

Action No.: 2001-14300
E-File Name: CVQ22INGRAMR
Appeal No.: _____

IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE OF 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

H E A R I N G
(Excerpt)

Calgary, Alberta
February 16, 2022

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1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta

2
3
4 February 16, 2022

Morning Session

5
6 The Honourable Justice Romaine

Court of Queen's Bench of Alberta

7
8 J. R. Rath (remote appearance)

For R. Ingram

9 L. B. Grey, QC (remote appearance)

For Heights Baptist Church, Northside Baptist
Church, E. Blacklaws and T. Tanner

10
11 N. Parker (remote appearance)

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

12
13
14 N. Trofimuk (remote appearance)

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

15
16
17 B. LeClair (remote appearance)

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

18
19
20 M. Palmer

Court Clerk

21
22
23 **Discussion**

24
25 THE COURT:

Okay. Good morning. Okay. We are going to
have to start this morning with a further discussion with respect to Mr. Rath's letter of
October 5th and the issue of whether or not there was adequate notice to the Crown of the
plaintiff's intention to add September directives to the list of matters to be dealt with. I
emailed Mr. Parker and Mr. Rath at a very early time this morning, I'm sorry for that,
because I determined that I had never received a copy of that October 5th letter. It turns
out that the letter went to my backup assistant, who wrote back to the parties saying that
Justice Poelman was the case management justice and asking whether this should go to
him. And then it appears from what Mr. Parker has sent me, everyone agreed that it should
go to Justice Poelman and Mr. Parker has indicated to me that he did not receive anything
further from Justice Poelman. Mr. Rath, are you aware of any -- I have been trying to reach
Justice Poelman but I haven't yet. Did something happen with Justice Poelman with respect
to this letter?

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39 MR. RATH:

Part -- I'm not sure, My Lady. I'm going to have
to make investigations and enquiries at our end. I haven't seen your email. I haven't had
the opportunity of reviewing this email chain. What was happening at the time when this

1 was going on, the correspondence on this file was being managed by a lawyer in our office
2 who subsequently left because of an opportunity to acquire an interest in a real estate in
3 Calgary. So I need to determine (INDISCERNIBLE) to which this has fallen through the
4 cracks at our end but, certainly from my perspective, I haven't seen a response and certainly
5 I drafted -- or I was aware of the letter that went on the 5th and at my -- you know, at my
6 end -- you know, until we investigate further at our end, I can't provide any further
7 (INDISCERNIBLE)
8

9 THE COURT: Okay. Well, I think it's essential that I know
10 what happens with this letter because I can tell you that my decision on whether or not to
11 allow in the two directives depends on whether there was any follow-up with this letter and
12 with Justice Poelman. I promised you a bottom line decision today so I can tell you that
13 without this letter I would not be inclined to allow the inclusion of the two September
14 directives into this hearing. So I think it's important, Mr. Rath, for you to get to the bottom
15 of this as quickly as possible. I don't know what to suggest to you. Perhaps you could
16 take an hour or so, right now, to --
17

18 MR. RATH: I think -- I think that would be helpful, My Lady,
19 and we'll -- you know, we'll happily undertake to do that. I mean it's --
20

21 THE COURT: Okay.
22

23 MR. RATH: You know, that -- that being said, we would note
24 to you that we did reference the -- the two (INDISCERNIBLE) September orders in our
25 reply factum that was served on my friend on the (INDISCERNIBLE) of September, so --
26

27 THE COURT: I know you did --
28

29 MR. RATH: (INDISCERNIBLE)
30

31 THE COURT: I know you did because I've had an opportunity
32 to go through that, but I also note that the Crown's factum of September 14th listed all of
33 the directives that they believe to be challenged in paragraph 6 of that. Their list does not
34 include the CMOH order of 42-2021 or order 43-2021. Then you subsequently filed a brief
35 later - I'm just trying to see if I can get to the date - where you do reference those too, but
36 I can't see -- yeah, the 21st day. So after the Crown had indicated in their factum that these
37 were the restrictions that they understood to be challenged and warning that the *Judicature*
38 *Act* required parties challenging the constitutionality to provide reasonable particulars of
39 the constitutional argument, which included the provisions being challenged, et cetera. In
40 essence, you're saying by putting it in paragraph 10 of your brief, you thought that that was
41 giving sufficient particulars?

1
2 MR. RATH: Certainly, My Lady. Our position throughout,
3 and the Crown has known this, is that all of the orders up to the date of (INDISCERNIBLE)
4 are in issue. The fact that Mr. Parker constantly sings the opposite refrain doesn't change
5 our position and hasn't changed our position throughout, including the position that we've
6 taken repeatedly in the pleadings in this matter which frame the matters for hearing in trial,
7 regardless of whatever self-serving arguments Mr. Parker wants to make in his documents.
8

9 THE COURT: Well, I'm sorry, but --

10
11 MR. PARKER: Can I speak, Justice Romaine, please?

12
13 THE COURT: Mr. Parker, yeah, go ahead.

14
15 MR. PARKER: My friend referred to pleadings and, again, reply
16 factum, not pleadings, supplemental particulars that don't cover this, but my friend seeks
17 to say they cover it, not pleadings. The letter of October 5th asks for leave, said it was their
18 position. It seemed to be their position (INDISCERNIBLE) adjournment which seems to
19 confirm this wasn't their position before the adjournment.
20

21 In terms of reasonable notice, I mean I expect my friend will come back and confirm that
22 they haven't heard from Justice Poelman and, you know, we left it -- I think when we look
23 at this email chain that they had written to the Court, obviously it looked to us like it had
24 been received by both you and the case management justice and there was no response
25 forthcoming, which seemed to us to say, Bring your application, and we would have dealt
26 with it then and we would have opposed it because we had already gone through a lengthy
27 process of straightening out the actual pleadings here so that the Court had sufficient detail
28 of the actual issues before it. We demanded supplemental particulars, which we received,
29 and we asked and those were attached to the oral hearing order for your benefit. So, you
30 know, at that point, if they had brought the application, we would have certainly opposed
31 it, but they didn't. In any event, I hear what you're saying and I hear what you're saying if
32 they did receive the response, having not received the response, which again I expect we'll
33 have the confirmation of within the hour, you know, where do you see this going, I guess?
34 Are you able to tell us that now, Justice Romaine?
35

36 THE COURT: Yes. I hear you, Mr. Rath, you are arguing what
37 you argued yesterday. You're adding a few things, Mr. Parker. I had the opportunity last
38 night and early this morning to go through all of the documents that you had referenced in
39 your arguments and, as I said, I can tell you that unless some action was taken with respect
40 to this October 5th letter, some follow-up by your office, Mr. Rath, some kind of
41 application, which appears unlikely, then my decision would be not to allow the two

1 September directives to be part of this hearing. I'm giving you this one last chance, Mr.
2 Rath, to show me that perhaps there was some follow-up before I make that decision final.

3
4 MR. RATH: We'll take a look in the correspondence at our --
5 our end, My Lady. I hear the direction you're going, but we would point out that the
6 pleadings do, in fact, contain a provision that indicates that it's the orders -- all of the orders
7 after March 20th that are at issue, so. But anyway, we'll take -- we'll take a look at our
8 correspondence and we'll revisit it and we'll await your decision. You know, we'll see
9 where we end up with your decision and we'll go from there.

10
11 THE COURT: Yes. Okay.

12
13 MR. RATH: Thank you.

14
15 THE COURT: Okay. So I guess we'll adjourn then. How long
16 do you need, Mr. Rath?

17
18 MR. RATH: You'd suggested an hour. We'll take a look at
19 what we can find and, if we're -- if we're sooner than that, we'll advise the clerk, so.

20
21 THE COURT: Okay. Well, let's just set a time because, of
22 course, there's other people that would have to be --

23
24 MR. RATH: Right.

25
26 THE COURT: Okay. So it's 9:46.

27
28 MR. RATH: 10:45 (INDISCERNIBLE)

29
30 THE COURT: 10:30? 10:45? Okay. 10:45. So --

31
32 MR. RATH: Just a quick question. We wanted to reach out -
33 - we've got Dr. Kindrachuk lined up for 11 AM when he's available. We're obviously not
34 going to be ready for 11 for him. If there's any insight my friends can provide me on how
35 long they expect to be with Dr. Bhattacharya in redirect, I'll pass that on and give an update
36 to Dr. Kindrachuk.

37
38 MR. GREY: Madam Justice, good morning. It's Leighton
39 Grey here.

40
41 THE COURT: Mr. Grey.

1
2 MR. GREY: I would estimate no more than 45 minutes.
3
4 THE COURT: Okay. Mr. Rath?
5
6 MR. RATH: I'll be less than that. No more than half an hour.
7
8 THE COURT: Okay. Does that help, Mr. Parker?
9
10 MR. PARKER: That's very helpful. Thank you very much,
11 counsel, I appreciate that.
12
13 THE COURT: Okay. We're adjourned to 10:45. Thank you.
14
15 (ADJOURNMENT)
16
17 THE COURT: Okay. Thank you. Mr. Rath, what have you
18 discovered?
19
20 MR. RATH: Well, my friend Mr. Grey has forwarded an
21 email to the Court, My Lady, that we'd like you to consider. I'm having an issue right now
22 trying to track down Mr. Rejman with regard to this matter, because this is his
23 correspondence. (INDISCERNIBLE) at my end, what I can advise the Court is that I need
24 more time to sort all of this out and, given the importance of this matter
25 (INDISCERNIBLE) so that we can make the proper enquiries and, if necessary, file an
26 application under rule 365.4 to amend pleadings at trial because, you know, at this point if
27 those orders of Dr. Hinshaw from September which we thought are in are ruled by the
28 Court to be out, I don't even know (INDISCERNIBLE) --
29
30 THE COURT: I can't hear you, Mr. Rath. You're breaking up.
31
32 MR. RATH: Well, I said I don't even know if -- if the
33 September orders that we believed to have been in are out, that there's any purpose in
34 continuing with this proceeding. So given -- given the import of everything that we're
35 dealing with, we'd -- we'd like 24 hours to sort this out and make the appropriate enquiries
36 and applications, if necessary.
37
38 THE COURT: Okay. Mr. Parker, I'm just looking, but I haven't
39 received your email yet.
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41 MR. RATH: It was Mr. -- it was Mr. Grey's email --

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THE COURT: Oh.

MR. RATH: -- (INDISCERNIBLE) assistant Ms.
(INDISCERNIBLE) had indicated she forwarded it to you.

THE COURT: No, I don't have that either. Oh, wait a minute.
I'm sorry. Sorry, I see it here.

MR. GREY: Yeah. Yeah.

THE COURT: Okay.

MR. GREY: It's -- it's nothing magnificent, My Lady, it
simply says what Mr. Rath has already told you.

THE COURT: Okay. Okay. Mr. Parker then?

MR. PARKER: Thank you. Yes. We received the email. The
concern is the timing and we've got six witnesses to put up. Dr. Kindrachuk was supposed
to start at 11, we were hoping. We pushed him back. We've got 2 and a half hours with
him tomorrow because we do have a full day scheduled with him. You know, I think we're
kind of at the point of no return here if we take an adjournment. We're still hopeful, based
on the existing time estimates, that we can get all the evidence in by the 24th, the last
scheduled day. There wouldn't be time for the closing arguments as planned but, again,
the proposal was to get the evidence in, find dates in April that you and counsel are
available for, come back and argue it at that point. But if we -- if we spend a day, today,
without any witnesses going forward, then that schedule -- I just don't think we can get the
-- the evidence in. We've also been -- and our witnesses have been incredibly patient, as
Mr. Trofimuk has communicated, and -- and rescheduled and rescheduled again, and that's
part of trial obviously, you have to adjust, but -- and so, you know, to go back and
reschedule now, the present schedule we were hoping, as we say, Dr. Kindrachuk done
today. If not today, because a full day was scheduled, tomorrow with 2 and a half hours
and then use the time tomorrow as best we can, hopefully get at Dr. Zelyas, possible Dr.
Balachandra and then come back with Dr. Hinshaw on Friday and Tuesday, Wednesday of
next week. But, again, if we lose today, then that whole schedule changes and I think this
-- this trial, the evidence, doesn't even get in within the time we've currently got scheduled.
So that's my concern on that point.

The other thing I would say is, you know, the -- the Crown's being consistent here. This
was not an issue that we saw as being a legitimate issue. That's still the Crown's position

1 based on everything you've looked at. And, you know, I would say we've not seen anything
2 from the Court or from Mr. Rejman after the correspondence I sent you this morning at --
3 after you contacted me and I -- my -- I don't imagine -- I can't imagine what my friends are
4 expecting to find from Mr. Rejman that they can't already confirm between now and
5 tomorrow such that they need an adjournment. So that's -- that's the respondent's position
6 on this request.

7
8 MR. RATH: Madam Justice, if I may, to be of assistance to
9 my friend, I think we can pick up quite a bit of time here going forward and certainly, given
10 that the issue lies on me, I'm -- I'm prepared on behalf of my clients, given the importance
11 of this issue, to certainly do my best to -- to limit cross-examination of my friends'
12 witnesses to get -- to keep us on schedule or get us back on schedule. I would note,
13 however, for the record that, you know, we are where we are right now further to my friend
14 taking at least 100 percent more time than he initially anticipated to cross-examine Dr.
15 Bhattacharya so I don't know how much -- you know, (INDISCERNIBLE) additional full
16 day, I don't know how much this should be blamed on -- on us, given the importance of
17 these issues. Certainly, to help my friend, I don't intend to be more than 45 minutes to an
18 hour with Dr. Kindrachuk given the quality -- what we consider to be the quality of his
19 evidence, I don't believe my friend Mr. Grey is going to be much longer either, so I think
20 we can pick up a half day there and we can pick up time certainly as we go through and I
21 can certainly, given the fact that we've scheduled Dr. Hinshaw for -- for 4 days now, I can
22 certainly --

23
24 MR. PARKER: No, sorry, we -- we had -- originally had 2 days
25 -- sorry to interrupt. I just want to --

26
27 THE COURT: No.

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29 MR. PARKER: (INDISCERNIBLE)

30
31 MR. RATH: Mr. Parker, if you let me finish.

32
33 THE COURT: Go ahead, Mr. Rath.

34
35 MR. PARKER: We don't have 4 days scheduled is what I wanted
36 to interject. I'll let my friend continue. Sorry, I just -- may I speak to that, Justice Romaine?

37
38 MR. RATH: (INDISCERNIBLE)

39
40 THE COURT: Okay. Mr. Rath, please -- and Mr. Parker. Mr.
41 Rath, please finish with what you're saying and then, Mr. Parker, I'll call on you.

1
2 MR. RATH: Thank you, My Lady. And, you know, and what
3 I would do -- what I was going to say is certainly with regard to Dr. Hinshaw, you know, I
4 can -- I can cut back on my cross-examination, you know, by as much as half a day to pick
5 up an additional half a day. So, you know, our -- in -- in our view, the requested
6 adjournment given the importance of this issue isn't something that should -- should in any
7 way unduly prejudice anyone with regard to this hearing, but certainly if the Hinshaw
8 orders are out, there's far -- from September, there's far graver prejudice to our clients than
9 there are to my friends, given that anything that would arise from that my friend has already
10 indicated on the record to be cured by an adjournment and my friend providing additional
11 evidence as he'd indicated, you know, in -- in his previous submissions to the Court. Those
12 are our submissions. Thank you.

13
14 THE COURT: Okay. Mr. Parker?

15
16 MR. PARKER: Thank you. I'm just going to start with that last
17 point. I said if these went in, we would be seeking an adjournment. I didn't say that would
18 cure any prejudice. I said that's what we would have to do because, obviously, evidence
19 would need to be filed. There's no evidence from the applicants before the court in respect
20 to the September orders either and so, seeing that everybody would need an adjournment
21 in that case.

22
23 I just -- and my apologies for interjecting, but my friend said we've got 4 days and we don't
24 presently. We had agreed in -- in the 10 days that there would be 2 days set aside for Dr.
25 Hinshaw. Then during the first several days my friends indicated that they would require
26 more and I heard 4 days. I was actually told it was 3 to 4 days after the fact, but I did
27 request and obtain 4 days for Dr. Hinshaw, which was to be tomorrow and Friday and
28 Tuesday and Wednesday, recognizing Monday's a holiday, but we have other witnesses
29 that we wish to put up before Dr. Hinshaw and, because of that, we now are into 3 days,
30 Friday, Tuesday, Wednesday, and so that's where we are with Dr. Hinshaw. That's all I
31 wanted to comment on, just so there was no confusion on my friend's part as to the present
32 timing and availability of Dr. Hinshaw. But I think, beyond that, unless there's anything
33 you wish to hear from me from on this, Justice Romaine, I've already made the submissions
34 that the respondents have on this adjournment request.

35
36 THE COURT: Okay. Thank you. Mr. Grey and Mr. Rath, we
37 are running short of time, we are far behind and I'm not going to point a finger at anybody
38 for this. There have been some interesting issues brought up during the course of this
39 hearing so far. I will give you until 1:00 today to try to reach -- I'm sorry, I can't remember
40 the name of the lawyer in your office, Mr. Rath, but I have also received from Justice
41 Poelman all the materials that he has. I haven't been able to see anything to indicate, so

1 far, that he heard any kind of application on this matter so I'll look at them again and at
2 1:00 if you will just let me know what you have discovered and I'll make the decision and
3 then we can proceed to possibly have --

4
5 MR. RATH: Madam --

6
7 THE COURT: Yes.

8
9 MR. RATH: -- Madam Justice, before we -- if -- if I may, I
10 was -- I would like to refer to you, and this is what I need to -- what I need to confirm with
11 Mr. Rajman, if I may. We didn't suggest in our October 5th letter that we needed to bring
12 an application to bring in the September orders. We suggested that we might need leave
13 of the court for additional evidence with regard to the new orders, but my recollection,
14 which I intend to confirm with Mr. Rajman before 1:00 and provide an affidavit if
15 necessary, my recollection is that we -- we didn't pursue an application for additional
16 evidence because in our view the onus was on the Crown to justify those new orders and it
17 was for the Crown to make -- to bring new evidence if necessary. So I'd like you to consider
18 that in the interim while we're trying to sort the rest of this out, but certainly there's nothing
19 in that October 5th letter or any of the correspondence with regard to Justice Poelman that
20 indicates that we were either obligated (INDISCERNIBLE) to bring an application to either
21 amend the pleadings or provide my friend with further particulars. It's particularly bizarre
22 for my friend to suggest that the applicants or the plaintiffs have an onus to bring an
23 application to provide my friend with further particulars. So, anyway, I'll leave you with
24 that --

25
26 THE COURT: Okay.

27
28 MR. RATH: -- we'll leave it until 1:00 --

29
30 THE COURT: I will, Mr. Rather, for everybody's edification,
31 your letter says, it starts: (as read)

32
33 Given that new CMOH orders have been ordered, it is our position
34 that they are also covered in the originating application, we
35 therefore kindly request leave of this Honourable Court to file a
36 new expert report in direct rebuttal to these new public health
37 measures, the Restrictions Exemptions Program which constitutes
38 a prima facie vaccination passport. We further seek leave of this
39 Honourable Court to file a further supplemental affidavit for the
40 applicant, Rebecca Marie Ingram.
41

1 That certainly sounds to me like you recognize in your letter that, if these two orders are to
2 come in, you will have the need to file additional evidence and you're seeking --
3
4 MR. RATH: Right. And we --
5
6 THE COURT: -- and you --
7
8 MR. RATH: That's right. And we can --
9
10 THE COURT: But --
11
12 MR. RATH: We considered that position, My Lady, and my
13 recollection is that we didn't make that application because the onus is on the Crown under
14 section 1 to justify those infringements so we didn't pursue that application. So, but
15 anyway, I'll leave it at that and --
16
17 THE COURT: Okay.
18
19 MR. RATH: -- we'll provide further (INDISCERNIBLE)
20 1:00.
21
22 THE COURT: Okay. Okay.
23
24 MR. RATH: Thank you.
25
26 THE COURT: Thank you.
27
28 MR. RATH: And, sorry, at 1:00, Dr. Bhattacharya, is he
29 available to continue redirect, Mr. Leighton -- Mr. Grey?
30
31 MR. GREY: Yes, he is.
32
33 THE COURT: Yeah. Okay.
34
35 MR. RATH: Thank you, Sir.
36
37 THE COURT: Okay. Thank you.
38
39 MR. GREY: Thank you.
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41 MR. RATH: Thank you.

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PROCEEDINGS ADJOURNED UNTIL 1:00 PM

1 **Certificate of Record**

2
3 I, Michelle Palmer, certify that this recording is the record made of the evidence in the
4 proceedings in the Court of Queen's Bench, held in courtroom 1702, at Calgary, Alberta, on
5 the 16th day of February, 2022, and that I was the court official in charge of the sound-
6 recording machine during the proceedings.
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1 **Certificate of Transcript**

2
3 I, Lori Nelson, certify that

4
5 (a) I transcribed the record, which was recorded by a sound-recording machine, to the best of
6 my skill and ability and the foregoing pages are a complete and accurate transcript of the
7 contents of the record, and

8
9 (b) the Certificate of Record for these proceedings was included orally on the record and is
10 transcribed in this transcript.

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14
15 Lori Nelson, (Operating as Pro-to-type Word Processing)

16 Order: TDS-1001000

17 Dated: February 17, 2022

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