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LAWYERS & NOTARIES

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September 27, 2021

To Whom It May Concern:

RE It is unlawful for your facility to implement REP for youth activities

We have been retained by a group of parents whose children are involved with youth physical, performance and recreational activities. Your facility has implemented the Restrictions Exemptions Program (“REP”) under Public Health Order 43-2021. You may have adopted REP willingly, as an eligible in-scope business, or you may have been forced to do so by Calgary City Council’s decision to enact the “Vaccine Passport Bylaw” 65M2021 on September 23, 2021. You may not yet realize it, but Public Health Order 43-2021 has been rescinded, and the order replacing it, Public Health Order 45-2021, makes REP unavailable for youth activities.

On this basis, we make the following demands:

- 1. We demand that you immediately cease enforcing any REP-related restrictions in association with youth physical, performance and recreational activities.**

You lack the legal authority to request that parents, children and spectators divulge private health information upon entry to your facility for youth activities. By keeping these illegal restrictions in place, you are causing ongoing damage to our clients and their children; and

- 2. We also demand that you follow the clear direction of the Alberta government regarding these matters and immediately implement the proper public health restrictions contained in Public Health Order 44-2021 for youth physical, performance and recreational activities.**

Failing to immediately cease all REP restrictions in association with youth activities may be an illegal discriminatory denial of services contrary to the law of Alberta.

YOUTH ACTIVITIES ARE OUT OF SCOPE FOR REP

Public Health Order 43-2021 was the initial legal instrument containing the rules for Alberta’s so-called “vaccine passport.” This Order has been rescinded by the province due to bad faith behaviour on the part of businesses offering youth activities and rogue municipal governments seeking to increase and stiffen the restrictions enacted by the Government of Alberta.

To remedy this bad faith behaviour, the Government of Alberta replaced Order 43-2021 with Order 45-2021 on September 24, 2021, the first two provisions of which read:

1.1 This Order rescinds CMOH Order 43-2021.

1.2 This Order is effective September 20, 2021, and applies throughout the Province of Alberta.

This clearly indicates that Order 43-2021 no longer has the force of law in Alberta and that Order 45-2021 applies retroactively from September 20, 2021.

Order 45-2021 makes it clear that youth activities are out of scope for REP. On the final page of the Order, in the right-hand column, "Youth physical activity, performance activity and recreational activity, where all participants are under the age of 18" is listed as outside of the purview of REP. This means that REP is not available for implementation in association with such activities.

Youth physical, performance and recreational activities are defined as the following, according to Order 45-2021:

"physical activity" means a fitness activity or sport activity.

"performance activity" means singing, playing a musical instrument, dancing, acting or other activities of a similar nature and includes, but is not limited to, a rehearsal, concert, theatre, dance, choral, festival, musical and symphony events.

"recreational activity" means any structured or organized activity or program where the purpose of the activity or program is intended to develop a skill, including but not limited to, Girl Guides, Scouts, choir, arts and crafts, pottery or other substantially similar activities.

Since these activities are now clearly outside of the scope of REP, you cannot enforce the rules associated with REP to these youth activities without violating the law of Alberta.

- You can no longer request that youth, parents and spectators attending your facility for a youth physical, performance or recreational activity reveal their vaccination status or COVID-19 test results. Doing so would be a violation of Alberta's *Personal Information Protection Act*.
- You can no longer deny access to youth, parents or spectators who refuse to provide their vaccination status or COVID-19 test results. Doing so would be a violation of Alberta's *Human Rights Act*.

THE PROPER RESTRICTIONS

Order 44-2021 may be replaced at some point in the near future by the Government of Alberta, but for the time being, your facility must instead rely on the rules from that Order for youth activities under 18 years of age.

Those rules are explained on the relevant Government of Alberta website as:

Youth (under 18) sport, fitness and performance activities (Sept 16)

- Indoor group classes, training, and competitions are permitted, but participants are required to:
 - screen for symptoms
 - maintain 2 metres distancing, except youth while engaged in physical activity
 - wear a mask, except youth while engaged in physical activity
- Spectator attendance is restricted to 1/3 fire code capacity, attendees are limited to a single household or 2 close contact if living alone and must be masked and maintain 2 metres physical distancing.
- Outdoor activities can continue with no restrictions.

If you wish to introduce REP for specific events or programs, like adult recreational activities, it is possible to do so and also comply with Orders 44-2021 and 45-2021. Notice, under the heading “Adult (18-plus) sport, fitness and performance activities”, the Government of Alberta website states that a “program” is permitted to implement REP:

Adult (18-plus) sport, fitness and performance activities (Sept 20)

- The following restrictions apply unless the facility or **program** implements the Restrictions Exemption Program:
 - Indoor group classes and activities are not permitted.
 - Indoor competitions are paused except where vaccine exemptions have been granted.
 - Indoor one-on-one training and solo activities are allowed with 3 metre physical distancing.
- Outdoor activities can continue with no restrictions.

This would permit you to take advantage of the rules for REP with regards to adult recreational opportunities, under Order 45-2021, while keeping youth activities out-of-scope as the province intends. You may also rely on the rules in Order 44-2021 section 2.1(e) regarding “cohorts”.

To be clear, insofar as you implement REP at your facility for the youth activities discussed above, you are acting illegally. Please update your policy immediately to bring it into compliance with the law of Alberta or we may advise our clients to take legal action against you.

Yours Truly,
WARNOCK KRAFT ANDERSON

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