

COURT FILE NUMBER 2110 00751
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE RED DEER
APPLICANT DEENA HINSHAW
RESPONDENT PATRICK JAMES KING
DOCUMENT **ORIGINATING APPLICATION**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT ALBERTA JUSTICE
CIVIL LITIGATION
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Calgary, Alberta T2P 0M9
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Cynthia R. Hykaway

OUR FILE: LIT- 11840

NOTICE TO THE RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: July 19, 2021 (~~alternate date July 20, 2021~~)
Time: 10:00 a.m.
Where: Red Deer Courthouse, 4909 48th Avenue, Red Deer, Alberta
Before: Justice in Chambers

Go to the end of this document to see what you can do and when you must do it.

Basis for this claim:

1. The Applicant, Dr. Deena Hinshaw, is the Chief Medical Officer of Health for Alberta ("CMOH").

2. Part 3 of the *Public Health Act*, RSA 2000, c. P-37 (the “**Act**”) authorizes the CMOH to issue orders to protect public health. In response to the COVID-19 pandemic, the CMOH has issued orders under Part 3 of the Act.
3. Under s. 73 of the Act, a person who contravenes an order issued under Part 3 is guilty of an offence.
4. On December 5, 2020, the Respondent, Patrick James King (“**Mr. King**”), was issued a ticket for contravening an order of the CMOH contrary to s. 73(1) of the Act (the “**ticket**”). The trial is being heard by the Honourable Judge Snider in Provincial Court action number A87988036R (the “**Provincial Court proceeding**”).
5. On July 14, 2021, Mr. King obtained a subpoena for the CMOH to give evidence in the Provincial Court proceeding (the “**subpoena**”), and served the subpoena on the CMOH on July 15, 2021. The subpoena requires the CMOH to attend a trial continuation in the Provincial Court proceeding on July 21, 2021.
6. The subpoena was issued by a Justice of the Peace under s. 699 of the *Criminal Code*, RSC 1985, c. C-46 (the “**Criminal Code**”). It requires the CMOH to bring “all white papers describing the isolation of the COVID-19 aka SARS-CoV-2 virus in human beings, directly from a sample taken from a diseased patient”, because “these white papers would have been integral in the crafting of the statutes made under the “Public Health Act” here in Alberta”.

The Subpoena is Technically Deficient

7. The Justice of the Peace did not have jurisdiction to issue the subpoena under s. 34(3) of the *Alberta Evidence Act*, RSA 2000, c. A-18, and it should be quashed on this basis.

The CMOH Has No Material Evidence

8. Mr. King has no evidence showing that the evidence sought from the CMOH is likely to be material to the Provincial Court proceeding contrary to ss. 698 and 699 of the *Criminal Code*. As such, the Justice of the Peace did not have jurisdiction to issue the subpoena, and it should be quashed on this basis.
9. Mr. King explained the reason for the subpoena in the document he attached as Schedule A to the subpoena. It is clear that Mr. King seeks evidence relating to the rationale for orders issued by the CMOH under the Act: he seeks evidence about the “crafting of the statutes”.

10. The Provincial Court proceeding is about the December 5, 2020 enforcement of the law (when Mr. King was issued the ticket), not the rationale for the law. The CMOH does not have, and Mr. King does not seek from the CMOH, any evidence about the ticket issued to Mr. King on December 5, 2020.
11. Further, there can be no constitutional challenge to the Act, or orders issued by the CMOH under the Act, in the absence of proper notice to the Attorney General of Canada and the Minister of Justice and Solicitor General of Alberta under the *Judicature Act*, RSA 2000, c. J-2. Mr. King has not given any such notice in the Provincial Court proceeding.

Remedy sought:

12. An Order quashing the subpoena.
13. An Order abridging time for service.
14. Any other direction that the Court considers appropriate in the circumstances.

Affidavit or other evidence to be used in support of this application:

15. Affidavit of K. Grech, sworn July 16, 2021.
16. Such further material as Counsel may advise and this Honourable Court may allow.

Applicable Acts and regulations:

17. *Public Health Act*, RSA 2000, c. P-37, Part 3.
18. *Criminal Code*, RSC 1985, c. C-46.
19. *Alberta Evidence Act*, RSA 2000, c. A-18, s. 34.
20. *Judicature Act*, RSA 2000, c. J-2, s. 24.
21. *Alberta Rules of Court*, rule 3.15.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).