

Form 66 (Rule 16-1 (2))

File No. \_\_\_\_\_  
Vancouver Registry

In the Supreme Court of British Columbia

Between

ANDREW LOOTENS, AREN VANDYKE, AUKE HAMELINK, COR VANDERMOOREN,  
DENNIS FLOKSTRA, REV. IWAN BORST, JULIUS JAGERSMA, ROB VANE, REV.  
ROBERT SCHOUTEN, AND REV. DR. ROELF CHRISTIAAN JANSSEN

Petitioners

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,  
and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR  
THE PROVINCE OF BRITISH COLUMBIA

Respondents

**PETITION TO THE COURT**

ON NOTICE TO:

Deputy Attorney General  
Ministry of the Attorney General  
PO Box 9290 Stn Prov Govt, Victoria BC V8W 9J7

Dr. Bonnie Henry, Provincial Health Officer  
4th Floor, 1515 Blanshard Street  
PO Box 9648 Stn Prov Govt, Victoria BC V8W 9P4

This proceeding is brought for the relief set out in Part 1 below, by  
[X] the persons named as petitioners in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
  - (b) serve on the petitioner(s)
    - (i) 2 copies of the filed response to petition, and
    - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.
- Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner(s),

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the Registry is: The Law Courts, 800 Smith Street, Vancouver, BC
(2)	The ADDRESS FOR SERVICE of the petitioners is:  c/o Neil Mulholland McQuarrie Hunter LLP   Barristers & Solicitors Suite 1500, 13450 102nd Avenue, Surrey, BC V3T 5X3 Phone: 604.581.7001  Email address for service of the petitioners: <a href="mailto:john@acaciagroup.ca">john@acaciagroup.ca</a>
(3)	The names and office address of the petitioners' lawyers:  Albertos Polizogopoulos John Sikkema The Acacia Group Suite 200, 38 Auriga Dr. Nepean, ON, K2E 8A5

## Part 1: ORDERS SOUGHT

Pursuant to section 2(1) and (2) of the *Judicial Review Procedure Act*, RSBC 1996, (“JRPA”), the Petitioners seek:

1. A Declaration pursuant to section 24(1) of the *Constitution Act, 1982*, that the decision of the Provincial Health Officer (issued on February 10, 2021) to reject the Petitioners’ written request (submitted on January 8, 2021) to hold religious gatherings while following a detailed COVID-19 safety plan pursuant to sections 38 and 43 of the *Public Health Act*, SBC 2008, c. 28 (“the Decision”), unjustifiably infringes the rights of the Petitioners guaranteed by sections 2(a) and (c) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 (the “*Charter*”), and is therefore unreasonable;
2. An order that the decision of the Ministry of Health be quashed and a decision substituted that permits the Petitioners to hold gatherings for religious worship in accordance with their proposed safety plan while the February 10 public health order or a substantively similar order remains in effect;
3. In the alternative, an order that the Provincial Health Officer reconsider its decision with respect to the Petitioners’ proposal submitted on January 8, with guidance from this Court with respect to the parameters for minimally impairing the Petitioners’ *Charter* rights;
4. Costs of this Petition; and,
5. Such further and other relief as the Petitioners may seek and as this Honourable Court deems just and equitable.

## Part 2: FACTUAL BASIS

### Legislative Background

1. The Respondent, Dr. Bonnie Henry, is British Columbia's Provincial Health Officer (the “PHO”), appointed under Part 6 of the *Public Health Act*, SBC 2008, c 28 (the “PHA”).
2. On March 17, 2020, the PHO declared a public health emergency under Part 5 of the PHA by which she unlocked a range of emergency powers. Among other things, this empowered her to issue verbal and written orders that have immediate effect. A person who contravenes the orders of the PHO may be subject to penalties (PHA, s. 96(1)(b)).
3. On March 28, 2020, BC’s “Provincial Covid-19 Task Force” published guidelines called “Covid-19 Ethical Decision Making Framework” (Exhibit A to the Affidavit of Eric Vandergriendt). Under “Ethical Principles and Values”, it says the BC government is committed to exercise its powers in accordance with, inter alia:

“**Respect:** To whatever extent possible, individual autonomy, individual liberties, and cultural safety must be respected”;

**“Least Coercive and Restrictive Means:** Any infringements on personal rights and freedoms must be carefully considered, and the least restrictive or coercive means must be sought”;

**“Proportionality:** Measures implemented, especially restrictive ones, should be proportionate to and commensurate with the level of threat and risk”;

**“Procedural Justice:** [...] Involve people to the greatest extent possible in aspects of planning that affect them.[...] Decision makers should take into account all relevant views expressed”;

**“Accountability:** This means that those responsible for making decisions may have to justify the decisions that they do or do not make.”

4. Ministerial Order No. M416 was issued on November 13, 2020, pursuant to section 10 of the *Emergency Program Act*, RSBC 1996, c 111. Section 4 of the order reads as follows: “A person must not promote a gathering or event referred to in section 3 [of the order] or encourage another person to attend such a gathering or event.” Ministerial Order No. M416 incorporates the provisions of the “Gatherings and Events Order” made by the PHO on September 18, 2020, as amended or replaced from time to time.
5. On November 19, 2020, the PHO issued an oral order prohibiting activities which include those at issue herein. It was affirmed by subsequent written orders pertaining to "Gatherings and Events," including those dated December 2, 9, 15, and 24, 2020, and those dated January 8 and February 10, 2021 (the “Gatherings Orders”). The Gatherings Orders were issued “Pursuant to sections 30, 31, 32, and 39(3) *Public Health Act*”.
6. Subject to certain exemptions, the Gatherings Orders seek to prohibit certain “events”, referring to “in-person gathering of people in any place whether private or public, inside or outside, organized or not, including, among other things, “a worship or other religious service, ceremony or celebration”.
7. The Gatherings Orders refer to the legal mechanism provided for in the PHA under “[Part 4] Division 5 – Making and Reviewing Orders” for requesting the reconsideration of an Order, in sections 38 and 43:

**May make written agreements**

**38** (1) If the health officer reasonably believes that it would be sufficient for the protection of public health and, if applicable, would bring a person into compliance with this Act or the regulations made under it, or a term or condition of a licence or permit held by the person under this Act, a health officer may do one or both of the following:

- (a) instead of making an order under Division 1, 3 or 4, enter into a written agreement with a person, under which the person agrees to do one or more things;
- (b) order a person to do one or more things that a person has agreed under paragraph (a) to do, regardless of whether those things could otherwise have been the subject of an order under Division 1, 3 or 4.

(2) If, under the terms of an agreement under subsection (1), a health officer conducts one or more inspections, the health officer may use information resulting from the

inspection as the basis of an order under this Act, but must not use the information as the basis on which to

- (a) levy an administrative penalty under this Act, or
- (b) charge a person with an offence under this Act.

### **Reconsideration of Orders**

**43** (1) A person affected by an order, or the variance of an order, may request the health officer who issued the order or made the variance to reconsider the order or variance if the person

- (a) has additional relevant information that was not reasonably available to the health officer when the order was issued or varied,
- (b) has a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would
  - (i) meet the objective of the order, and
  - (ii) be suitable as the basis of a written agreement under section 38 [may make written agreements], or
- (c) requires more time to comply with the order.

(2) A request for reconsideration must be made in the form required by the health officer.

(3) After considering a request for reconsideration, a health officer may do one or more of the following:

- (a) reject the request on the basis that the information submitted in support of the request
  - (i) is not relevant, or
  - (ii) was reasonably available at the time the order was issued;
- (b) delay the date the order is to take effect or suspend the order, if satisfied that doing so would not be detrimental to public health;
- (c) confirm, rescind or vary the order.

(4) A health officer must provide written reasons for a decision to reject the request under subsection (3) (a) or to confirm or vary the order under subsection (3)(c).

(5) Following a decision made under subsection (3) (a) or (c), no further request for reconsideration may be made.

(6) An order is not suspended during the period of reconsideration unless the health officer agrees, in writing, to suspend it.

(7) For the purposes of this section,

- (a) if an order is made that affects a class of persons, a request for reconsideration may be made by one person on behalf of the class, and
- (b) if multiple orders are made that affect a class of persons, or address related matters or issues, a health officer may reconsider the orders separately or together.

(8) If a health officer is unable or unavailable to reconsider an order he or she made, a similarly designated health officer may act under this section in respect of the order as if the similarly designated health officer were reconsidering an order that he or she made.

8. The most recent iteration of the Gatherings Orders (February 10) adds the following new text to the preamble to the Order:

I. I recognize the societal effects, including the hardships, which the measures which I have and continue to put in place to protect the health of the population have on many aspects of life, and with this in mind continually engage in a process of reconsideration of these measures, based upon the information and evidence available to me, including infection rates, sources of transmission, the presence of clusters and outbreaks, the number of people in hospital and in intensive care, deaths, the emergence of and risks posed by virus variants of concern, vaccine availability, immunization rates, the vulnerability of particular populations and reports from the rest of Canada and other jurisdictions, with a view to balancing the interests of the public, including constitutionally protected interests, in gatherings and events, against the risk of harm created by gatherings and events;

J. I further recognize that constitutionally-protected interests include the rights and freedoms guaranteed by the *Canadian Charter of Rights and Freedoms*, including specifically freedom of religion and conscience, freedom of thought, belief, opinion and expression, freedom of peaceful assembly and freedom of association. These freedoms, and the other rights protected by the Charter, are not, however, absolute and are subject to reasonable limits, prescribed by law as can be demonstrably justified in a free and democratic society. These limits include proportionate, precautionary and evidence-based restrictions to prevent loss of life, serious illness and disruption of our health system and society. When exercising my powers to protect the health of the public from the risks posed by COVID-19, I am aware of my obligation to choose measures that limit the Charter rights and freedoms of British Columbians less intrusively, where this is consistent with public health principles. In consequence, I am not prohibiting outdoor assemblies for the purpose of communicating a position on a matter of public interest or controversy, subject to my expectation that persons organizing or attending such an assembly will take the steps and put in place the measures recommended in the guidelines posted on my website in order to limit the risk of transmission of COVID-19.

9. The February 10 iteration of the Gatherings Order is the first that includes a reference to the *Charter*.

10. The British Columbia government webpage explaining the “PHO order on gatherings and events” (Exhibit B to the Affidavit of Eric Vandergriendt) asserts:

You must not attend a service at a church, synagogue, mosque, gurdwara, temple or other place of worship.

Religious services can continue using remote or virtual attendance options, like Zoom or Skype.

### **The Petitioners’ beliefs about religious worship and response to COVID-19**

11. The Petitioners are representatives of ten churches in British Columbia from within the same church denomination, namely the Canadian Reformed Churches. Together these churches have about 3000 members.

12. The Petitioners ordinarily hold two worship services each Sunday, one in the morning and one in the afternoon, and most of their members attended both services. This practice is

deeply meaningful to the Petitioners and their members in shaping the Sabbath as a day set apart for rest, worship, and hearing the Bible taught and preached. This longstanding practice recentres people on God for the week ahead. The Petitioners would also ordinarily hold special worship services for religious holidays.

13. The Petitioners believe God calls Christians to gather to worship Him and promises to be present in worship in a special way. The Petitioners believe there is no substitute for the God-glorifying, faith-sustaining, and love-renewing power of public worship. The Petitioners believe that while meeting through electronic means may offer spiritual benefits, such means cannot replace the gathered worship service.
14. The Petitioners believe that the sacraments, namely baptism and Lord's Supper are physical signs and seals of God's promises to God's people which cannot be administered virtually. Baptism is a sacrament involving not only the member(s) being baptized, but also the gathered covenant community, who participate in the sacrament by witnessing it and promising to pray for and support the person being baptized. The Lord's Supper or "communion" as it is also called must be served and overseen by the pastor and elders of the church, which is not appropriate through livestream.
15. Prior to the November 19 Order and subsequent Gatherings Orders referred to in paragraph 11 herein, the Petitioners had in place various COVID-19 protocols in keeping with the law and good public health practices, including:
  - a. A maximum of 50 people per physically separate worship space, with separate entrances and washrooms for each group;
  - b. Contact tracing;
  - c. Posting signs;
  - d. Sharing public health advice;
  - e. Physical distancing protocols; and
  - f. Enhanced cleaning protocols.
16. The Petitioners have had no known or suspected instances of COVID-19 being acquired at or spread through any of their religious worship gatherings or meetings.

### **The Petitioners' Request for Accommodation under the *Public Health Act***

17. In late November, The Petitioners were placed in the difficult position of choosing between doing what they believe God calls them to do as churches, namely gather to worship God and to minister to people, and submitting to the civil government.
18. The Petitioners have complied with the Gatherings Orders. At the same time, in light of their deeply held religious beliefs with respect to the importance of gathering together for religious worship and their perception of the spiritual, mental, and emotional detriments of foregoing gathered worship entirely, the Petitioners began in November to discuss in earnest what they might do in response to the Gatherings Orders.

19. Without any higher church authority prompting them to do so, the leaders of these individual churches, while complying with the Gatherings Orders, began to discuss with “sister churches” in their denomination how to respond to the Gatherings Orders.
20. The Petitioners became aware, in December 2020, of other churches in the province which were deliberately noncompliant with the latest public health orders. The Petitioners chose not to follow that path.
21. Rev. Robert Schouten and the Church Council of the Aldergrove Canadian Reformed Church wrote to the PHO on December 2, 2020, asking the government to reconsider the Gatherings Order. The Aldergrove Church Council’s letter explains why gathered worship is essential for the Church. This letter did not refer to the PHA or include a COVID safety plan proposal. There has been no response from the PHO. This letter is included as “Exhibit A” to the 2nd Affidavit of Rev. Robert Schouten.
22. Rev. Roelf Janssen and the Church Council of the Willoughby Heights Canadian Reformed Church wrote to the PHO on December 3, 2020, asking the government to reconsider the Gatherings Order. The Willoughby Heights Church Council’s letter explains their belief that God calls them to gather regularly for worship and sacraments. This letter did not refer to the PHA or include a COVID safety plan. There has been no response to this letter from the PHO. This letter is included as “Exhibit D” to the 2nd Affidavit of Rev. Roelf Janssen.
23. The Petitioners decided to seek legal advice and to seek an accommodation from the PHO using the legal mechanism provided by sections 38 and 43 of the *Public Health Act* and referred to in the Gatherings Orders.
24. This led to the January 8 letter explaining the Petitioners’ religious beliefs with respect to religious worship and requesting a reconsideration, along with a detailed COVID-19 safety plan (“the Plan”) prepared by the Petitioners with the assistance of legal counsel. The Petitioners’ religious beliefs were conveyed to the PHO through their January 8 letter and the accompanying Plan (together, “the Request for Reconsideration”). The January 8 letter is included as “Exhibit A” and the Plan as “Exhibit B” to the 1st Affidavit of Rev. Robert Schouten.
25. The January 8 letter explains the Petitioners’ religious beliefs regarding the importance of gathered worship services. The letter refers to the accompanying Plan, asking the PHO to permit the Petitioners to follow the Plan, but also welcoming feedback on its Plan with a view to ensuring it would be adequate, if it was not already.
26. The Request was sent to the PHO via email on January 8, again by fax on January 14, and again by email and fax on January 25. The emails and fax cover notes make clear that the January 8 letter and Plan were part of a time-sensitive request for reconsideration under the PHA. These communications are included as Exhibits C, D, E, and F to the 1st Affidavit of Rev. Robert Schouten.

## **The Petitioners' enhanced COVID-19 safety plan**

27. The Petitioners worked together and with the help of their legal counsel to develop their Plan, taking the best practices of their churches from before the Gatherings Orders and looking for ways to improve them even further.
28. Part 2 of the Petitioners' Plan included the following summary of preventive measures that are further explained in the rest of the Plan:

In particular, this proposal would enhance preventive practices that were in place before worship services were prohibited by public health orders by:

- a) limiting attendance in each worship space or zone to the lesser of 50 persons or to 30% of regular seated capacity of a given space,
- b) instructing attendees to self-screen before attending worship,
- c) requiring masks inside the church building,
- d) suspending access to church mailboxes,
- e) revising the manner in which the sacrament of Lord's Supper is distributed,
- f) suspending the use of collection plates / bags for financial offerings,
- g) suspending children's programs and nursery care for infants,
- h) ensuring all worship spaces are well ventilated, and
- i) assigning specific responsibilities to specific categories of people (each church will further specify the relevant persons by name)

Other measures relating to social distancing, contact tracing, and cleaning will remain in place. These too are set out below. This proposal also ensures that specific persons within a church community are responsible for implementing it. [...].

## **The Provincial Health Officer's decision**

29. The Petitioners' followed up with the PHO, asking for a response to their January 8 proposal, on January 14 and on January 25. These communications are included as Exhibits C, D, E, and F to the 1st Affidavit of Rev. Robert Schouten.
30. On February 10, Thomas Guerrero from the Ministry of Health responded via email "on behalf of Dr. Bonnie Henry, Provincial Health Officer." Attached to Mr. Guerrero's email are the Petitioners' letter and Plan, but his email makes no reference to the content of the Petitioners' letter or Plan, nor to the request for reconsideration, nor to section 38 or 43 of the PHA, nor to the *Charter*. Mr. Guerrero's February 10 email is included as "Exhibit G" to the 1st Affidavit of Rev. Robert Schouten.
31. Despite what the Petitioners (through counsel) communicated in their letter and Plan, Mr. Guerrero's email said, "To maintain a sense of connection, we encourage places of worship to hold religious services remotely or virtually." The Petitioners were already using "livestream" and had explained in their Request for Reconsideration that livestream cannot replace gathered worship and that sacraments are "covenant community" events that cannot be administered virtually.

### Part 3: LEGAL BASIS

1. Section 2 of the JRPA requires that this proceeding be by way of petition and also provides for the specific remedies sought herein, stating:

2 (1) An application for judicial review must be brought by way of a petition proceeding.

(2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:

(a) relief in the nature of mandamus, prohibition or certiorari;

(b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

2. And section 7 of the JRPA provides:

7 If an applicant is entitled to a declaration that a decision made in the exercise of a statutory power of decision is unauthorized or otherwise invalid, the court may set aside the decision instead of making a declaration.

3. Section 24(1) of the *Charter* also provides the legal basis for the relief sought herein:

24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

4. The Petitioners' common law right to procedural fairness was not met. The government's written reply was a generic or standard form reply, which suggests that Petitioners' letter and Plan were not read. The reply does not refer to the *Charter* or the PHA, both of which were raised in the Petitioners' communications. The reply email gives no indication that it was understood that the Petitioners were requesting reconsideration and accommodation under the PHA, despite how obvious this was from the Petitioners' repeated communications.

5. The government's reply is also not responsive to the substance of the Petitioners' letter and Plan in other ways. For example, the reply even encourages the Petitioners to use electronic means, which the Petitioners already do and which the Petitioners clearly communicated cannot replace gathered religious worship.

6. The government's reply also represents a failure to abide by section 43(4) of the PHA, which requires the government to provide reasons for a decision to reject a request for reconsideration. The government's response does not refer to section 43(4), or to the PHA at all. The Decision should therefore be quashed on that basis alone.

7. The Decision is also substantively unreasonable as an unjustified limitation on *Charter* rights and should therefore be quashed and an order substituted to grant the reconsideration and agreement requested pursuant to sections 38 and 43 of the PHA.

8. The constitutionally protected freedoms asserted by the Petitioners herein fall within *Charter* section 2, which states:
2. Everyone has the following fundamental freedoms:
    - (a) freedom of conscience and religion;
    - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
    - (c) freedom of peaceful assembly; and
    - (d) freedom of association.
9. While the Gatherings Orders and the Decision arguably violate of all of section 2(a) – (d), the most directly and severely impacted freedoms are those of religion in 2(a) and assembly in 2(c), and therefore the Petitioners rely primarily on these.
10. The worship services described herein are religious practices connected to deeply held religious beliefs. The prohibition of such in-person worship services under the Orders and continued through the Decision constitutes a severe infringement of freedom of religion, which includes the right to “manifest religion by worship and practice.”
11. Section 2(c) protects the right to gather for religious purposes. Religious belief and identity is one of the most common and profoundly important reasons why people assemble. The Orders and the Decision impose not only limit, but effectively obliterate the Petitioners’ freedom of assembly.
12. Section 1 of the *Charter* states:
1. 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.
13. Once infringement of the asserted *Charter* freedoms have been established, it is constitutionally valid only if the Respondents prove on a balance of probabilities that they are acting to meet a pressing and substantial objective and that they satisfy the proportionality requirement under the *Loyola/Doré* test.
14. To do this, the Respondent must show that the Decision infringes the Petitioners’ *Charter* rights no more than is “demonstrably necessary in a free and democratic society.” The Respondent must also show that the Decision is not arbitrary, unfair, or based on irrational considerations.
15. The Respondent must establish that the Decision to reject the Petitioners’ request serves to advance the statutory objectives of the PHA, and in particular, sections 38 and 43. If it cannot, then the Decision is arbitrary and must be quashed.
16. Even if the Decision does advance the Respondent’s statutory objectives, the Respondent must also prove that it impairs *Charter* rights no more than reasonably necessary. If it is not minimally impairing, the Decision must be quashed.

17. The Respondent must also show that the benefits of the Decision, if any, are not outweighed by its detrimental effects.
18. The PHA does not have a general purposes or objectives clause, either for the statute as a whole or for Part 4 – Inspections and Orders (ss. 23 – 50).
19. The relevant sections of the PHA, particularly sections 30, 31, 32, and 39(3), on which the Gatherings Orders are based, and sections 38 and 43, which permit the reconsideration of orders and entering a binding agreement in the place of following an order, together indicate that the statutory objective is to enable public health officers to protect against health hazards through the most reasonably tailored means possible.
20. The objective of these sections aligns well with the statement of the government’s “Ethical Principles and Values” quoted above (paragraph 8 herein).
21. Section 30 states that a health officer may issue an order “only if the health officer reasonably believes that (a) a health hazard exists.” The word “only” in section 30 signals that orders should be issued sparingly if possible. This fits with the COVID-19’s Task Force’s principle of respecting “to whatever extent possible, individual autonomy, individual liberties, and cultural safety.”
22. A “health hazard” is defined in section 1 as follows:
  - "health hazard"** means
  - (a) a condition, a thing or an activity that
    - (i) endangers, or is likely to endanger, public health, or
    - (ii) interferes, or is likely to interfere, with the suppression of infectious agents or hazardous agents, or
  - (b) a prescribed condition, thing or activity, including a prescribed condition, thing or activity that
    - (i) is associated with injury or illness, or
    - (ii) fails to meet a prescribed standard in relation to health, injury or illness;
23. Sections 30-32 consistently use language referring to a particular person or place, suggesting that orders under Part 4 of the Act should be as focused and limited as reasonably possible.
24. This is reinforced by section 39, which states that a health officer must specify “who must comply with the order.” Section 39(3) says, “An order may be made in respect of a class of persons.” This suggests that orders should be more narrowly focused where possible, but may extend more broadly (though not without limit) where necessary.
25. Sections 38 and 43 also serve the objective of protecting the public from a health hazard in the most reasonably tailored way available. Under these sections, a person or party impacted by the order, such as these Petitioners, may request a reconsideration (s. 43) and seek to enter an agreement (s. 38) to substantively achieve the goals of the order. Under section 43, the health officer may vary the order either on the basis of new information

presented by an impacted party or on the basis that an impacted party has a suitable proposal.

26. Section 43(4) requires that written reasons be provided for rejecting a request under sections 38 and 43(1). This reflects the fact that an order may impact important interests, and persons are entitled to understand why their request for an alternative solution could not be accommodated. Where it is not economic interests, but fundamental *Charter* rights that are impacted, this makes reasons for denying a request more important.
27. The exercise of discretion granted by sections 38 and 43 of the PHA must take into account the *Charter* rights of the person(s) requesting reconsideration and balance them with the statutory objectives.
28. The statutory objective is to protect public health with tailored measures. The health benefits, if any, of the Decision should be weighed not only against *Charter* freedoms, but also against the detrimental health impacts of the Decision.
29. The severe infringement of the Petitioners' freedom of religious exercise and near obliteration of their freedom of assembly resulting from the Decision is not reasonable. The onus is on the Respondents to demonstrate that the Decision has significant public health benefits over and above permitting the Petitioners to follow a COVID-safety plan.

#### **Part 4: MATERIAL TO BE RELIED ON**

1. Affidavit #1 of Robert Schouten, made on date
2. Affidavit #2 of Robert Schouten, made on date
3. Affidavit #1 of Roelf Janssen, made on date
4. Affidavit #2 of Roelf Janssen, made on date
5. Affidavit #1 of Julius Jagersma, made on date
6. Affidavit #1 of Dennis Flokstra, made on date
7. Affidavit #1 of Cornelius Vandermooren, made on date
8. Affidavit #1 of Auke Hamelink, made on date
9. Affidavit #1 of Andrew Lootens, made on date
10. Affidavit #1 of Iwan Borst, made on date
11. Affidavit #1 of Robert Vane, made on date
12. Affidavit #1 of Alida Vanderhorst, made on date
13. Affidavit #1 of Andrea Van der Leest, made on date
14. Affidavit #1 of Celia Vandergugten, made on date
15. Affidavit #1 of Deborah Huttema, made on date
16. Affidavit #1 of Joanna Vanderpol, made on date
17. Affidavit #1 of Levi Geertsema, made on date
18. Affidavit #1 of Lydia Heetebrij, made on date
19. Affidavit #1 of Pleuntje ten Brinke, made on date
20. Affidavit #1 of Yvonne Jacobi, made on date

21. Affidavit # 1 of Eric Vandergriendt, made on 02/03/21.

22. Such other material as counsel may advise and this Court may permit.

The Petitioners estimate that the hearing of the petition will take 2 days.

Date: March 2, 2021

**THE ACACIA GROUP**



Albertos Polizogopoulos



John Sikkema

Lawyers for the Petitioners

To be completed by the court only:

Order made

in the terms requested in paragraphs ..... of Part 1 of this petition

with the following variations and additional terms:

.....  
.....  
.....

Date: .....[dd/mmm/yyyy].....

.....  
Signature of  Judge  Master