

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

Transcript Management Services
Suite 1901-N, 601-5th Street SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392
Email: TMS.Calgary@csadm.just.gov.ab.ca

This transcript may be subject to a publication ban or other restriction on use, prohibiting the publication or disclosure of the transcript or certain information in the transcript such as the identity of a party, witness, or victim. Persons who order or use transcripts are responsible to know and comply with all publication bans and restrictions. Misuse of the contents of a transcript may result in civil or criminal liability.

TABLE OF CONTENTS

| Description | | Page |
|---------------------------------|-------------------|------|
| February 16, 2022 | Afternoon Session | 1 |
| Submissions by Mr. Rath | | 1 |
| Submissions by Mr. Grey | | 4 |
| Submissions by Mr. Parker | | 4 |
| Submissions by Mr. Rath (Reply) | | 5 |
| Decision | | 6 |
| Certificate of Record | | 12 |
| Certificate of Transcript | | 13 |

1 Proceedings taken in the Court of Queen's Bench of Alberta, Courthouse, Calgary, Alberta
2

3
4 February 16, 2022

Afternoon 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 of Health

12
13
14 N. Trofimuk (remote appearance)

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

15
16
17 B. M. LeClair (remote appearance)

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

18
19
20 M. Palmer

Court Clerk

21
22
23 THE COURT:

Okay. Good afternoon, everyone. I guess will
start with Mr. Rath. Were you able to determine anything further, Mr. Rath?

24
25
26 MR. RATH:

Yes. I'll be happy to speak to that, but did you
also receive the notice of application that we prepared, Madam Justice?

27
28
29 THE COURT:

Yes, I did.

30
31 **Submissions by Mr. Rath**

32
33 MR. RATH:

Okay. Thank you. So, yes, I've gotten a hold of
Mr. Rejman and his recollection is the same as mine, that we were of the view throughout
that the pleadings as drafted in the procedural orders encompassed the CMOH orders 42-
2021 and 43-2021, and that's why we referred to them in our reply, and that when we were
writing -- talking about potentially filing new evidence, that was the only issue that we
thought was pending before the Court. And then when Mr. Trofimuk wrote our -- wrote
our office and we were corresponding back and forth between (INDISCERNIBLE) and
said, Hey, Martin, from the respondents' views, the issues raised in your letter are probably
best dealt with by a case management justice. Our understanding was that there was an

1 issue with regard to CMOH orders 42 and 43 forming part of the pleadings
2 (INDISCERNIBLE) anybody requiring particularization that those were issues for Alberta
3 and the issues for evidence were ours and we took the view internally that we didn't need
4 to call evidence because the onus to justify the orders was on the Crown, and that's why it
5 was left the way it was left.

6
7 So, you know, our -- certainly, our internal view here is that there's some shared
8 responsibility with regard to the fact that this matter wasn't dealt with. My friends clearly
9 didn't respond to the letter of October (INDISCERNIBLE) the issues when they said it was
10 to be dealt with by way of case management, they didn't follow up on it, either, and,
11 obviously, there's a great deal of confusion that now exists as a result, but we certainly
12 don't -- you know, we certainly (INDISCERNIBLE) responsibility for it. The only -- the
13 only motion that we were speaking about was a motion with regard to evidence and we
14 decided internally we didn't need to pursue a motion for evidence because the onus to
15 justify the restrictions under section 1 of the *Charter* and under the *Oakes* test clearly lies
16 with the Crown and that remains our position today.

17
18 So that's -- that's the best I can tell you. In order to clarify matters, jointly with my friend,
19 Mr. Grey, we had filed an application for an amendment of pleadings, if necessary, at trial
20 pursuant to rule 365(4) and we're prepared to speak to that either today or tomorrow,
21 depending on what my friend wants to do.

22
23 THE COURT:

Okay. I'm having a little trouble following you.

24 You are referring to the onus on the Crown to -- if it gets to the question of whether or not
25 section 1 of the *Charter* applies, you're speaking about the onus on the Crown to establish
26 that; is that correct?

27
28 MR. RATH:

Well, I'm -- we'll, I'm speaking -- I'm speaking of
29 two things, Madam Justice. The first thing I'm speaking of is if my friend is going to be
30 standing up and saying, Well, we have a right, you know, to -- to demand particularization,
31 we have no issue with regard to their right to demand particularization, they didn't do it.
32 So I'm -- you know, I've been practicing law for 30 years, I have yet to hear of a -- of a
33 motion brought by a plaintiff or an applicant to -- for them to provide further
34 particularization of their view of the pleadings.

35
36 In our view, the pleadings have been clear throughout. They were always intended to
37 capture all of the CMOH orders up to the date of the hearing. We referred to the relevant
38 orders in the context of our reply and that my friend, Mr. Parker, had notice of that and
39 they -- you know, and they're the ones that didn't seek clarification either by letter from our
40 office after receiving our reply or by letter to our office after receiving our letter of October
41 5th, and now, you know, they're -- here we are at hearing and Mr. Grey and I were both

1 shocked at the outset of these proceedings to hear my friend, Mr. Parker, make submissions
2 to the Court that somehow or other these proceedings were limited to the CMOH orders
3 that -- that were in existence prior to the 30th of (INDISCERNIBLE).
4

5 So (INDISCERNIBLE) that there -- there has been any confusion. We don't accept that
6 we are responsible in that regard. Mr. Parker (INDISCERNIBLE) notice of our position
7 since -- since the 21st of September. No steps were taken by the Crown to clarify that or
8 to seek further or better particulars, which we would have happily provided so that this
9 matter could have been argued in case management prior to now.
10

11 As I indicated, when we got Mr. Trofimuk's, you know, collegial correspondence back on
12 the 5th, it simply said, From the respondents' view, the issues raised in your letter are
13 probably best dealt with by the case management justice. Well, Mr. Rejman and I were of
14 the view that, you know, that the only issue in that regard would have been our -- you
15 know, our need for evidence, additional evidence, and we took the internal view that we
16 didn't need it.
17

18 So, you know, this is where we're at, but to the extent that there has been any confusion,
19 you know, in this regard, at that point I would -- I would suggest that it's appropriate that
20 this Court hear our application under rule 364 to either amend the pleadings, if necessary,
21 or, alternatively, hear our application at this point, our joint application to vary the -- the
22 procedural order, because at -- at this point, you know, here we are at hearing and there's a
23 great deal of prejudice and mischief that will arise to the applicants and -- and Mr. Parker
24 has indicated that, to the extent that they need to -- that they need to supply additional
25 evidence, that prejudice can be cured by an adjournment and, you know, we're happy to
26 make -- make further argument on our notice of application in that regard, if necessary, and
27 I'd like to hear from my friend, Mr. Grey, now in support of our -- our submissions.
28

29 THE COURT: The submission to your application to amend,
30 pleadings?
31

32 MR. RATH: Not just for the -- our application to amend, My
33 Lady, it was also Mr. Grey's view and his client's view as at September that all of the
34 CMOH orders up to the date of hearing were subsumed in this and Mr. Grey was as shocked
35 as I was at the outset of these -- at this hearing of Mr. Parker's position that somehow or
36 other the orders were cut off back in June. This isn't -- I'm not the only counsel in this
37 proceeding that's -- that's taking that view and I'd like Mr. Grey to be able to speak to that
38 so the Court can hear it from a voice other than mine.
39

40 THE COURT: Okay. Mr. Grey, go ahead. I heard from you
41 yesterday on this and I received a letter from you.

1
2 MR. GREY: Right. Right.

3
4 THE COURT: Do you want to add anything to that?

5
6 **Submissions by Mr. Grey**

7
8 MR. GREY: I don't have a lot to add, My Lady. I -- I do agree
9 with the position and the interpretation that was -- has been offered by Mr. Rath. Also, it's
10 -- it's obvious that my office did not take any of the steps that Mr. Rath did in terms of
11 sending the October 5th letter and that was based upon our understanding that Mr. Rejman
12 was doing those things on our joint behalf, and so that's the explanation for why we didn't
13 take these steps.

14
15 Our understanding, as has occurred many times throughout this proceeding, at certain times
16 my office has taken the lead in terms of drafting things and corresponding with the Court
17 and this was a shared responsibility. This particular course, if we can call it that, was being
18 undertaken on our joint behalf by Mr. Rejman, but I do join with Mr. Rath in the application
19 that he has filed to seek an amendment of the pleadings at trial.

20
21 And that's everything I have, Madam Justice, subject to your questions.

22
23 THE COURT: Okay. Thank you.

24
25 Mr. Parker?

26
27 **Submissions by Mr. Parker**

28
29 MR. PARKER: Thank you, Justice Romaine. Can you hear me
30 okay?

31
32 THE COURT: Yes, I can.

33
34 MR. PARKER: My first point is that we have experienced
35 counsel on the other side, experienced counsel who say they are shocked that I have taken
36 the position that the orders in issue are from the third and second wave, the third wave
37 going up until June 30th, and our evidence was filed on July 12th. There's some claimed
38 confusion and, with respect, this confusion is very convenient on my friends' part. This
39 position they're taking is not believable. The letter from Mr. Rejman of October 5th says
40 what it says. There is nothing in the pleadings dealing with 42 or 432021. There's nothing
41 in the particulars dealing with them, the particulars came from June 9th. These orders

1 apparently didn't arise until September, 4 days before the original trial was supposed to
2 take place.

3
4 So if we believe my friends, their view is, and they're shocked to find out otherwise, we
5 were going to trial on September 20th, and these orders that deal with the Restriction
6 Exemptions Program, for which no evidence has been called by either side, were to be
7 heard and determined by you during the originally scheduled trial date. They say, Well, I
8 didn't seek particulars, and that that was for me to do because why would they bring an
9 application to particularize their own claim? Of course, if there's nothing in the pleadings
10 or otherwise indicating that these orders are in issue, and, of course, they can, they didn't
11 exist until September 16th, then there's nothing for me to demand particulars of.

12
13 Again, we -- we -- and this is going to be part of my opening statement if we get to it, but
14 we started with Madam Justice Kirker back in December of 2020, did the interim injunction
15 application, and then she asked us right after that, on December 19th, to start putting our
16 mind to a schedule to get us to trial. And then we came back in January and we were served
17 with Dr. Bhattacharya's 2,300 page report and we did that and we said several very lengthy
18 case management meetings where we argued and then she finally hammered out the
19 procedure which got us to filing our evidence, the respondents' evidence, in rebuttal on July
20 12th.

21
22 Yeah, there's -- with respect, there's simply no reasonable basis for the position that my
23 friends are taking. To suggest that these orders were always impugned and were going to
24 be part of the trial at its originally scheduled time is simply not believable, it's not borne
25 out by the evidence, and their claims to be shocked by that should be viewed with suspicion.

26
27 Yeah, those -- I'm sorry, those are all I've got for submissions at this point based on what I
28 just heard. I'll be glad to talk to their application that they served us with over the lunchtime
29 when you would like me to do so. Do you have any questions for me, Justice Romaine?

30
31 THE COURT: No, I don't, thank you. Thank you, Mr. Parker.
32 Okay.

33
34 MR. PARKER: Thank you.

35
36 **Submissions by Mr. Rath (Reply)**

37
38 MR. RATH: If I may in reply? My friend's suggestion -- my
39 friend's suggestion that counsel are in any -- any way (INDISCERNIBLE) application are
40 making any submissions that are -- that are incorrect is simply without merit. We have had
41 catch-all provisions in the application from the beginning, in the amended application and

1 in the second application, to take care of the very contingency that occurred, which was
2 that on the eve of trial that Alberta would largely rescind previous orders that were at issue
3 and replace them with new orders. That was a possibility that was -- that we were aware
4 of throughout, it was raised through case management, and that we thought was covered
5 off in the pleadings by paragraph (n)(i) of the amended statement of claim which states:
6 (as read)

7
8 A declaration that the CMOH orders issued since March 2020
9 regarding business restrictions are ultra vires the *Public Health Act*
10 and have no force and effect.

11
12 We were of the view that that took us up to the date of the hearing, and that was always
13 our view, as -- as was reflected by our reply. Mr. Parker's suggestion that somehow any
14 submissions of counsel need to be looked at with suspicion is simply discreditable and, as
15 far as I'm concerned, inappropriate.

16
17 And those are our submissions.

18
19 **Decision**

20
21 THE COURT: Thank you. Thank you, Mr. Rath.

22
23 As I said, I am prepared to give you my decision on the two September orders after we had
24 cleared up to the extent that we could what happened with the October letter and my
25 decision, bottom line, is that I will not allow those two orders to be part of this hearing.
26 Now, I will follow this with reasons, written reasons, as soon as possible.

27
28 So that takes us to the new application that you have brought over the noon hour, Mr. Rath,
29 the application to amend the pleadings. You suggest there that you would like to argue
30 that application at 9:30 tomorrow morning. Are you prepared to argue it now or you need
31 the time to 9:30 in the morning? I can't hear you, sir.

32
33 MR. RATH: Our preference would be 9:30 tomorrow
34 morning because we want to go through all of the orders that were -- that Mr. Parker says
35 were covered off in -- you know, in his version of the pleadings. And then to
36 (INDISCERNIBLE) --

37
38 THE COURT: I can't hear you.

39
40 MR. RATH: -- the futility of the (INDISCERNIBLE).

41

1 THE COURT: Okay.

2

3 MR. RATH: I'm sorry, I have laryngitis, My Lady. So -- so
4 we -- we want the opportunity to be able to -- to go through all of the orders that were
5 extant, that Mr. Parker says were extant in the pleadings and to the Court, now says they're
6 extant in the pleadings without the September orders, so that we can put together a table
7 for the Court to understand the futility of these proceedings continuing without the
8 requested amendments, and that will take some time.

9

10 As -- you know, as well, we would like some time to prepare, and I'm sure my friend would
11 like some time to prepare and respond as well. So, in our view, an adjournment until 9:30
12 tomorrow morning is appropriate.

13

14 THE COURT: Okay. Mr. Parker?

15

16 MR. PARKER: Well --

17

18 MR. RATH: (INDISCERNIBLE) Mr. Grey first, My Lady, or
19 no?

20

21 THE COURT: Oh, well, I'm assuming that you're doing this
22 jointly.

23

24 Mr. Grey, though, do you wish to add anything?

25

26 MR. GREY: No. Thank you.

27

28 THE COURT: Okay. Thank you. Thank you.

29

30 Mr. Parker?

31

32 MR. PARKER: Thank you, Justice Romaine. In terms of timing,
33 again, I made my submissions, the concerns, before lunch and those remain. I had
34 (INDISCERNIBLE) Dr. Kindrachuk and said, You're not going to be up at 1, maybe 2:30,
35 but we'll see, and then we're now looking at tomorrow where he has a window of 10 to
36 12:30.

37

38 This whole trial is getting thrown off, with respect, by something that should -- should
39 have, if it was really an issue, been raised much earlier. The idea that we were heading to
40 trial in September and that these orders were part of that trial and that I should have known
41 and we should have, I guess, on the 16th, 4 days before, said, Well, we ought to get

1 particulars of those because, obviously, those are part of this trial and we'll -- we'll just run
2 without any new -- I mean, it's -- it's -- I'm sorry, it's -- it's not realistic and -- and so,
3 anyway, those are my submissions on that.
4

5 In terms of when this application should be heard, if my friends can't proceed now, then
6 they can't proceed now. If we're going to respond, we would like until tomorrow. We can
7 get ready to be responding in the morning but, you know, I guess my point about the timing
8 is, if we can find a way to do this without derailing the whole hearing, that would be
9 preferable because that's my concern. And it's not just a concern for this hearing and these
10 issues and -- and these applicants, it's a concern for the other matters that have been waiting
11 for the outcome of this matter, and Associate Chief Justice Rooke has been helpful in -- in
12 case managing and dealing with those issues. And we've also got the number of matters in
13 Provincial Court that are waiting for the outcome of this -- this trial and your decision on
14 the constitutionality of the -- of the CMOH orders that are in issue.
15

16 But, you know, again, we're in your hands, obviously, as to the timing and the -- of the
17 arguing application. We would just ask that we not respond today, which I don't think is
18 happening, but we're glad to be ready to respond tomorrow morning and file brief written
19 submissions to help guide our oral submissions, but if we can do this in a way while we
20 keep the trial on track, that would be -- that would be really good.
21

22 THE COURT: Okay. I am certainly in agreement that we
23 should try to keep the trial on track. Brief written submissions to accompany the oral
24 submissions would be very helpful. I don't know whether you can do that tonight. I could,
25 for instance, say we could start at 10 tomorrow so that you could get me the written
26 submissions before we start the oral submissions. Is that a possibility for everyone?
27

28 MR. RATH: On our side, yes, My Lady.
29

30 THE COURT: Okay.
31

32 MR. GREY: Yes, Madam Justice.
33

34 THE COURT: Yes.
35

36 MR. PARKER: Thank you, Justice Romaine. We -- I'm sorry,
37 we can get you our submissions this evening.
38

39 THE COURT: Okay.
40

41 MR. PARKER: In terms of the timing tomorrow, earlier would

1 be better, but, again, we're in your hands.

2

3 THE COURT: Well, yes, it's just that I need some time to read
4 them, too, you know, and to think about them. Okay.

5

6 Sorry, Mr. Trofimuk. So 10:00 tomorrow. Thank you.

7

8 MR. RATH: Thank you.

9

10 THE COURT: Just before we -- I have received a lot of the
11 documents that I gather counsel have agreed on in terms of --

12

13 MR. PARKER: Yes.

14

15 THE COURT: So --

16

17 MR. PARKER: Sorry, I'll just interject.

18

19 THE COURT: Go ahead.

20

21 MR. PARKER: We're waiting to hear from my friends on
22 agreement. It sounded like we were approaching agreement, but we haven't heard from
23 them the final word. So if they -- you know, if they have anything that would help us out
24 on that now, that would be terrific. If not, hopefully, we can hammer something out offline.

25

26 Mr. Grey, what's --

27

28 MR. GREY: Sorry, Mr. Parker. Which point are you talking
29 about?

30

31 MR. PARKER: Justice Romaine turned to the exhibits --

32

33 MR. GREY: Oh, yes.

34

35 MR. PARKER: -- Mr. Trofimuk has sent to her office, all the
36 exhibits provided to you and Mr. Rath, and we -- we appeared to be approaching -- I was
37 hopeful on an agreement on these and I'm just wondering if we're there or if we can get
38 there soon.

39

40 MR. GREY: I -- yeah, I think we're very, very close. Just a
41 couple of refinements that I'm hopeful that Mr. Trofimuk and I can correspond about. So

1 far, we've made a lot of progress there, so I -- I think that'll be -- that'll be successful.

2
3 The other thing that I'll mention for the benefit of Mr. Parker and his group is that, during
4 the break this morning, I took a look with a view to helping to let's say streamline the
5 evidence and I -- I am looking at some of the affidavit evidence that's been filed on behalf
6 of the respondents. I can confirm that I do not anticipate to have any cross-examination
7 for Dr. Balachandra so, hopefully, that will -- will save some time and trouble for my
8 friends and help to streamline the trial. I can't speak for Mr. Rath, but having reviewed Dr.
9 Balachandra's evidence, it's very straightforward. My friends know it's pretty consistent
10 with Dr. Colville's (phonetic) evidence and so -- and he -- he was not cross-examined and
11 I don't think I need to cross-examine Dr. Balachandra for essentially the same reasons. My
12 friends know what I'm talking about, I'm sure.

13
14 MR. PARKER: Well, thank you, Mr. Grey, that's helpful.

15
16 MR. RATH: And we're -- we're on the same page in that
17 regard, My Lady. And as I've previously indicated, we don't anticipate being very long at
18 all with -- with Dr. Kindrachuk and, you know -- you know, I -- I think my friend's concerns
19 with regard to timing are grossly overstated. So, thank you.

20
21 MR. PARKER: That's good to know. Just, sorry, if I could just
22 throw this out to my friends because that's very helpful and I think you're saying no cross
23 for Dr. Balachandra, am I able to cancel Dr. Balachandra? Is that what I'm hearing,
24 gentlemen?

25
26 MR. GREY: That's what I'm saying, Mr. Parker.

27
28 MR. PARKER: I've got that from you, sir, Mr. Rath?

29
30 MR. RATH: Yeah.

31
32 THE COURT: Okay.

33
34 MR. PARKER: Thank you. And then if you could just update
35 any of your other time estimates, that would be terrifically helpful, as we've been asking
36 for, to just -- to reschedule and then maybe we can get this thing done within the time we
37 have currently planned.

38
39 Thank you very much, Justice Romaine. Thank you, counsel.

40
41 THE COURT: Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

MR. PARKER:
just hear from us once we've tried to --

Did you want to discuss the exhibits anymore or

THE COURT:

No, no, I just wondered where you were on it.

MR. PARKER:

Wonderful.

THE COURT:

Okay. Thank you very much. 10:00 tomorrow.

PROCEEDINGS ADJOURNED UNTIL 10:00 AM, FEBRUARY 17, 2022

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.
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41

1 **Certificate of Transcript**

2
3 I, Carla Novello, 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.

11
12
13
14
15 Pro-to-type Word Processing

16 Order: TDS-1001010

17 Dated: February 17, 2022

18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41