



S217586

No. 217586
Vancouver Registry

In the Supreme Court of British Columbia

Between

Action4Canada, Kimberly Woolman, The Estate of Jaqueline Woolman, Linda Morken, Gary Morken, Jane Doe #1, Brian Edgar, Amy Muranetz, Jane Doe #2, Ilona Zink, Federico Fuoco, Fire Productions Limited, F2 Productions Incorporated, Valerie Ann Foley, Pastor Randy Beatty, Michael Martinz, Makhan S. Parhar, North Delta Real Hot Yoga Limited, Melissa Anne Neubauer, Jane Doe #3

Plaintiffs

and

Her Majesty the Queen in right British Columbia, Prime Minister Justin Trudeau, Chief Public Health Officer Theresa Tam, Dr. Bonnie Henry, Premier John Horgan, Adrian Dix, Minister of Health, Jennifer Whiteside, Minister of Education, Mable Elmore, Parliamentary Secretary for Seniors Services and Long-Term Care, Mike Farnworth, Minister of Public Safety and Solicitor General, British Columbia Ferry Services Inc. (operating as British Columbia Ferries), Omar Alghabra, Minister of Transport, Vancouver Island Health Authority, The Royal Canadian Mounted Police (RCMP), and the Attorney General of Canada, Brittney Sylvester, Peter Kwok, Providence Health Care, Canadian Broadcasting Corporation, TransLink (British Columbia)

Defendants

RESPONSE TO CIVIL CLAIM

Filed by: Her Majesty the Queen in right British Columbia, Dr. Bonnie Henry, Premier John Horgan, Minister of Health, Jennifer Whiteside, Minister of Education, Mike Farnworth, Minister of Public Safety and Solicitor General (the "Province" or the "Provincial Defendants")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants' Response to Facts

1. The facts alleged in paragraphs 23-24, 27, 30-37, 39, and 42 of Part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs 25-26, 28-29, 38, and 44-331 of Part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraphs 1-22, 40-41, and 43 of Part 1 of the notice of civil claim are outside the knowledge of the Province.

Division 2 – Defendants’ Version of Facts

Introduction

1. The COVID-19 pandemic is an ongoing global pandemic of the novel coronavirus SARS-CoV-2, which causes the illness known as COVID-19. As of January 1, 2022, the global death toll from COVID-19 exceeded 5.4 million. Across Canada there have been over 30,000 deaths and 95,000 hospitalizations. In British Columbia, there have been over 2,400 deaths and 12,900 hospitalizations.
2. Nations, territories, and jurisdictions throughout the world, including British Columbia, have implemented a variety of public health measures designed to combat the spread of infection, protect citizens against serious illness and death, and prevent hospital and critical care facilities from being overwhelmed.
3. The plaintiffs’ 391-page notice of civil claim (the “Claim”) is a prolix and convoluted document that attempts to challenge the scientific and legal basis for the entirety of British Columbia’s response to the COVID-19 pandemic. The Claim is replete with factual inaccuracies, misinformation, groundless accusations against public officials, inflammatory language, and conspiracy theories.
4. Part 1 of the Claim contains over a 1,300 paragraphs and sub-paragraphs. The Claim is not, in its current form, amenable to a comprehensive response from the Province and will be addressed only summarily at this time.
5. In response to the whole of Part 1 of Claim, the Province denies every fact and allegation pleaded by the plaintiffs, unless expressly admitted in Part 1, Division 1 of the Province’s response to civil claim.
6. In response to paragraphs 155 and 283 of Part 1 and the whole of the Claim, the COVID-19 pandemic is patently not a “false pandemic” that was “designed and implemented for improper and ulterior purposes, at the behest of the WHO, controlled and directed by Billionaire, Corporate, and Organizational Global Oligarchs” such as Bill Gates in order to “install a New World (Economic) Order”.
7. In general response to the Claim’s allegations of misconduct or bad faith on the part of individually named Provincial Defendants, the Province says these are spurious claims, with no merit whatever, that are unequivocally denied.

The COVID-19 Pandemic

8. The Provincial Health Officer (the “PHO”) is the senior public health official for the Province, appointed pursuant to the *Public Health Act*, SBC 2008, c. 28 (the “*Public Health Act*”). The PHO leads the public health response under the *Public Health Act* to public health emergencies in British Columbia, including the transmission of the novel coronavirus SARS-CoV-2 that causes the illness known as COVID-19.
9. The first diagnosis of a case of COVID-19 in British Columbia occurred on January 27, 2020.
10. In response to paragraphs 52, 164, 167-175, 185-206 of Part 1 and the whole of the Claim:
 - a. SARS-CoV-2 is a highly transmissible virus that can be spread by symptomatic and asymptomatic people primarily through virus containing droplets and aerosols that are then inhaled by others;
 - b. SARS-CoV-2 has a higher transmissibility rate (i.e., a higher basic reproductive number) compared to influenza;
 - c. Ongoing transmission in populations leads to the emergence of new variants of SARS-CoV-2, some of which are more transmissible and/or can cause more severe illness than earlier strains of SARS-CoV-2; and
11. In further response to paragraphs 52, 164, 167-175, 185-206 of Part 1 and the whole of the Claim, the Province and the PHO have been actively trying to prevent and contain the transmission of SARS-CoV-2 and maintain the ability of the healthcare system to meet the needs of the population for COVID-19 related care and other healthcare, including critical care and surgical services, through a series of comprehensive public health measures, including health promotion, prevention, testing, case identification, isolation of cases and contact tracing, and more recently vaccination and vaccine cards, all based on the best available and generally accepted scientific evidence, including epidemiological data for COVID-19 in British Columbia, nationally and internationally.
12. In further response to paragraphs 52, 164, 167-175, 185-206 of Part 1 and the whole of the Claim, without adequate public health measures SARS-CoV-2 would spread exponentially.
13. In further response to paragraphs 52, 164, 167-175, 185-206 of Part 1 and the whole of the Claim, preventing and controlling transmission of communicable diseases is essential to maintaining the provincial health system’s ability to deliver quality care and continue the safe delivery of essential health services, for both COVID-19 related care and other healthcare, including critical care and surgical services.
14. In response to paragraphs 306-331 of Part 1 and the whole of the Claim, the presently available vaccines for SARS-CoV-2 are safe, highly effective and an important preventative measure that provides protection for individuals and other persons with whom they come into contact from infection, severe illness, and possible death from COVID-19.

Declarations by the PHO and the Minister of Public Safety and Solicitor General

15. On March 17, 2020, the PHO declared the transmission of the infectious agent SARS-CoV-2, which had caused cases and outbreaks of COVID-19 within British Columbia, to be a “regional event” as defined under s. 51 of the *Public Health Act* (the “PHO Declaration”).
16. Pursuant to s. 51 of the *Public Health Act*, a regional event is that which poses “an immediate and significant risk to public health.”
17. In response to paragraphs 289 and 331 of Part 3 and the whole of the Claim, the designation of a regional event allows the PHO to exercise powers under Part 5 of the *Public Health Act*, including the power to make oral and written public health orders in response to the COVID-19 pandemic.
18. On March 18, 2020, the Minister of Public Safety and Solicitor General (“MPSSG”) declared a state of provincial emergency under the *Emergency Program Act*, RSBC 1996 c.111 (the “*Emergency Program Act*”) due to the COVID-19 pandemic. The declaration of emergency was extended numerous times before it eventually expired on June 30, 2021 (the “MPSSG Declaration”).
19. In response to paragraphs 130-151 of Part 1 and the whole of the Claim, the declaration of a state of emergency allows the MPSSG to exercise powers under Part 3 of the *Emergency Program Act*, including section 10(1) which empowers the MPSSG to “do all acts and implement all procedures he considers necessary to prevent, respond to or alleviate the effects of the emergency.”

Orders issued by the PHO

20. From March 2020 to date, the PHO has made orders under the *Public Health Act* in response to the COVID-19 regional event, including new orders relating to commercial establishments, types of gatherings, prescribed industries, prescribed recreational activities, and preventative health measures and orders varying, revoking or amending prior orders in response to the changing circumstances of the COVID-19 pandemic in British Columbia (the “PHA Orders”).
21. In response to paragraphs 125, 164, 185-189 and 226-228 of Part 1 and the whole of the Claim, the aim of the PHA Orders is to prevent and contain the transmission of SARS-CoV-2 and maintain the ability of the health care system to meet the needs of the population for COVID-10 related care and other healthcare, including critical care and surgical services, based on the best available and generally accepted scientific evidence and epidemiological data at the time the particular order is issued.
22. In further response to paragraphs 125, 164, 185-189 and 226-228 of Part 1 and the whole of the Claim, over the course of the pandemic, the scientific community and public health officials have learned that the likelihood of transmission of SARS-CoV-2 is greater when people, particularly unvaccinated and partially vaccinated people, are interacting:

- a. in communal settings (e.g. gatherings, events, celebrations), other than in transactional settings (e.g. at retail outlets);
 - b. in close proximity to each other;
 - c. in crowded settings;
 - d. in indoor settings; and
 - e. when speaking, and especially when singing, chanting or engaging in excited expression.
23. In further response to paragraphs 125, 164, 185-189 and 226-228 of Part 1 and the whole of the Claim, the overriding concern is to ensure that PHA Orders and other public health guidance protect the most vulnerable members of society while minimizing social disruption and preserving the ability of the healthcare system to meet the needs of the population for COVID-19 related care and other healthcare, including critical care and surgical services.
24. In further response to paragraphs 125, 164, 185-189 and 226-228 of Part 1 and the whole of the Claim, in appropriate circumstances, many of the PHA Orders include a section that advises people who are affected by an order that they can request a variance by making a request for reconsideration to the PHO under s. 43 of the *Public Health Act*.
25. In response to paragraphs 167-189 of Part 1 and the whole of the Claim, the Province denies that the PHA Orders have caused the impacts and effects alleged in the Claim and further deny that any effects that the PHA Orders may have had give rise to or support the legal causes of actions advanced, or the remedies sought, in the Claim.

Orders issued by the MPSSG

26. From March 2020 to date, the MPSSG has made orders under the *Emergency Program Act* in response to the declared provincial state of emergency due to COVID-19, including new orders and orders revoking or amending prior orders in response to the changing circumstances of the COVID-19 pandemic in British Columbia (the “MPSSG Orders”).
27. In response to paragraphs 144-151 of Part 1 and the whole of the Claim, the MPSSG Orders have been issued in relation to a wide-range of topics which, in the view of the MPSSG, were necessary to address, prevent, respond to or alleviate the effects of the COVID-19 pandemic in British Columbia including, but not limited to:
- a. the adjustment of limitations periods applying to court proceedings;
 - b. travel;
 - c. electronic witnessing of wills and other documents;
 - d. the facilitation of local government meetings and bylaw processes and electronic attendance at statutory meetings;

- e. the ongoing provision of critical services, essential goods and supplies; and
- f. the maximum charges to be applied for food delivery services.

28. In further response to paragraph 144-151 of Part 1 and the whole of the Claim, the *COVID-19 Related Measures Act*, SBC 2020, c. 8 (“*CRMA*”) enacted the MPSSG Orders listed in its Schedules 1 and 2 as legislative provisions. Many of the MPSSG Orders identified in the Claim have legislative force by virtue of *CRMA* as of March 17, 2020 (for M139/2020) or as of the date that the MPSSG Order was issued under the *Emergency Program Act*.

29. In further response to paragraphs 144-151 of Part 1 and the whole of the Claim, the Province denies that the MPSSG Orders have caused the effects and impacts alleged in the Claim and further deny that any effects that the MPSSG Orders may have had give rise to or support the legal causes of actions advanced, or the remedies sought, in the Claim.

Part 2: RESPONSE TO RELIEF SOUGHT

30. The defendants consent to the granting of the relief sought in the following paragraphs of Part 2 of the notice of civil claim: **none**.

31. The defendants oppose the granting of the relief sought in the following paragraphs of Part 2 of the notice of civil claim: **all**.

32. The defendants take no position on the granting of the relief sought in the following paragraphs of Part 2 of the notice of civil claim: **none**.

Part 3: LEGAL BASIS

33. The Claim is a scandalous, frivolous, and vexatious pleading. The Claim fails to meet the basic requirements for pleadings and is an abuse of the Court’s process. The Claim should be struck in accordance with Rule 9-5(1) of the *Supreme Court Civil Rules*.

34. The Province denies all of the allegations set out in Part 3 of the Claim.

35. The impugned PHA Orders, MPSSG Orders, Declarations, and actions or conduct of the Provincial Defendants specified in the Claim (the “Impugned Orders and Actions”) were implemented or undertaken in good faith, in accordance with the best available and generally accepted medical science, to minimize the spread of the novel SARS-CoV-2 virus and associated illness and death, with an overarching goal of protecting the health and safety of British Columbians during an unprecedented global pandemic.

36. The Province denies that any of ss. 30-32 or 39 of the *Public Health Act* or s. 17 of the *Infants Act*, RSBC. 1996, c. 223 (the “Impugned Provisions”), or the Impugned Orders and Actions set out in the Claim, violate the *Charter of Rights and Freedoms*, including ss. 2, 6, 7, 8, 9, and 15, are *ultra vires* the Province’s jurisdiction under s. 92 of the *Constitution Act, 1867*, or are otherwise unlawful or unconstitutional.

37. In the event any of the Impugned Provisions or Impugned Orders and Actions infringe upon *Charter* rights, which is firmly denied, such limits are demonstrably justified in a free and democratic society and saved by s. 1 of the *Charter*.

Defendants' address for service:

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Date: January 11, 2022



Solicitor for the Provincial Defendants
Mark Witten

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.