



No. 233427
Victoria Registry

In the Supreme Court of British Columbia

Between

JASON BALDWIN

Plaintiff

and

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH
COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL
HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Defendants

Brought under the *Class Proceedings Act*, RSBC 1996, c. 50

RESPONSE TO CIVIL CLAIM

Filed by: His Majesty the King in right of the Province of British Columbia (the "**Province**") and Dr. Bonnie Henry in her capacity as Provincial Health Officer for the Province of British Columbia (collectively, the "**Defendants**")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants' Response to Facts

1. The facts alleged in paragraphs 16 and 17 of Part 1 of the Amended Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 1-15 and 18-26 of Part 1 of the Amended Notice of Civil Claim are denied.
3. The facts alleged in none of the paragraphs of Part 1 of the Amended Notice of Civil Claim are outside the knowledge of the Defendants.

Division 2 – Defendants’ Version of Facts

The Parties

1. In response to paragraph 1 of Part 1 of the Amended Notice of Civil Claim (the “**Claim**”), the plaintiff’s employment was at all material times subject to a collective agreement (the “**GEU Collective Agreement**”) between his union, the British Columbia General Employees’ Union (the “**GEU**”), and the Province.
2. In further response to paragraph 1 of Part 1 of the Claim, the plaintiff refused to provide proof of full vaccination against COVID-19 by November 22, 2021, or at all, as required by Human Resources Policy 25, COVID-19 Vaccination Policy (the “**Vaccination Policy**”). The plaintiff was placed on leave without pay effective January 10, 2022, and terminated for just cause effective October 5, 2022.
3. In response to paragraph 2 of Part 1 of the Claim, proceedings against the Province must name the government as “His Majesty the King in right of the Province of British Columbia”.
4. In response to paragraph 3 of Part 1 of the Claim, 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.

Unionized Employees of the Province

5. In response to paragraphs 4 and 5 of Part 1 of the Claim, the Province had approximately 33,000 unionized employees appointed under the *Public Service Act*, RSBC 1996, c 385 (the “**PSA**”) when the Vaccination Policy and the *Public Service COVID-19 Vaccination Regulation*, BC Reg 284/2021 (the “**Regulation**”) were in effect.

The Vaccination Policy and Regulation

6. In further response to paragraphs 1 and 2 of Part 1 of the Claim, and in response to paragraphs 12-15 of Part 1, on November 1, 2021, the Minister of Finance issued the Vaccination Policy under s. 5(4) of the *PSA*.
7. In further response to paragraphs 1, 2 and 12-15 of Part 1 of the Claim, the Vaccination Policy required employees of the Province to provide proof of full vaccination against COVID-19 by November 22, 2021, subject to exemptions based on a medical condition or other protected ground under

the *Human Rights Code*, RSBC 1996, c. 210. Employees who did not provide proof of vaccination or refused to disclose their vaccination status were placed on leave without pay unless they had requested or been granted a medical exemption or other accommodation. After three months of being placed on leave without pay, employees who did not become at least partially vaccinated may be terminated.

8. In further response to paragraphs 1, 2 and 12-15 of Part 1 of the Claim, the purpose of the Vaccination Policy was to protect and promote the health and safety of employees and others in the workplace through COVID-19 vaccinations and to define the conditions and expectations for employees to disclose their vaccination status and to be vaccinated.
9. In further response to paragraphs 1 and 2 of Part 1 of the Claim, and in response to paragraphs 16 and 17 of Part 1, on November 19, 2021, the Lieutenant Governor in Council (i.e., the provincial Cabinet), enacted the Regulation under s. 25(1) of the *PSA*.
10. In further response to paragraphs 1, 2, 16 and 17 of Part 1 of the Claim, the Regulation stated that the Vaccination Policy is a term and condition of employment for employees of the Province and that if an employee is terminated under the Vaccination Policy, the employee is deemed to have been dismissed for just cause.
11. In further response to paragraphs 1, 2 and 12-17 of Part 1 of the Claim, effective April 3, 2023, the Minister of Finance rescinded the Vaccination Policy and the Lieutenant Governor in Council repealed the Regulation.

The COVID-19 Pandemic

12. In response to paragraphs 18-26 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 through the air;
 - b. A person infected with SARS-CoV-2 can infect other people with whom the infected person comes into contact; and
 - c. Ongoing transmission in populations leads to the emergence of new variants of SARS-CoV-2, some of which are more transmissible and cause more severe illness than earlier strains of SARS-CoV-2.
13. In further response to paragraphs 18-26 of Part 1 and the whole of the Claim, the vaccines for SARS-CoV-2 that were available when the Vaccination Policy and the Regulation were in effect are safe, highly effective and an important preventative measure that provide protection for individuals and other persons with whom they come into contact from infection, severe illness, and possible death from COVID-19. In particular

and without limitation, at the time the Vaccination Policy and the Regulation were in effect:

- a. a full course of vaccine was more reliable in providing effective and enduring protection from infection and severe illness than post-infection immunity from prior COVID-19 infection alone, or post-infection immunity in combination with a single-dose of vaccine;
- b. unvaccinated and partially vaccinated people were at a higher risk than vaccinated people of becoming infected with SARS-CoV-2 and those who were infected experienced significantly higher rates of hospitalization, ICU-level care and invasive mechanical ventilation, complications and death when compared with fully vaccinated people;
- c. unvaccinated and partially vaccinated people presented a higher risk of transmission of SARS-CoV-2 to other people. Vulnerable groups such as people over 70 years of age, and people with chronic health conditions or compromised immune systems were more vulnerable to severe illness and death from COVID-19 even if they were vaccinated;
- d. vaccinated people who became infected with SARS-CoV-2 were generally contagious for a shorter period of time, were less symptomatic, and were less likely to transmit SARS-CoV-2 than unvaccinated people;
- e. unvaccinated people who contracted SARS-CoV-2 comprised the majority of hospitalizations and ICU admissions;
- f. communities with low vaccination rates had experienced rapid spread of SARS-CoV-2 causing serious illness and increases in hospitalizations and intensive care admissions, primarily in unvaccinated people;
- g. unvaccinated and partially vaccinated people in close contact with other people could promote the transmission of SARS-CoV-2; and
- h. programs that require proof of vaccination limited the presence of unvaccinated and partially vaccinated people in settings conducive to transmission and increased vaccination uptake in populations thereby reducing the public health risk of SARS-CoV-2 resulting in the occurrence of COVID-19.

Improper Pleadings

14. Paragraphs 6-11 of Part 1 of the Claim constitute argument and are not proper pleadings.

Division 3 – Additional Facts

The Collective Agreements

15. The putative class members' employment was at all material times subject to a collective agreement between their union and the Province.
16. The GEU Collective Agreement and the collective agreements that apply to putative class members who are or were members of unions other than the GEU (collectively, the "**Collective Agreements**") provide:
 - a. a grievance procedure for grievances concerning all disputes respecting the interpretation, application, operation, or alleged breach of the Collective Agreements;
 - b. an arbitration process to be followed after exhausting the grievance procedure; and
 - c. that the decision of the arbitration board is final, binding and enforceable on the parties.

Part 2: RESPONSE TO RELIEF SOUGHT

17. The Defendants oppose the granting of the relief sought in ALL of the paragraphs of Part 2 of the Claim.

Part 3: LEGAL BASIS

Jurisdiction

18. The Defendants plead and rely upon s. 84(2) of the *Labour Relations Code*, RSBC 1996, c. 244 (the "**Code**").
19. The plaintiff and putative class members' s. 2(d) *Charter* claims and claims based on an alleged breach of their privacy rights fall within the exclusive jurisdiction of a labour arbitrator.
20. The court does not have jurisdiction over the Province in respect of the s. 2(d) *Charter* claims and the claims based on alleged breach of privacy rights made against the Province in this proceeding.

Misfeasance in Public Office

21. The Claim lacks sufficient material facts or a legal basis to support a cause of action for the tort of misfeasance in public office.
22. In addition and in any event, the Defendants deny that the PHO engaged in any deliberate and unlawful conduct in her capacity as a public officer or

acted in bad faith, as alleged or at all. At all material times, the PHO was acting in the lawful exercise of her duties and in good faith.

23. The Defendants deny that any of their acts or omissions caused or contributed to any harm suffered by the plaintiff or putative class members, as alleged or at all.
24. The Defendants deny that the plaintiff and putative class members suffered any damage, as alleged or at all. In addition or in the alternative, if the plaintiff or putative class members have suffered or continue to suffer any damage, as alleged or at all (which is denied), then they have failed to take all reasonable steps to mitigate such losses.

Section 2(d) of the *Charter*

25. If the court has jurisdiction over the Province in respect of the s. 2(d) *Charter* claims (which is denied), the Claim lacks sufficient material facts or a legal basis to support a cause of action for the alleged breach of the plaintiff and putative class members' rights under s. 2(d) of the *Charter*.
26. The Defendants deny that the plaintiff or putative class members have been deprived of their rights under s. 2(d) of the *Charter*, as alleged or at all.
27. In the alternative, if the plaintiff or putative class members were deprived of their rights under s. 2(d) of the *Charter* (which is denied), the Defendants deny that any of their acts or omissions caused or contributed to the breach, as alleged or at all.
28. In the further alternative, the Vaccination Policy and the Regulation are proportionate responses to the statutory purposes of occupational and public health and therefore any infringement of the plaintiff or putative class members' *Charter* rights (which is not admitted but denied) is justified under s. 1 of the *Charter*.
29. In the further alternative, the Defendants deny that damages pursuant to s. 24(1) of the *Charter* are just or appropriate.

Privacy Rights

30. If the court has jurisdiction over the Province in respect of the claims based on alleged breach of privacy rights (which is denied), the Claim lacks sufficient material facts or a legal basis to support a cause of action relating to the privacy rights of the plaintiff or putative class members.
31. In addition, and in any event, the Province was authorized under the Regulation to require employees to disclose their vaccination status and to provide information in connection with a request for an exemption or accommodation under the Vaccination Policy.

32. The Defendants plead and rely upon s. 2(2)(c) of the *Privacy Act*, RSBC 1996, c. 373.

Aggravated and Punitive Damages

33. The Claim lacks sufficient material facts to support a claim for punitive or aggravated damages.
34. In addition and in any event, the Defendants deny that either of them engaged in any conduct that would support an award of aggravated or punitive damages, as alleged or at all. The Vaccination Policy and the Regulation were intended to protect and promote the health and safety of employees and others in the workplace.

Statutory Immunity

35. In addition or in the alternative, the plaintiff and putative class members' claims are statutorily barred in whole or in part by operation of s. 92 of the *Public Health Act*.
36. The Claim lacks sufficient material facts or a legal basis to support a constitutional challenge to s. 92 of the *Public Health Act*. The Claim pleads no material facts or legal basis to support the declaratory relief sought in respect of s. 92 of the *Public Health Act*.
37. The Defendants plead and rely on the *Code*, the *PSA*, the *Public Health Act*, the *Privacy Act*, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89.

Defendants' address for service:

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Date: May 6, 2024



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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.