2021 **Yar No. 510031**

Supreme Court of Nova Scotia

Between:

Citizens Alliance of Nova Scotia and J.M. by his Litigation Guardian K.M.

Applicant

and

Robert Strang acting as Chief Medical Officer of Health of Nova Scotia and Michelle Thompson acting as Minister of Health and Wellness of Nova Scotia and the Attorney General of Nova Scotia representing His Majesty the King in Right of the Province of Nova Scotia

Respondents

THE APPLICANT, CITIZENS ALLIANCE OF NOVA SCOTIA, RESPONSE TO AGNS MOOTNESS MOTION

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Background

1) Section 2 of the ***HPA*** reads plainly; **Restrictions on private rights and freedoms limited *2 Restrictions on private rights and freedoms arising as a result of the exercise of any power under this Act shall be no greater than are reasonably required, considering all of the circumstances, to respond to a health hazard, notifiable disease or condition, communicable disease or public health emergency. 2004, c. 4, s. 2.***

2) The response by the government of Nova Scotia to the emergence of SARS-CoV2 pathogen as directed by Robert Strang acting as Chief Medical Officer of Health and constituted the sharpest departure from Democratic and Legal norms in the history of Nova Scotia.

3) The infectious agent in question was named SARS-COV2 because there was already a pandemic level event involving SARS-COV1 in 2003. There was nothing “unique” about it.

4) Pandemics have occurred repeatedly at varied intervals throughout human history and will occur again.

5) The CMOH will be the main administrator the government relies on to deal with any future pandemics.

6) Contrary to the affidavit the Respondent submitted with his motion the first issuance of Public Health orders came from the office of the CMOH using the authority of the ***HPA***, “several weeks” before this video of the oral orders went live on March 6th at the below URL: https://www.youtube.com/watch?v=HGfSPVf_G3U&t=643s

7) As stated in the respondents motion for mootness at para 1, **“*The province of Nova Scotia was under a state of emergency, pursuant to the Emergencies Management Act SNS 90 c-8, from March 22, 2020, until March 21st 2022 in response to the global Covid-19 pandemic”*** There is no statutory mechanism for a State of Emergency, which is under the authority of the Minister of Municipal Affairs and Housing, to be initiated by the Minister of Health or the Chief Medical Officer of Health. At no time did the Minister of Health of Nova Scotia issue a **Public Health Emergency as outlined in Section 53 of the Health Protection act so at NO TIME did Robert Strang have access to any of the powers under section 53 of the *HPA*** the actions taken by the Respondents were completely ultra vires from the foundation to implementation and intention of the Statute.

8) Even if the requisite “Public Health Emergency” had been declared by the Minister of Health allowing the Respondent to use the powers granted by section 53 of the *HPA*,

Robert Strang exceeded the authority given him by the *HPA* in section 53 as in his Order of October 1, 2021 and its embedded protocol the Respondent created a coercive vaccine mandate even though the *Health Protection Act (HPA)* clearly restricts him from doing so.

9) The Nova Scotia government's guide to the *HPA* published in 2005 states clearly that even with the declaration of a Public Health Emergency by the Minister of Health that, "*This declaration then allows the CMOH to implement special measures. These measures might include (but are not limited to):implementing an immunisation program;* ***note that there is no ability to implement mandatory immunization in Nova Scotia even in a public health emergency****".*

10) As stated in my Lord's decision on Public Interest Standing Citizens Alliance of Nova was formed in response ***directly*** to the actions of the Respondent, its mission was to shield the legal and constitutional rights of Nova Scotia's citizens ***directly*** from the respondents overreach and thus the corporate Applicant was negatively affected in a manner more egregiously and ***directly*** than other organizations.

11) Section ***38 (1)*** of the ***HPA*** clearly delineates the power to **force any medical treatment** as resting solely with the Courts and only when an individual is found to have a listed communicable disease. Thus the impugned order is an unconstitutional usurping of the power of the Courts and the Respondent acted Ultra Vires when issuing the impugned orders to every healthy Nova Scotian.

12) Section **38 (1)** ***HPA*** confers upon the Court to Order the power to "*where found on examination to be infected with an agent of a communicable disease, be treated for the disease*." and gives no power to even the Courts to order the injection of anything into a healthy person. The statute follows the Legal Maxim ***that which cannot be done directly cannot be done indirectly,*** however the actions of the Respondent do not.

13) The mRNA products that the coercive Orders issued Mandate system created by Robert Strang had not at the time of his initial or ensuing Iterations ***passed clinical trials*** and no person could have had any insight into their long term effects. An Experimental "treatment" with no informed consent which is a violation of *The International Covenant of Civil and Political Rights Article 18.* and fraudulent statements such as: "mRNA injections/vaccines stop transmission" and are "safe and effective" deliberately misrepresent their experimental / clinical trial status.

14) Neither the WHO nor Health Canada nor NACI have legal responsibility or authority for the Health of Nova Scotians, that responsibility rests solely with Robert Strang acting as CMOH by way of the HPA however health is neither defined nor listed as a Subject Matter under provincial or federal jurisdiction in sections 91 or 92 of the *Constitution*.

15) The use of *Coercive Deterrence* is contrary to Charter Values breached labor contracts, collective agreements violated section ***346(1)*** Extortion of the *Criminal Code* and breached the Applicant's Charter stated values/rights.

16) Children are afforded unique special protections under Canadian and International Law and Treaty.
.

17) The Applicant takes note of the wording contained in the May 30th finding of the Military Grievances External Review Committee (MGERC) in a May 30 2023 decision.
"I conclude that the limitation of the grievors' right to liberty and security of the person by the CAF vaccination policy is not in accordance with the principles of fundamental justice because the policy, in some aspects, is arbitrary, overly broad and disproportionate,"
Commissioner Nina Frid

Law of Mootness

18) In its decision on **Borowski v. The Attorney General of Canada** the honourable justices of the court set the standard test for whether a matter is *Moot* in Canada.
"The doctrine of mootness is part of a general policy that a court may decline to decide a case which raises merely a hypothetical or abstract question. An appeal is moot when a decision will not have the effect of resolving some controversy affecting or potentially affecting the rights of the parties. Such a live controversy must be present not only when the action or proceeding is commenced but also when the court is called upon to reach a decision. The general policy is enforced in moot cases unless the court exercises its discretion to depart from it.
The approach with respect to mootness involves a two-step analysis. It is first necessary to determine whether the requisite tangible and concrete dispute has disappeared rendering the issues academic. If so, it is then necessary to decide if the court should exercise its discretion to hear the case."

19) The two part test is then firstly , ***"Is there a live issue***" that could be resolved and materially affect the rights of the parties by adjudication secondly if not should the court consider the matter notwithstanding after considering the following factors

(1) the presence of an adversarial context;

(2) the concern for judicial economy; and

(3) the need for the Court to be sensitive to its role as the adjudicative branch in our political framework.

20) In ***Nassichuk-Dean v University of Lethbridge, 2022 ABKB 629 (CanLII)*** Justice D.V. Hartigan found the following

[14] In Trang #1, the parties seeking a declaration alleged that their Charter rights were breached by the detention facility while they were remanded awaiting trial. The government argued that the action was moot, as all the charges against the applying parties had either been stayed or otherwise disposed. The Court of Appeal held that, notwithstanding that the underlying criminal proceedings were at an end, whether or not the applying parties' Charter rights were breached while they were detained remained a live controversy: Trang #1, at para 5. The proceedings were therefore not moot.

[15] In Pridgen v University of Calgary, 2010 ABQB 644 [Pridgen], Strekaf J considered the issue of mootness in an action for declarative relief. In that case, a group of students had been disciplined by the University of Calgary. The students sought a declaration that the discipline violated their Charter rights. The University of Calgary argued that the issues on that application were moot, as the applicant's periods of probation had passed and all reference to the discipline had been removed from the respective academic records. Applying Trang #1, the Court found that the action for declarative relief was not moot: Pridgen, at paras 27 and 28.

[16] I therefore find that the issue as to whether Ms. Nassichuk-Dean's rights were violated remains a live controversy between the parties. The application is not, therefore, moot.

[17] Given that finding, I do not need to proceed to the second stage of the analysis set out in Borowski.

21) Justice Hartigan relied on his ***Nassichuk-Dean v University of Lethbridge*** decision on ***Trang v. Alberta (Edmonton Remand Centre), 2005 ABCA 66*** where Justice Costigan J.A. found at para ***[3] "The appellants argued that the application for a declaration was moot because the underlying criminal proceedings had been stayed or otherwise terminated and, accordingly, there was no live controversy between the parties. The chambers judge concluded that there was a live controversy because the respondents were seeking a remedy, a declaration, for past charter breaches and until a determination of the issue of entitlement to a remedy was reached there was a live controversy"*** and at para ***[5]*** " ***In our view, the proceedings are not moot. There is clearly a live controversy between the parties as to whether or not the respondents' charter rights were breached while they were incarcerated. An action for a declaration may proceed in the absence of a claim for any other remedy. Given our findings on that issue it is unnecessary for us to consider the second stage of the Borowski v. Canada (Attorney General), 1989 CanLII 123 (SCC), [1989] 1 S.C.R. 342 analysis; that is whether the chambers judge properly exercised his discretion in allowing the proceedings to continue.***

22) In ***Pridgen v. University of Calgary, 2010 ABQB 644*** Madam Justice J. Strekaf found that

28] The Applicants in this instance are seeking, inter alia, a declaration that their Charter rights were breached, which is analogous to the relief sought in Trang v. Alberta (Edmonton Remand Centre), 2005 ABCA 66, 363 A.R. 167. The Alberta Court of Appeal dismissed the argument that the proceedings in that case were moot and found at paragraph 5 that "(t)here is clearly a live controversy between the parties as to whether or not the respondents' Charter rights were breached while they were incarcerated. An action for a declaration may proceed in the absence of a claim for any other remedy."

23) The courts then have determined that declaratory relief is enough to keep a conflict Live in the view of the courts and that declaratory relief can proceed minus any other claimed relief.

24) In **J. Cote & Son Excavating Ltd. v City of Burnaby, 2017 BCSC 2323**

[55] In balancing the above factors, I consider that the first two outweigh the latter two. Accordingly, I conclude that it is appropriate to allow the public policy issue to proceed to a determination along with the constitutional/Charter questions that remain between the parties. I exercise my discretion to do so here.

Conclusion

[56] There is no formal application by the City to determine the mootness issue. Nevertheless, I conclude:

a) the constitutional and Charter issues raised in the further amended notice of civil claim are not moot; and

b) the public policy issue raised in the further amended notice of civil claim is moot but I exercise my discretion to allow that matter to proceed to a determination.

25) In the above decision a court yet again found a claim for Charter breach and constitutional issues were enough to sustain a proceeding saying.
a) I have no concerns about a lack of an adversarial process. Cote is actively asserting its positions. The City remains an involved litigant who is assiduously defending this proceeding and opposing the relief sought. In addition, the Attorney General remains fully engaged in this litigation and has and is expected to provide extensive and helpful submissions on the issues before the Court;

b) similarly, I have few concerns about the expenditure of judicial resources. This is but one of many issues that will be decided in this proceeding and I do not expect that consideration of the public policy arguments will materially add to the

overall time and resources of the Court in addressing all of the issues at the same time;

c) I accept that there may be practical effects on the rights of Cote and other contractors in addressing the validity of these types of clauses. For example, there is no reason why the City could not reintroduce the Clause or a similarly worded clause in the future

26) In these decisions the courts have laid out the fact that if the Declaratory relief sought will have a real effect on the parties then it is enough to sustain a “live conflict” before the courts that might otherwise be moot. Even if the moving instance has disappeared.

27) The Applicant humbly asserts that our matter similarly should proceed to review as the “public policy” issue at hand is far more pressing than contractor rights.

28) We say whether or not the Respondent actions do/ or do not form the component parts of Torts of Public Misfeasance and Unlawful Means are a “live conflict” whose resolution will have a direct material effect on the rights of the Parties before you my Lord and which will have practical utility for the Applicant.

Discretion of the courts

29) The Nova Scotia Court of Appeals in **The Canadian Civil Liberties Association v. Nova Scotia (Attorney General), 2022 NSCA 64** found unanimously on the subject of Mootness on, in an issue involving Robert Strang acting as CMOH,

22 (b)” ***Although moot, the Court should entertain this appeal owing to the public interests engaged;”***

30) In ***Kassam v. Canada (Minister of Citizenship and Immigration), 1997 (FC)*** at paras

(10) The first criteria is the existence of an adversarial context because it "is a fundamental tenet of our legal system and helps guarantee that issues are well and fully argued by parties who have a stake in the outcome" (at page 358). Sopinka J. noted that the adversarial relationship can prevail even in the absence of a live controversy. In particular, he suggested that the collateral consequences of a court's determination may provide the necessary adversarial context. In this case, I would find that the adversarial context is present based on the fact that this matter was argued with great tenacity by the parties at the hearing. In addition, given that the applicant still expresses a desire to visit Canada, the outcome of this decision would certainly have collateral consequences for the applicant.

(11) The second criteria is a concern for judicial economy. Sopinka J. cited several situations where this concern would be addressed by hearing a moot case and I find that two such situations are relevant here (see pages 360-2). First, although the court's determination will not affect the controversy which gave rise to this application, it will have some practical effect on the rights of the parties because the applicant will be affected in future applications for a visitor's visa. Second, Sopinka J. suggested that a moot case may be heard if it is of a recurring nature but brief duration. The learned justice added that merely because the same point recurs frequently is not a reason to hear the case unless the dispute will have always disappeared before it is ultimately resolved. In the case of a refusal of a visitor's visa, the facts underlying the dispute will always have disappeared before it is heard on judicial review.

(12) The final criteria concerns the need for the court to recognize its proper law-making function (see pages 362-3). The court must be wary of making judgments in the absence of a dispute affecting the rights of the parties as they may be seen as intruding into the legislative role rather than its usual adjudicative role. However, Sopinka J. noted that the court must be flexible in its determination on this issue. The learned justice added that an evaluation of this criterion requires more than a consideration of the subject matter's importance.

(38) A judge of this Court in Vancouver Shipyards Co. Ltd. v. Canadian Merchant Services Guild, 2023 BCCA 77 recently summarized some of the considerations that arise in respect of the second Borowski factor:

[24] The second Borowski factor of concern for judicial economy will be addressed if "the special circumstances of the case make it worthwhile to apply scarce judicial resources to resolve it" (Mapara v. Ferndale Institution, 2014 BCCA 49 at para. 34), including where:

> ***a) the court's decision will have some practical effect on the rights of the parties even without the effect of determining the controversy that gave rise to the action;***
>
> ***b) the appeal raises an issue of a recurring nature but of necessarily brief duration that might otherwise evade review; or***
>
> ***c) the appeal raises an issue of public importance where a resolution is in the public interest***

31) In ***2024 FC 42*** a matter that involved the challenge to the legality and constitutionality of a temporary "Emergency Act" invocation that was rescinded before any meaningful case

could proceed to adjudication The Honourable Justice Mosley found on the issue of mootness;

[141] In my view, the Applicants have established that an adversarial context continues to exist and have built a record upon which meaningful judicial review of the decision to invoke the Act and issue the Proclamation and related instruments can occur.

[142] Under the judicial economy analysis, courts can consider whether the matter is likely to recur and is evasive of review, and whether the matter is of national or public importance: Borowski at p 353. The Respondent does not dispute that the matter is of national and public importance but contends that alone is insufficient in the absence of an additional "social cost in leaving the matter undecided": Borowski at p 362. The Respondent suggests that the likelihood of recurrence is uncertain given the exceptional circumstances in which the Act was invoked and contend that further declarations will not be evasive of review going forward in light of the requirements for both a public inquiry and parliamentary review.

[148] As argued by the CCF, a public order emergency is a paradigmatic example of a matter that is evasive of review because it will almost always be over and moot by the time a challenge can be heard on the merits. For arguably comparable examples see Tremblay v Daigle, [1989] 2 SCR 530, p 539; G.(J.) at para 47; Doucet-Boudreau v Nova Scotia (Minister of Education), 2003 SCC 62 at para 20; Mazzei v British Columbia (Director of Adult Forensic Psychiatric Services), 2006 SCC 7 para 15; A.C. v Manitoba (Director of Child and Family Services), 2009 SCC 30 at para 174; Mission Institution v Khela, 2014 SCC 24 at para 14; Canada (Public Safety and Emergency Preparedness) v China, 2019 SCC 29 at para 15; and R. v Penunsi, 2019 SCC 39 at para 11.

149] The Act's definition of a "public order emergency" requires that it be temporary, which means that such order will likely have ended long before any legal challenges to the proclamation of an emergency are heard by the courts. The timeline of this case illustrates this point. If the Court declines to hear these cases, a precedent may be established that so long as the government can revoke the declaration of an emergency before a judicial review application can be heard, the courts will have no role in reviewing the legality of such a decision.

[150] There would thus be an "additional social cost" in leaving the issues raised in these proceedings undecided, as the Act vests extraordinary powers in the Executive, including the power to create new offences without recourse to Parliament, or public debate, and the power to act in core areas of provincial jurisdiction without provincial consultation or consent.

[151] Uncertainty as to when and how the Act can be invoked necessarily creates a "social cost" in that, in the next emergency, the government may take similar measures without the benefit of the guidance of the courts on their reasonableness or compliance with the Charter. In the result, the interests of judicial economy do not foreclose the hearing of these applications.

[158] Taking the public and national importance of the subject matter into account, which is not disputed by the Respondent, and my conclusions on the factors of judicial economy and respect for the legislative process, and subject to my remarks below about standing, I am satisfied that the applications should be heard notwithstanding their mootness.
This, it was recognized, was to ensure that Canadians would be able to challenge in the courts any Proclamation and related statutory instruments made by the Executive.

32) The courts have found repeatedly that matters of **importance to the Public** that are **likely to recur** but are, or may be, **evasive of review** in any future instance should engage the courts to exercise discretion to hear these matters in the present instant.

33) In ***A.C. v Manitoba (Director of Child and Family Services), 2009 SCC 30*** The Justices found at para ***[174] The order of the applications judge was upheld by a unanimous Court of Appeal on February 5, 2007. The issue by that time was moot, as the April 16, 2006 order had been executed, but the court heard the appeal on the basis (correctly in my view) that the CFSA issue was not only likely to recur but in the nature of things will generally be evasive of review. Few treatment decisions of this nature can await the outcome of the appellate process.***

34) Like the above case ours involves the medical treatment where the window between the ordering and delivering of it may be short and evasive to review the impugned action at Bar in the present instance and in any future CMOH response whose duration is set solely by the CMOH and may thus be can be withdrawn by the CMOH at any time of his choosing to evade review.

35) The Justices of the Supreme Court in **Doucet-Boudreau v. Nova Scotia (Minister of Education)** at para 20 , "***As to the concern for conserving scarce judicial resources, this Court has many times noted that such an expenditure is warranted in cases that raise important issues but are evasive of review"***
Although this appeal is moot, the considerations in Borowski, supra, suggest that it should be heard. Writing for the Court, Sopinka J. outlined the following criteria for courts to consider in exercising discretion to hear a moot case (at pp. 358-63):

(1) the presence of an adversarial context;
(2) the concern for judicial economy; and
(3) the need for the Court to be sensitive to its role as the adjudicative branch in our political framework.

19 In this case, the appropriate adversarial context persists. The litigants have continued to argue their respective sides vigorously.
20 As to the concern for conserving scarce judicial resources, this Court has many times noted that such an expenditure is warranted in cases that raise important issues but are evasive of review (Borowski, supra, at p. 360; International Brotherhood of Electrical Workers, Local Union 2085 v. Winnipeg Builders' Exchange, [1967] S.C.R. 628; New Brunswick (Minister of Health and Community Services) v. G. (J.), [1999] 3 S.C.R. 46). The present appeal raises an important question about the jurisdiction of superior courts to order what may be an effective remedy in some classes of cases. To the extent that the reporting order is effective, it will tend to evade review since parties may rapidly comply with orders before an appeal is heard.

36) In **Mission Institution v. Khela, 2014 SCC 24 the court found**

[14] Despite being moot, this appeal merits a decision in the circumstances of this case. The nature of habeas corpus applications involving the transfer and segregation of inmates is such that the factual circumstances of a given application can change quickly, before an appellate court can review the application judge's decision. This means that such cases will often be moot before making it to the appellate level, and are therefore "capable of repetition, yet evasive of review" (Borowski v. Canada (Attorney General), 1989 CanLII 123 (SCC), [1989] 1 S.C.R. 342, at p. 364). As was true in May v. Ferndale Institution, 2005 SCC 82, [2005] 3 S.C.R. 809, at para. 14, and Cardinal v. Director of Kent Institution, 1985 CanLII 23 (SCC), [1985] 2 S.C.R. 643, at p. 652, the points in issue here are sufficiently important, and they come before appellate courts as "live" issues so rarely, that the law needs to be clarified in the instant case

37) The Applicant humbly submits that the above case reinforces the view of the courts that matters that may be evasive to Review yet engage the public interest should be heard by the courts especially if they have the effect of clarifying the Law on some aspect of administrative power under Law and have even a potential impact on those rights in the future.

Applicants Submission on Live Conflict

38) The Applicant submits the Respondents analysis of Borowski as it relates to Review is fundamentally flawed as the required "Live Conflict" and "Adversarial context" as defined in, **Shakeri v. Canada 2016 FC 132 7paras 16,17, *Trang v. Alberta (Edmonton Remand Centre), 2005 ABCA 66, Nassichuk-Dean v University of Lethbridge, 2022 ABKB 629, Pridgen v. University of Calgary, 2010 ABQB 644*** continues to exist.

39) A live conflict exists between the Corporate Applicant CANS against Robert Strang and that the rights of the Applicant may reasonably be said to be inevitably "potentially affected" by the reasonably foreseeable future actions of the impugned administrator or any subsequent CMOH without adjudication. The Applicant further humbly asserts that the adjudication of the matter will have

40) The Applicant asserts that a Live Conflict exists in regards to the Respondent as CANS style of Action asserts ***Unlawful Action*** inter alia. The Applicant's desire for Declaratory Relief is an *effect of Robert Strangs Unlawful action*. The Applicants amended claim for Judicial Review puts this ***Unlawful Action*** at the center of the Applicant's primary cause of action.

41) In Borowski the Justice Sopinka, J. found that the matter was Moot because the "*substratum of Mr. Borowski's appeal has disappeared*" in that ***"the challenge to the constitutionality of s. 251(4), (5) and (6) of the Criminal Code -- disappeared when s. 251 was struck down in R. v. Morgentaler (No. 2). None of the relief sought in the statement of claim was relevant"***

42) The Applicant asserts that ***The substratum*** in our matter is an allegation of ***unlawful*** action. **"Unlawful"** is defined in Black's Legal Dictionary as, "***not authorized by law; illegal.".*** Whether or not the Administrator acted within the Law toward the Applicant remains a Live Conflict.

43) The *HPA* at 53 (2) b specifically and clearly restricts the CMOH to "establishing a **voluntary immunization program** for the Province or any part of the Province," The Applicant asserts the Order is Prima Facie Ultra Vires to the *HPA* and thus to the Statutory Authority of Robert Strang in the manner described in **McLean v. British Columbia (Securities Commission), 2013 SCC 67 para [38]** and **Katz Group Canada Inc. v. Ontario (Health and Long-Term Care), 2013 SCC 64 para**[24]

44) The "GUIDE TO THE HEALTH PROTECTION ACT AND REGULATIONS 2005" published by the Government of Nova Scotia as a resource for Health Professionals states the following:

The Chief Medical Officer of Health is responsible to assess whether or not a public health emergency exists. If he or she believes a public health emergency exists and that special measures are required to respond to the public health emergency, then the CMOH recommends to the Minister that a public health emergency be declared in all of the province or only part of the province. This declaration then allows the CMOH to implement special measures. These measures might include (but are not limited to):
implementing an immunization program; note that there is no ability to implement mandatory immunization in Nova Scotia even in a public health emergency .
A GUIDE TO THE HEALTH PROTECTION ACT AND REGULATIONS 2005

45) Norms in Statutory interpretation are succinctly commented on in

a) **McLean v. British Columbia (Securities Commission), 2013 SCC 67**
[38] It will not always be the case that a particular provision permits multiple reasonable interpretations. Where the ordinary tools of statutory interpretation lead to a single reasonable interpretation and the

administrative decision maker adopts a different interpretation, its interpretation will necessarily be unreasonable — no degree of deference can justify its acceptance; see, e.g., Dunsmuir, at para. 75; Mowat, at para. 34. In those cases, the "range of reasonable outcomes" (Canada (Citizenship and Immigration) v. Khosa, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 4) will necessarily be limited to a single reasonable interpretation — and the administrative decision maker must adopt it.

b) ***In its decision Katz Group Canada Inc. v. Ontario (Health and Long-Term Care), 2013 SCC 64***

[24] A successful challenge to the vires of regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate (Guy Régimbald, Canadian Administrative Law (2008), at p. 132). This was succinctly explained by Lysyk J.:

> ***In determining whether impugned subordinate legislation has been enacted in conformity with the terms of the parent statutory provision, it is essential to ascertain the scope of the mandate conferred by Parliament, having regard to the purpose(s) or objects(s) of the enactment as a whole. The test of conformity with the Act is not satisfied merely by showing that the delegate stayed within the literal (and often broad) terminology of the enabling provision when making subordinate legislation. The power-conferring language must be taken to be qualified by the overriding requirement that the subordinate legislation accord with the purposes and objects of the parent enactment read as a whole.***

46) This is further clarified in ***Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27:***

[21] Although much has been written about the interpretation of legislation (see, e.g., Ruth Sullivan, Statutory Interpretation (1997); Ruth Sullivan, Driedger on the Construction of Statutes (3rd ed. 1994) (hereinafter "Construction of Statutes"); Pierre-André Côté, The Interpretation of Legislation in Canada (2nd ed. 1991)), Elmer Driedger in Construction of Statutes (2nd ed. 1983) best encapsulates the approach upon which I prefer to rely. He recognizes that statutory interpretation cannot be founded on the wording of the legislation alone. At p. 87 he states:

> ***Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.***

47) The Justices of the Supreme Court of Canada said in ***R. v. Thanabalasingham*** 2019 SCC 21 at para [4] ***The underlying basis for the criminal proceedings has not disappeared and there remains a live controversy even if the accused's return to Canada is unlikely.*** " The **underlying basis of a criminal proceeding** is ***unlawful behavior,*** which is commonly referred to as Illegal when it contravenes the Criminal Law as opposed to Administrative Law, but an ***Ultra Vires*** action remains an ***unlawful action***, as defined by Black's Law, and thus illegal.

48) The Applicant says that the style of cause in our proceeding means there is a Live Controversy existing between the Applicant CANS, the Co Applicant JM and the respondent Robert Strang et al. and adjudication will "***have the effect of resolving some controversy affecting or potentially affecting the rights of the parties." Borowski v Canada*** in that the Respondent will not be able to interfere with the ability of the Applicant to conduct economic activity associated with its mandate of the Applicant through any repeat of his coercive mandate scheme.

49) The *unlawful effect* on the economic activity of the Citizens Alliance of Nova Scotia would form the basis of a ***Tort of Unlawful Means*** if my Lord finds that the Respondent indeed acted unlawfully this will certainly have an effect of settling the ***controversy*** evident between the parties as to whether the Administrator acted within his statutory powers and whether that was a breach on the rights of the Applicant and its members in terms of making claim for damages against the Respondent as outlined in ***A.I. Enterprises Ltd. v. Bram Enterprises Ltd., 2014 SCC 12, [2014] 1 S.C.R. 177*** ,***The defendant must have the intention to cause economic harm to the plaintiff as an end in itself or the intention to cause economic harm to the plaintiff because it is a necessary means of achieving an end that serves some ulterior motive." ,.. "The existence of a valid business relationship between the plaintiff and the third party and the defendant's knowledge of that relationship are not elements of the unlawful means tort. The focus of this tort is unlawful conduct that intentionally harms the plaintiff's economic interests. There need be no contract or even other formal dealings between the plaintiff and the third party so long as the defendant's conduct is unlawful and it intentionally harms the plaintiff's economic interests.".***

50) ***Grapendaal v. Canada (Citizenship and Immigration), 2010 FC 1221*** by Justice Mosley of the Federal Court, "***it must be determined if the dispute is still "tangible" and "concrete***". In that case the court ruled that a Live Controversy still existed because, "***I am satisfied that there continues to be a live issue between the parties as the applicant still wishes to visit Canada. It will be two years since the commencement of these proceedings. In that time, the procedural steps in this case have included a leave application, opposition by the respondent to the application for leave, a motion to strike, a non-disclosure request, and a judicial review. Both the applicant and the respondent have demonstrated the adversarial***

nature of this case through their written advocacy and their commitment to the issues." at para 17.

51) The Applicant humbly asserts my Lord that we have shown the dogged tenacity required to form the basis of such a," ***live issue***"

52) In ***Skobrev v. Canada (Minister of Citizenship and Immigration), 2004 FC 485*** the Justice held at para 3 that **"T*wo issues arise in this application. The first is whether this application for judicial review is moot, having regard to the fact that the reason for the Applicant's request for a temporary visa, that is in speed skating competition, no longer exists. The second issue is whether the Applicant has shown that the Visa Officer committed a reviewable error in the manner in which he assessed the Applicant's application."*** and found at para 6 that**, "*I am of the view that the within application should proceed, notwithstanding the expiry of the reason for the Applicant's request for a visitor's visa. The Applicant successfully obtained leave to proceed with this application for judicial review. This occurred in the context of an adversarial process, since this Respondent opposed the application for leave. Further, the evidence is unclear whether future efforts to obtain entrance into Canada would be adversely affected by the negative decision under review*."**

53) In **Shakeri v. Canada 2016 FC 1327 ,** the Justice held that,

17] As per Borowski v Canada (Attorney General), [1989] 1 SCR 342, the Court must determine if the case raises a live issue, and if not, if it should exercise its discretion to hear the case.

[18] The Court is satisfied that there is still a live controversy and that the application is therefore not moot. The Applicants' intention of seeking a temporary resident visa to set another interview and to visit Canada has not been set aside. <u>As pointed out by the Applicants, the Officer's decision could affect further visa requests negatively"</u>

54) The Applicant here notes that in **none** of the above decisions was there even the assertion of any **transcendent Public Interest** in the matters before those courts the matters affected only the private interests of each Applicant.

55) The unadjudicated actions of the Impugned administrator may leave him or any subsequent CMOH with the ***perceived option*** of implementing a coercive immunization mandate unlawfully as described in, ***Schlenker v. Torgrimson, 2013 BCCA***

"[30] So the respondents are concerned that unless the decision under appeal is reviewed, it will remain the basis of legal advice to councillors throughout the

province and because of the good-faith defence, no one will be motivated to challenge their conduct. The argument is that if the decision is wrong and left uncorrected, it will have a deleterious long-term effect.

[31] I agree with this argument. I am not satisfied the case is moot, but even if it is, it falls within the class of cases that should be decided in the public interest.

56) ***Schlenker v. Torgrimson,*** The Applicant humbly submits is also relevant as it explores elements of a type of "public misfeasance" that can occur even if the administrator does not financially benefit,
"32] As mentioned, my principal difference of opinion with the judge is in what I consider to be his too narrow construction of the phrase "a direct or indirect pecuniary interest".

[33] By limiting the interest to personal financial gain, the chambers judge's interpretation missed an indirect interest, pecuniary in nature, in the fulfillment of the respondents' fiduciary duty as directors. The result of applying that narrow interpretation to the facts was to defeat the purpose and object of the conflict of interest legislation.

[34] The object of the legislation is to prevent elected officials from having divided loyalties

57) The Applicant asserts that the Respondents Motion completely misses the basic facts underlying Justice Rosinski's decision in **Coaker**. The Decision Maker in Croaker had the undisputed statutory authority under ***Section 79*** of the ***Correctional Services Act Regulations***, to closely confine Prisoners in his custody. The Applicant asserts that Robert Strang Acted, ***Ultra Vires*** and outside his statutory authority. Justice Rosinski Stated that the courts "*should be very deferential" to decision-makers* ***absent compelling evidence of bad faith****"* paras 37 and 38".

58) The Applicant alleges serious and repeated breaches of Robert Strang's Section 12 Duty of Good Faith under the *HPA* which rise to the level of a Tort of Misfeasance in Public Office as described in House of Lords in ***Three Rivers District Council v. Governor and Company of the Bank of England (No. 3) 6*** and the Supreme Court of Canada in ***Odhavji Estate v. Woodhouse,***

59) We say that to knowingly exceed his mandated powers in such a serious manner is in itself an act of Bad Faith and his further actions taken with the purpose of circumventing his legal authority meets the definition of Bad Faith as described in ***Equity Waste Management of Canada Corp v. Halton Hills (Town), 1997 CanLII 2742***
"[36] Bad faith connotes a lack of candor, frankness and impartiality. It includes arbitrary or unfair conduct and the exercise of power to serve private purposes at the expense of the public interest".

60) The Applicant asserts that the Respondent took ***steps taken, knowing and deliberately, in furtherance*** of his Ultra Vires actions that demonstrably violate the Respondents Section 12 Duty of Good Faith to the Applicant under the *HPA*. This is illustrated by facts of what he knew to be true contained in his direct correspondence opposed to his repeated public statements that demonstrate "***a lack of candor, frankness"*** and shows in stark relief that the Respondent demonstrated," ***arbitrary or unfair conduct and the exercise of power to serve private purposes at the expense of the public interest"***

61) The Applicant asserts strongly this was done with a forethought and calculation we say meets the legal burden of ***Mens Rea*** in Civil Law, and exhibits the constituent characteristics of a Tort of Misfeasance of Public Office toward the Applicant. The Applicant demonstrates this through the Affidavit of Dr [redacted] citizen of Nova Scotia. Dr [redacted] was a practicing front line physician during the pandemic and will testify as to:
    a) *A Guide to the Health Protection Act and Regulations 2005* instructed him as to "vaccination" or immunization programs and how this differs from his direct knowledge of what was done.
    b) Pfizer Canada stating that safety or efficacy data was not known as of October of 2020

62) The Applicant humbly submits the above affidavit is relevant to the Applicants response the the motion to strike as it clarifies the prima facie nature of the ultra vires accusation and offers proof to the court of the Applicants cause of action asserting repeated Bad Faith action we say was essential in furthering his ultra vires mandate scheme in which the Applicant was forced to participate.

63) The Applicant humbly says in this matter the Bad faith actions of the administrator are inseverable from the *ultra vires action*. We say the Bad Faith action was used to facilitate and advance the ultra vires mandate scheme and was indeed essential to it.

64) As proof the Applicant humbly offers the affidavit and attached evidence of [redacted] citizen of Nova scotia who has obtained thousands of internal communications through the Province's FOIPOP process from the Respondent Robert Strang's governing Department, Health And Wellness describing what he knew to be true compared to his public statements and actions which we say ***"connotes a lack of candor, frankness"*** on the part of the Respondent in the formation and implementation of the impugned order and embedded protocol and was "***arbitrary or unfair conduct and the exercise of power to serve private purposes at the expense of the public interest"***

65) The Applicant humbly asserts that the evidence of [redacted] is applicable in response to the Respondents motion to strike as it speaks to two vital matters in the test the Applicant must meet to have this matter heard. Firstly we say strongly that whether or not the CMOH acted in Bad Faith during the exercise of his powers where it affected

the Applicant has bearing on whether or not some aspects of civil tort exists or not and it is our right to have the courts pronounce on it. We also strongly say that whether or not Robert Strang acted in Bad Faith is a, ***"issue of public importance where a resolution is in the public interest" Vancouver Shipyards Co. Ltd. v. Canadian Merchant Services Guild*** or as stated in ***2024 FC 42 "There would thus be an "additional social cost" in leaving the issues raised in these proceedings undecided, as the Act vests extraordinary powers in the Executive, including the power to create new offences without recourse to Parliament"***

66) The Applicant asserts there is a **Live Controversy** between the parties as the *Declaratory Relief* asked for by the Applicant against the Respondent Robert Strang includes;

2. A declaration that the Order under review breached the Respondent, Robert Strang's, duty of Procedural Fairness and was a violation of the Applicant's human rights and fundamental freedoms manifested in the Canadian Bill of Rights and Charter values.

67) The Applicant and its members have at all times the right under section 15 of the *Charter of Rights of the Constitution Act of Canada* to, "***Equality and freedom from discrimination (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law. (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms***." This right was egregiously violated by the Respondents unlawful "mandate" as its ***basic purpose and function*** was as a discriminatory tool to deprive the Applicant of these rights.

68) The most basic section **2, and 2(c) Charter** rights of the Applicant were deprived by the imposition of the Prima Facie ultra vires "Vaccine" mandate system unlawfully forced upon CANS preventing the enjoyment of those rights by its members.

69) The unlawful actions of the impugned administrator had an especially egregious and targeted effect on the Citizens Alliance of Nova Scotia as it was formed to question and legally challenge the egregious and unprecedented violations of fundamental human rights committed throughout the SARS-CoV2 event by the impugned administrator and would thus ***per force*** be especially negatively affected.

70) This is made especially egregious because of the punitive nature of the mandate forced upon the Applicant that threatened significant financial penalties for failing to comply with its unlawful dictates as noted in **Regina v. Coldbeck 1970 CanLII 1203 (AB PC)** The Alberta Provincial Magistrate found that the province cannot enact punitive law with sanction without due process ***"The demerit point system allegedly in force in this province and purporting to be operative by implementation of regulation without enactment, and otherwise creating offenses resulting in recordings of convictions and imposition of penalties neither enacted nor authorized by law, renders both***

the demerit point system ab initio and the section of the Act in question, out of which, on any conviction therefor, its alleged implementation inextricably flows, ultra vires the authority of the Lieutenant-Governor in Council, unconstitutional and in violation of the rights of the individual as secured by sec. 1(a) of the Canadian Bill of Rights, 1960 (Can.), ch. 44. In support of these submissions in general, counsel for the accused urges with emphasis and particularity: "3. The regulations relating to the demerit point system in fact affect an intra vires ouster of the' jurisdiction of the courts. 'Any instrument effecting an intra vires ouster of the jurisdiction of the courts must be expressly authorized to do so.' (The Making of Statutory Instruments,Jeremy S. Williams, Vol.. 8 (1970) Alberta Law Review.

71) The Justices of the Supreme Court of Canada elucidated this principle eloquently in *B.C.G.E.U. v. British Columbia (Attorney General)*, 1988 CanLII 3 (SCC), [1988] 2 S.C.R. 214, "***The Union is advancing certain Charter arguments in the present proceedings. I will deal with those arguments shortly. For the moment I wish to highlight certain sections of the Charter which, it seems to me, are a complete answer to anyone seeking to delay or deny or hinder access to the courts of justice in this country. Let us look first at the preamble to the Charter. It reads: "Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law". So we see that the rule of law is the very foundation of the Charter. Let us turn then to s. 52(1) of the Constitution Act, 1982 which states that the Constitution of Canada is the supreme law of Canada and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect. Earlier sections of the Charter assure, in clear and specific terms, certain fundamental freedoms, democratic rights, mobility rights, legal rights and equality rights of utmost importance to each and every Canadian. And what happens if those rights or freedoms are infringed or denied? Section 24(1) provides the answer--anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances. The rights and freedoms are guaranteed by the Charter and the courts are directed to provide a remedy in the event of infringement. … And so it is in the present case. Of what value are the rights and freedoms guaranteed by the Charter if a person is denied or delayed access to a court of competent jurisdiction in order to vindicate them? How can the courts independently maintain the rule of law and effectively discharge the duties imposed by the Charter if court access is hindered, impeded or denied? The Charter protections would become merely illusory, the entire Charter undermined.***

72) Whether or not Robert Strang ***knowingly, and with intent*** breached his duty of good faith to the applicant by mandating it to partake in an ultra vires coercive vaccine mandate scheme is in the view of the Applicant an issue ***"potentially affecting the rights of the parties.".*** Robert Strang remains in his position and could reimplement his coercive mandate regime at any time to directly and indirectly force medical interventions

on unwilling citizens and mandate the Applicant to participate in this scheme. This constitutes in the Applicants view a Live Conflict and adversarial context required by my Lord.

73) This principle was relied on in, ***J. Cote & Son Excavating Ltd. v City of Burnaby, 2017 BCSC 2323***, to conclude ***"[56] There is no formal application by the City to determine the mootness issue. Nevertheless, I conclude: a) the constitutional and Charter issues raised in the further amended notice of civil claim are not moot;"***

74) The Courts have found consistently for this principle, it is again prescribed by the Alberta Court of Appeal in ***Trang v. Alberta 2005*** that Applications for Declaratory Relief against the breach of constitutional rights may proceed and are not moot if they will have the effect of resolving a live controversy. The Applicants prayed for Relief includes exactly the described Declaration of Charter Rights breach by the Respondent toward the Applicant.

75) The Alberta Court of Appeal found that the mootness decision is not merit based as stated in ***The Alberta Teachers' Association v Buffalo Trail Public Schools Regional Division No 28, 2022 ABCA 13***

[11] Proceedings are "moot" if there is no remaining live issue between the parties. This is not the same thing as saying that the pleadings "do not disclose a cause of action", or that the proceedings can be summarily dismissed because they are without merit. The chambers judge based the conclusion of mootness on the basis that the grievance was without arguable merit. Finding that there remains a live dispute, but it is without merit, is the opposite of finding that there is no live dispute at all.

[12] As the appellant points out, there are numerous decisions holding that a dispute is not moot if the issue of a proper remedy for past breaches remains unresolved: Trang v Alberta (Edmonton Remand Centre), 2005 ABCA 66 at paras. 3, 5, 363 AR 167; J. Cote & Son Excavating Ltd. v City of Burnaby, 2017 BCSC 2323 at paras. 38-40, 85 CLR (4th) 155; Astrazeneca Canada Inc. v Sandoz Canada Inc., 2020 FC 635 at para. 12; Dichmont Estate v. Newfoundland and Labrador (Government Services and Lands), 2021 NLSC 9 at paras. 15, 17. There are labour arbitration decisions to the same effect.

76) This principle is stated precisely in **Nassichuk-Dean v University of Lethbridge,** where Justice Hartigan found that the matter was not moot because of the prayed declaratory relief even though the Justice then ***denied*** the Declaratory Relief asked for on other grounds.

77) The Applicant asserts that a Live Conflict exists in regards the Respondent as CANS style of Action asserts Unlawful action *inter alia*. The Applicant's desire for Declaratory

Relief is an effect of Robert Strangs Unlawful action. The Applicants amended claim for Judicial Review puts this ***Unlawful Action*** as the Applicants primary cause of action.

78) The Applicants strong assertions of Bad Faith Action present a Live Conflict in that a finding of Bad Faith by this court would allow the Applicant to bring action against Robert Strang as an ***Individual*** for a **Tort of unlawful Means** and any other claims **as opposed to bringing action against the crown and impugning the public purse.** The Applicant humbly asserts that this is but one of the "practical effects"that Judgement in this matter would bring on the rights of the Applicant and Respondent respectfully because of the factor of the Respondents section 12 ***HPA*** protections.

79) The Respondents' actions and public statements compared to his private correspondence, both of which are official government documents, show a stunning duplicity. We have here give only a small example of the ***factual evidence*** the Applicant can put before the court to provide the proper context for adjudication, if need be through Rule 7.28 of the Nova Scotia Civil Procedure.

80) Bill 174 currently in first reading in the Nova Scotia legislature[1] would create Robert Strang as an Officer of The House of Assembly vastly increasing the discretionary power of this impugned Administrator. Whether, or not, Robert Strang carries out his function at all times under his section 12 *HPA* duty of good faith is a Judicable matter we humbly assert.

81) If my Lord finds there is no **Live Conflict** then Applicant humbly submits that it would be most proper for the court to exercise its discretion to adjudicate this matter. The Applicant asserts that the necessary adversarial context exists, that adjudication would preserve Judicial economy and that adjudication of this matter would place the court in its most natural and proper place in our democratic process of ensuring that the functions of government are carried out under the rule of Law.

82) The Applicant humbly submits that we meet the criteria for the second Borowski factor exactly as outlined in ***Vancouver Shipyards Co. Ltd. v. Canadian Merchant Services Guild*****,** 2023 BCCA 77 in that

> ***a) the court's decision will have some practical effect on the rights of the parties even without the effect of determining the controversy that gave rise to the action;***
>
> ***b) the appeal raises an issue of a recurring nature but of necessarily brief duration that might otherwise evade review; or***
>
> ***c) the appeal raises an issue of public importance where a resolution is in the public interest.***

[1] https://nslegislature.ca/legc/bills/64th_1st/1st_read/b174.htm

83) The Applicant humbly asserts that Adjudication would have the practical effect of securing the Applicants economic and charter rights in any future infectious disease outbreak. We assert as an uncontroversial fact that another infectious disease outbreak will occur so that Adjudication of this matter now would prevent a massive burden on the courts caused by the likely voluminous legal response to the Respondent or any future CMOH acting in a similar manner That the CMOH seems to believe he can act in this manner is, we say, Prima facie.

84) Adjudication will also have the practical effect on the ***Respondent*** of restricting him or any antecedent CMOH from implementing coercive "***immunization mandates***" in the future.The certainty that ***du jure,*** the CMOH is limited by statute will we say result from the adjudication of this matter. This will per force will have a very practical effect on how they approach inevitable future infectious disease outbreaks which is itself a matter of not inconsequential Public Interest and would have a practical effect of preventing Applicant's potential right.

85) The Applicant humbly asserts that since pandemics are of a recurring nature so will the reaction of Public Health officials and, as we say occurred in this case, any breaches may be of such short duration that it would be necessarily evasive of revue as outlined in 2024 FC 43 ***[148] As argued by the CCF, a public order emergency is a paradigmatic example of a matter that is evasive of review because it will almost always be over and moot by the time a challenge can be heard on the merits. For arguably comparable examples see Tremblay v Daigle, [1989] 2 SCR 530, p 539; G.(J.) at para 47; Doucet-Boudreau v Nova Scotia (Minister of Education), 2003 SCC 62 at para 20; Mazzei v British Columbia (Director of Adult Forensic Psychiatric Services), 2006 SCC 7 para 15; A.C. v Manitoba (Director of Child and Family Services), 2009 SCC 30 at para 174; Mission Institution v Khela, 2014 SCC 24 at para 14; Canada (Public Safety and Emergency Preparedness) v Chhina, 2019 SCC 29 at para 15; and R. v Penunsi, 2019 SCC 39 at para 11.***

86) This position is also set out in In ***A.C. v Manitoba (Director of Child and Family Services), 2009 SCC 30*** The Justices found at para ***[174] The order of the applications judge was upheld by a unanimous Court of Appeal on February 5, 2007. The issue by that time was moot, as the April 16, 2006 order had been executed, but the court heard the appeal on the basis (correctly in my view) that the CFSA issue was not only likely to recur but in the nature of things will generally be evasive of review. Few treatment decisions of this nature can await the outcome of the appellate process."***

87) The Supreme Court reiterated this position in ***Mission Institution v. Khela, 2014 SCC***, ***24 (14] Despite being moot, this appeal merits a decision in the circumstances of this case. The nature of habeas corpus applications involving the transfer and segregation of inmates is such that the factual circumstances of a given application can change quickly, before an appellate court can review the application judge's decision. "This means that such cases will often be moot***

before making it to the appellate level, and are therefore "capable of repetition, yet evasive of review" (Borowski v. Canada (Attorney General), 1989 CanLII 123 (SCC), [1989] 1 S.C.R. 342, at p. 364). As was true in May v. Ferndale Institution, 2005 SCC 82, [2005] 3 S.C.R. 809, at para. 14, and Cardinal v. Director of Kent Institution, 1985 CanLII 23 (SCC), [1985] 2 S.C.R. 643, at p. 652, the points in issue here are sufficiently important, and they come before appellate courts as "live" issues so rarely, that the law needs to be clarified in the instant case

88) The Applicant humbly says that the principle outlined in an American decision regarding a similar covid event related injection mandate. In ***HEALTH FREEDOM DEF. FUND, INC. V. CARVA*** the court took notice of the principle of "***voluntary cessation"*** which forms an exception to mootness under their statute. It does so because the reviewable administrator has the direct ability to render any future challenge to any future unlawful mandate moot ***sua sponte .*** This we say is very much the factual context of our matter though we apparently do not possess the automatic exception.

89) The Applicant respectfully submits that the adversarial context has been demonstrated by the "***great tenacity***" with which we have advanced our cause of action and through these efforts we have, "***established that an adversarial context continues to exist and have built a record upon which meaningful judicial review of the decision "*** as outlined in ***Kassam*** and we humbly say that in this matter as in **Doucet-Boudreau**," ***the appropriate adversarial context persists. The litigants have continued to argue their respective sides vigorously."***

90) The Second principle outlined in ***Kassam,*** **Doucet-Boudreau** is Judicial economy, ***"First, although the court's determination will not affect the controversy which gave rise to this application, it will have some practical effect on the rights of the parties because the applicant will be affected in future applications for a visitor's visa." Sopinka J.*** The Applicant asserts exactly that a future abrogation of the Applicant's rights is assured as it is an uncontroversial fact that future infectious disease outbreaks will occur and that without adjudication it is almost certain that the CMOH will react to them in an unlawful manner or in the style of the Covid-19 response.

91) The third principle elucidated in ***Kassam,*** **Doucet-Boudreau** "***The final criteria concerns the need for the court to recognize its proper law-making function"*** The Applicant asserts that the Review we pray my Lord to undertake places the court precisely in its proper function in the rule of Law, that of assuring Rule only under the Law. We assert ultra vires action with measurable harm attached and we humbly ask my Lord to rule whether the administrator acted within the Law or did not.

92) This principle is further reinforced by In ***Skobrev v. Canada (Minister of Citizenship and Immigration), 2004 FC 485*** the Justice held at para 3 that **"T*wo issues arise in this application. The first is whether this application for judicial review is moot, having regard to the fact that the reason for the Applicant's request for a temporary visa, that is in speed skating competition, no longer exists. The second***

issue is whether the Applicant has shown that the Visa Officer committed a reviewable error in the manner in which he assessed the Applicant's application." and found at para 6 that**, "*I am of the view that the within application should proceed, notwithstanding the expiry of the reason for the Applicant's request for a visitor's visa. The Applicant successfully obtained leave to proceed with this application for judicial review. This occurred in the context of an adversarial process, since this Respondent opposed the application for leave. Further, the evidence is unclear whether future efforts to obtain entrance into Canada would be adversely affected by the negative decision under review*."**

93) In ***Nova Scotia Liberal Party v Chief Electoral Officer,*** 2024 NSSC the court held that a matter should be heard despite it being moot because the event, an election, that gave rise to it was of a recurring nature and that the Liberal Party would be involved in them going forward. The court also found that, "***The CEO had asserted a position on the use of a power which would come up again, so there was a benefit to the Court clarifying the matter."***

94) The Applicant humbly submits that this further reinforces our argument that the unadjudicated fact of what ***was done*** will perforce have a direct effect ***what will be done by*** the CMOH toward the Respondent in any future application of the *HPA* which we say is uncontroversially ***inevitable*** and thus adjudication of the ***immediate instance*** is fully appropriate.

95) To make our point above we quote here from the Hansard of Nova Scotia and say that a recurrence of the unlawful actions of the CMOH are inevitable without adjudication.
MONKEYPOX OUTBREAK - PLANNING

HON. BEN JESSOME « » : Recently the World Health Organization declared monkeypox a global health emergency. Canada has nearly 700 cases, and I will unhappily table that. My question for the Minister of Health and Wellness: What planning is under way in Nova Scotia to prepare for a potential monkeypox outbreak and transmission in Nova Scotia?

HON. MICHELLE THOMPSON « » : This is a great opportunity to highlight the incredible work of the public health system. We have come to know Public Health because of COVID-19 and the work that they do, but this is their expertise around surveillance. In collaboration, not only in Nova Scotia but across Canada, they are experts in surveillance, and they are experts in communicable disease prevention and control. So, the planning has already started. Dr. Deeks, who is one of our Medical Officers of Health, is sitting on national committees and talking about how we are going to plan for the event that we have an outbreak, and how best to address monkeypox. July 27, 2022, https://nslegislature.ca/legislative-business/hansard-debates/assembly-64-session-1/house_22jul27

96) The Applicant here notes that the recommended treatment for Monkeypox is vaccination.

97) Given the above possibility arising from a failure to adjudicate this matter we humbly say of collateral effects on the society and actions potentially affecting rights of the Applicant **are in no way speculative** and the prevention of these unlawful conditions ever recurring, as we say they will certainly without adjudication, is the reason for the Application for Review now in front of My Lord.

98) The Applicant asserts that the documents under affidavit in this response offer proof that there is compelling evidence of Bad Faith in the PHO

Responses in detail to the respondents amended motion of October 11th 2024

99) We humbly say the Respondents analysis of ***Coaker*** is severely flawed in that no one in that matter questioned the ***lawfulness*** of the impugned administrators actions. Therefore the court found itself asked to judge how the administrator carried out his mandated authority. That is not the case in the present review as we allege ***Ultra Vires*** action by the administrator so we do not seek the court to adjudicate how the administrator carries out his lawfully given authority but weather the CMOH ***had the lawful authority to act as he did, and weather he acted in Bad faith,*** which Justice Rosinski in ***Coaker*** actually gave as an exception to this bar from interference in the legislative function.

100) At Para 40 of the motion for mootness the Respondent asserts that, "***The orders have not affected the Applicants since July 6th, 2022"*** The October 2021 order that created the mandate for the injection of experimental mRNA products was by the admission of the Respondent withdrawn less than 10 months after issuance this is not in the humble opinion of the Applicant enough time to reasonably expect any litigation to be argued on its merits especially given the harsh restrictions placed by the CMOH on the administration of justice, that we say were without merit or in the case of the injection mandate legal force, but which greatly delayed the hearing of this matter.

101) In Paras 50 to 54 of the Respondents motion to strike he asserts that our declaratory relief is unavailable because it would have no "***practical utility***" The Applicant humbly asserts that this is not true in the present Review as the declaratory relief asked would have the immediate "***practical utility***" of restricting the CMOH to acting within the Law. Which would "effect the rights" of both parties.

102) At para 55 the respondent relies on ***Spencer v. Canada 2023 FCA 08*** to assert that our asked relief is invalid. In ***Spencer*** , which was an amalgamation of four separate claims, the Ultra Vires accusation, made solely in **Court file T-480-21** depended on a very close reading of a section **58(1) of the *Quarantine Act*,** which directs quarantine only when no other "reasonable" action could be taken to lessen the danger of a

communicable disease. The case involved voluminous submission of “expert opinion” as to what was medically reasonable. That is not the case in the matter before my Lord in that no parsing of words or battle of the eggheads is required to adjudicate whether or not the CMOH was or was not ultra vires. There is no statute that directly and specifically restricts the AIC from taking the actions they did cited by those Applicants. That is not the case in the review before my Lord where section ***53 (2) (a) HPA*** clearly restricts the CMOH of Nova Scotia from doing what he did and his actions further deemed ultra vires in the government published document *A Guide to The Health Protection Act and the Regulations 2005* where it explains ”note that there is no ability to implement mandatory immunization in Nova Scotia even in a public health emergency” on page 11 of the guide.

103) The Applicant notes the decision in ***Spencer*** shares with ***Coaker*** the courts well placed regard with not directly intruding into the Legislative or administrative function to **interpret their actions and decisions within their statutory powers**, to second guess or re make decisions placed within their competence, whereas we alledge Prima Facie ultra vires action and ask the court to rule **on whether or not the administrator had the statutory power to issue the October iteration of his order and embedded protocol.**

104) That matter is, we say, is Prima facie or, at the very least our accusations of ultra vires, “***speak more forcefully for Themselves.***” as noted by my Lord in your August decision at para 52.

105) The cited case ***Ben Naoum v. Canada (Attorney General), 2022 FC 1463*** was an aggregation of four separate applications, like ***Spencer,*** with a wide range of pleadings on a wide range of various Interim Orders and Ministerial orders, ***“[10] The Applicants each independently filed Notices of Application for judicial review challenging the orders. The earliest was filed on December 24, 2021 and the last on March 11, 2022. Because of the differences in time when they initiated their Applications, there are differences as to which specific iteration of the IO they challenge (one Applicant challenges IO 49, two challenges IO 52, and one challenges IO 53).***

106) The Applicant humbly asserts this is fundamentally different from our cause of action in our August amendment. We seek adjudication of the October iteration of the CMOH Robert Strangs order and its embedded protocol which mandated CANS to require proof of injection with experimental mRNA products.

107) The court in reaching its decision cited the fact that, ***“(these files comprise 23 affidavits and 15 expert reports totaling approximately 6,650 pages).”*** that is not the case in the matter before my Lord.

108) Further one of the four cases in **Naoum**, ***SHAUN RICKARD and KARL HARRISON*** has since the striking for mootness in the amalgamated case commenced an action,

Court File No. T-2536-23 against the Federal government covering much of the same ground as the struck Judicial Review which is injurious to Judicial economy.

109) The Justice in Naoum found that, "***[49] There is no important public interest or inconsistency in the law that would justify allocating significant judicial resources to hear these moot Applications."*** Humbly, my Lord indicated thus in your Decision on Public Interest Standing of August 8th 2024, ***"I agree the issues which CANS raises are of public interest and transcend it as an organization***." We the Applicant allege prima facie, "***Inconsistency in the Law***" or at least the Law and what was done.

110) The Applicant respectfully submits that ***Naoum, Spencer, et al*** cited by the Respondent in para 71 of the Respondents motion to strike are Constitutional challenges and the small portion that go beyond ask the courts to very closely read and interpret sections of statute or regulation and adjudicate whether the administrator was reasonable in interpreting them in some specific way. These arguments are advanced through voluminous affidavit evidence and expert testimony.

111) The Applicant humbly asserts that these cases bear little in common with the matter before my Lord in this review. Evidence before you now, in the form of the October 1, 2021 iteration and attached protocol and the *HPA*, is enough to adjudicate whether or not the impugned administrator willfully acted outside his statutory powers in the most egregious manner possible to force the injection of an experimental substance and using unlawful coercive means to force the Applicant to participate in this Ultra Vires scheme or interfere with its mandate and economic activities.

112) The Applicant notes that by far the main subject for contest in the cases cited by the Respondent involve various travel, testing, and quarantine measures as insulting various aspects of constitutional rights. The matter before you now my Lord involves the coerced injection of experimental mRNA products that are now under increasing scrutiny and the subject of legal challenge in Jurisdictions spanning the globe.

113) The Respondent opines about or choice of Judicial review at length, and colours the choice as improper or unsuited to the matter. The Applicant humbly submits that this assertion is not at all based in the *specific facts and context* of our matter. It would have been almost impossible for the Applicant to bring Action or Application that would have had even a remote chance of success given that we humbly say;

a) Much of the basic evidentiary burden for these forms of litigation could not have been met by the Applicant as for the most part it was in the possession of corporate entities extra jurisdictional to this court. Those entities would have vigorously fought any attempt to obtain proprietary information from them
b) Judicial Review uniquely automatically compels the Respondent to provide the Applicant with all documents, scientific studies ect no matter what their original source to the Applicant.

c) Given the directives issued by the Respondent to the court slowing its function precipitously.
d) Given that the Nova Scotia courts started issuing Judicial notice of various “facts” that the ***Respondent*** provided regarding vaccination inter alia.
e) Given the directives and guidance issued by the Barristers association no Lawyer we contacted would even consult with us on this issue. The initiating document for this proceeding was produced solely by lay persons. Given the much higher legal complexity of action or application this was prohibitive to a self represented litigant.
f) Given the ultra vires action of the Respondent interfered with the economic activity of the Applicant that would have allowed the corporate Applicant to launch complex litigation required for action or application which CANS says has the characteristics of a Tort of Unlawful means towards it as described in *A.I. Enterprises Ltd. et al v. Bram Enterprises Ltd. et al.*

114) The evidence to pursue action or application was not available to the Applicant until at least July 1st 2022 when unsealed by the ***UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISIon*** in ***PUBLIC HEALTH AND PROFESSIONALS FOR TRANSPARENCY, v. FDA No. 4:21-cv-1058-P***

115) Given the above we say that the idea that the Applicant had the full menu of litigation open before us and made a poor selection has no basis in reality whether or not it does in Law. Anyone standing before the court has the right to ask it to perform its most proper function of adjudicating against unlawful exercise of power by the state. That is what we choose to do within the 30 day time constraint.

116) The Applicant here takes note that in great variance with his *initial document* the amended motion of the Respondent makes no reference to the various “Judicial Notices” taken by this court at the beginning of the Covid-19 event. This is a tactically wise move by counsel for the respondent but somewhat telling we say as to what purported *facts* the Respondents council considers he could rely on in this proceeding, the missives of his client apparently not being among them.

117) At para 72 of the amended motion to strike the Respondent opines that we should have done various things to advance our cause faster and more efficiently. The Applicant respectful call my Lord to the Supreme Court of Canada’s decision in ***Pintea v. Johns***

> **[4] We would add that we endorse the *Statement of Principles on Self-represented Litigants and Accused Persons* (2006) established by the Canadian Judicial Council”**.

And we humbly ask that my Lord at all times consider this.

118) The Applicant here notes that the time frame between the Applicants motion for public standing being filed, heard and decided was almost a full year. The assertion by

the Respondent that meaningful review could have been accomplished from filing to decision in ten months is most respectfully dreamlike in its lack of contact with the contextual reality of the courts at the time of filing. The Respondents version of events would have no voluminous demands for particulars as was served the Applicant by the Respondent. In counsel's version no one would make any motions, like the current motion to strike or the Applicants motion to be granted public standing. From the myriad cases the Applicant has read through or cited this does not seem normative for Judicial Review of serious matters.

119) The Applicant humbly submits that aside from the restrictions placed *directly on the operating of courts,* that included losing one Justice, caused by the Respondent the courts of Nova Scotia at the time of the initial filing for review were facing a titlewave of "Covid-19 offences" which included; standing closer than what random peace officers deemed to be 6 feet, going to grandma's house or nursing home, visiting your neighbours or participating in religious rights. One person was ticketed for walking alone on a beach in the Province of Nova Scotia. This context was directly materially caused by the Respondent.

120) The Applicant most humbly submits that it is an uncontroversial fact that the various iterations of the Respondents' orders **touched every facet of society and impacted every function of the state.** As the council for Respondent has previously pleaded the orders of the CMOH when in effect "***affected every citizen of Nova Scotia and everyone present in the province"***.

121) None of the above we respectfully say changes the fact that ten months, which is the term of the "vaccine mandate" unlawfully created by the Respondent, that it is in terms of the flow of the courts even under "normal" at least the very ***highly questionable*** that this review could have proceeded in a fulsome way, Initial filing to review in principle to final decision, in ten months. The Applicant humbly understands it is my Lord, who actually conducts these proceedings, who has the most precise understanding of this but asks that any doubt in this matter be weighed in favour of the Applicant.

122) The Applicant humbly submits that the adding of the minor Applicant was completely natural given the moving document submitted by the Applicant noted strongly the insult to the rights of this class by the respondent and his unlawfully conferring on them sole legal right to consent to a medical treatment so that the Applicant was mandated to carry out the impugned administrators ultra vires scheme even against minor children.

123) At para 53-58 and 60 the Respondent makes arguments about the lack of live controversy precluding declaratory relief. In ***Trang*** the justices said, "[5] In our view, the proceedings are not moot. ***There is clearly a live controversy between the parties as to whether or not the respondents' charter rights were breached while they were incarcerated. An action for a declaration may proceed in the absence of a***

claim for any other remedy." so the issue here at bar hangs on whether a Judgement would have a "practical effect" on the rights of the parties even though the moving instance has ceased as in Trang the ***"underlying criminal proceedings had been stayed or otherwise terminated" para 3***

124) The SCC in ***Spencer*** based its decision on their finding that Judicial decisions on the matter would have ***no practical effect on the rights of the parties.*** The Applicant humbly submits that is not the case here.

125) We here are not asking for the purview of any sort of interim order or temporary regulation but on whether, or not the ***HPA*** as written provides the CMOH with the lawful power to cause the injection of any substance he declares to be immunising using coercive or less than voluntary measures thus interfering with the economic activity of the Applicant by coercive measures. We say obviously has a practical effect on the Applicants rights.

126) The Applicant humbly asserts now, as we have, that the decision in this matter will serve the Public Interest even if we are unworthy to represent it. For the reasons laid out in ***Nova Scotia Liberal Party v Chief Electoral Officer, "The Liberal Party would continue to be involved in elections going forward";*** We say it is an uncontroversial fact that pandemics are a recurring feature of human life. The CMOH will undoubtedly be involved in them going forward. "***The CEO had asserted a position on the use of a power which would come up again, so there was a benefit to the Court clarifying the matter."*** The CMOH, and more thoroughly the crown in toto, continues to make the same assertions about the use of their power so that there is demonstrable benefit to this court deciding the matter.

127) The Applicant notes here that almost all communicable diseases covered by the *HPA* are primarily treated with some form of Immunizing agent so that the specific matter of the coerced "immunisation" by the CMOH would almost certainly reoccur with the inevitable arrival of the next communicable disease event that is deemed to pose a threat.

128) At para 59 point 3 the Respondent says that our private standing limits us to bad faith action taken toward the Corporate Entity Citizens Alliance of Nova Scotia. The Applicant says, relying on the definition given in ***Canada Corp v. Halton Hills,*** that the Respondent in forced CANS, under the threat of massive financial penalty, to support his ultra vires mandate scheme. He created this scheme and partially enforced it using assertions he knew to be false and at all times in his actions that affected CANS acted with "***a lack of candour, frankness and impartiality. It includes arbitrary or unfair conduct and the exercise of power to serve private purposes at the expense of the public interest:" para [36]***

129) These bad faith actions we say have the constitute components of a ***tort of public misfeasance*** and were used in furtherance of what would comprise because of its direct economic effect on the Applicant a ***tort of unlawful means.***

130) The Respondent argues in paras 60,61 that the requisite adversarial context does not exist. The Applicant respectfully submits that the ultra vires actions of the administrator had the collateral impact of unlawful interference with the economic activities of the Applicant. Given that our mandated purpose is to advance legal actions in response to government overreach, and legal services are precipitously expensive, the collateral impact as to CANS continues to this day.

131) The necessary adversarial context exists between the parties. Here we say we meet the test put down in **Doucet-Boudreau**," ***In this case, the appropriate adversarial context persists. The litigants have continued to argue their respective sides vigorously."*** and in ***Kassam v. Canada (Minister of Citizenship and Immigration), 1997 (FC)*** at paras

> ***(10) The first criteria is the existence of an adversarial context because it "is a fundamental tenet of our legal system and helps guarantee that issues are well and fully argued by parties who have a stake in the outcome" (at page 358). Sopinka J. noted that the adversarial relationship can prevail even in the absence of a live controversy. In particular, he suggested that the collateral consequences of a court's determination may provide the necessary adversarial context. In this case, I would find that the adversarial context is present based on the fact that this matter was argued with great tenacity by the parties at the hearing. In addition, given that the applicant still expresses a desire to visit Canada, the outcome of this decision would certainly have collateral consequences for the applicant.***

132) The collateral outcome the Justice cites in ***Kassam*** is much the same in our case. CANS has a desire to exercise its economic and other charter rights at all times in the future without the interference of the Respondent or any other CMOH of a new disease rated as a pandemic, as Monkeypox now is so that in the present review, as in Kassam, "***this decision would certainly have collateral consequences for the applicant."*** The Applicant humbly submits that we have argued and continue to argue this matter vigorously.

133) In paras 63-72 the respondent makes an argument that continuing this proceeding would be inconsistent with Judicial economy. As well as the reasons stated previously we say his analysis of Coaker is fundamentally flawed.

134) At para 66 the Respondent states, "***The PHO was not evasive of review. It was in place from March, 2020 and no judicial review was sought until October, 2021. The Order remained in effect until May, 2023.***" We here seek Review of the October order containing the elements of the unlawful vaccine mandate that the Applicant was coercively forced to participate in. This was not possible before October as the order creating the "vaccine mandate" had not been given. We filed for Review within 30 days of it being issued.

135) The *HPA* itself is "*evasive to review*" at section," ***17 (1) "The information, records of interviews, reports, statements, notes, memoranda or other data or material prepared by or supplied to or received by a medical officer, public health inspector or public health nurse, in connection with research, studies or evaluations relating to morbidity, mortality or the cause, prevention, treatment or incidence of disease, or prepared by, supplied to or received by any person engaged in such research or study with the approval of the Minister, are privileged and are not admissible in evidence in any court or before any tribunal, board or agency except as and to the extent that the Minister directs."*** This was the statute the laypersons writing the moving document in this matter were confronted with this in itself presents the citizen reading the statute with the impression that the CMOH is immune from action Application or Judicial Review

136) The Applicant takes note that the respondent did not try and deny the court the record based on this section. This is understandable given the position the courts have outlined in ***Dunsmuir v. New Brunswick, 2008 SCC 9.*** *para* **52** ***This does not mean, however, that the presence of a privative clause is determinative. The rule of law requires that the constitutional role of superior courts be preserved and, as indicated above, neither Parliament nor any legislature can completely remove the courts' power to review the actions and decisions of administrative bodies. This power is constitutionally protected. Judicial review is necessary to ensure that the privative clause is read in its appropriate statutory context and that administrative bodies do not exceed their jurisdiction"***

137) For the reason above the Applicant humbly submits that the Administrator's enabling legislation, the ***Health Protection Act***. 2004 should engage my Lord's discretion as enunciated by the B.C. Court of appeals in its Reference re Section 94(2) of the Motor Vehicle Act 1983,"***The Constitution Act, 1982 in our opinion, has added a new dimension to the role of the courts; the courts have been given constitutional jurisdiction to look at not only the vires of the legislation and whether the procedural safeguards required by natural justice are present but to go further and consider the content of the legislation.***"

138) The Respondent in paras 67 to 70 again says we are moot because we," failed to move this matter forward expeditiously" in a court system bogged down partly by the actions of the respondent and their collateral impacts on our ability to raise the funds required to bring the matter forward.

139) Para 68 and 69 of the Respondent's motion speak to the actions of our former council. If they were improper in any way the Respondent has yet to name it.The Applicant had the legal right to do all these things.

140) The Respondent for their part submitted two demands for particulars one of which required a 14 page response. The Respondent took 370 days to deliver the record.

Respectfully the Applicant in no way implies that the Respondent was committing any trespass of the Civil Procedure. The Respondent took steps allowed to them and those steps involve the passage of time and humbly say this cannot be used as a measure of the Judiciability of the matter at review.

141) At para 70 the Respondent states, "***Additionally, public health orders across the country have already been considered on numerous occasions, so there is no 'gap' in the reported case law"*** This the Applicant humbly submits is incorrect. The cases cited in ***NAOUM*** by the SCC are almost exclusively constitutional arguments and in no way speak to whether the CMOH of Nova Scotia acted outside his statutory authority as clearly stated in the Nova Scotia HPA. In none of these citations is there an accusation of Prima Facie unlawful behaviour. The matter in front of my Lord has been adjudicated by no one.

142) Respondent para 71 the Applicant respectfully says continues the misapplication of Coaker. The Applicant does not ask my Lord to offer ***"helpful guidance"*** to public health officers on how they conduct themselves within their statutory powers but rather **did the impugned administrator act within his statutory powers or did he exceed them**. This humbly we say puts the court firmly in its most proper place in our democratic system. Restraining the rampant power of the state and ensuring governance at all times in accordance with the Law.

143) The Applicant respectfully rejects the Respondents assertion at para 80 that ***The Canadian Civil Liberties Association v Nova Scotia (Attorney General),*** 2022 NSCA 64 is of no assistance to my Lord. in fact the court on that case gave the reason for hearing it even though moot as, "**22 (b**)" ***Although moot, the Court should entertain this appeal owing to the public interests engaged;"*** the same public interest, my Lord has found, rest in the matters before the court in this Review.

144) The other factor we say weighs in our favour from the above decision in this matter is that *" ...**the process here involved legal errors that need not recur."*** The Applicant submits that this is very much the case here. The Applicant's cause of action alleges just such legal fault in the "process" mandated unlawfully by the Respondent that we say very definitely not only need not recur but ***must not*** in the interests of natural justice and fundamental right and the proper functioning of government.

145) The CCLA matter we humbly say is similar to ours in that an administrator in a position of authority for the crown, in one case a Justice in one a CMOH, did not fully and properly apply the statutory and regulatory guidelines under which they are constrained which resulted in an improper insult to the rights of the Applicant in both cases as the Injunction against public gatherings against "Covid-19 measures" perforce preclude the Applicant whose mandate was to challenge such measures from gathering in any way even with the so called "proof of vaccination"

146) The Applicant here notes part of the court's finding in ***CCLA*** was;

"[90] At the time that the injunction application was sought, the Province had been monitoring COVID-19 transmission by contact tracing for many months. Yet no examples of outdoor transmission from this monitoring were described in the affidavit evidence. The affidavit of Hayley Critchton details a number of previous "illegal" outdoor gatherings, but does not ascribe any infection or transmission of COVID-19 to these gatherings. In other words, there was no actual evidence of outdoor transmission presented by the Province. Instead, the Province relies on an opinion from the Chief Medical Officer.

[95] The lack of evidentiary detail is particularly concerning because:

The Province failed to provide a single example of outdoor transmission of COVID-19."

147) The Applicant most strongly asserts that is also the case in the CMOH had no scientific evidence or epidemiological data that supported his unlawful mandating of ***experimental*** mRNA products, if so it would appear in the record as it would perforce have formed part of the materials he relied on to form his decision if it were scientifically sound.

148) The Applicants response to the Respondent at para at para 83 and 84 is to once again note that both ***Naoum*** and ***Spencer*** were aggregate cases each containing four separate actions with a variety of causes none of them including ***Prima facie*** evidence of patently unlawful action.

149) The respondent at para 85 speaks to the ***CM*** case in Alberta which itself relies on ***Taylor v. Newfoundland*** ," ***As the Newfoundland Court of Appeal commented in Taylor at para 31, it "will be the specific government response to the particulars of any future pandemic that would be the subject of any future challenge". The constitutional validity of section 3 of the In-Person Learning Regulation would need to be assessed in that context."*** Unlike ***CM*** or ***Taylor*** we are not seeking adjudication of the constitutionality of certain specific responses to the Covid-19 event we are asking for direct adjudication as to whether the October iteration and embedded protocol, the "vaccine mandate" which CANS was then ***coerced*** to participate in under the coercive threat of severe financial sanction was allowed by the ***home statute*** of the administrator or was wholly ultra vires to it. .

150) Further in ***CM*** the court found ***[12] The chambers judge did not find that either the CMOH Order or the LaGrange Statement violated the Charter. He said "fundamental" to those claims was the appellants' assertion that they and other disabled children "are at increased risk if they contract COVID", but that this assertion was not proven on the evidence before him.*** That is not the case in the review my lord where the ***HPA*** and the October iteration of the CMOH's order and embedded protocol are in evidence and provide the basis for meaningful Review.

151) As the Respondent says ***Taylor,*** "***at para 40 considered it inappropriate for the Court to opine on the constitutionality of discontinued government action.***" We do not seek my Lord to opine on anything but the base ***lawfulness*** of the administrator's action, the fulsome ***collateral consequences*** of which were serious enough to engage the discretion of the court we humbly say.

152) The Respondent at paras 87-89 relies on ***Bowen*** as he says ," ***Notably, the Court found that public interest in the Court's views on vaccination policies was not appropriate because it would constitute a hypothetical opinion where the policies were not in effect".*** The Applicant points out the fundamental difference: we do not ask this court to render some generalised opinion on vaccines but rather on the lawfulness of the administrators actions in light of the restrictions placed on him by his home statute in establishing only a "***voluntary immunisation program in Nova Scotia or any part of the Province."*** at section 53 (2) (a)

153) The "epidemiology" of any future event opined on by the Respondent at para 89 will have no effect on whether or not the CMOH has the ability to coerce the injection of anything any more than the epidemiology submitted as part of the record supported any of Robert Strang's actions. The only restriction we asked placed on the future actions of the CMOH is that they act within the law as written.

154) The case cited by the Respondent at para 90 ***Kassian v British Columbia,*** 2023 BCCA 383 was again a challenge to the constitutionality of some aspects of the so-called "vaccine passport" issued under the *Health Act of British Columbia*. We in common with ***Kassian*** say our charter rights and the administrator's Doré charter duties were breached, but we also say the entire mandate scheme was ***UNLAWFUL*** in the Province of Nova Scotia under the statutes of Nova Scotia. We make no comment on the Laws ,status, or regulations of British Columbia.

Conclusion

155) My Lord the Applicant respectfully persists in our most strong assertion that the matter before you presents Prima Facie evidence of unlawful behaviour with egregious results. We say that the Bad faith actions are ***inseverable*** from the Prima Facie Ultra Vires action. We say that these caused severe and lasting economic damage to the corporate applicant unlawfully, that the results of the damage caused continue to affect the Applicant meeting the duties of its primary mandate. We humbly say this forms a live conflict for the reasons above.

156) The Applicant and its members pray that if my Lord finds there is no Live Conflict that this honourable court will exercise its rightful and proper discretion to hear this matter. The people, including the corporate Applicant and the minor co Applicant, have a right to rule under Law as laid out in the Magna Carta. The social cost of not having this matter adjudicated we humbly but most strongly say could have multi generational impacts on our society. "***As when concerned with individual cases and aggrieved persons, there is a tendency to forget that one is dealing with public law remedies, which, when granted by the courts, not only set a right individual injustice, but also ensure that public bodies exercising powers affecting citizens heed jurisdiction granted them. Certiorari stems from the assumption by the courts of supervisory powers over certain tribunals in order to assure the proper functioning of the machinery of government." R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Company, [1924J 1 K.B. 171 at 205:***

For all the foregoing reasons the Applicant humbly says the Respondent's Motion to Strike for mootness should be denied by this honourable court and that costs in the amount of 1300$ be awarded the Applicant.

All OF WHICH IS RESPECTFULLY SUBMITTED on this 22nd day of November 2024

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William Ray
Agent of the Board

Citizens Alliance of Nova Scotia and J.M. by his litigation guardian K.M.

CANS/

c. Daniel Boyle, Counsel for the Respondents (via mail)

Co-applicant (via email)