



No. . VLC-S-S-217586
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

Action4Canada, Linda Morken, Gary Morken, Jane Doe, Ilona Zink, Valerie Ann
Foley, Pastor Randy Beatty, Brittany Wilson

Plaintiffs

-and-

His Majesty the King in right British Columbia, His Majesty the King in right
Canada. Prime Minister Justin Trudeau, Chief Public Health Officer Theresa Tam, Dr.
Bonnie Henry, Premier John Horgan, David Eby, Adrian Dix, Minister of Health, Mike
Farnworth, Minister of Public Safety and Solicitor General Omar Alghabra, Minister of
Transport, Vancouver Island Health Authority, The Royal Canadian Mounted
Police (RCMP), and the Attorney General of Canada, Peter Kwok, Translink
(British Columbia)

Defendants

RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM

Filed by: Vancouver Island Health Authority

Part 1: RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants’ Response to Facts

1. The facts alleged in none of Part 1 of the amended notice of civil claim are admitted.
2. The facts alleged in all of Part 1 of the amended notice of civil claim are denied.
3. The facts alleged in none of Part 1 of the amended notice of civil claim are outside the knowledge of Vancouver Island Health Authority.

Division 2 –Health Authority Defendants' Version of Facts

4. Vancouver Island Health Authority is regional health board constituted pursuant to the *Health Authorities Act* R.S.B.C. 1996 c. 180, (“VIHA”).

5. VIHA denies every allegation of fact contained in the amended notice of civil claim and puts the plaintiffs to strict proof thereof.
6. There are no factual allegations in the amended notice of civil claim in respect of VIHA and, therefore, there is no factual basis to the plaintiffs' claims against VIHA.
7. In the alternative, at all material times, VIHA provided appropriate and reasonable services and/or care.
8. At all material times, VIHA complied with the *COVID-19 Related Measures Act*, S.B.C. 2020, c. 8, *Emergency Program Act*, R.S.B.C. 1996, c. 111, regulations thereto, and Ministerial Orders.

Division 3 – Additional Facts

9. None at this time.

Part 2: RESPONSE TO RELIEF SOUGHT

10. VIHA opposes the granting of the relief sought in all of Part 2 of the amended notice of civil claim.
11. VIHA seeks an order dismissing the plaintiffs' action against it with costs.

Part 3: LEGAL BASIS

12. VIHA denies every allegation of law contained in the amended notice of civil claim and puts the plaintiffs to strict proof thereof.
13. The allegations contained in the amended notice of civil claim do not disclose a cause of action as against VIHA. There is no basis for granting the orders sought.
14. The amended notice of civil claim filed by the plaintiffs:
 - a. discloses no reasonable claim,
 - b. is unnecessary, scandalous, frivolous or vexatious,
 - c. will prejudice, embarrass or delay the fair trial or hearing of the proceeding,
 - d. is prolix and improperly pleads evidence; and
 - e. is otherwise an abuse of the process of the court,

and ought to be dismissed as against VIHA on these bases.

15. In further answer to the whole of the amended of civil claim, no action for damages lies or may be brought against VIHA, as all of its allegedly impugned actions were rendered pursuant to the *COVID-19 Related Measures Act* and/or the *Emergency Program Act*, R.S.B.C. 1996, c. 111, and VIHA pleads and relies upon Section 5 of the *COVID-19 Related Measures Act*, and section 18 of the *Emergency Program Act*, R.S.B.C. 1996, c. 111. and amendments, regulations, and ministerial orders thereto, including Ministerial Order 120/2020 – Protection Against Liability (COVID-19) Order No. 2.
16. Further and in the alternative the *Canadian Charter of Rights and Freedoms* does not apply to VIHA.
17. In the further alternative and in further response, there is no basis in fact or law for a claim against VIHA pursuant to the *Canadian Charter of Rights and Freedoms*.
18. In the further alternative and in further response, VIHA denies that it breached any of the plaintiffs' rights under the *Canadian Charter of Rights and Freedoms*.
19. VIHA specifically denies that it owe the plaintiffs, or any of them, a duty of care (common law, statutory, or otherwise) as alleged or at all.
20. If VIHA did owe the plaintiffs, or any of them, a duty of care (common law, statutory, or otherwise), which is not admitted but denied, VIHA denies that it breached any duty to the plaintiffs (common law, statutory, or otherwise), or any of them.
21. In the alternative, no act or omission on the part of VIHA or on the part of any of its employees, agents or servants constituted negligence or breach of any duty (common law, statutory, or otherwise) owed to the plaintiffs, or any of them, as alleged or at all, and any service, care or treatment provided by its employees, servants, or agents, in respect of the service, care or treatment provided to the plaintiffs met the applicable standard of care and was in accordance with standard and approved practice and procedures and was rendered competently with reasonable care, skill and diligence, and without fault or neglect, in the manner of a reasonably prudent health authority.
22. VIHA denies that the plaintiffs, or any of them, suffered, or continue to suffer, any injury, loss, damage or expense which is recoverable at law and put the plaintiffs to strict proof thereof.
23. In the alternative, VIHA says that if the plaintiffs, or any of them, did suffer injury, loss, damage or expense, which is not admitted but denied, this injury, loss, damage or expense was not caused or contributed to by any acts or omissions of VIHA, or its employees, servants, or agents.

24. Decisions regarding diagnosis, treatment, and level of care a patient receives are solely made by physicians. Physicians are independent contractors and not employees of VIHA. VIHA is not vicariously liable for any acts or omissions of the independent contractor physicians.
25. VIHA says that any care or treatment rendered to the plaintiffs by its employees, servants or agents, was performed and provided pursuant to physicians' orders.
26. If the plaintiffs suffered any injury, loss, damage or expense, as alleged or at all, which is denied, then:
 - a. such losses would not have reasonably been predicted or foreseen by a reasonable health authority or its employees, servants or agents;
 - b. VIHA could not have prevented, avoided, or minimized the plaintiffs' loss by the exercise of reasonable care;
 - c. these were caused by the plaintiffs' own negligence, or alternatively the plaintiffs' negligence was a contributing cause, the particulars of which will be plead as soon as they become known to VIHA, in which case VIHA seeks an apportionment of fault at the trial of this matter pursuant to the *Negligence Act*, R.S.B.C. 1996, c. 333; and,
 - d. such losses were caused by the fault of other parties for whom VIHA are not responsible or, in the alternative, such fault contributed to the plaintiffs' alleged losses, the particulars of which will be plead when they become known to VIHA, in which case VIHA pleads and relies on the *Negligence Act*, R.S.B.C. 1996, c. 333, and shall seek apportionment of fault at the trial of this proceeding.
27. In the alternative, if the plaintiffs suffered, or will suffer, any injury, loss, damage or expense, which is not admitted but specifically denied, the plaintiffs failed to mitigate their losses by failing to take all reasonable steps to minimize or avoid such loss, damage, or expense.

Defendant' address for service:

Carfra Lawton LLP
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Victoria BC V8T 5K7

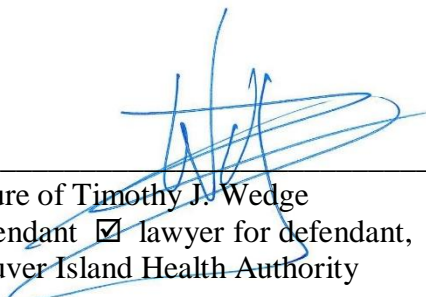
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twedge@carlaw.ca

Dated: 14/Jan/2025



Signature of Timothy J. Wedge
 defendant lawyer for defendant,
Vancouver Island Health Authority

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.