

Federal Court



Cour fédérale

Date: 20240123

Docket: T-347-22

Citation: 2024 FC 38

Ottawa, Ontario, January 23, 2024

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

**CANADIAN CONSTITUTION
FOUNDATION**

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

and

ATTORNEY GENERAL OF ALBERTA

Intervener

JUDGMENT

UPON an Application for Judicial Review pursuant to section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7 (*Federal Courts Act*) in respect of the Proclamation *Declaring a Public Order Emergency*, SOR/2022-20 (*Proclamation*), made pursuant to s. 17(1) of the *Emergencies*

Act, RSC 1985, c 22 (4th Supp.) (the *Act*) and regulations made pursuant to s. 19(1) of the *Act*: the *Emergency Measures Regulations*, P.C. 2022-107, SOR/2022-21 (*Regulations*), and the *Emergency Economic Measures Order*, P.C. 2022-108, SOR/2022-22 (*Order*);

AND UPON the motion of the Respondent to strike the application for judicial review on the grounds that it was moot as the *Proclamation* had been revoked and the associated *Regulations* and *Order* had been terminated by operation of law and that the Applicant lacked standing to challenge the *Proclamation*, *Regulations* and *Order* as they were not directly affected by them within the meaning of subsection 18.1(1) of the *Federal Courts Act*;

AND UPON considering the material filed by the parties and hearing the oral arguments of Counsel at a hearing in the City of Ottawa, Ontario on April 3-5, 2023;

AND UPON considering that the wording of subsection 18.1 (1) of the *Federal Courts Act* is broad enough to encompass applicants when they meet the test for public interest standing;

AND UPON determining that while the application is moot, the Court should exercise its discretion to hear it and that the Applicant has satisfied the test to be granted public interest standing;

AND UPON determining that the decision to issue the *Proclamation* and the associated *Regulations* and *Order* was unreasonable and *ultra vires* the *Act*;

AND UPON determining that the *Regulations* infringed section 2(b) of the *Canadian Charter of Rights and Freedoms Part I of the Constitution Act, 1982 adopted as Schedule B to the Canada Act 1982, 1982, c 11 (UK) (Charter)* and that the *Order* infringed section 8 of the *Charter* and that neither infringement was justified under section 1 of the *Charter*;

THIS COURT ORDERS that:

1. The Respondent's motion for an order striking the application for judicial review is denied and the Court exercises its discretion to determine the matter notwithstanding that it is moot in view of the revocation of the *Proclamation* and termination of the associated *Regulations* and *Order*;
2. The Applicant is granted public interest standing to bring this application for judicial review;
3. It is declared that the decision to issue the *Proclamation* and the associated *Regulations* and *Order* was unreasonable and *ultra vires* the *Emergencies Act*;
4. It is declared that the *Regulations* infringed section 2 (b) of the *Charter* and declared that the *Order* infringed section 8 of the *Charter* and that neither infringement was justified under section 1; and

There is no award of costs.

"Richard G. Mosley"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-347-22

STYLE OF CAUSE: CANADIAN CONSTITUTION FOUNDATION v
ATTORNEY GENERAL OF CANADA AND
ATTORNEY GENERAL OF ALBERTA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 3-5, 2023

JUDGMENT: MOSLEY J.

DATED: JANUARY 23, 2024

APPEARANCES:

Sujit Choudhry
Janani Shanmuganathan
FOR THE APPLICANT

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John Provart
David Aaron
Kathleen Kohlman
FOR THE RESPONDENT

Mandy England
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