



Protecting citizens' freedoms during a public health emergency

Legislative proposals submitted by the
Justice Centre for Constitutional Freedoms
to Alberta Premier Danielle Smith

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Executive Summary

Without amendments to Alberta's *Public Health Act*, Alberta's Chief Medical Officer of Health (CMOH) is now in a position to exercise near-absolute power over the lives of millions of Albertans, for an indefinite period of time, if he or she determines that a public health emergency exists. This dangerous situation has been exposed as the result of the Alberta Court of King's Bench interpretation of the *Public Health Act* in *Ingram v. Alberta (Chief Medical Officer of Health)*, 2020 ABQB 806 (CanLII).

Two aspects of the *Public Health Act*, as interpreted in the *Ingram* court ruling, are particularly troubling.

First, the Court ruled that elected representatives should have no effective oversight over health orders that violate the fundamental *Charter* freedoms of conscience, religion, expression, association and peaceful assembly. Implicitly, the Court appears to have ruled that the CMOH may, without any oversight from legislators, also violate the *Charter* right to bodily autonomy and privacy by way of vaccine mandates, which impose second-class citizenship on those who decline to get injected.

Second, the Court in its lengthy *Ingram* ruling fails to mention, let alone analyze, the abundant evidence placed before it about the massive harms that lockdowns inflicted on citizens. Without bothering to review the evidence of serious harms to the mental, physical, psychological, spiritual and financial well-being of vulnerable people, Justice Barbara Romaine simply states her general impression that the health orders that violated *Charter* freedoms had salutary benefits that outweighed their deleterious effects. This is an abject failure of the Court to apply Section 1 of the *Charter*, which requires judges to insist that governments justify any violation of *Charter* rights and freedoms "demonstrably" with persuasive evidence.

Justice Romaine did not properly apply the test laid down by the Supreme Court of Canada in *R. v. Oakes*, 1986 CanLII 46 (SCC), which includes a requirement that governments show that their violations of *Charter* rights and freedoms are actually doing more good than harm.

Declaring oneself to be the sole purveyor of "science" is contrary to science itself, because science is a process requiring humility, love for truth, inquiry, transparency and honest debate. It should not take a court action to obtain the actual information that governments rely on to justify restrictions on *Charter* freedoms; this info should be available to the public in real time.

The way to protect Albertans from medical tyranny is to amend the *Public Health Act* and other legislation such that the CMOH will be required to respect the scientific process of inquiry and debate, by transparently providing the public with all relevant scientific information and by facilitating wholesome and necessary debate about the costs and the benefits of any lockdown measures that violate any of our fundamental *Charter* rights and freedoms.

During the time of lockdowns and vaccine passports, the Alberta Government disregarded the constitutional principle of democratic accountability. Our constitution requires that prospective laws be debated, and come into force only after approval by a vote of elected representatives

who are accountable to the people. For the better part of three years, MLAs abandoned to a significant degree their constitutional authority to make laws. MLAs refused to accept responsibility for the restrictions that drove many Albertans into unemployment, poverty, debt, bankruptcy, isolation, loneliness, depression and despair. Instead, while still retaining and exercising ultimate authority over lockdown measures (a key point in the *Ingram* decision), Alberta's cabinet empowered the CMOH to speak new laws into force at news conferences. Accorded a level of deference akin to that enjoyed by medieval monarchs, the CMOH was not required to answer questions from elected representatives about the wisdom, the rationale or the consequences of ever-changing health orders.

To ensure that these egregious violations of civil liberties, human rights and constitutional freedoms do not occur in Alberta again, legislative reforms are in order.

Alberta's *Public Health Act* should be amended to require that the CMOH disclose to the public at all times the specific assumptions, data, and sources for any modelling and for all health orders. The declaration of a public health emergency should be subjected to a free vote of the legislature, taken only after a thorough debate. The public health emergency should automatically expire 30 days after the vote, renewable for further 30-day periods only by subsequent votes, with each such vote taking place only after ample opportunity for public debate, both inside and outside of the Legislature.

The CMOH should be required by the *Public Health Act* to appear weekly before an all-party committee of MLAs, to answer questions and to provide information as may be requested, including all data, assumptions, studies and reports on which the CMOH is relying. If restrictions on *Charter* freedoms are truly based on sound evidence, then those who propose or impose these restrictions have nothing to fear from transparency and accountability.

Alberta's *Public Health Act* should require the government to subject public health regulations and orders to an ongoing and comprehensive cost-benefit analysis. The government's monthly reports should measure, explain and report on the specific impact of public health orders on mental health (alcoholism, drug overdoses, depression, spousal abuse, child abuse, suicide), on physical health (cancer, obesity, all-cause mortality) and on unemployment, bankruptcies, homelessness, and public debt. The government should also be required by law to monitor closely the quality of care received by seniors in long-term care facilities, including their right to receive frequent in-person visits from loved ones.

The right of every individual to choose to receive or not receive medical treatments (including a vaccine) should be added to the *Alberta Human Rights Act* by adding "medical status" as a prohibited ground of discrimination.

In order to ensure that scientific debate and inquiry are fully respected, legislation should require the College of Physicians and Surgeons of Alberta to respect fully the right of all doctors to research, write and speak freely. Doctors should not have to fear adverse consequences for expressing heterodox opinions about medical topics, or any other topics. Further, the Colleges must respect the doctor-patient relationship by neither compelling doctors to prescribe treatments nor prohibiting doctors from prescribing treatments. Doctors should not be conscripted into

providing patients with a treatment regime that violates the doctor-patient relationship, including fully informed consent on the part of the patient.

Alberta's *Public Health Act* should also provide that, upon conclusion of a public health emergency, a public inquiry must take place to review the government's emergency-related policies, regulations and health orders, to determine what harms and what benefits resulted.

In light of the failure of courts in Alberta to uphold and protect our *Charter* rights and freedoms during a public health emergency, these legislative reforms are sadly necessary to protect Albertans from suffering egregious violations of their *Charter* rights and freedoms in future.

Defending *Charter* rights and freedoms during lockdowns

The freedoms of expression, association, conscience, religion, mobility and peaceful assembly, along with the right to life, liberty and security of the person, set forth in the *Canadian Charter of Rights and Freedoms*, are the pillars of a free and democratic Canada. Protecting human dignity includes respecting and upholding these freedoms, as well as the *Charter* right of every person to accept or reject, without any form of coercion or duress, medical treatments including vaccinations and any other injections.

In May of 2020, two months after Canada's federal and provincial governments began violating the *Charter* freedoms of association, conscience, religion and peaceful assembly, the Justice Centre for Constitutional Freedoms (jccf.ca) became one of the first groups in Canada to call for an end to lockdowns. From May of 2020 to the present, the Justice Centre has been at the forefront of defending Canadians' rights and freedoms in the face of well-intentioned but unscientific and destructive government policies to combat Covid.

To better protect the *Charter* rights and freedoms of Canadians in future, the Justice Centre urges all Members of the Legislative Assembly to support amending the *Public Health Act*, and other legislation as applicable.

Transparency with the public

- 1) The *Public Health Act* should be amended to require the Chief Medical Officer of Health (CMOH), along with all Alberta government ministries, to disclose to the public at all times the specific sources, assumptions, data, and statistical models in their possession on which health orders are purportedly based.
- 2) Once a public health emergency has been declared, the CMOH must appear not less than once per week at a public hearing before an all-party committee of elected members of the legislature to answer questions. This all-party committee must include at least one MLA from each party that is represented in the Legislature. At these weekly hearings, the CMOH must also provide all data and all medical, scientific and other relevant documents that are in the CMOH's possession, as may be requested by these elected members

Using existing emergency response plans

- 3) The Alberta government should have emergency response plans in place for various forms of public emergency, which can only be deviated from to the extent that new and unanticipated information emerges and politicians transparently justify any such deviation by providing specific data on which their decisions are based.

Free votes and open debate as to a public health emergency

- 4) The declaration of a public health emergency by the CMHO must be subjected to a free vote of Alberta's Legislature, by which this declaration shall be confirmed or denied. Such a vote in the Legislature must be made after a thorough debate on the issue, which may take place only after the CMOH has tabled the reports, data and documents on which she or he relies in support of the declaration. Further, all Members of the Legislative Assembly shall have the right to table additional reports, data and evidence. These reports and documents tabled by the CMOH or by MLAs (or both CMOH and MLAs) must be made public.
- 5) If a public health emergency is confirmed by a free vote of the Legislature, the public health emergency shall expire automatically 30 days after that vote has taken place. A public health emergency can be renewed and continued by a subsequent vote (or by subsequent votes) once every 30 days, to authorize its continuation on the basis of full information.
- 6) The documents on which the CMOH relies as the basis for a declaration of a public health emergency must be made available to all MLAs, and must also be made available to all members of the public by posting them on the government's website, at least three full days (72 hours) prior to such a vote taking place.

Adopting a broad approach to public health and societal well-being

- 7) Alberta's *Public Health Act* should expressly require government officials, both elected and non-elected, to take note of the World Health Organization definition of "health" as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity." In formulating government responses to a public health emergency, elected and non-elected government officials should take into account all aspects and dimensions of human health, including physical, mental, psychological, spiritual, social and economic well-being, and should not focus exclusively on any one threat to physical health.

Ongoing accountability and the proper weighing of harms and benefits

- 8) Alberta's *Public Health Act* must expressly provide that the government subject public health rules, policies, regulations and orders to an ongoing and comprehensive cost-benefit analysis, including assessing the economic, social and public health impacts of public health measures.
- 9) The *Public Health Act* should require that during a public health emergency, whether it lasts for 30 days or longer, the government must provide the public with a comprehensive report at least once per month which evaluates, measures, monitors and explains the impact of public health measures on individuals' mental health (including rates of alcoholism, depression, drug overdoses, spousal abuse, child abuse and suicide), on individuals' physical health (including rates of cancer, obesity and all-cause mortality, and including data on access to diagnostic procedures and surgeries) and on individuals' financial well-being (including data on unemployment, bankruptcies, homelessness and public debt).
- 10) The *Public Health Act* should require that the government's monthly report include data about the quality of care received by seniors in long-term care facilities, including frequent and reliable in-person contact with visitors from outside the facility.
- 11) The government's monthly reports must also evaluate specifically the impact of non-pharmaceutical interventions (e.g., lockdowns, mandatory vaccination policies, travel restrictions) on vulnerable groups, including but not limited to recent immigrants, vulnerable workers, youths, those experiencing cognitive or physical disabilities, those experiencing addiction or substance-abuse issues, prison inmates, children, parents, those experiencing chronic illnesses, and indigenous persons. These monthly reports must weigh the harms associated with non-pharmaceutical interventions against whatever benefits may be associated with these measures, in relation to all Albertans and especially in relation to vulnerable members of society.

Respect for the right to bodily autonomy

- 12) The *Public Health Act* should expressly enshrine the right of every individual to choose to receive or not receive any medical treatment, including a vaccine and any other substance that may be injected or ingested. Neither the CMOH nor the cabinet should have legal authority to impose vaccines on people, whether directly or indirectly.
- 13) An individual's medical history and medical choices should be added to the *Alberta Human Rights Act* as a prohibited grounds of discrimination in employment and in the provision of goods and services to the public. The *Alberta Human Rights Act* should make it illegal to ask people (apart from voluntary or private communications) about their prior medical history and about current, future or prospective treatments. This would not apply to medical doctors and other health care providers who, in the context of providing

treatment to patients, may have a valid medical reason for inquiring about prior medical history and current medications or treatments.

- 14) Provincial legislation should expressly enshrine the *Charter* right to bodily autonomy, including the individual's choice about vaccines and other medical treatments, such that this *Charter* right will be fully respected by colleges, universities, employers, businesses, governments at all levels, and all public and private institutions.
- 15) The *Public Health Act* or the *Alberta Human Rights Act* should provide for a statutory right of civil remedy against any person, government or other body or entity which participates in any form of medical coercion, with "coercion" defined broadly so as to include any direct or indirect threat of any adverse consequence (including the loss of any civil or legal rights) and any failure to obtain informed consent. This would include the threat of job loss and the threat of expulsion from a school, university or other post-secondary learning institution.
- 16) Provincial legislation should be amended to ensure that the College of Physicians and Surgeons respects the scientific process of free inquiry, frank debate and the sincere pursuit of truth. Legislation should require the College of Physicians and Surgeons and other professional associations which regulate nurses, midwives, chiropractors, ophthalmologists, etc. to respect fully the right of all their members to research, study, speak and write freely, without facing any direct or indirect adverse consequences for expressing their beliefs and conclusions. Further, the College and other governing bodies must respect the doctor-patient relationship (and analogous relationships between the patient and other health care providers) by neither compelling doctors (or other health care professionals) to prescribe any treatment(s) or provide any advice, nor prohibiting doctors (or other health care professionals) from prescribing any treatment(s) or providing any advice.

Transparency regarding contracts with pharmaceutical companies

- 17) The *Public Health Act* should require that proposed contracts between the Alberta government and pharmaceutical companies, as well as proposed contracts between the Alberta government and the government of Canada pertaining to vaccines and other medical treatments, must be made available to the public prior to being signed, as well as after being signed, by prominently posting this information on government websites, such that all members of the public can easily access this information.
- 18) The *Public Health Act* (or other provincial legislation) should clarify that no pharmaceutical companies are to be protected from liability for their products, including novel or emergency use products. A pharmaceutical company may avoid liability by insisting that all consumers of its products sign a waiver as a condition for using the product, and consumers may choose voluntarily to agree to such a condition. Apart from the voluntary signing of a waiver by the consumer, civil liability for damages should not

be excluded by legislation or by other government action, such as a contract to which the government is one of the parties.

Democratic accountability and access to justice

- 19) Legislation should provide expressly that any government responses to a public health emergency cannot be considered or used as a reason for the suspension of the normal obligations and proceedings of the Legislative Assembly of Alberta. In preparation for future epidemiological events that could disrupt the normal proceedings of the Legislature, plans should be made for remote voting by MLAs, for there to be no disruptions to “opposition days,” for opposition parties to be able to cast non-confidence votes, for MLAs to be able to table order papers and private member bills, etc.
- 20) The *Court of Justice Act* should be amended to clarify that a public health emergency cannot serve as a reason or pretext for Alberta’s provincial courts to limit or restrict, directly or indirectly, access to justice, or to impair the proper and ongoing functioning of courts. Alberta’s courts must have specific plans in place to continue, without interruption, their obligation to provide access to justice to all Albertans.

Mandatory Public Inquiry after conclusion of public health emergency

- 21) Once a public health emergency has ceased to exist for 90 days, the Alberta Government shall commence a public inquiry to conduct a costs-benefits analysis of the government’s emergency-related laws, policies, regulations and health orders, in order to determine what harms and what benefits resulted from the government’s approach. This inquiry should determine the scale or magnitude of the public health emergency, looking at the evidence available at the outset as well as evidence available at the time of the inquiry (post-emergency). This Public Inquiry shall receive evidence for a period of 90 days, and shall release a final report to the public 90 days thereafter, such that an evaluation and analysis of the government’s policies is made available to the public 270 days after the conclusion of the public health emergency.

These submissions were prepared by John Carpay, B.A., LL.B. and other staff of the Justice Centre for Constitutional Freedoms (www.jccf.ca).