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Yeshiva Yesodei Hatorah, an Orthodox Jewish school, is one of two religious schools challenging the order to close. It filed legal documents Thursday in the Ontario Superior Court of Justice alleging that Toronto and the Ontario government have harmed the religious rights of students.

Lawyers Rifkind and Atkinson sue the City over Charter breach

Students aren't allowed internet as part of their Orthodox Jewish practice, court documents state

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A Toronto independent religious school has launched a charter challenge in the Ontario Superior Court of Justice, alleging a citywide public health order to close schools breaches students' and staff's freedom of religion.

Following a Toronto Public Health order issued May 6 that limited in-person learning across all educational settings, Bnos Bais Yaakov High School did not close, according to legal documents filed in court May 14. The Orthodox Jewish girls school has approximately 144 students and 45 staff members. It functions as a high school and a religious congregation.

The applicants — the school and a representative 16-year-old student — make the case that the public health order breaches charter rights. They include the student's right to freedom of conscience and religion, as she is "unable to exercise her religious beliefs as a consequence of the order," according to court documents. As well, they say it breaches the applicants' right "not to be subjected to cruel and unusual treatment" in the form of prohibiting the school attendance of students unable to learn virtually given their strict religious beliefs.

"As per their religious beliefs, children do not use the internet... they don't have those sorts of devices," said a member of the school's counsel, Ryan Atkinson, a barrister and solicitor at Atkinson Law Professional Corp. "It's very distressing on these young girls, and their families and their rabbis that are trying to look out for the community."

The school's staff and students "strictly" observe "Orthodox Judaism" and "shun the use of internet and internet-enabled devices," the court documents state. For this reason, students and staff do not have internet access or smart phones, and remote learning by means of those devices "is simply not an option," according to court documents.

Further, the school's religious teachings are meant to be conducted in a private setting with teachers exemplifying how to pray and study properly, which "cannot be done virtually," the documents state. The applicants also argue attending school is a matter of religious obligation.

Atkinson said "the ideal solution," which the school, students and parents are requesting, is students be allowed to attend classes of no greater than 10 people. The school says it will require students to come from homes where both parents have received one dose of the vaccine and wear masks. The school also says it has the capacity to provide Health Canada-approved rapid antigen tests to its students daily.

Yigal Rifkind, another lawyer representing the school, asked Toronto Public Health on April 11 to provide staff and students with telecommunication equipment so they can learn remotely. The accommodation was denied by letter on May 13. In the letter, Nicole Welch, director and chief nursing officer for Toronto Public Health, said the school is responsible for its own compliance with public health restrictions, and noted

that "internet-based instruction is not the only method available for providing remote teaching and instruction."

With COVID-19 cases on the rise amid the pandemic's third wave, the province announced April 12 that elementary and secondary schools would move to remote learning indefinitely, beginning April 19.

On May 6, Toronto's medical officer of health, Dr. Eileen de Villa, issued a new public health order to "enhance" the provincial rules, limiting in-person attendance of school-aged children across all education settings, including independent religious schools, not just those within the meaning of the Education Act as outlined by the provincial Lockdown Regulation.

According to an affidavit by Chaya Suri Adler, the school's vice-principal, the public health order "essentially closed the loophole (which allowed Jewish institutions to have students in class and claim they were there for the purposes of prayer)."

The order prohibited independent religious schools like Bnos Bais Yaakov High School from remaining open as places of worship and holding religious services for children.

Yeshiva Yesodei Hatorah, another Orthodox Jewish school, is also challenging the public health order, filing legal documents Thursday in the Ontario Superior Court of Justice alleging Toronto and the Ontario government have harmed the religious rights of students. The school was reported to Toronto Public Health in April by Coun. Michael Colle, who represents Eglinton-Lawrence, after area residents complained the school was "fully operational" with students going to and from school.

Public health has not formally fined Bnos Bais Yaakov High School, Atkinson said.

On May 13, Toronto Public Health sent the school a letter of non-compliance. The letter says 100 school-aged children were observed entering the school the morning of May 12 and again on May 13, not wearing masks.

The letter indicated if the school continues to disobey the city public health order and provincial Lockdown Regulation, the fine could be as much as \$100,000 for individuals, \$10 million for corporations and \$500,000 for individuals who are officers or directors of a contravening corporation.

The school is prepared to pay into court security an amount of \$20,000 pending the outcome of litigation to cover the costs of the fines which may be accruing daily, according to Adler's affidavit.

Toronto Public Health legal services said "the city does not directly comment on matters that are before the courts."

In an email to Rifkind and Atkinson dated May 18, the medical officer of health and the City of Toronto's counsel, solicitor Cara Davies, said the Superior Court of Justice "does not have jurisdiction to hear this matter" and that the review of the public health order is within the jurisdiction of the Health Services Appeal and Review Board.

A case management conference was heard Friday morning with counsel for Bnos Bais Yaakov High School, Yeshiva Yesodei Hatorah and the City of Toronto. All agreed that the applications should be heard by the Divisional Court.