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, REBUTTAL FOR

OBSERVANCE OF PUBLIC INTEREST STANDING

William Ray, Board Member
91 – 3045 Robie St., Unit 5 Halifax,
NS B3K 4P6
Email: secretary@thecans.ca

AGENT FOR THE APPLICANT

Daniel Boyle
Barrister & Solicitor
Department of Justice (NS)
8th flr , 1690 Hollis St., PO Box
7 Halifax, NS B3J 1T0
Phone: 902-266-4255
Fax: 902-424-1730
Email:daniel.boyle@novascotia.ca

COUNSEL FOR THE RESPONDENTS

Hugh E. Robichaud
8314 Highway 1 PO Box 40
Meteghan, NS B0W 2J0
Email: hugh@hughrobichaud.com

SOLICITOR FOR THE APPLICANT J.M. BY HIS LITIGATION GUARDIAN K.M.

The Applicants have responded to identified points below using "Re Respondent para" and numbers from the Respondent's submission to the Applicant's Public Interest Standing Motion:

1. Re Respondent para 4; The Applicant takes note that on three separate occasions in documents the Respondent has submitted as correct and true, including the motion for mootness and its attached Affidavit of V. Chouinard, the following appears, " *The first iteration of the Order was issued verbally by Dr. Strang on March 22, **2022**, followed by issuance of the first written Order on March 23, **2020**. "* The Applicant asks that the Respondent correct this error so that the record of this proceeding may be true.

2. The Applicant asserts that the first written order made publicly available on the Nova Scotia government website was on March 24, 2020.

3. Re Respondent at para 5; The Applicant asserts that given the epidemiology data provided in what the Respondent purports to be the Record, that the updates to the Order in response to this epidemiology were unreasonable and based on data that shows no evidence of a health emergency.

4. Re Respondent Para 6; The focus of this review is only on those components of the Order in the timeframe identified that refer to the coercive measures contained in the October order and embedded protocol that formed in effect a "vaccine mandate".

5. Re respondent Para 13; The CMOH is not empowered by statute to issue any mandated medical treatment. The CMOH requires a Judicial order in order to mandate any medical treatment at section 38 (1)(e) of the *HPA*.

6. The masking order was not a mandate and is another example of the Orders being ultra vires the *HPA* where only the judiciary is empowered to mandate medical treatment based on application by the CMOH to the courts through section 38 (1) (e).

7. Re Respondent at para 19; the remaining restrictions in the Order still affect many healthcare sector and other members of the Applicants' organization as can be seen in the affidavits included in this filing.

8. Re Respondent at para 23; The Record was filed and delivered electronically on October 31, 2022 as per Justice Keith's deadline.

9. Re Respondent at para 29; The vaccination requirement is also still in effect as a result of the Order in areas such as in healthcare settings

10. Re Respondent at para 46, 47; The Applicant takes note of the preamble to the Nova Scotia Child and Family Services Act 1990

- *WHEREAS the family exists as the basic unit of society, and its well-being is inseparable from the common well-being*
- *AND WHEREAS children are entitled to protection from abuse and neglect;AND WHEREAS the rights of children are enjoyed either personally or with their family;*
- *AND WHEREAS children have basic rights and fundamental freedoms no less than those of adults and a right to special safeguards and assistance in the preservation of those rights and freedoms;*
- *AND WHEREAS children are entitled, to the extent they are capable of understanding, to be informed of their rights and freedoms, to be heard in the course of and to participate in the processes that lead to decisions that affect them;*
- *AND WHEREAS the basic rights and fundamental freedoms of children and their families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests and of society's interest in pro- tecting children from abuse and neglect;*
- *AND WHEREAS parents or guardians have responsibility for the care and supervision of their children and children should only be removed from that super- vision, either partly or entirely, when all other measures are inappropriate;*

11. The Applicant asserts that the infringement on the, "health and integrity of the Family " was the effect desired by the Respondent's *ultra vires* action. The Applicant asserts that the CMOH purposefully created conditions in his October Order and its embedded protocol effectively mandating the injection of experimental mRNA products in children between the ages of 12 and 16 years in the province of Nova Scotia without, and even against, parental consent.

12. The Applicant asserts that the protocol embedded in the October order directed that proof of the injection of experimental mRNA products be required for any children between the ages of 12 and 16 to undertake certain activities to which they would normally have full right and access and that without this proof the Respondent mandated that they be prohibited from these activities.

13. The Applicant asserts that minor children are a disadvantaged group in terms of access to Justice in that they may not, of their own accord, commence a Judicial proceeding in any manner.

14. The Applicant asserts that this is one of the reasons to grant it Public Interest standing so that the actions of the Administrator that were specifically aimed at Minor children to force the injection of the experimental mRNA products may be properly adjudicated so that in future, the rights of these persons would be protected from insult by the Respondents.

15. Re Respondent at para 48; The Applicant seeks adjudication on the coercive "vaccine mandate" created in the October 2021 iteration of the PHO and its embedded protocol.

16. Re Respondent at para 52; The totality of the actions taken by the Respondents in response to sars-cov2 which included the so-called "lockdowns" were indeed the most egregious of violations of *habeas corpus* in Nova Scotian history. This forms part of the clear factual context in which the October order was made. The Applicants are also aware of several Summary

Offense tickets presently in court proceeding directly due to the issuance of the PHO which is clogging up the judicial system and creating problems in observing judicial economy.

17. Re Respondent at para 53; The Applicant References Charter violations as they relate to the Administrators clear Doré Duty to weigh any action that would cause insult to charter *values,* not charter rights as the Respondent states. In the documents the Respondent purports to be the Record, there are thousands of references to various pronouncements and directives of the Public Health Agency of Canada and other agencies of the Federal government who are bound by the Bill of Rights. The respondents cannot say they received direction from the federal agencies and then say the Canadian Bill of Rights doesn't apply.

18. The Applicant takes note of Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817 "*Though discretionary decisions will generally be given considerable respect, that discretion must be exercised in accordance with the boundaries imposed in the statute, the principles of the rule of law, the principles of administrative law, the fundamental values of Canadian society, and the principles of the Charter.*"

19. The Applicant takes note of the finding of the Court of Appeal for British Columbia Reference re Section 94(2) of the Motor Vehicle Act 1983-02-03, "*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.*"

20. 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.

21. The Applicant understands that the MGERC is a Federal tribunal, but submits that its findings are taken as Legal opinions and the subject matter is very precisely relevant.

22. Re Respondent at para 63; The Applicant asserts that the only individuals that could have had Private Interest standing in the Ecology Action Centre matter would have been someone whose direct property rights would be infringed by the physical realignment of the road. The actual issue the Ecology Action Centre Applicant in this case has is the LNG storage facility, so in effect they are using the courts to mount an indirect legal challenge to the LNG facility. This is in no way analogous to the Review proposed by CANS.

23. The cited case at Respondents para 64 involves the NSCLA contesting in part the increase of the fine amount to an action already clearly prohibited under section 138 (1) of the Motor

Vehicle Act of Nova Scotia and certain disturbing restrictions on Charter freedoms and thus involved a Charter challenge. This has no analogy in the Applicants case against Robert Strang.

24. The NSCLA was proposing to make constitutional arguments and Justice Rosinski held that since there was "**no evidence that anyone was directly affected by the order**," *the paucity of evidence available, measured against the evidence that would be required to assist the court meaningfully with its examination of the constitutionality of the Directions in this particular case, amounts to no more than a veneer of a "factual context suitable for judicial determination*" NSCLA v Nova Scotia para(36)

25. The Applicant CANS asserts that the direct prima facie Ultra Vires action of the Respondents in issuing the impugned October order and embedded protocol, exceeded the CMOH's statutory authorities as outlined at section 53(2)a. The order ,by the Respondents' admission, affected all persons in Nova Scotia. The impugned order and embedded protocol and the Health Protection Act are already in evidence.

26. Re Respondents at para 72; The applicant asserts that the Respondents issuance of the October 2021 PHO and attached protocol created an immunization program that was not voluntary and was in fact coercive and thus was outside his Statutory power at section 53(2)a; this and and inter alia action taken in furtherance of it are a violation of his Section 12 duty to act in good faith.

27. Re Respondent para 73: The primary function and purpose of Judicial Review is described by Lord Atkins in R. v. Electricity Commissioners, Ex parte London Electricity Joint Committee Company, [1924) *"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,*"

28. It is in the above capacity that the Applicant seeks adjudication of these matters and in that capacity the Applicant says Public Standing is necessary so that we may insure that this egregious abrogation of the jurisdiction committed by the administrator and his *ultra vires* order is given a full examination.

29. In granting Public Standing in **Thorson v. Attorney General of Canada,** the Supreme Court Justices held, "*It is not the alleged waste of public funds alone but the right of citizenry to constitutional behaviour that will support standing. As a matter of discretion the appellant should be allowed to proceed to have the suit determined on the merits*."

30. As the Respondent admits in para 75 that some aspects of the Applicant's Bad Faith

accusations would be subject to a more comprehensive judicial examination if the Applicant has Public Standing.

31. The Respondent has repeatedly asserted that any other person or the corporate applicant could have/ should have launched application or action as these would have involved evidentiary submissions. The Applicant calls the Respondents' attention to section 17 of the HPA which on its face would prohibit any such action or application.

32. Re respondent para 75; The Applicant asserts that the Respondents section 12 duty to act in good faith is breached by his knowingly *ultra vires* action. *Fraus et jus nunquam cohabitant.* Fraud and justice never dwell together. Fraud corrupts justice regardless of the good faith or just intentions. Lord Denning observed in a language without equivocation that "*no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels everything*" ***Lazarus Estates Ltd v Beasley.***

33. The Applicant asserts that the CMOH knew full well that in creating a coercive mandate that he was acting beyond his statutory powers and that in order to facilitate his extra legal mandate he committed numerous Bad Faith actions.

34. The other acts in Bad Faith alleged by the Applicant flow directly from, *and are acts in furtherance of,* and thus functionally INSEVERABLE from the Administrators *ultra vires* Action. *"Subla Fundamento cedit opus" - a foundation being removed, the superstructure falls.* The Common Law doctrine of public policy can be enforced wherever an action affects/ offends public interest or where the harmful result of permitting the injury to the public at large is evident. More so, if initial action is not in consonance with law, the subsequent conduct of a party cannot sanctify the same.

35. Re respondent at para 76; The Applicant is contesting the right of an administrator to create a coercive program outside of his prima facie legal authority to force the injection of experimental mRNA products. The Applicant in EAC was contesting the variance of a road. These are not the same in scale or seriousness.

36. The factual evidence required for the Review at hand is contained in the *HPA* as written and the impugned October order and embedded protocol creating a coercive vaccine mandate. Both are already in evidence.

37. The respondent at para 77, 78; The Applicant asks that My Lord rule on whether the impugned administrator acted within his powers as described in the *HPA*. The Applicant asserts that since Robert Strang had a clear duty in these most serious of circumstances to know his powers and their limitations under the HPA and he acted *knowingly* to breach them as demonstrated by the Bad faith actions he took in furtherance of his *ultra vires* vaccine mandate.

38. These Bad Faith actions are contained prima facie in the protocol attached to the October Order that effectively mandated Jane or John Doe in the Province of Nova Scotia to utilize Coercive Deterrence against those that did not voluntarily inject the experimental mRNA product. The enforcement of the actual provisions of the embedded protocol and its parent order would by their nature have to be carried out by individual citizens on behalf of the mandated businesses and organizations.

39. Re Respondent at para 78;

    As stated in Justice Keith's letter of September 08, 2023:
    - The parties all agreed that CANS' motion for public interest standing ("Public Interest Standing Motion") should proceed as a discrete preliminary matter.
    - The Respondents' Mootness Motion shall be heard as a discrete, separate matter after the Public Interest Standing Motion is determined;
    - The Applicants' Records Motion shall be heard after the Respondents' Mootness Motion is determined.

    The Applicants will provide a Record Motion according to the schedule determined by Justice Keith.

40. The Applicant asserts that the *ultra vires* action was intrinsically a violation of Robert Strang's section 12 duty of good faith. Unless it is the administrators position that he did not read/or lacked the capacity to understand his clear statutory boundary against anything less than a "**voluntary immunization program**."

41. The Applicant asserts that the other actions of accused bad faith were *acts in furtherance* of the *ultra vires* action. The Administrator knew full well he had no statutory ability to force any person, especially minors, to receive experimental mRNA products, even under the color of Immunization, so the further imputed actions were necessary for him to create the mandate system which is the *ultra vires* action.

42. In creating the coercive conditions in his October order the Administrator showed foreknowledge of the fact that large numbers of Nova Scotians would likely not take an experimental mRNA product otherwise he would have had no need to impose the coercive conditions designed to cause direct harm to any who would not comply.

43. Re Respondent at para 83; The Applicant asserts that Judicial Review is the precise mechanism set out for ensuring that Administrators are acting within their statutory powers. "Judicial review is directed at the legality, reasonableness, and fairness of the procedures employed and actions taken by government decision makers. It is designed to enforce the rule of law and adherence to the Constitution. Its overall objective is good governance. These public purposes are fundamentally different from those underlying contract and tort cases or causes of action under the Civil Code of Québec, R.S.Q., c. C-1991, and their adjunct remedies, which are primarily designed to right private wrongs with compensation or other

relief.41"... Canada (Attorney General) v. TeleZone Inc...2010 SCC 62 at para 24

44. The ***Downtown Eastside*** decision was in a case where only a small portion of the Public would ever possibly or foreseeably be affected by any judgements flowing from the granting of Public Standing as only a very small portion of the population would ever engage in activities related to prostitution. Public interest standing was granted

45. By the Respondents own admission in his pleadings the impugned order affected every person in Nova Scotia. Any future orders of this kind made in the same way would have the same scope of effect.

46. The Applicant further notes Dunsmuir, "all exercises of public authority must find their source in law. All decision-making powers have legal limits, derived from the enabling statute itself, the common or civil law or the Constitution.... The function of judicial review is therefore to ensure the legality, the reasonableness and the fairness of the administrative process and its outcomes." Dunsmuir, supra note 13 at para 28

47. Re Respondent at para 87; The Applicant submits that whether the Administrator knowingly acted outside the Law, especially given the specific nature of the matter at Bar, continues to be "far from frivolous" as the administrator is still in a post that grants him sweeping powers to disrupt and direct the lives of every citizen in Nova Scotia.

48. The bar for this in Nova Scotia was set by **Bancroft v. Nova Scotia (Lands and Forestry), 2021 NSSC 234,"***In my view, whether the Province owes the public a duty of fairness when it makes decisions about lands that it has previously identified as having conservation value is an important issue that does not appear to have been previously judicially considered. Whether the Treasury and Policy Board's decision was reasonable is also an important issue. Although the merits of the applicants' positions might not survive a more fulsome review, the claims are far from frivolous.*

49. Judicial Review of Administrative Action in Canada, Vol. 2, views the "*serious issue*" requirement in the following manner at 4:3550:,"*Because of the limits to judicial and other public resources, where private rights are not at stake, courts have required that the issue in dispute not only be justiciable, but also that it be "serious." This concept has two aspects to it. First, the judicial review proceeding must have some prospect of succeeding on the merits, a requirement that is typically readily met, and not be premature. Second, the issue must also be "serious" in the sense that it must be of some public importance."*

50. The Applicant submits that adjudication on whether or not Robert Strang or any other administrator has the power to create a mandate to force the injection of experimental mRNA products or any other medical treatment on the entire population of Nova Scotia, including minor children is "*far from frivolous*" and a matter of massive,"*public importance"*

51. In furtherance of this the Applicant takes note of the findings in **M.M. v. W.A.K., 2022 ONSC 4580,"[39] I also share the concerns expressed by Pazaratz J. with respect to the court taking judicial notice of government information. In a recent case, similar to this case, he makes several critical observations:**

    - ***"[67] Why should we be so reluctant to take judicial notice that the government is always right?***

    - ***a. Did the Motherisk inquiry teach us nothing about blind deference to "experts"? Thousands of child protection cases were tainted – and lives potentially ruined – because year after year courts routinely accepted and acted upon substance abuse testing which turned out to be incompetent.***

    - ***b. What about the Residential School system? For decades the government assured us that taking Indigenous children away – and being wilfully blind to their abuse – was the right thing to do. We're still finding children's bodies.***

    - ***c. How about sterilizing Eskimo women? The same thing. The government knew best.***

    - ***d. Japanese and Chinese internment camps during World War Two? The government told us it was an emergency and had to be done. Emergencies can be used by governments to justify a lot of things that later turn out to be wrong.***

    - ***e. Few people remember Thalidomide. It was an experimental drug approved by Canada and countries throughout the world in the late 1950's. It was supposed to treat cancer and some skin conditions. Instead it caused thousands of birth defects and dead babies before it was withdrawn from the market. But for a period of time government experts said it was perfectly safe.***

    - ***f. On social issues the government has fared no better. For more than a century, courts took judicial notice of the fact that it was ridiculous to think two people of the same sex could get married. At any given moment, how many active complaints are before the courts across the Country, alleging government breaches of Charter Rights? These are vitally important debates which need to be fully canvassed.***

    - ***g. The list of grievous government mistakes and miscalculations is both endless and notorious. Catching and correcting those mistakes is one of the most important functions of an independent judiciary.***

    - ***h. And throughout history, the people who held government to account have always been regarded as heroes – not subversives.***

    - ***i. When our government serially pays out billions of dollars to apologize for unthinkable historic violations of human rights and security – how can we possibly presume that today's government "experts" are infallible?***

- ***j. Nobody is infallible.***

- ***k. And nobody who controls other people's lives – children's lives – should be beyond scrutiny, or impervious to review."***

52. Justice J.C. Corkery J. went on to state in the case at para 42 that, "*I **am not prepared to take judicial notice of any government information with respect to COVID-19 or the COVID-19 vaccines**.*"

53. The Applicant takes note that Justice Rickcola Brinton of Nova Scotia commenced an action against the Crown and Former Chief Judge Pamela Williams for 5 million dollars directly involving the coercive mandate to inject experimental mRNA products

54. The Applicant takes note of the current 500 million dollar suit in Federal Court T-1296-23 by Armed Forces Members over coercive vaccine mandates. 129 million against the city of guelph in the Ontario Supreme court. It is certain that many more such suits will be brought, clogging the courts and costing our society billions in public money payouts. If granted the sought declaratory relief citizens would be free to launch action against Robert Strang as an individual.

55. The Applicant asserts that the present and full adjudication of this matter that would be provided by granting the Applicant Public Standing would prevent future claims against the crown from *any future* coercive mandating of this or any other medical treatment by the respondent or any future CMOH. The coercive measures implemented by the Respondent could at this point be reinstated for some new "variant" mRNA product or in fact any other thing the Administrator may see fit since he has set a precedent for doing so

56. Re Respondent at Para 88; The Applicant takes note of the Respondents unwillingness to admit to any part of the "factual context" surrounding the impugned order. Including the simple definitions of "voluntary" and "immunization."

57. The Applicant asserts that the declaratory relief sought will prevent Robert Strang or any person acting as CMOH from implementing any coercive mandate and restrict them to fully voluntary Immunization programs at all times in the future. This is a matter that has effect far beyond the private interests of the Applicant and is thus properly heard in the Public Interest.

58. The order of Prohibition sought will correct this grievous abrogation of the "proper functioning of government" and will act in "preventing the Respondents from instituting anything but a voluntary immunization program at any time in the future." This will certainly serve the "practical purpose" of never again allowing any bureaucrat to force the injection of experimental mRNA products or any medical treatment "at any time in the future".

59. The Respondents counsel has repeatedly made statements to the effect that "actions or applications" would be more facile in the matters at Bar. The declaratory relief sought would

make this **actually** possible for any citizen affected as they would not face the immediate challenge of overcoming the powerful limited liability protections granted the administrator in section 12 of the *HPA*. This would also importantly have the immediate effect of allowing any person to bring action against Robert Strang **as an individual** and not the crown. This would also serve the interests of Judicial economy as the courts would not face repetitive hearings to establish the same thing.

60. The Applicant asserts that some of the actions taken by Robert Strang may also constitute breaches of the Criminal Code of Canada and that he should not enjoy limited liability shield provided by the *HPA* as this would be a bar to investigators in any such matter.

61. Re respondent at 91; The Applicant is questioning whether,/or not, the impugned Administrator **Knowingly** acted outside his statutory power. The HPA and the October order and attached protocol creating the coercive measures or "vaccine mandate" are in evidence. The Applicant asserts that the Bad faith actions are inseverable in this instance from the *ultra vires* action.

62. Re respondent at para 95; The Applicant takes note that the repeated, and we say baseless assertions of the Respondent that there is *no prima facie evidence of bad faith action* in what he purports to be the record are not the result of any Judicial finding. Since there is as yet no agreement on what actually would constitute the record in this matter the Applicant says this argument is insupportable.

63. Re respondent at para 101; The corporate Applicant was formed in response to the actions taken by the government of Nova Scotia in response to the sars-cov2 pathogen. The Applicant immediately took action by submitting a Position letter to the CMOH and Minister of Health and later in legal action through this Review. The Applicant relies on this letter to satisfy Mandamus in the matter at Bar.

64. The Applicant in their August 11 amendment clearly identifies the fact that the Order of October 2021 and embedded protocol applied what was styled "proof of vaccination requirements" toward minors as young as 12 years old. At that time direction previously issued by and known to the Respondent had created in persons as young as 12 the ability of their own accord and without, or even against, parental consent, make the decision to have the mRNA products injected. These facts are in evidence and form the ***factual basis*** surrounding the administrators impugned order.

65. The Applicant asserts that minor children being offered special protection in law is *Jus Cogens* in every civilized jurisdiction on earth.

66. The coercive mandate coupled with the Administrators previous direction per force created a

situation that violates the **Children and Family Services Act** at section 61 (1) "*Where a child is in the care or custody of a parent or guardian who refuses to consent to the provision of proper medical or other recognized reme- dial care or treatment that is considered essential by two duly qualified medical practitioners for the preservation of life, limb or vital organs of a child and the Minister is notified thereof, the Minister shall apply to the court forthwith for a hearing."*

67. Thus the direct intended effect of the Administrators actions was to strip Parents of the legal right to be heard before the courts on matters regarding a medical treatment for their minor children. The Applicant asserts that the Administrator took this action to be evasive of the proper Judicial oversight regarding any interference in this most fundamental of parental duties toward children.

68. Re respondent at para 102; The Respondent differentiates the Ecology Action Center (EAC)and CANS based on financial resources and litigation record. The Applicant takes note that EAC would have had to commence the first preceding that led to their laudable record with an **initial proceeding** without the benefit of their current resume. One would also assume naturally that in their infancy they would have had far less financial resources. It would logically follow that the initial case that EAC undertook and gained standing at would have been based on the merits of the case at Bar. CANS seeks the same be done in this matter.

69. Re respondent at para 108; The Applicant rejects entirely the Respondents position that access to justice should be decided by the bank balance of those seeking redress. The Applicant takes note of the basis for all common Law the Magna Carta at clause 40, "'**To no one shall we sell, delay or deny right or justice**'.

70. The Applicant asserts that this ancient right of relief before the courts is vested in the citizen and not in the citizen and "competent council"

71. The Applicant notes Chief Justice of the Supreme Court of Canada Beverley McLachlin her address to *Faculty of Law's Access to Civil Justice for Middle Income Canadians Colloquium(2011) "The task of ensuring access to justice falls to this generation,..,..People expect they can turn to the legal system for a resolution, They are 'hard-wired' for justice. Access to justice affirms the rule of law, and promotes social stability."*

72. The Applicant notes that this has been echoed in Nova Scotia courts. In *H. (V.G.) v. H. (P.L.)*, 2009 NSSC the Justices in their findings quoted Winkler v Winkler in noting that "*it is difficult to think of a more fundamental human right than the right to access our justice system. No one should have that right restricted except for the clearest and most compelling of reasons.*" and the Law Reform Commission of Nova Scotia's Final Report of April 2006 on vexatious litigants: "*Canadian courts agree that access to justice is a fundamental right in our society.*

Restricting that right will only be done in exceptional circumstances."

73. In Cram v. Veterinary Medical Association (N.S.) et al., 2016 NSSC 181 the court noted "Courts are becoming increasingly aware of the importance of making the court process more available to the public through the use of more simplified and user friendly forms and procedures and plain language documents.."

74. In Kings (county v Berwick (Town) the court noted," One of the serious problems in the justice system in Canada is access to justice, caused by delay and cost"

75. The Applicant rather notes the view of the Supreme Court of Canada in **Trial Lawyers Association of British Columbia v. British Columbia (Attorney General), 2014 SCC 59***"The historic task of the superior courts is to resolve disputes between individuals and decide questions of private and public law. Measures that prevent people from coming to the courts to have those issues resolved are at odds with this basic judicial function."*

76. Re Respondent at para 108 b; The Applicant asserts that by its very nature the impugned order and embedded protocol created deliberately a class of "disadvantaged persons" in that its sole aim was to limit freedom to do certain things including in some cases maintaining employment in order to create the coercive conditions necessary to enforce the *ultra vires* order.

77. The Applicant asserts that this was a completely foreseeable and in fact the **desired effect** of the Administrators issuance of the October PHO and embedded protocol which constituted a coercive "mandate" that employers , sports associations and many others act as agents for the Administrator in the enforcement of the coercive regime. That in fact those who for whatever reason did not receive an injection of the specified experimental mRNA product could in some cases not maintain employment or do other things to their economic advantage thus removing from them their access to Justice and ability to challenge the coercive mandate.

78. The CMOH goes further and affords more authority to employers that issue provisions that are stricter than his own medically qualified opinion. The permission to form these plans with punitive intent is laid out sections 14.3 and 16.5 of the October 1, 2021 Order.

79. Re Respondent at para108 c; The Respondents assertion that CANS should have commenced an action or application is spurious. At the time of initial Application for Judicial Review the "evidence" that could have been used was being withheld from the corporate Applicant or any other person. It was not available until the January **6th, 2022** ruling of Justice Pittman in Public Health and Medical Professionals for Transparency v. FDA *UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION* released the Pfizer safety documents. .

80. The Applicant further would note that discovery against the government of Nova Scotia in this case would have yielded very little or no evidence from which to pursue an application or action against the Administrator as the material evidence required to make the required arguments about safety and function of the mandated mRNA products was not in the possession of the Nova Scotia government.

81. The Applicant notes that in civil Action or Application against the crown and its agents the potential respondents have many crown prerogatives and government "privilege" that they may at all times rely on to prevent the disclosure of material evidence in such proceedings. This is less so in Judicial Review as the crown must produce " the record" without further motions.

82. Re Respondent at para 108 c 1 The Applicant takes note that under Rule 7.28 of the Nova Scotia Civil procedure. "**Evidence on judicial review or appeal (1)** *A party who proposes to introduce evidence beyond the record on a judicial review or appeal must file an affidavit describing the proposed evidence and providing the evidence in support of its introduction."*

83. The Applicant has not yet filed such a motion but may and thus we say that the assertion that no evidence beyond the Record can be dealt with in Judicial Review is not correct in Law.

84. Re Respondent at para 108 d i ; A finding that the coercive measures taken by the Respondent were ultra vires the HPA will have the direct effect of preventing the Respondent or any other person acting as CMOH from instituting any such coercive regime in the future. The relief the Applicant seeks would also cause a prohibitory order to ensure this.

85. Re Respondent at Para 109 110 111; As outlined in our previous pleadings on tariff costs the Applicant asserts that their counsel failed to follow instruction which resulted in much of what the Respondent outlines here. We have since our counsel departed striven to focus and simplify the issue for the court.

86. We note that the Respondent admits the issues now clearly at Bar are Judiciable. His claim that they are not "serious" rests so far solely on their partial expiration and not on their substantive reality or affect and most noticeably not their legality.

87. The Applicant takes note of the 2015 article by Michelle Flaherty, **"Self-Represented Litigants, Active Adjudication and the Perception of Bias: Issues in Administrative Law"** (2015) 38:1 Dal LJ 119.

"*The increasing presence of self-represented litigants and emerging trends in adjudicative roles call out for a rethinking of the notion of impartiality. The role of the adjudicator and the principles that define that role must be alive to the needs and reality of increasing numbers of self-represented litigants. If, as the courts have held, it is unfair to expect self-represented litigants to navigate legal processes without assistance and direction, it is also unfair to adopt a vision of impartiality that prevents adjudicators from providing that*

help and direction.″ The Nova Scotia courts echoed this in **Tupper v. Nova Scotia (Attorney General), 2015 NSCA 92** at para 47 ″*Motivated by this leadership, courts throughout the country are working with their respective bars and justice departments to promote initiatives that enhance access to justice. Assistance for legitimate self-representatives is a central theme*.″

88. Re Respondent at para 113 colours the Applicant as " a case study in defining the "busybody" litigants the Supreme Court of Canada has warned against." The Applicant says that the supreme court Justices prohibition against "busybody"'s at para 1 was "to ensure that courts have the benefit of contending points of view of *those most directly affected and to ensure that courts play their proper role within our democratic system of government: Finlay v. Canada (Minister of Finance), 1986 CanLII 6 (SCC), [1986] 2 S.C.R. 607, at p. 631. The traditional approach was to limit standing to persons whose private rights were at stake or who were specially affected by the issue. In public law cases, however, Canadian courts have relaxed these limitations on standing and have taken a flexible, discretionary approach to public interest standing, guided by the purposes which underlie the traditional limitations.* "

89. The Applicant takes note of the Respondents' admission that "every person" in Nova Scotia was directly affected by the October Order. In no light does the Applicant or co Applicant resemble what the supreme court designated "busybody" litigants

90. Both the Applicant and co Applicant were directly and materially affected by the Order as was every other person in Nova Scotia. Any future action of this type would have the same scope of affect and whether our interest, and we say the Public Interest, is engaged directly by whether or not the Administrator had the power to take the impugned action and would thus be free to do so in the future, is not the idle curiosity of a curious bystander but the apprehension of those most affected.

91. The Applicant asserts that we indeed bring the, "*contending points of view"* required by the Downtown Eastside Test and in seeking for adjudication in this matter we are directly and humbly begging the court to fully engage in what we say is its, " *proper role within our democratic system of government"* by ensuring that Public Administrators who are granted massive power over the citizen act within the Law and in Good Faith.

92. The Applicant asserts it is directly the role of the courts to assure in the Public Interest that the Legislators, Administrators, bureaucrats, whose sole Legitimacy and authority is derived from the citizen is at all times accountable to them under the Law. Under all circumstances. even if, and especially if, the four horsemen of the apocalypse thunder over the horizon on their foul steeds because that is when it matters most if our Democratic traditions are to survive.

93. The Applicant asserts that this is a matter of fundamental Public Interest.

94. The Applicant here would say that in many ways the matter at Bar is representative of a fundamental shift in the way the government exerts its power toward the citizen and thus many more citizens will have reason, and right, to take some action before the courts to alleviate a wrong done or defend their rights against intrusion. If the position of the Respondent were to be adopted by the courts then only those with sufficient financial resources would ever be able to exercise that right in any real, practicable way.

95. The Respondent in his reply is essentially arguing that the citizen has no right to speak for the Public Interest under any circumstances. He bases this argument on lack of "competent counsel" yet the impugned order was deliberately aimed at depriving any person refusing to consent to the *ultra vires* "mandate" of the economic ability to engage "competent counsel" as the average cost of civil litigation of this type is in the range of 100 000 Dollars for represented litigants.

96. The Applicant takes note that the Supreme Court of Canada has recognised in British Columbia (Minister of Forests) v. Okanagan Indian Band, 2003 SCC 71 the concept that the lack of financial resources should not be a bar to access to Justice. The Applicant believes CANS and its current amended application would meet the test set out by the Justices *The power to order interim costs is inherent in the nature of the equitable jurisdiction as to costs, in the exercise of which the court may determine at its discretion when and by whom costs are to be paid. Several conditions must be present for an interim costs order to be granted. The party seeking the order must be impecunious to the extent that, without such an order, that party would be deprived of the opportunity to proceed with the case; the claimant must establish a prima facie case of sufficient merit to warrant pursuit; and there must be special circumstances sufficient to satisfy the court that the case is within the narrow class of cases where this extraordinary exercise of its powers is appropriate*."

97. The Respondent in his submissions argues we are "impecunious" and should therefore not be permitted to proceed. The Applicant asserts prima facie ultra vires action that by its nature had serious consequences not just on the corporate Applicant or minor Applicant but all Nova Scotians. The Applicant asserts that without adjudication the Administrator is free to reimplement the coercive regime at any time. The Applicant asserts that the issues in this Revue are of such a fundamentally serious nature that they form the required "special circumstance"

98. By its very nature and definition Public Interest litigation in Administrative Law pits the citizen against the massive resources of the state. The Attorney General is de rigueur one of the respondents and will represent the administrator with the full resources of their office against the citizen. The Respondent argues that unless the citizen possesses the huge financial resources required to proceed or be represented that the courts should be barred to them with Public interest standing in all instances no matter the merit of the cause.

99. This seems to the Applicant contra temp to the citations of Legal precedent and thought in Canada, quoted in this submission, that views access to Justice as a **right** of all. Meaningful Access to Justice in the sphere of Administrative Law must mean access to Public Interest standing as by its nature much of Administrative Law deals with government action levied at or affecting the public as a whole.

100. The Applicant takes very seriously its responsibility in humbly asking to speak for Nova Scotians. We regard with utmost seriousness and are continually seized of our responsibility to at all times abide by the rules of and in all respects preserve the dignity of the court and the process.

101. The Applicant believes this matter should be before the courts and adjudicated fully based on its merits as a matter of public importance and thus Public Interest.

102. The Respondent himself points out the full adjudication of the matter at Bar is not possible with the private standing of the Applicant and Co Applicant.

103. The Applicant notes the Supreme Court ***Downtown Eastside*** at para 2 took note of *Canadian Council of Churches v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 236, at p. 253 "***The courts exercise this discretion to grant or refuse standing in a "liberal and generous manner***"

104. The Applicant therefore humbly asks that it be granted Public Interest standing so that the court has a wide range to review this matter and may rule in the Public Interest of all the people of Nova Scotia.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of November, 2023

_____

William Ray

Agent for the Applicant