



Court of King's Bench of Alberta

Citation: Ingram v Alberta (Chief Medical Officer of Health), 2023 ABKB 453

Date:
Docket: 2001 14300
Registry: Calgary

Between:

**Rebecca Marie Ingram, Heights Baptist Church, Northside Baptist Church, Erin
Blacklaws and Torry Tanner**

Applicants

- and -

**Her Majesty the Queen in Right of the Province of Alberta and
The Chief Medical Officer of Health**

Respondents

**Reasons for Judgement
of the
Honourable Justice B.E. Romaine**

I. Introduction

[1] This application involves challenges to certain orders enacted by the Chief Medical Officer of Health for Alberta (CMOH), Dr. Deena Hinshaw, with respect to the Covid-19 pandemic (the “impugned Orders”), both on a constitutional basis and on the basis that the orders were *ultra vires* the *Public Health Act* RSA 2000, c. P-37.

[2] I find that the impugned Orders were *ultra vires* the *Public Health Act*.

[3] The *Public Health Act* requires that decisions with respect to public health orders must be made by the CMOH, or her statutorily- authorized delegate. The final decisions implemented by the impugned Orders in this case were made by the cabinet of the government of Alberta or by committees of cabinet. While the CMOH made recommendations and implemented the decisions of the cabinet and committees through the impugned Orders, she deferred the final decision making to cabinet.

[4] Although, Dr. Hinshaw was maligned during the pandemic and afterwards as the symbol of the restrictions, she was not in fact the final decision-maker. The delegation of her final decision-making authority to cabinet is not permitted by section 29 of the *Public Health Act*.

[5] However, had the impugned Orders been validly enacted by the CMOH, they would not have been, however, are not unconstitutional. While they may have infringed certain of the Applicants’ rights under the *Canadian Charter of Rights and Freedoms*, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11 and the *Alberta Bill of Rights*, RSA 2000, c A-14, these limitations were amply and demonstrably justified as reasonable limits in a free and democratic society pursuant to section 1 of the *Charter* and that they were enacted pursuant to a valid legislative purpose.

II. The Hearing Order

[6] On August 6, 2021, the case-management Justice, Kirker J, as she then was, granted an Oral Hearing Order for this application that, among other provisions, set out the following directions:

- A. The type or nature of the application to be heard at the oral hearing is an Originating Application for the following relief:
 - i. a declaration that all provisions of Alberta’s CMOH’s orders as described in Schedule “A” of the Originating Application are of no force and effect as they offend sections 1(a), 1 (c), 1 (e) and 1 (g) of the *Alberta Bill of Rights* and are accordingly *ultra vires* the

Conclusion

[520] In summary, I find that the impugned Orders are *ultra vires* section 29 of the *Public Health Act* in that the final decision makers were the cabinet and committees of cabinet, rather than the CMOH or one of her statutorily authorized delegates.

[521] I have found that, in addition to the concessions made by Alberta with respect to the *Charter* rights, the impugned Orders infringed Ms. Tanner's section 2(a) *Charter* rights. There was no infringement of any of the Applicant's section 7 rights as they were enacted pursuant to a valid legislative purpose.

Page: 82

[522] However, if I am incorrect with respect to whether the impugned Orders are *ultra virus* the *Public Health Act*, these infringements were amply justified as reasonable limits in a free and democratic society pursuant to section 1 of the *Charter*.

Dated at the City of Calgary, Alberta this 31st day of July, 2023.



B.E. Romaine
J.C.K.B.A.