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(Winnipeg Centre)
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COURT OF QUEEN'S BENCH OF MANITOBA

BETWEEN:	)	**APPEARANCES:**
	)	
	)	
SPRINGS OF LIVING WATER CENTRE INC.,	)	KEVIN T. WILLIAMS
	)	J. MATTHEW NORDLUND
applicant,	)	GERALD D. CHIPEUR, Q.C.
	)	STEVEN T. ROBERTSON
- and -	)	
	)	
THE GOVERNMENT OF MANITOBA,	)	HEATHER S. LEONOFF, Q.C.
	)	DENIS G. GUÉNETTE
respondent.	)	SEAN D. BOYD
	)	
	)	Judgment delivered (orally):
	)	December 5, 2020

JOYAL C.J.Q.B.

INTRODUCTION

[1] In the midst of a critically dangerous phase of the COVID-19 pandemic, the applicant, Springs of Living Water Centre Inc., a church, applies for urgent relief that it says would enable its congregants to worship at the church, in their vehicles, in a "drive-in" manner, that it says does not violate the operative Provincial Public Health Orders. The applicant says that any current restriction prohibiting it from doing so violates the applicant and its congregants' rights to freedom of religion, freedom of peaceful assembly

and freedom of association under the ***Canadian Charter of Rights and Freedoms*** ("***Charter***").

[2] In the context of the fluid, but still ever dangerous COVID-19 pandemic, governments the world over are having to respond in various ways to ensure the safety of their citizenry and to prevent the needless spread of a potentially deadly disease. These responses include what most governments say are unprecedented, but necessary restrictions to what are our fundamental freedoms.

[3] Against this backdrop, courts in liberal democracies must assume their institutional role as an essential service as they are called upon – often in urgent circumstances – to, amongst other things, make sometimes-quick determinations about the applicability and enforceability of these restrictions. In Canada, whether the challenges brought to a government's stipulated restrictions involve a short term or a more permanent declaratory remedy, it will be the responsibility of the courts to determine whether any challenged and impugned restriction(s) at any given moment is properly prescribed by law and whether any apparent ***Charter*** infringement is demonstrably justified.

THE PRESENT APPLICATION

[4] On December 2, 2020, the applicant filed an originating application in this matter seeking amongst other things, a declaration that certain Orders issued by the Chief Provincial Public Health Officer of Manitoba, under ***The Public Health Act***, C.C.S.M. c. P210 (the "***PHA***"), do not prohibit drive-in-churches, or what the applicant calls "church in our cars". More specifically, the applicant seeks determinations that declare that:

(i) attendance at "church in our cars" does not constitute "assembling in a gathering of more than five persons at any indoor or outdoor public place" under s. 2(1) of the **Orders under *The Public Health Act*** ("PHOs");

(ii) "church in our cars" cars complies with the requirements of s. 15(2) of the PHOs;

(iii) "church in our cars" constitutes "a social service under s. 2(2) of the PHOs";

(iv) the PHOs violate the applicant and its congregants' rights to freedom of religion under s. 2(a) of ***Charter***;

(v) the PHOs violate the applicant and its congregants' rights to freedom of peaceful assembly under s. 2(c) of the ***Charter;***

(vi) the PHOs violate the applicant and its congregants' rights to freedom of association under s. 2(d) of the ***Charter***; and

(vii) the violations of the applicant and its congregants' ***Charter*** rights are not justified under s. 1 of the ***Charter***.

[5] Flowing from the above, the applicant also seeks an order pursuant to s. 52(1) of ***Constitution Act, 1982***, declaring that ss. 2(1) and 15 of the PHOs are "inconsistent with the Constitution of Canada" and of no force or effect.

[6] In addition to the above, the applicant seeks immediately an interim stay of enforcement of the operation of ss. 2(1) and 15 of the PHOs in relation to church in our cars pending a full hearing of the ***Charter*** challenges.

[7] For obvious reasons, the sought after ***Charter*** determinations will not be made today. Given the Government of Manitoba's ("Manitoba") concession respecting the

infringement of the substantive ***Charter*** rights, the ***Charter*** adjudications when they occur will involve a s. 1 ***Charter*** defence. Such an adjudication will require more time, which in turn will bring a more extensive evidentiary foundation and a more specifically focused and thorough preparation by all counsel.

[8] What is currently before the Court today is the application for an interim stay of the operation and enforcement of ss. 2(1) and 15 of the PHOs in relation to the "church in our cars" program pending the full hearing of this matter. Also before the Court, are questions of interpretation in relation to whether the current and operative PHOs prohibit the gathering of persons in cars in the way described by the applicant in relation to its program "church in our cars". In this connection, the Court's interpretive task requires it to answer the following three questions:

(i) Whether attendance at "church in our cars" constitutes "assembling in a gathering of more than five persons at any indoor or outdoor public place" under s. 2(1) of the PHOs?

(ii) Whether "church in our cars" complies with the requirements of s. 15(2) of the PHOs?

(iii) Whether "church in our cars" constitute "a social service" under s. 2(2) the PHOs?

[9] The hearing of this matter is taking place extraordinarily, on a Saturday (December 5, 2020), following the granting of short leave two days earlier. The Government of Manitoba had requested 24 hours to further prepare their submission. The applicant was agreeable on the condition that certain of its immediate relief – the interim stay and the three interpretative determinations – be addressed prior to the weekend's first church service, which was set to commence early Saturday evening.

FACTUAL BACKGROUND

[10] As a church, the applicant operates a place of worship from its buildings and sanctuaries located at 595 and 725 Lagimodiere Boulevard in Winnipeg, Manitoba where it offers frequent and regular worship services. As a result of the COVID-19 pandemic, these services have transitioned to a "drive-in" church program available remotely - "church in our cars".

[11] During church in our cars, members of the public attend in the applicant's parking lot, remain in their vehicles, which are spaced two to three metres apart, and the applicant offers a worship service on a stage, projected onto a large screen, and is available on Facebook and on YouTube. The church building remains closed to the public during church in our cars, and it maintains that none of the attendees are permitted to enter the church for any reason, including use of the washrooms.

[12] On November 19, 2020, Dr. Brent Roussin, Chief Provincial Public Health Officer of Manitoba, made a series of COVID-19 Prevention Orders pursuant to relevant clauses of the ***PHA***. The same day, the PHOs were approved by the Minister of Health, Seniors and Active Living, pursuant to s. 67(3) of the ***PHA***.

[13] Section 2(1) of the PHOs state:

> Except as otherwise permitted by these Orders, all persons are prohibited from assembling in a gathering of more than five persons at any indoor or outdoor public place or in the common areas of a multi-unit residence.

[14] Section 15 of the PHOs state:

> 15(1) Except as permitted by subsections (3) and (4), churches, mosques, synagogues, temples and other places of worship must be closed to the public while these Orders are in effect.

> 15(2) Despite subsection (1), religious leaders may conduct services at places of worship so that those services may be made available to the public over the Internet or through other remote means.
>
> 15(3) A funeral, wedding, baptism or similar religious ceremony may take place at a place of worship provided that no more than five persons, other than the officiant, attend the ceremony.
>
> 15(4) This Order does not prevent the premises of a place of worship from being used by a public or private school or for the delivery of health care, child care or social services.

[15] On November 22, 28 and 29, 2020, the applicant offered church in our cars to its congregants. The public was invited to attend in the parking lot of the applicant's church (with the church building closed), to remain in their cars, and to attend the offered services in this fashion. Officials from Manitoba Public Health and Manitoba Justice were in attendance at the services offered November 22, 28 and 29, 2020 and members of the Winnipeg Police Service were in attendance at the services offered November 28 and 29, 2020.

[16] As a result of the worship services offered November 22, 28 and 29, 2020, the applicant was served with five Provincial Offence Notices (generally, a "Notice"), each alleging that it had contravened the PHOs, and each indicating an amount of $5,000 payable by the applicant.

[17] In addition to the Notices served on the applicant, Leon Fontaine, Senior Pastor of the applicant, was personally issued four Notices, and Zach Fontaine, Pastor of the applicant, was personally issued two Notices. All of these Notices allege contraventions of the PHOs and all six indicated an amount payable of $1,296.13.

THE STAY APPLICATION PENDING A FULL HEARING OF THE *CHARTER* CHALLENGES

[18] As a point of departure, I note that the PHOs at issue in this litigation is a legislative instrument that is presumed to be constitutional. While it infringes on freedom of religion, it is the Government's position that it is justified on the basis that it is necessary to protect public health during the COVID-19 pandemic. Specifically, it is intended to mitigate the risks associated with large gatherings for a common purpose.

[19] I emphasize again, that apart from the three interpretive questions I earlier identified, the immediate application before me is for a stay of the legislation. The constitutional challenges are not currently or directly before me on this hearing and accordingly, this is not an application at this stage, about the constitutionality of that legislation.

[20] The onus that an applicant must meet to obtain a stay of legislation is extremely high. The Supreme Court of Canada noted in ***Harper v. Canada (Attorney General)***, [2007] 2 S.C.R. 764, that "only in clear cases will interlocutory injunctions against the enforcement of a law on grounds of alleged unconstitutionality succeed" (at paragraph 9).

[21] For an applicant to obtain a stay, it must establish that it satisfies each prong of the conjunctive three-part test set out by the Supreme Court of Canada in ***RJR-MacDonald Inc. v. Canada (Attorney General)***, [1994] 1 S.C.R. 311. In other words, the applicant must establish that first, there is a serious issue to be tried, second, that absent an injunction, it will suffer irreparable harm, and third, the balance of convenience favours it.

[22] Like Manitoba, I accept that the applicant can meet the low threshold of establishing a serious issue to be tried. The eventual adjudication of the constitutionality of the PHOs will be determined on the basis of whether Manitoba can justify the PHOs in respect of s. 1 of the ***Charter***.

[23] On the second prong of the relevant test, I do not believe that the applicant meets its burden of showing that it will suffer irreparable harm if the injunction is not granted. In that regard, I am mindful that evidence of irreparable harm must be clear and not speculative. It cannot be presumed. (See ***Winnipeg (City) v. Caspian Projects Inc. et al***., 2020 MBQB 131, at paragraph 27; ***Oberg et al. v. Canada (A.G.)***, 2012 MBQB 64, at paragraphs 32 - 33, 36 - 60; ***Sapotaweyak Cree Nation et al. v. Manitoba et al.***, 2015 MBQB 35, at paragraphs 221, 233 and 235; ***White v. EBF Manufacturing Ltd***., 2001 FCT 1133, at paragraph 13(2); and ***1003126 Ontario Ltd. v. Caterina DiCarlo***, 2013 ONSC 278, at paragraph 27.)

[24] On the facts before me in the present application, the congregants are able to practice their religion and attend a remote service regardless of whether the stay is granted or denied. The evidence shows that the service is available on Facebook and on YouTube. What the applicant seeks on this stay application is to be able to attend the otherwise same service (which is being broadcast remotely) while seated in their cars in the actual parking lot of the church where the service is taking place.

[25] I note that the applicant has brought no evidence as to why being in a car, where congregants cannot communicate with any other congregants, is otherwise necessary for their worship. Even if it were open to the Court (which it is not) to presume that being

in a car, in a parking lot, with other persons similarly situated, somehow enhances the religious experience, I am not persuaded that the differences in the experience, given the extraordinary circumstances of this pandemic, would be sufficient to rise to a level that can be characterized as "irreparable harm". I am in agreement with the submissions of Manitoba that a remote service in one's home is similar to or not substantially different than a remote service in one's car.

[26] Just as I am not satisfied that the applicant will suffer irreparable harm, neither am I persuaded that the applicant has met its burden of showing that it is favoured by the balance of convenience.

[27] I note that in considering whether to suspend the legislation on an interlocutory basis, the public interest weighs very heavily in any assessment of the balance of convenience. As a starting point, courts must assume that laws enacted by democratically elected governments are enacted for the public good. Equally important as a starting point is the acknowledgment that the equivalent of interlocutory injunctions are rarely granted in constitutional cases. It is only in the clearest of cases that injunctions will issue to enjoin the operation of legislation. In ***Harper***, the Supreme Court of Canada stated as follows (at paragraph 9):

> Another principle set out in the cases is that in considering the grant of an interlocutory injunction suspending the operation of a validly enacted but challenged law, it is wrong to insist on proof that the law will produce a public good. Rather, at this stage of the proceeding, this is presumed. As Sopinka and Cory JJ. stated in *RJR--MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, at pp. 348-49:
>
> > When the nature and declared purpose of legislation is to promote the public interest, a motions court should not be concerned whether the legislation actually has such an effect. It must be assumed to do so. In order to overcome the assumed benefit to the public interest arising from

> the continued application of the legislation, the applicant who relies on the public interest must demonstrate that the suspension of the legislation would itself provide a public benefit.
>
> It follows that in assessing the balance of convenience, the motions judge must proceed on the assumption that the law -- in this case the spending limits imposed by s. 350 of the Act -- is directed to the public good and serves a valid public purpose. This applies to violations of the s. 2 (*b*) right of freedom of expression; indeed, the violation at issue in *RJR--MacDonald* was of s. 2 (*b*). The assumption of the public interest in enforcing the law weighs heavily in the balance. Courts will not lightly order that laws that Parliament or a legislature has duly enacted for the public good are inoperable in advance of complete constitutional review, which is always a complex and difficult matter. It follows that only in clear cases will interlocutory injunctions against the enforcement of a law on grounds of alleged unconstitutionality succeed.
>
> [emphasis added]

[28] It is worth noting that there are but five examples from the Supreme Court of Canada in the post-***Charter*** era where injunctions have been sought to stay legislation pending a constitutional determination. In all five cases, the Court denied the injunction on the basis of public interest. The bar is set very high. (See ***Manitoba (A.G.) v. Metropolitan Stores Ltd.***, [1987] 1 S.C.R. 110; ***RJR-MacDonald Inc. v. Canada (Attorney General)***, [1994] 1 S.C.R. 311; ***Harper v. Canada (Attorney General)***, [2000] 2 S.C.R. 764; ***Thomson Newspapers Co. v. Canada (Attorney General)***, [1998] 1 S.C.R. 877; and ***Gould v. Canada (Attorney General)***, [1984] 2 S.C.R. 124.)

[29] If an applicant wishes to displace the presumption in favour of upholding the operation of a lawfully enacted statute, it must meet a very high onus. In ***RJR-MacDonald Inc***., Justices Sopinka and Cory provided a helpful explanation as to the extent of the applicant's burden (at pages 344-45, 349 and 353):

> In considering the balance of convenience and the public interest, it does not assist an applicant to claim that a given government authority does not represent the

> public interest. Rather, the applicant must convince the court of the public interest benefits which will flow from the granting of the relief sought.
>
> …
>
> In order to overcome the assumed benefit to the public interest arising from the continued application of the legislation, the applicant who relies on the public interest must demonstrate that the suspension of the legislation would itself provide a public benefit.
>
> …
>
> … [I]t is not for a court on an interlocutory motion to assess the actual benefits which will result from the specific terms of the legislation. … Rather, it is for the applicants to offset these public interest considerations by demonstrating a more compelling public interest in suspending the application of the legislation.
>
> [emphasis added]

[30] Accordingly, it is not sufficient for the applicant to identify the benefit that it will receive from the granting of an injunction or a stay. Rather, it must show how granting an injunction serves the greater public good. In this case, the applicant has not done so.

[31] In this hearing, the applicant, in an effort to blunt what would be the categorical and broad effects of suspending the operation of key parts of the lawfully enacted PHOs, has argued this case to be an exemption case. In other words, on the particular facts of this case, the applicant says that rather than suspending the entirety of the provisions, it (the applicant) alone can be exempted from its application. I am not so convinced.

[32] Manitoba has acknowledged that the test for obtaining an injunction to enjoin legislation in an exemption case is somewhat lower than in a suspension case because the government policy set out in the statute remains largely unaffected (see ***RJR-MacDonald Inc.***, *supra*). However, in order to obtain an exemption, there must be a valid reason or legally defensible justification to carve out or separate the applicants from the legislation in question. As Manitoba has argued in the present case, if this applicant receives the equivalent of an injunction, there is nothing preventing others from coming

forward and asking for the same remedy. The implications for such subsequent proceedings, were well identified by Beetz J. in ***Manitoba (A.G.) v. Metropolitan Stores Ltd.*** (at page 146):

> It has been seen from what preceeds that suspension cases and exemption cases are governed by the same basic rule according to which, in constitutional litigation, an interlocutory stay of proceedings ought not to be granted unless the public interest is taken into consideration in the balance of convenience and weighted together with the interest of private litigants.
>
> The reason why exemption cases are assimilated to suspension cases is the precedential value and exemplary effect of exemption cases. Depending on the nature of the cases, to grant an exemption in the form of a stay to one litigant is often to make it difficult to refuse the same remedy to other litigants who find themselves in essentially the same situation, and to risk provoking a cascade of stays and exemptions, the sum of which make them tantamount to a suspension case.
>
> [emphasis added]

[33] Even if the likely cascade did not occur or was simply delayed, given the very short time frames within which this application has been brought, Manitoba is right to argue that it would be unfair to other religious organizations if the applicant was the only such group that received what would be an exemption, particularly while the other religious organizations were left to comply with the law. It is not obvious that in the context of a deadly pandemic, that such an uneven or checkerboard application of a *prima facie* important legislative instrument would well serve the "public good" or the need for a societal solidarity and sense of common purpose. Even allowing for what the applicant would say are some factual distinctions, there is, when considering the balance of convenience, no clear reason or legal justification for carving the applicant out of the legislation, nor is there a clear reason to believe that this case would not cascade into a series of *de facto* suspension cases.

[34] I am in agreement with Manitoba that in the circumstances, this case must be decided on the basis of it being a suspension case.

[35] In coming to the above conclusion, I have taken note of the one example of a case that could properly be decided on the basis of an exemption. It is an example that is very different from the present case.

[36] In ***Law Society of British Columbia v. Canada (Attorney General)***, 2001 BCSC 1593 (upheld in the British Columbia Court of Appeal, 2002 BCCA 49) the issue related to an application brought by The Law Society of British Columbia to exempt lawyers from the operation of the regulations under the ***Proceeds of Crime (Money Laundering) Act***, S.C. 2000, c. 17. As Manitoba properly identified in its explanation distinguishing that case, the statute in question required a wide range of financial actors, such as banks, investment counsellors and accountants to report on their clients' transactions. An injunction was granted exempting lawyers from the operation of the regulations on the basis that this served to protect solicitor-client privilege. As emphasized by Manitoba in the present case, the public benefit in ***The Law Society of British Columbia*** case was that the clients would be able to get advice from the lawyers knowing their confidentiality was protected. The fact that the injunction was limited to lawyers also meant that the overall policy objectives of the statute remained largely unimpeded.

[37] In considering the current application before me, I take seriously the applicant's argument that it provides a public service by offering religious services and fostering a sense of community. Like the respondent Manitoba, I do not dispute that this is in the

public interest, however, I am of the view that at best in a pandemic, it is on an equal footing with the public interest served by the PHOs, which as Manitoba has emphasized, is designed to mitigate the risk of contact in order to prevent death, illness and the overwhelming of the Manitoba health care system. I am persuaded by the Government's position that even if the public interest in fostering community and the public interest in keeping people safe can be said to be equivalent, that is not sufficient for the applicant to succeed on this application for a stay. In that regard, the applicant's onus requires it to show that the public interest in granting the stay outweighs the public interest in denying it. In that respect, the applicant has failed to so demonstrate.

[38] I am of the view that there is a strong public interest in maintaining the integrity of the PHOs during a public health emergency. This Court like all courts should be extremely cautious prior to granting a stay that risks undermining the respect for and the benefits of public health orders absent a full constitutional review on the merits. The fact that these PHOs restrict rights cannot be denied. For that reason, courts will purposefully take their place and assume their institutional role as an essential service and do their duty to ensure that these infringements are demonstrably justified. That said, any determinations in respect of the application and operation of the impugned law, which has otherwise been duly enacted for the public good, will not be lightly made in advance of a complete constitutional review, which as the Supreme Court said in ***Harper*** is "always a complex and difficult matter".

[39] While the restricting of ***Charter*** rights in this and like cases will have to be justified on the basis of s. 1 (thereby representing a serious issue to be tried), an application like

the one in the present case, falls far short of meeting the high onus that attaches to an applicant. It is a high onus, which includes showing that the public interest in granting the injunction outweighs the public interest in denying it.

[40] Accordingly, the application for the stay of the operation of the PHOs is denied. The applicant has failed to meet the high onus that must be met in order to obtain this remedy.

[41] I now turn to and address the questions respecting ss. 2(1), 2(2) and 15(2) of the PHOs.

THE INTERPRETIVE QUESTIONS

DOES ATTENDANCE AT "CHURCH IN OUR CARS" CONSTITUTE "ASSEMBLING IN A GATHERING OF MORE THAN FIVE PERSONS AT ANY INDOOR OR OUTDOOR PUBLIC PLACE" UNDER S. 2(1) OF THE PHOS?

[42] Section 2(1) of the PHOs in question reads:

> Except as otherwise permitted by these Orders, all persons are prohibited from assembling in a gathering of more than five persons at any indoor or outdoor public place or in the common areas of a multi-unit residence.

[43] "Gathering" is defined in the PHOs as follows:

> Gathering means a grouping of persons in general proximity to each other who have assembled for a common purpose or reason, regardless of whether it occurs in public or at a private residence or on other private property.

[44] I note in passing that the term "assembly" is defined in *The Shorter Oxford English Dictionary*, vol. 1, 3d ed., as "the coming together of two or more persons".

[45] Before going further and exploring the applicability of s. 2(1) of the PHOs to the applicant, I wish to take a moment to provide some context for the interpretive task I am about to undertake.

[46] When I examine and interpret the sections of the PHOs, I remain mindful of three points.

[47] First, I remain mindful that the sections in question along with the PHOs themselves, represent foundationally, a purposeful and required response to a pandemic, a pandemic which constitutes what is likely the greatest public health concern to have enveloped the world in the last century. Despite the pandemic's slippery and dangerous evolution, governments everywhere are trying to respond. Inevitably, in this context, every action and additional reaction by governments will bring its own impacts, which as Manitoba has acknowledged, may be both desired and undesired by different segments of the public. The degree of concern and dissatisfaction on the part of the citizenry with this or that particular restriction or limitation, will inevitably be as varied as the lines themselves that have to be drawn by government.

[48] It is in the above highly fluid and unpredictable context, that in most instances, the only and most appropriate basis for evaluating and assessing this line drawing will be where something as foundational as a ***Charter*** right is alleged to have been violated. For it will only be in that context, and what will likely be the necessary judicial evaluation of a s. 1 defence, that the always complex analysis will take place with respect to whether the limitation is appropriately proportionate. In other words, it will be in the context of a complete constitutional review on the merits (and not in the course of an exercise in statutory interpretation) that this Court will be required to address whether the limitation in question is rationally connected to the pressing and substantive objective, minimally impairing and whether the salutary benefits ultimately outweigh the limitation's

deleterious effects. As mentioned earlier, for today's determinations, while the Court must take note of the seriousness of the ***Charter*** breaches being alleged, the complex and nuanced constitutional analysis required will have to wait another day.

[49] Accordingly, insofar as the applicant is urging upon me the more immediate task and exercise of interpreting the sections of the PHOs, that exercise must be done rigorously, but with a proper measure of humility. In other words, it must be done mindful of the fact that despite apparent inconsistencies and incongruities that may arise from the words in the specific provisions of the PHOs (and/or the manner in which the PHOs are enforced), such provisions and its wording may represent evolving complex public health policy objectives, nuances, distinctions and choices that on "an all things considered basis", were determined necessary at this stage of the Government's response to a fast changing and seemingly deteriorating crisis.

[50] The second point about which I must remain mindful in examining and interpreting the sections of the PHOs in response to the questions posed by the applicant, is the fact that the PHOs in question are legislative instruments.

[51] A Public Health Order is made by a statutory delegate – the Chief Provincial Public Health Officer, Dr. Brent Roussin – and they are made pursuant to a legislative grant of authority pursuant to s. 67 of ***PHA***. Given that these PHOs are legislative instruments in terms of their substantive effect, they are instruments that call upon this Court to interpret them according to established principles for the interpretation of legislative instruments. Those principles and interpretation are well known and established. They were

conveniently summarized in a Supreme Court of Canada's judgment in ***Rizzo & Rizzo Shoes Ltd. (Re)***, [1998] 1 S.C.R. 27. The Court noted (at paragraph 21):

> … the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[52] When reflecting on this guiding principle for interpreting legislation, I accept the submission of Manitoba that not all of the concepts expressed in the above paragraph can always work in perfect harmony with one another. Nonetheless, as Manitoba has submitted, grammatical accuracy, ordinary sense of terminology, harmony with the scheme of a statute, consideration of the broader object of a statute and deciphering the legislator's intention, all constitute factors that can contribute, each in their own distinct way, to the interpreter's task. Even if these reference points sometimes operate awkwardly together on a practical level, they can all be called upon within an exercise that will eventually lead towards a singular determination of the true and identifiable meaning of any specific given legislative provision.

[53] I accept Manitoba's submission that the guiding principle of statutory interpretation as identified above, serves as a caution against an unnecessarily myopic and disjointed interpretation of specific and discrete legislative provisions. As argued, the guiding principle says that discrete provisions exist within a larger statute or regulation. Such statutes or regulations exist within what are sometimes unique and particular contexts – both social and legal. It is the submission of Manitoba that my task in interpreting the legislative provisions in question, calls for a proper understanding of the context in which the legislation exists. It is in that spirit that Manitoba argues that the legislative

interpretations in this case must be guided by a realistic acknowledgement of a legal context, which so obviously includes an emphasis on addressing the seriousness of the pandemic and which in turn, de-emphasizes an interpretation that is animated by any specific litigant's "singular purpose driven outcomes".

[54] As it relates to the specific provisions of the PHOs and despite what might unsurprisingly be some inconsistences and incongruities in the PHOs and/or its potential enforcement, the general severity of the PHOs cannot be in doubt. The restrictions represent an evolving, cumulative and significant set of precautions meant to operate as a circuit breaker. In other words, the overriding purpose of the PHOs and the specific provisions cannot be other than to interrupt deteriorating public health trends that were and are obviously still seen as worrisome. As counsel for Manitoba has accurately noted, more than any other prior version of any Public Health Order thus far in Manitoba, the overriding message for this current prevailing PHOs is simple: stay at home, and more specifically, stay in your own home.

[55] The third reference point with which I must remain mindful when I conduct the interpretative task that I am required to perform in the present case, is in respect of the restraint that I must maintain in not overemphasizing the relevance of what I have already referred to as potential incongruities and inconsistencies arising from some of the provisions of the PHOs and the their enforcement (upon which the applicant places considerable importance in its argument). What are some of the inconsistencies and/or incongruities invoked by the applicant? In that connection, I note the applicant argues that the incongruous and inconsistent interpretation and enforcement of s. 2(1) as it

relates to them, erroneously suggests that it is possible to be an "assembly" or "gathering" of persons while the persons remain otherwise confined in their vehicles. It is the applicant's submission that notwithstanding what it insists is this erroneous interpretation (and the resulting enforcement), s. 2(1) still seems to incongruously permit and not preclude what the applicant acknowledges are a multitude of other patently permissible activities including:

- parking or waiting in a parking lot while attending a grocery store;
- parking or waiting in a parking lot for the purpose of curbside pick up at a big box retail store;
- parking or waiting in line at a drive-through at a Tim Hortons or Starbucks; and/or
- parking or waiting in line at a drive-through at a COVID-19 testing site.

[56] Whether the examples above, as cited by the applicant, do indeed represent true inconsistencies and/or incongruities respecting the interpretation and/or enforcement of the PHOs' provisions, does not change the fact that the use of such comparative examples by the applicant has a very limited utility as it relates to the task of legislative interpretation. Generally speaking, this sort of argument as raised by the applicant, should be reserved for its constitutional arguments respecting the restrictions of its ***Charter*** rights and the Government's s. 1 defence. In other words, such arguments based on comparisons in the manner in which the applicant has invoked them, normally play out and are relevant only with respect to concepts such as overbreadth or arbitrariness. Such arguments and/or comparative examples – except perhaps to show an absurdity (which in this case, I do not find) – has very limited use in statutory or legislative interpretation.

[57] Let me now turn specifically to s. 2(1) of the PHOs. In my view, based on Senior Pastor Fontaine's own description of the services that are occurring at this place of worship, the activity in question does indeed fall within the meaning of "gathering".

[58] Based on the earlier mentioned definition of "gathering" in the PHOs, a gathering is something that meets the following criteria:

- it has persons;
- they are a grouping;
- they are in general proximity to each other; and
- they have assembled for a common purpose or reason.

[59] In addressing whether "church in our cars" fits the definition of a gathering, even if everyone stays in their cars as they are instructed to do, I note that the definition of "gathering" does not create exceptions for persons who congregate in a collective and then implement their own self-isolation measures. As Manitoba has conceded, such self-directed measures might be many and noble and they may include: remaining in cars, or erecting personal tents or booths, or being dressed in full isolation suits, or implementing self-imposed specified distance-based social distancing standards. Nonetheless, the definition of a "gathering" in the PHOs incorporates none of that. What remains undeniable and important is the actual wording of the PHOs, which notes that "gathering" is persons, that are a grouping, who are in general proximity to each other and who have assembled for a common purpose or reason.

[60] I find it persuasive when Manitoba argues as it does that the definition of "gathering" is not qualified by certain commonly-known social distancing norms some of which can be found elsewhere, such as in other PHOs or other COVID-19 related guidelines. As submitted by Manitoba, there is not, for example, a statement within the

definition of "gathering" which says that a collective of more than five persons who maintain a two-metre social distancing protocol are, by that fact alone, deemed to not be a gathering.

[61] Similarly, Manitoba underscores that parties of more than five persons are not allowed, even if they are on outside premises, even if everyone stays more than two metres away from each other, and even if they have voluntarily implemented other risk-reduction strategies that might be selected from other orders.

[62] I have no difficulty in concluding that in the circumstances of this case, the congregants attending in cars are "persons" who have assembled "for a common purpose". I also conclude that the "church in our cars" services constitutes a configuration that is a "grouping" in "general proximity to each other".

[63] In coming to that conclusion, I wish to acknowledge that there is no denying the exquisite care and good faith measures taken by Senior Pastor Fontaine in attempting to find a legally compliant manner in which to facilitate a sense of collective congregation, even if in cars. The fact however, that everyone remains in their vehicles throughout the service, does not mean that this is not a grouping of persons in general proximity to each other. As has been pointed out, the act of persons grouping and remaining in vehicles amounts to a self-directed implementation of the social distancing measure, which however useful and noble, is nonetheless not incorporated into the current prevailing PHOs as a qualification, justification or exception to the general prohibition.

[64] I will make one final point while returning to an earlier observation. I have already noted that any extensive argument invoking what might appear to be any incongruous

and inconsistent interpretation, application or enforcement of the restrictions in the PHOs are most appropriately raised in the context of any eventual ***Charter*** analysis if and where for example, such concepts as overbreadth and arbitrariness are plead. However, to the extent that the applicant is pointing to such inconstancies and incongruities as a potential resulting absurdity in the context of my interpretative task, such an argument is not persuasive. The PHOs were designed to restrict contacts among persons to those that are absolutely essential. It is clear that the PHOs were never intended to prevent persons from parking and/or waiting in line while in vehicles to facilitate the buying of food – even though such parking and the obtaining of essentials may inevitably lead to contact with others. In considering the effect of such supposed or alleged interpretive absurdity, in addition to considering the intention of the PHOs, it should be remembered that members of the congregation can still worship remotely.

[65] Accordingly, I have determined that the applicant's program, "church in our cars", is not in compliance with s. 2(1) of the PHOs. Attendance at "church in our cars" constitutes "assembling in a gathering of more than five persons at any indoor or outdoor public place" contrary to s. 2(1) of the PHOs.

[66] Let me now turn briefly to the two remaining interpretive questions that are before me.

DOES "CHURCH IN OUR CARS" COMPLY WITH THE REQUIREMENTS OF S. 15(2) OF THE PHOS?

[67] Section 15(1) of the PHOs, directs that places of worship must be closed. It reads as follows:

> **ORDER 15**
> 15(1) Except as permitted by subsections (3) and (4), churches, mosques, synagogues, temples and other places of worship must be closed to the public while these Orders are in effect.

[68] Section 15(2) of the PHOs read as follows:

> 15(2) Despite subsection (1), religious leaders may conduct services at places of worship so that those services may be made available to the public over the Internet or through other remote means.

[69] Despite subsection (1), religious leaders may conduct services at places of worship so that those services may be made available to the public over the Internet or through other remote means. I read s. 15(2) as speaking to religious leaders. Insofar as s. 15(2) is arguably silent respecting congregants and what they can do, instruction in this regard can nonetheless be found in relation to the PHOs' provision containing the prohibition on "gathering".

[70] I have concluded that for the purposes of interpreting s. 15(2) in a manner consistent with the intent of the PHOs, that reference to the phrase "remote means" is a reference to technology different from that which is taking place or being used in the context of "church in our cars". In other words, the attendance of a multitude of persons in vehicles in a parking lot where the worship service on the stage is projected onto a large screen is not what was contemplated by "remote means".

[71] There is one final question that I am required to address as it relates to my interpretive task in the present case.

DOES "CHURCH IN OUR CARS" CONSTITUTE A "SOCIAL SERVICE" UNDER S. 2(2)?

[72] I can dispose of this question quickly.

[73] In my view, to the extent that social services are indeed being provided at the church, that is not what is being done with the program "church in our cars" as described and that is not how "church in our cars" is being used on those identified occasions of service and worship.

[74] Again, I have no hesitation in concluding that "church in our cars" does not comply with s. 2(2) of the PHOs.

CONCLUSION

[75] The application for the stay of the operation of the identified sections of the PHOs is denied.

[76] The applicant and its program "church in our cars" is not in compliance with the identified sections of the PHOs.

_____ C.J.Q.B.