

NEW WESTMINSTER

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STREET

No. S-124618
New Westminster Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

FRASER HEALTH AUTHORITY

PETITIONER

AND:

ALICE JONGERDEN carrying on business as
HOME ON THE RANGE, JANE DOE and JOHN DOE

RESPONDENTS

NOTICE OF APPLICATION

Names of applicant: Alice Jongerden

To: The Respondent, Fraser Health Authority

And To: The Respondent's solicitor

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the Law Courts at Begbie Square, on Carnavan Street, in the City of New Westminster, in the Province of British Columbia, on Monday, February 21, 2011 at 9:45 a.m. for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An Order pursuant to s.52 of the *Constitution Act* declaring s.7 of the *Public Health Act Transitional Regulation* to be of no force and effect.
2. An Order declaring s.7 of the *Public Health Act Transitional Regulation* to be *ultra vires* and to be of no force and effect;
3. An Order setting aside the March 18, 2010 Order of Madam Justice Gropper, which prohibits the applicant from packaging and distributing raw milk for human consumption.

4. An Order for payment of interim costs, should the applicant prove unable to bear the financial burden of this litigation.
5. An Order for costs payable by the respondent.

Part 2: FACTUAL BASIS

Overview

1. The combined effect of s.15 of the *Public Health Act* and s.7 of the *Public Health Act Transitional Regulation* is to prohibit the creation of unprocessed, unpasteurized, non-homogenized milk ("Fresh Milk") for human consumption in British Columbia. On March 18, 2010, Madam Justice Gropper issued an order prohibiting the applicant from marketing and distributing Fresh Milk for human consumption (the "Prohibition Order").
2. The applicant says that the prohibition against Fresh Milk for human consumption infringes the right to liberty and security of the person as guaranteed by s.7 of the *Canadian Charter of Rights and Freedoms*. In particular, the applicant says that the prohibition against Fresh Milk is contrary to the right to nutritional choice and carries criminal penalties and that the prohibition against Fresh Milk offends the principles of fundamental justice because it is arbitrary and overbroad.
3. Furthermore, the applicant says that the *Public Health Act* regulation prohibiting as a health hazard all milk that is not pasteurized at a licenced dairy plant is *ultra vires* is not authorized by law. The regulation is consequently of no force and effect.

Procedural History

4. From 2006 to September 15, 2010, the applicant operated a cowshare that produced and distributed Fresh Milk for human consumption. Fresh Milk is unprocessed, unpasteurized and non-homogenized. Fresh Milk is occasionally referred to as raw milk.
5. On March 18, 2010, Madam Justice Gropper issued an Order prohibiting the applicant from packaging or distributing raw milk for human consumption.
6. From March 18, 2010 until September 14, 2010, the application continued to distribute Fresh Milk but clearly labeled the Fresh Milk as "not for human consumption".
7. On December 2, 2010, the applicant was cited for contempt, although no penalty was imposed and she was taken to have purged her contempt. Mr. Justice Smith clarified that the Prohibition Order prohibited the packaging and distribution of Fresh Milk in circumstances where there is a real and substantial possibility that it would be consumed by humans.

The Health and Nutritional Value of Fresh Milk

8. Fresh Milk has high nutritional value. Fresh Milk contains vitamins, minerals, nutrients, beneficial enzymes, natural immune system boosters, and healthy fats and proteins.
9. Processing milk by pasteurizing and homogenization significantly reduces the nutritional value of milk. Pasteurization decreases the number, concentration and bio-availability of vitamins, minerals, nutrients, beneficial enzymes, immune system boosters, and healthy fats and proteins. Milk that has been pasteurized and homogenized (“Processed Milk”) is significantly less nutritious than Fresh Milk.
10. Fresh Milk is available for retail or farm sale to consumers in at least twenty States in the United States of America, and in all European Union countries with the exception of Scotland. Fresh Milk production and distribution in the US and EU is regulated by ensuring that the milk cows are healthy and tested for diseases, that the milking facilities are sanitary, and that the milk is tested for virulent pathogens. The regulation of Fresh Milk keeps the risk to consumers low by ensuring that virulent pathogens do not enter the Fresh Milk in the first instance.
11. Regulation of Processed Milk relies on a heating process known as pasteurization to kill pathogens after they have entered the production stream. Unfortunately, pasteurization has a deleterious effect on the nutritional value of Processed Milk. Processed Milk also involves homogenization, a process in which the milk fats are broken down in order to ensure a consistent product appearance for which the cream is slower to separate. Homogenization also has a deleterious effect on the nutritional value of Processed Milk.
12. Consumption of Processed Milk involves manageable risks. Manageable risks are also associated with consumption of Fresh Milk. As is the case with Processed Milk, the risks associated with Fresh Milk can demonstrably be managed with appropriate regulation and without an outright prohibition.

Part 3: LEGAL BASIS

1. The production and distribution of Fresh Milk is prohibited throughout the Province of British Columbia. Section 15 of the *Public Health Act* provides as follows:

15 A person must not willingly cause a health hazard, or act in a manner that the person knows, or ought to know, will cause a health hazard.

Public Health Act, [SBC 2008], c.28, s.15

2. The phrase “health hazard” is defined in s.1 of the *Public Health Act*:

1 In this Act: ...

“health hazard” means

(a) a condition, 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.

3. A breach of s.15 of the *Public Health Act* carries a penalty under s.108(1)(c) of a fine not exceeding \$3,000,000 and imprisonment for a term not exceeding 36 months. Absent s.7 of the *Public Health Act Transitional Regulation*, a prosecution would require the Province to prove beyond a reasonable doubt that Fresh Milk endangers or is likely to endanger public health, or that Fresh Milk is associated with injury or illness.
4. Section 111(1)(b) of the *Public Health Act* provides that “the Lieutenant Governor in Council may make regulations in respect of defined terms... respecting conditions, things or activities or standards for the purposes of the definition of ‘health hazard’”.
5. B.C. Reg.51/2009, effective March 31, 2009, entitled, *Public Health Act Transitional Regulation*, provides under s.7 that “milk for human consumption that has not been pasteurized at a licensed dairy plant in accordance with the *Milk Industry Act* is prescribed as a health hazard.”
6. Section 7 of the *Public Health Act Transitional Regulation* therefore does not directly target Fresh Milk. Any milk, whether processed, pasteurized or homogenized, is prohibited under s.7 of the *Transitional Regulation*. Fresh Milk is merely a subset of the kinds of milk that are prohibited. The prohibition on Fresh Milk is an incidental effect of the larger prohibition against milk that is produced and distributed outside the *Milk Industry Act*.
7. The *Milk Industry Act* regulates the production and distribution of Processed Milk. Section 13 of the *Milk Industry Act* provides that a person must not operate a dairy plant unless the person is in possession of a subsisting licence issued to the person under the *Milk Industry Act*.
8. It is to be observed that the *Milk Industry Act* expressly contemplates the production and distribution of Fresh Milk. Section 40(3)(q) provides as follows:

40(3) Without limiting subsection (1) or (2), the Lieutenant Governor in Council may make regulations as follows: ...

(q) defining rural areas known as “milk pasteurization areas”, within which milk delivered or sold to consumers must be pasteurized, and making just and equitable provision for the sale of milk from approved raw milk dairy farms in the milk pasteurization areas, and the requirements, restrictions and exceptions under which the raw milk may be sold.

9. The *Milk Pasteurization Regulation*, B.C. Reg. 39/75, provides as follows:

1 All unorganized territory within the Province of British Columbia is designated as a milk pasteurization area.

10. Contrary to the provisions of the *Milk Industry Act*, the *Milk Pasteurization Regulations* do not make just and equitable provision for the sale of milk from approved raw milk dairy farms in the milk pasteurization area, and makes no provision for the requirements, restrictions and exceptions under which the raw milk may be sold.

11. The combined effect of s.15 of the *Public Health Act* and the *Public Health Act Transitional Regulations* is to prohibit the production and distribution of Fresh Milk in the Province of British Columbia, along with all Processed Milk that was not processed in a licenced milk processing plant.

Section 7 of the Transitional Regulation is Ultra Vires

12. The Applicant says that s.7 of the *Public Health Act Transitional Regulation* lacks statutory foundation and is accordingly *ultra vires*.

13. As noted above, s.111(1)(b) of the *Public Health Act* provides that “the Lieutenant Governor in Council may make regulations in respect of defined terms... respecting conditions, things or activities or standards for the purposes of the definition of ‘health hazard’”.

14. With respect, s.111(1)(b) does not authorize the Lieutenant Governor in Council to arbitrarily deem a class of conditions, things or activities to be a health hazard. Section 111(1)(b) is confined to the enactment of regulations “in respect of defined terms”. In particular, the “defined terms” set out for “public health hazard” include “endanger, or is likely to endanger, public health”, “interfere with the suppression of an infectious disease”, “is associated with injury or illness”, or “fails to meet a prescribed standard”.

15. 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 the legislature.

16. According to the plain meaning of s.111(1)(b), regulations enacted under that section must be of the form: “for the purposes of s.15, a condition, thing or activity is “likely to endanger public health if...”, or “for the purpose of s.15, a condition, thing or activity “is associated with injury or illness if...”. Such regulations are intended to provide guidance to investigators under the *Public Health Act*, who have specific powers to investigate s.15 violations and to issue orders for the purpose of containing public health hazards.
 17. The plain meaning of s.111(1)(b) does not authorize the Lieutenant Governor in Council to enact regulations deeming specific conditions, things or activities to be public health hazards. Section 111(1)(b) does not authorize such regulations. Under such an interpretation, the Lieutenant Governor in Council could deem virtually anything to be a public health hazard, including unprotected sex, hard drugs, boxing and mix martial arts fighting, sharing water bottles, etc. This absurd result could not have been the intention of the legislature.
 18. Section 41(1)(a) provides as follows:

41(1) If an enactment provides that the Lieutenant Governor in Council or any other person may make regulations, the enactment must be construed as empowering the Lieutenant Governor in Council or that other person, for the purpose of carrying out the enactment according to its intent, to

(a) make regulations as are considered necessary and advisable, are ancillary to it, and are not inconsistent with it...
- Interpretation Act*, [RSBC 1996] c..238, s.41
19. The Applicant submits that s.7 of the *Transitional Regulations* are not in accordance with the intent of the *Public Health Act*. The *Public Health Act* is intended to prevent serious risks to public health. There is no evidence that Fresh Milk is a serious risk to public health. Moreover, s.7 of the *Transitional Regulations* includes a prohibition on milk that has been pasteurized as an unlicensed pasteurization facility. There is no evidence that such milk presents a public health.
 20. Rather than serving the purposes of the *Public Health Act*, the *Transitional Regulation* serves the purpose of the *Milk Industry Act*. The specific wording of the *Transitional Regulation* includes reference to facilities licensed under s.12 and 13 of the *Milk Industry Act*.
 21. A breach of the *Milk Industry Act* by an individual can lead to a fine under s.37 of the *Milk Industry Act* of not less than \$10 and not more than \$500. In contrast, a breach of s.15 the *Public Health Act* can lead under s.108(1)(c) to a fine not exceeding \$3,000,000 and imprisonment for a term not exceeding 36 months.

22. The vast difference in scale between the penalties for an infraction of s.13 of the *Milk Industry Act* and the penalties for an infraction of s.15 of the *Public Health Act* is indicative of a difference in the importance of the public interest served by each Act. While both Acts might be intended at some level to promote health conditions, the *Public Health Act* is intended to provide an impressive arsenal of administrative powers and criminal sanctions for correspondingly serious threats to public health.
23. The disproportion between the relatively trivial risk that Fresh Milk may carry food-borne pathogens and the criminal offence resulting from a breach of s.15 of the *Public Health Act* is a further indication that s.7 of the *Transitional Regulation* exceeds the legislative intent of s.111(1)(b).
24. Despite its express reference to the *Milk Industry Act*, s.7 of the *Public Health Act Transitional Regulation* is contrary to the true purposes of the *Milk Industry Act*. An outright prohibition on Fresh Milk, as is implied by s.7 of the *Transitional Regulations*, is contrary to the express provisions of s.40(3)(q) of the *Milk Industry Act*, which require the Lieutenant Governor in Council to make “just and equitable provision for the sale of milk from approved raw milk dairy farms”. The regulatory provision of s.111(1)(b) of the *Public Health Act* cannot be permitted to override and invalidate mandatory obligations imposed on the Lieutenant Governor in Council by s.40(3)(q) of the *Milk Industry Act*.
25. In all the circumstances, the Applicant asks this honourable Court to declare s.7 of the *Public Health Act Transitional Regulations* to be of no force and effect, and set aside the Order of Madam Justice Gropper, made March 18, 2010.

The Prohibition against Fresh Milk infringes Section 7 of the Charter

26. The prohibition against Fresh Milk infringes s.7 of the *Charter of Rights and Freedoms*. The choice to drink Fresh Milk rather than Processed Milk is a nutritional choice. Nutritional choices are choices made by individuals that are intended to affect the long-term health of that individual. Nutritional choices are, in essence, choices about long-term health, and a person deprived of control over their long-term health does not enjoy individual dignity and independence.
27. The right to security of the person protects the right of the individual to make choices about his or her own body, including the right to make choices about one’s own health. The Supreme Court of Canada has repeatedly held that state action which has the effect of impairing a person’s health engages the fundamental right of a person under s.7 to security of the person. As stated in *Fleming v. Reid*, every person’s body is considered inviolate:

... it is manifest that the impugned provisions of the Act operate so as to deprive the appellants of their right to “security of the person” as guaranteed by s.7. The common law right to bodily integrity and personal autonomy is so entrenched in the traditions of our law as to be ranked as fundamental and deserving of the

highest order of protection. The right forms an essential part of an individual's security of the person and must be included in the liberty interests protected by s.7. Indeed, in my view, the common law right to determine what shall be done with one's own body and the constitutional right to security of the person, both of which are founded on the belief in the dignity and autonomy of each individual, can be treated as co-extensive.

Fleming v. Reid, 1991 CanLII 2728 (Ont.C.A.) at p.7

R. v. Monney, [1999] 1 S.C.R. 652 (S.C.C.) at paras.55 and 56

B.(R.) v. Children's Aid Society of Metropolitan Toronto, [1995] 1 S.C.R. 315 (S.C.C.)

28. Bastarache, J., writing for the majority in *Rodriguez*, expressed the principle as follows:

In my view, then, the judgments of this Court in *Morgentaler* can be seen to encompass a notion of personal autonomy involving, at the very least, control over one's bodily integrity free from state interference and freedom from state-imposed psychological and emotional stress. In *Reference re ss.193 and 195.1(1)(c) of the Criminal Code (Man.)*, *supra*, Lamer J. also expressed this view, stating at p.11778 that "[s]ection 7 is also implicated when the state restricts individuals' security of the person by interfering with, or removing from them, control over their physical or mental integrity". There is no question, then, that personal autonomy, at least with respect to the right to make choices concerning one's own body, control over one's physical and psychological integrity, and basic human dignity are encompassed within security of the person...

Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519 (S.C.C.) at p.36

29. McLaughlin, J. (as she then was) stated the same principle in these words:

It is established that s.7 of the *Charter* protects the right of each person to make decisions concerning his or her own body: *Morgentaler*, *supra*. This flows from the fact that decisions about one's body involve "security of the person" which s.7 safeguards against state interference which is not in accordance with the principles of fundamental justice. Security of the person has an element of personal autonomy, protecting the dignity and privacy of individuals with respect to decisions concerning their own body. It is part of the persona and dignity of the human being that he or she have the autonomy to decide what is best for his or her body. This is in accordance with the fact, alluded to by McEachern C.J.B.C. below, that "s.7 was enacted for the purpose of ensuring human dignity and individual control, so long as it harms no one else": 1993 CanLII 1191 (B.C..C.A.), (1993), 76 B.C.L.R. (2d) 145, at pa.164.

Rodriguez v. British Columbia (Attorney General), [1993] 3 S.C.R. 519 (S.C.C.) at p.49

30. In *R. v. Marmo-Levine*, the Supreme Court of Canada established that there is no s.7 right to recreational use of marijuana. There is, as the Court put it, no right for David Marmo-Levine to build a lifestyle around his recreational use of marijuana. On the other hand, the Ontario Court of Appeal found in *Parker* and *Hitzig* that the medicinal use of marijuana is protected by s.7 as an aspect of security of the person.

R. v. Marmo-Levine, 2003 SCC 74

R. v. Parker, 2000 CanLII 5762 (Ont.C.A.)

Hitzig v. Canada, 2003 CanLII 30796 (Ont.C.A.)

31. The Applicant says that, assessed in context, the right to make nutritional choices is more akin to the medical use of marijuana in *Parker* than to the recreational use of marijuana in *Marmo-Levine*. The Applicant does not claim a right to choose Fresh Milk on the basis of a purely abstract notion of the right to choice. Nutritional choice and long-term health is not a frivolity like “an obsessive interest in golf”, “an addiction to gambling”, or a “taste for fatty foods”. The Applicant claims the right to choose Fresh Milk on the basis of the right to direct and control her own long-term health. The right in question is the right to choose nutritious and nourishing foods, the consumption of which leads to a healthy body, greater physical fortitude, mental independence and a longer life.
32. Otherwise stated, the Applicant claims the right to make preventative health choices. The Applicant says that she need not wait until she becomes sick to trigger her right to make healthy choices. Her right to choose foods that enhance her bodily integrity and increase her sense of well-being exist before, during and after any acute illness. The right to make health choices includes both treatment and prevention.

R. v. Marmo-Levine, 2003 SCC 74 at para.85

33. The Applicant claims no restriction on the right of regulatory authorities to require accurate labeling of Fresh Milk or any other food, setting out health risks associated with that food.

The Transitional Regulation infringes the Applicant’s Liberty Interests

34. In the alternative, the *Public Health Act Transitional Regulation* creates the threat of prosecution and imprisonment for up to 36 months for creating Fresh Milk. The threat of imprisonment is sufficient to trigger scrutiny under s.7 of the *Charter of Rights and Freedoms*.

R. v. Marmo-Levine, 2003 SCC 74 at para.84

The Deprivation does not accord with the Principles of Fundamental Justice

35. The deprivation under s.7 does not accord with the principles of fundamental justice. The deprivation is both arbitrary and overbroad.
36. It is a well-recognized principle of fundamental justice that laws should not be arbitrary. The state is not entitled to arbitrarily limit its citizens' rights to life, liberty and security of the person. A law is arbitrary where it "bears no relation to, or is inconsistent with, the objective that lies behind it."

Chaoulli v. Quebec (Attorney General), 2005 SCC 35 at para.129 and 130

37. In order not to be arbitrary, the limit on life, liberty and security requires not only a theoretical connection between the limit and the legislative goal, but a real connection on the facts. In this case, the limit is an absolute penal offence prohibition on the production and distribution on milk that has not been pasteurized at a licenced dairy plant. The legislative goal in this case is purportedly to preserve public health.
38. Arbitrariness, in the form of the absence of a connection between a legislated limit and a legislative goal can be established by proof of that the absence of the legislated limit in other jurisdictions has no effect on the achievement of the legislative goal. In *Chaoulli*, for example, the absence of a connection between a ban on private health insurance and the goal of a quality public health care system was demonstrated by quality health care systems in Germany, Sweden and the United Kingdom, none of which had a monopoly on the delivery of health care. The majority reasoned as follows:

In summary, the evidence on the experience of other western democracies refutes the government's theoretical contention that a prohibition on private insurance is linked to maintaining quality public health care.

Binnie and LeBel JJ. suggest that the experience of other countries is of little assistance. With respect, we cannot agree. This evidence was properly place before the trial judge and, unless discredited, stands as the best guide with respect to the question of whether a ban on private insurance is necessary and relevant to the goal of providing public health care. The task of the courts, on s.7 issues as on others, is to evaluate the issue in the light, not just of common sense or theory, but of the evidence. This is supported by our jurisprudence, according to which the experience of other western democracies may be relevant in assessing alleged arbitrariness. In *Rodriguez*, the majority of this Court relied on evidence from other western democracies, concluding that the fact that assisted suicide was heavily regulated suggested that Canada's prohibition was not arbitrary: pp.601-5.

Chaoulli v. Quebec (Attorney General), 2005 SCC 35 at para.149-150

39. Arbitrariness, in the absence of a connection between the regulatory limit and the regulatory goal, is established in this case by the existence of regulatory limits in the US and EU that do not involve an absolute prohibition on Fresh Milk but maintain public

health. There is no evidence that the milk supply in the EU and US more dangerous to public safety than the milk supply in Canada.

40. The arbitrariness reveals shows that the prohibition on Fresh Milk is not rationally connected to public health. This arbitrariness is consistent with the opinion of Dr. Theodore Beals that the prohibition against Fresh Milk has more to do with maintaining the Processed Milk quota system than it has to do with promoting public health.

The Prohibition is Overbroad

41. The prohibition on Fresh Milk is also overbroad. Overbreadth analysis looks at the means chosen by the state in relation to its purpose. In considering whether a legislative provision is overbroad, a court must ask the question: are those means necessary to achieve the State objective? If the State, in pursuing a legitimate objective, uses means which are broader than is necessary to accomplish that objective, the principles of fundamental justice will be violated because the individual's rights will have been limited for no reason. The effect of overbreadth is that in some applications the law is arbitrary or disproportionate. Reviewing legislation for overbreadth as a principle of fundamental justice is simply an example of the balancing of the State interest against that of the individual.

R. v. Heywood, [1994] 3 S.C.R. 761 at p.17

R. v. Nova Scotia Pharmaceutical Society, [1992] 2 S.C.R. 606

42. In analyzing a statutory provision to determine if it is overbroad, a measure of deference must be paid to the means selected by the legislature. While the courts have a constitutional duty to ensure that legislation conforms to the *Charter*, legislatures must have the power to make policy choices. A court should not interfere with legislation merely because a judge might have chosen a different means of accomplishing the objective if he or she had been the legislator. It must be clear that legislation infringes life, liberty and security of the person in a manner that is unnecessarily broad, going beyond what is needed to accomplish the goal.

R. v. Heywood, [1994] 3 S.C.R. 761 at p.17

43. The means selected by the Lieutenant Governor in Council is unnecessary to achieve the public health purpose asserted by the Petitioner. Any concerns regarding the health risks posed by the consumption of Fresh Milk can be met with one of a range of regulatory schemes allowing the safe distribution of Fresh Milk from the farm or at the retail level. Notably, the cowshare operated by the Applicant had no reported complaints and the Fresh Milk it produced and distributed has not been demonstrated to present a public health risk.
44. The means selected by the Lieutenant Governor in Council in this case should be accorded little deference. Fair and equitable access to Fresh Milk is contemplated under

s.40(3)(j) of the *Milk Industry Act*. Little deference is owed to a regulation that is at cross-purposes with legislation.

45. The applicant says that the *Public Health Act Transitional Regulation* is overbroad. An outright prohibition is not necessary to the achievement of the stated public purpose. The legislative goals could be accomplished in a number of ways with less restrictive regulation.

Section 1

46. If s.7 of the *Transitional Regulation* is found to be arbitrary or overbroad, then it will for the same reasons lack a rational connection between means and objective and it will fail the test of minimal impairment.

Part 4: MATERIAL TO BE RELIED ON

1. *Affidavit #1 of Dr. Theodore Beals*, sworn January 10, 2011;
2. *Affidavit #1 of Alice Jongerdens*, sworn January 19, 2011; and
3. *Affidavit #1 of Hasan Junaid*, sworn January 7, 2011.

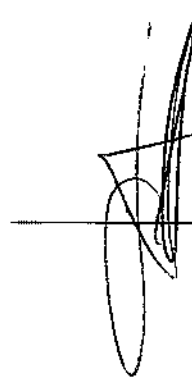
The applicant(s) estimate(s) that the application will take one hour.

This matter is not within the jurisdiction of the master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9)

Dated this 19th of January, 2011



Jason Gratl

Gratl & Company
Barristers & Solicitors
302 – 560 Beatty Street
Vancouver, B.C.
V6B 2L3

To be completed by the court only:

Order made

- in the terms requested in paragraphs _____ of Part 1 of this notice of application
- with the following variations and additional terms:

Date: _____

Signature of Judge Master Judge Master _____

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

Challenge to the constitutional validity of s.7 of the *Public Health Act Transitional Regulation*.