitation" or "implied

licence" covers the entry onto property to protect the interests of the owner or occupant, particularly where the public has access to conduct business with the owner. To determine whether there is a breach of Section 8, one must consider i) the purpose of the police in entering the property and ii) in light of the purpose, whether there was an invasion of the defendant's reasonable expectation of privacy. What gives authority the right to act in such circumstances?

Section 9 of the *Charter of Rights and Freedoms*

61. Section 9 everyone has the right not to be arbitrarily detained or imprisoned.
62. The test for arbitrary detention is an objective one. The state must show articulable cause, which requires a constellation of objectively discernible facts which give the police reasonable cause to suspect the detainee is criminally implicated in the activity under investigation. The arbitrariness of the detention is what is being addressed in this breach of the Charter.
63. Sections of the ROA amount to breaches of Section 9 as the provisions amount to psychological detention through the period of the orders and their execution and threat of execution. There is psychological detention due to threats to deter and manipulate behaviours.

Section 15 of the *Charter of Rights and Freedoms*

64. Section 15 of the charter- every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or

mental or physical disability. The Applicants intend to demonstrate an infringement of equality rights based on analogous grounds to those enumerated and demonstrate that the distinction's impact on the Applicants perpetuate disadvantages. Some businesses are allowed to open, while others are not. The arbitrariness of the distinction between those businesses that are viable and those that are not perpetuates disadvantage.

65. Section 15 equality rights are concerned not only with the position of individuals, but also with the situation of groups in society. The important evaluation is the question of status of the Applicants at the time he was confronted with the offending law.
66. The equality rights are engaged by virtue of the government's arbitrary action in closing certain business outlets and allowing certain others to remain open, raising the discriminatory behaviour of government as against the Applicants.

Section 1 of the *Charter of Rights and Freedoms*

67. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
68. The Applicants submit that if it is determined that the perceived objective of the proposed limits, as 'transitional emergency-like preventative measures', is of sufficient importance to justify overriding constitutionally protected rights or freedoms, the proposed limit is nonetheless, not rationally, or reasonably, connected to the perceived objective.
69. Furthermore, the Applicants submit the limit imposed by the offending legislation impairs the rights and freedoms far greater than is required to achieve the perceived objective.

70. Finally, the Applicants intend to establish that the effects of the limits are grossly disproportionate to the perceived objectives of the limits imposed.

Section 24(1) of the *Charter of Rights and Freedoms*

71. If it is found that the rights and freedoms of the Applicants have been unjustifiably infringed by either the drafting of the legislative instrument authorizing the infringements, or by the actions undertaken by the Provincial Government, the Applicants seek remedies pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms* as the Court considers appropriate and just in the circumstances.

E. Finally, has the Provincial and Federal Government breached their constitutional commitment to promote equal opportunities pursuant to s. 36(1) of the *Constitution Act, 1982*, to specifically (a) promote equal opportunities for the well-being of Canadians, (b) furthering economic development to reduce disparity in opportunities, and (c) provide essential public services of reasonable quality to all Canadians?

72. Although little substantive judicial consideration is available on the application of s. 36 as a constitutional provision, there has been positive discussion that s. 36 was meant to create enforceable rights, demanding reasonable expectations to promote and provide equal opportunity for all Canadians across all regions of Canada.

73. In December 1969, Prime Minister of Canada Pierre Elliott Trudeau proposed four principles that were to guide the constitutional negotiations. One of them was: "[t]o promote national economic, social and cultural development, and the general welfare and equality of opportunity for all Canadians in whatever region they may live, including the opportunity

for gainful work, for just conditions of employment, for an adequate standard of living, for security, for education, and for rest and leisure"[6]. The constitutional conference went on to include these objectives in their Statement of Conclusions, stating that "it is one of the foremost purposes of the country to ensure that disparities in the well-being and in the economic, social and cultural opportunity of individuals in all regions throughout Canada should be alleviated."[7] It is from this foundation to which s. 36 has been given life.

74. Section 36(1) enshrines the constitutional values of wealth sharing and equality of individual well-being. The commitments entrenched in s. 36(1) come down to providing a social safety net to avoid the marginalization of individuals or regions by the actions of the Government.

75. In this situation the Provincial Government has created disparity in the well-being of Ontarians by impeding the furtherance of economic development of certain facets of its community. The resultant disparity in economic opportunities is not only evident within the Province but also as against Canada as a whole. Furthermore, in suspending and disrupting businesses and educational services within the Province under the authority of the ROA, the question of the commitment to providing essential public services of reasonable quality to all Canadians comes to light and bares consideration by this Honourable Court.

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[6] The Constitution and the People of Canada: An approach to the Objectives of Confederation, the Rights of People and the Institutions of Government, The Right Honourable Pierre Elliott Trudeau, Prime Minister of Canada, 1968, Catalogue no. CP 32-9-1969, Federal-Provincial First Ministers' Conference, Ottawa, Ontario, December 8-10, 1969 in Bayefsky, *Canada's Constitution Act*, Volume 1,*supra* note 37 at 80.

[7] *Statement of Conclusions, September 15, 1970,* Document: 13-CD-070-E. Constitutional Conference—Working Session No. 2,Ottawa, Ontario, September 14-15, 1970, in Bayefsky, *Canada's Constitution Act*, Volume 1, *supra* note 37 at 208.

Conclusion

76. The conclusion that "Covid-19 coronavirus disease constitutes a danger of major proportions that could result in serious harm to persons" is open to challenge. The acceptance by the state to rely on "due to a pandemic declared by the WHO" as its justification for concluding as it did above, is not supported by scientific or medical studies informing the decision. Moreover, the scientific and medical evidence for the declaration of a pandemic, the justification for instituting the PCR testing and the rush to vaccinate the whole globe with no animal testing, casts humanity as the guinea pig. This lack of transparency in such a global catastrophe should put us all on alert to harmful consequences of such blitzkrieg behaviour. This issue is a global issue and is more than national importance.

77. The Court must reflect on the manner in which all of these draconian measures have been implemented. The Federal Government has disaster powers under the *Emergencies Act* (R.S.C., 1985, c. 22 (4th Supp.)), yet the Federal Government has not invoked the Act and the disaster is actually government action. The Preamble of the *Emergencies Act* requires scrutiny of the *Charter of Rights*, oversight of the international covenant on civil and political rights, and a return to Parliament to invoke it. The *Emergencies Act* occupies the constitutional legislative field of Federal powers, however the federal government stepped aside, the Provincial government then invoked emergency legislation with none of the scrutiny called for in the Federal *Emergencies Act*. In this regard, a rogue Provincial Government has stepped in without constitutional authority or oversight, and has placed Ontarians in a state of constitutional crisis that *is resulting* (not could) in dangers and harms of catastrophic and major proportions to persons all over Ontario, and Canada alike.

78. Avoiding Parliament during this novel crisis and overwhelming censorship in this same period leaves the citizen with no other option but civil disobedience to bring about scrutiny of government action which is causing enormous economic, social, physical and mental health harms in this "lockdown society" being imposed. We can't help but ask: where is the free and democratic society?

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ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings commenced at the City of Toronto

AMENDED AMENDED NOTICE OF CONSTITUTIONAL QUESTION

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