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April 17, 2020

Justice Minister Caroline Wawzonek
Department of Justice, Government of the Northwest Territories
4903 49th Street PO Box 1320 Yellowknife NT
X1A 2L9 Canada
Caroline_wawzonek@gov.nt.ca

Dear Minister Wawzonek,

I am writing in regards to the order issued by the Northwest Territories Chief Public Health Officer on April 10, 2020, attached for your reference. We have significant concerns about the constitutionality of this order. While we appreciate that public health management in the Northwest Territories is deserving of deference to local expertise, the constitution sets a higher standard for necessity, clarity and proportionality for orders than is found in this one signed by Dr. Kandola. This order limits peoples' constitutional rights and freedoms in a way that is overly broad and disproportionate.

We are concerned in particular with the prohibitions on public and private outdoor gatherings contained in ss. 1(b) and 1(c).

First, there is no definition of a public or private gathering. What is a gathering? And what is the defining feature of a public, as opposed to private, gathering? Is it the physical location of the gathering, whether it was publicly organized or advertised, whether the participants know each other, etc.? The absence of a definition of these key terms makes these prohibitions unacceptably vague.

Second, because there are no exceptions to these outdoor gathering provisions, on their face they prohibit a very wide – and we would argue unjustifiably broad – range of behaviour. Under almost any definition of public and private outdoor gatherings the lack of exemptions is problematic. It appears, for example, that paramedics attending an individual outside cannot “gather” unless they maintain a minimum of 2 metres distance. That construction work on essential outdoor infrastructure must take place with less than 10 workers. That a parent and child, from the same household, cannot walk down the street unless they maintain a distance of 2 metres apart at all times. That appropriately spaced lines of 10 people outside retail stores

or essential services are unacceptable. That two adults from the same household cannot walk down the street holding hands.

We do not believe, based on media statements, that any of these results were intended. It is critical, particularly at a time that individuals' basic liberties are being so severely curtailed, that orders are carefully and precisely drafted. Failing to do so undermines the legality of the order, creates confusion, and opens the door to arbitrary and discriminatory enforcement.

We urge you to carefully review the text of the order and make the necessary amendments so that it better reflects what we presume to be the government's intention.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Abby Deshman', with a stylized, flowing script.

Abby Deshman
Director, Criminal Justice Program
Canadian Civil Liberties Association