

In the Provincial Court of Alberta

Citation: R v Coates, 2021 ABPC 162

Date: 20210607
Docket: E12837926A
Registry: Stony Plain

Between:

Her Majesty the Queen

Crown

- and -

James David Coates

Accused

Decision of the Honourable Judge R.C. Shaigec

Introduction

[1] James Coates is the pastor of Grace Life Church. He refuses to comply with Alberta's COVID-19 laws, claiming that these restrictions violate his constitutional rights.

[2] On December 20, 2020, Pastor Coates defied public health rules by conducting a worship service where in-person attendance exceeded the allowable 15% of fire code capacity. As a result, he was charged with an offence contrary to section 73(1) of the *Public Health Act*.

[3] The constitutionality of the law limiting attendance at places of worship will be decided later in this trial. At issue now is the December 20th enforcement of that law. James Coates contends that his rights were infringed because religious services were unlawfully obstructed, he was charged in an attempt to "censor," and he spent an unjustifiable 35 days in jail.

[4] Were sections 2 or 7 of the *Charter* violated, and if so, what is the appropriate remedy?

Findings of Fact

[5] This stage of the trial proceeded on the basis of an Agreed Statement of Facts and *viva voce* testimony from Janine Hanrahan and James Coates. It is admitted by Pastor Coates that he

committed the offence charged, and his testimony therefore focused on the *Charter* arguments at issue in this case. On all of the evidence, I make the following findings of fact.

[6] Throughout the pandemic, Alberta Health Services (AHS) has received complaints about Grace Life Church. The church has refused to follow public health laws.

[7] In response to these complaints, AHS Inspector Janine Hanrahan spoke with Coates on November 22, 2020, and set out the mandatory measures that aim to reduce the risk of COVID transmission. As the operator of a place of worship, Coates was required by law to implement these practices, which included: limiting attendance, physical distancing, and masking.

[8] Pastor Coates responded by telling AHS that he would not “police” church members.

[9] Ms. Hanrahan next attended at Grace Life Church on December 13th, again because of public complaints. She observed multiple instances of non-compliance with COVID-19 rules, including that in-person attendance appeared to be “double” the allowable limit, which at the time was 15% of fire code capacity.

[10] On December 17th an AHS Executive Order was delivered to Grace Life Church, and Pastor Coates confirmed receipt of the same. The Order again set out the mandatory COVID-19 laws applicable to all places of worship across Alberta.

[11] Ms. Hanrahan then went back to Grace Life Church on December 20, 2020, to confirm compliance with the Executive Order. She was accompanied by two RCMP officers.

[12] To avoid causing disruption, Ms. Hanrahan arrived at the church on December 20th at 10 am, knowing that the Sunday service started at 10:45. Upon arriving she spoke with Pastor Coates who said that she was free to enter the building, but reminded her that obstructing religious services was a crime. Ms. Hanrahan then went to the church balcony and quietly watched. At 10:42 am she counted 178 people in the sanctuary of the church. Only 64 people were permitted to be present as a result of the 15% capacity law. In addition, attendees were not wearing masks, and were not physically distanced.

[13] As the Sunday service began, Pastor Coates drew attention to the RCMP, and led the congregation in applauding the police. Soon thereafter Ms. Hanrahan departed.

[14] The RCMP ticketed Coates later that day under section 73 of the *Public Health Act*.

[15] In the months that followed, the violations of public health laws continued.

[16] On February 7, 2021, Pastor Coates was again charged with breaching the 15% capacity law. This time he was released by police on an undertaking, on condition that he abide by the Chief Medical Officer of Health (CMOH) COVID orders. He refused to sign that undertaking.

[17] On the following Sunday, February 14th, Coates yet again violated public health laws while conducting a worship service at Grace Life Church.

[18] As a result, on February 16, 2021, James Coates was arrested and detained by police. He was charged with offences under the *Public Health Act*, and with breach of an undertaking contrary to section 145 of the *Criminal Code*, all arising from the February 14th worship service.

[19] In the hours following his arrest, Coates had a bail hearing. The Justice of the Peace granted bail, again on condition that he abide by CMOH orders. He refused to sign this release order, maintaining that Alberta's COVID-19 restrictions violated his religious freedoms.

[20] Therefore, James Coates remained in custody.

[21] On March 5th the decision of the Justice of the Peace was upheld: *R v Coates*, 2021 ABQB 179 (*Coates*). However, Pastor Coates still refused to sign his bail order.

[22] Ultimately, Coates was released from custody on March 22, 2021, after he pleaded guilty to breach of an undertaking, contrary to section 5(5) of the *Provincial Offences Procedure Act*. A \$1500 fine was imposed, and all of his outstanding charges, other than the single charge under section 73 of the *Public Health Act* that is the focus of this trial, were withdrawn by the Crown.

[23] In total, 35 days were spent in jail.

[24] James Coates testified about religion, science, and government.

[25] Coates has deep religious convictions, believing in short that "the Bible is true from Genesis to the Book of Revelation," and that Sunday worship is "a matter of obedience to Christ." He defied the law because he felt compelled to "comply with God" rather than "AHS."

[26] In June of 2020, Pastor Coates briefly transitioned Grace Life Church to online services after some congregants tested positive for COVID-19. However, unlimited in-person attendance was then quickly reinstated. As Coates explained, virtual services "alter what worship is," and he became "convinced" that the government response to COVID-19 was an "over-reaction," because this "is not a [real] pandemic." In Coates' words: masking is "hilarious," COVID testing is not "credible," the idea of asymptomatic spread is "folly," and the virus is "no more severe than the flu." In the end, James Coates opined that COVID-19 restrictions are part of an "agenda to transform our nation," that the government is therefore engaging in "civil disobedience," and that Canada has become an "international disgrace."

Rights Analysis

[27] Individual rights and freedoms are not absolute. The *Charter* is a "purposive document," and its purpose is to guarantee the enjoyment of the rights and freedoms it enshrines, "within the limits of reason": *Hunter v Southam Inc.*, [1984] 2 SCR 145 at 156.

[28] Further, Canada is diverse and polycentric. Competing rights and interests must be respected, accommodated and balanced. "[T]he *Charter* protects a complex of interacting values, each more or less fundamental to the free and democratic society that is Canada": *R v Lyons*, [1987] 2 SCR 309 at 326.

[29] At its core this case is about religious freedoms. Freedom of religion protects deeply held personal convictions essential to self-determination, and encompasses "the right to entertain ... religious beliefs ... the right to declare religious beliefs ... and the right to manifest religious beliefs by worship ...": *R v Big M Drug Mart Ltd.*, [1985] 1 SCR 295 at 336.

[30] However, section 2(a) of the *Charter* only shelters beliefs that might reasonably be threatened in more than an insubstantial way, and only after competing interests are weighed:

Alberta v Hutterian Brethren of Wilson Colony, 2009 SCC 37 at para 32 (*Hutterian*); *Syndicat Northcrest v Amselem*, 2004 SCC 47 at para 62 (*Amselem*).

[31] “Freedom of religion is subject to such limitations as are necessary to protect public safety, order, health or morals and the fundamental rights and freedoms of others”: *Ross v New Brunswick School District No. 15*, [1996] 1 SCR 825 at 868.

[32] The *Charter* erects “an invisible fence” around individuals “over which the state will not be allowed to trespass.” The role of the Court is to “map out, piece by piece, the parameters of [that] fence,” recognizing that people are neither wholly independent, nor indisputably subject to the decisions of government. It is “a bit of both”: *R v Morgentaler*, [1988] 1 SCR 30 at 164.

Section 2(a) – Freedom of Religion

[33] The test for determining whether section 2(a) of the *Charter* has been infringed is: (1) whether James Coates possesses sincere religious beliefs; and (2) whether the impugned government conduct interfered, in more than an insubstantial way, with his ability to act on those beliefs: *Hutterian* at para 32; *Amselem* at paras 56-57.

[34] I accept the sincerity of Pastor Coates’ religious convictions. Therefore, my analysis focuses on the second part of the test.

[35] Section 2(a) protects both religious beliefs and the manifestation of the same through “communal institutions”: *Law Society of British Columbia v Trinity Western University*, 2018 SCC 32 at para 64. However, the constitutionality of the 15% capacity law will be determined later in this trial. The question today is whether the purpose, manner, or effect of enforcement of that law on December 20, 2020 (the impugned government conduct), violated James Coates’ religious freedoms? The answer is no. I reach this conclusion for the following reasons.

[36] First, AHS and the RCMP were acting under the authority of the *Public Health Act*, and attended at Grace Life Church on December 20th in accordance with their duties set out therein.

[37] Second, the government did not target Grace Life Church. To the contrary, AHS responded to numerous public complaints about multiple violations of the law.

[38] Third, Alberta’s COVID-19 response did not unfairly focus on places of worship. Similar restrictions apply to almost all secular activities and gatherings.

[39] Fourth, Janine Hanrahan acted reasonably and professionally. Specifically, the decision to ticket was made after numerous failed attempts by AHS to work with Grace Life Church in an effort to encourage compliance with COVID-19 rules. Coates’ opinion that AHS and RCMP conduct amounted to “relentless ... harassment” is contrary to my findings of fact.

[40] Fifth, on December 20th AHS and the RCMP took all reasonable steps to ensure that they did not disturb the worship service. They arrived before the service started, quietly watched, and then delayed the ticketing until after the service had ended. The ticketing process itself was quick and respectful, and did not involve an arrest or any period of unnecessary detention. And, while I agree with Coates’ assertion that AHS and RCMP presence added “an element to conducting a service that would not normally be there,” it was Pastor Coates who drew the congregation’s attention to the police presence on December 20th.

[41] Sixth, the police acted on reasonable grounds in issuing the ticket, having witnessed a blatant violation of the law.

[42] Finally, nothing about the December 20th conduct of AHS or the RCMP violated section 176 of the *Criminal Code*, which prohibits obstruction of a religious service. The argument to the contrary conflicts with the facts of the case. Section 176 does not dig a moat around places of worship, preventing enforcement of laws that are being repeatedly broken.

Section 2(b) – Freedom of Expression

[43] Freedom of expression is intended to serve democratic discourse, truth finding and self-fulfillment: *Montréal (City) v 2952-1366 Québec Inc.*, 2005 SCC 62 at para 74.

[44] The three-part test for analyzing claimed violations of section 2(b) of the *Charter* is: (1) whether the activity has expressive content; (2) whether the method of the expression removes that protection; and (3) whether an infringement results from the purpose or effect of government action: *Canadian Broadcasting Corp v Canada (Attorney General)*, 2011 SCC 2 at para 38.

[45] Preaching, singing, prayer and fellowship are all *prima facie* constitutionally protected, and the method of the expression in this case did not remove that protection. Therefore, my analysis centres on the third branch of the test.

[46] The question is whether on December 20, 2020, the purpose or effect of the government action of enforcing the 15% capacity law, violated James Coates' freedom of expression? For the reasons that follow, the answer is no.

[47] First, section 2(b) protects both the expression, and the listening: *Little Sisters Book and Art Emporium v Canada (Minister of Justice)*, 2000 SCC 69 at para 41. Therefore, it is argued that 85% of the congregation "lost their right to listen" as a result of Alberta's COVID-19 rules. This argument is misplaced, as it relates to the constitutionality of the capacity law, rather than the December 20th enforcement of the same. Further, the facts are clear. 85% of Grace Life Church was not excluded, because the law was disobeyed. Everyone attended the worship service in person.

[48] Second, it is argued that the effect of the enforcement was to penalize Pastor Coates for the conduct of others (i.e. the extra 85% of the congregation that did attend). Context is critical. Public health laws impose duties upon owners and operators. Coates, as an operator of a place of worship, was required by law to implement and enforce COVID-19 measures.

[49] Finally, it is asserted that because Coates' December 20th sermon was critical of the Government of Alberta, that he was ticketed as a calculated act of "censor" to "impose a chilling effect." These claims are unsupported by, and wholly inconsistent with, the facts of this case.

Sections 2(c) and 2(d) – Assembly and Association

[50] The section 2 *Charter* guarantees extend to "the right to join with others in the pursuit" of constitutional freedoms: *Mounted Police Association of Ontario v Canada (Attorney General)*, 2015 SCC 1 at para 66. James Coates' arguments that the Christian Church has gathered in person for 2000 years, and that Canada has no history of breaking up peaceful assemblies, are both undeniably true. However, both arguments again attack the "law," as opposed to the

December 20th “government action” of issuing a violation ticket to Coates, and therefore exceed the scope of section 24(1) of the *Charter: R v 974649 Ontario Inc.*, 2001 SCC 81 at para 14.

Section 7 – Liberty and Fundamental Justice

[51] The section 7 right to liberty has not been breached. James Coates has failed to establish “a sufficient causal connection” between the December 20th ticketing, and his subsequent 35 days in jail: *Bedford v Canada (Attorney General)*, 2013 SCC 72 at para 75 (*Bedford*).

[52] On December 20th Coates was ticketed. Nothing more. The 35 days in jail relate to charges that arose months later, and that have subsequently been resolved with a guilty plea. The argument that a link is established because of reference to the December 20th ticketing during the February 16th bail hearing, is in error. The Crown was entitled to “show cause.”

[53] And, none of this caused James Coates’ imprisonment. He was ordered released, but refused to sign the bail order. He chose to remain in jail. “It was Mr. Coates’ choice to make”: *Coates* at para 19. The “port of entry” for a section 7 claim is closed: *Bedford* at para 78.

[54] Further, even if a causal connection exists, the loss of liberty accorded with the principles of fundamental justice found in the basic tenants of our legal system, and in the rights set out in sections 8 to 14 of the *Charter: Re BC Motor Vehicle Act*, [1985] 2 SCR 486 at 503.

[55] On December 20th a ticket was issued without conditions. *Public Health Act* violations continued, and Coates was charged again on February 7th. He was then released by police at the earliest opportunity, and on a single condition aimed at preventing repetition of the offence, all in keeping with sections 493.1, 498(1) and 501 of the *Criminal Code*. Refusal to sign that undertaking did not invalidate the same: section 501(6). Because breaches of the law continued, more charges were laid. On February 16th Coates appeared before a Justice of the Peace, and again was ordered released on a single condition that required in effect that he “comply with the law.” In short, “the right to bail on reasonable terms”: *R v Antic*, 2017 SCC 27 at para 67.

[56] Section 11(e) of the *Charter*, and all of the “principles that underlie our notions of ... fair process,” have been embraced and affirmed throughout the entirety of the proceedings against Coates: *Charkaoui v Canada (Citizenship and Immigration)*, 2007 SCC 9 at para 19.

[57] Finally, the argument that James Coates was forced to either forsake his conscience or secure his liberty, has been answered. Bail conditions may properly limit the fundamental rights set out in section 2 of the *Charter*, where necessary to protect “public safety”: *R v Zora*, 2020 SCC 14 at para 87. Religious freedoms are subject to the rule of law.

Conclusion

[58] The section 24(1) *Charter* application is dismissed.

Heard on the 3rd and 4th day of May, 2021.

Dated at the Town of Stony Plain, Alberta this 7th day of June, 2021.

R.C. Shaigec
A Judge of the Provincial Court of Alberta

Appearances:

Public Health Prosecutor
for the Crown

L. Grey, Q.C. and J. Kitchen
for the Accused