

Court File No.: CV-21-00673636-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN :

CANADIAN FRONTLINE NURSES,
SARAH CHOUJOUNIAN, KRISTEN NAGLE,
and KRISTAL PITTEK

Plaintiffs

– and –

CANADIAN NURSES ASSOCIATION,
TIM GUEST, MICHAEL VILLENEUVE, TOGETHER NEWS INC.
o/a COMOXVALLEY NEWS and o/a VANISLE NEWS,
and JOHN DOE

Defendants

**STATEMENT OF DEFENCE OF THE DEFENDANTS
CANADIAN NURSES ASSOCIATION, TIM GUEST
AND MICHAEL VILLENEUVE**

1. The Defendants, Canadian Nurses Association, Tim Guest and Michael Villeneuve (“**CNA Defendants**”) admit the allegations contained in paragraphs 7, 9 and 10 of the Statement of Claim.
2. The CNA Defendants have no knowledge of the allegations contained in paragraphs 2, 4, 5, 6, 11, 12 and 13 of the Statement of Claim.
3. The CNA Defendants deny all of the allegations in the Statement of Claim other than the paragraphs that are admitted.

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I. THE PARTIES

4. The Defendant Canadian Nurses Association ("**CNA**") is the national and global professional voice of Canadian nursing. The CNA speaks for the 448,000 registered nurses, nurse practitioners, licensed and registered practical nurses, registered psychiatric nurses, retired nurses, and nursing students, nationwide. The CNA has been providing national nursing leadership for 114 years. CNA's head office is located in the City of Ottawa, Ontario.
5. The Defendant Tim Guest ("**Guest**") is the President of the CNA and resides in Halifax, Nova Scotia.
6. The Defendant Michael Villeneuve ("**Villeneuve**") is the Chief Executive Officer of the CNA and resides in the Village of Mountain, Ontario.
7. The Plaintiff Canadian Frontline Nurses is a federal corporation with a registered office located in Mississauga, Ontario.
8. The Plaintiff Kristen Nagle ("**Nagle**") Nagle resides in London, Ontario and is a director of Canadian Frontline Nurses. Nagle was formerly employed by the London Health Sciences Centre. Nagle has made statements including but not limited to:
 - (a) there is no evidence to support public health mandates including masking, social distancing, and vaccination mandates;

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- (b) bacteria and viruses have never been proven to cause any disease, making vaccines unwarranted or unnecessary;
 - (c) viruses are not contagious;
 - (d) animal testing of COVID-19 vaccines was skipped because all the animals it was tested on were dying.
9. The Plaintiff Sarah Choujounian (“**Choujounian**”) resides in Mississauga, Ontario and is a director of Canadian Frontline Nurses. Choujounian has made statements including but not limited to:
- (a) COVID-19 vaccines are experimental and unsafe;
 - (b) COVID-19 vaccines cause dementia and kill vaccine recipients;
 - (c) COVID-19 vaccines cannot be called vaccines because they are in fact gene therapy;
 - (d) COVID-19 vaccines genetically modify vaccine recipients;
 - (e) hydroxychloroquine, ivermectin, vitamins C and D, and zinc are viable alternatives to COVID-19 vaccines;
 - (f) animal testing of coronavirus vaccines has caused all of the vaccinated animals to die when exposed to coronavirus;

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- (g) the majority of nurses oppose the COVID-19-related public health mandates, but are too afraid to speak out.
10. The Plaintiff Kristal Pitter (“**Pitter**”) resides in Tillsonburg, Ontario. Pitter has made statements including but not limited to:
- (a) expressing support for a theory that the COVID-19 pandemic was planned by Bill Gates, Anthony Fauci, the World Health Organization, and the Rockefeller Foundation to cause the global population to be injected with “lethal vaccines with identification capabilities, which can track and manipulate the thoughts, movements and the whereabouts of every human being;”
 - (b) the Pfizer COVID-19 vaccine causes miscarriages and stillborn babies;
 - (c) the Pfizer COVID-19 vaccine contains the toxic ingredient luciferase;
 - (d) COVID-19 vaccine efficacy studies are false;
 - (e) COVID-19 vaccines are deadly and were rejected by an FDA Vaccine Panel;
 - (f) COVID-19 vaccines are failing to stop patient hospitalizations, and it is therefore not scientifically, legally or ethically justifiable to mandate vaccines.

II. BACKGROUND

A. The COVID-19 Pandemic

11. The COVID-19 Pandemic (the “**Pandemic**”) is an ongoing global pandemic of coronavirus disease 2019 and its variants (“**COVID-19**”). At various times, all of Canada’s provinces and territories declared states of emergency to combat the Pandemic.
12. The Government of Canada reported that, as of February 2, 2022, over 3 million cases of COVID-19 have been recorded in Canada. The Government of Canada has also reported over 34,000 deaths in Canada caused by COVID-19 as of February 2, 2022.
13. To inhibit the spread of COVID-19 in Canada, provinces and territories have, at varying times and to varying extents, implemented, among other Pandemic measures: vaccine mandates, mask mandates, school closures, prohibitions on gatherings, and closures of nonessential businesses.
14. In December 2020 and early 2021, Health Canada approved certain COVID-19 vaccines, and mass vaccinations began nationwide. Canada has had a high uptake of COVID-19 vaccines according to the Public Health Agency of Canada:

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TOTAL POPULATION	AGE 18 +	AGE 5 +	AGE 5 TO 11
Received at least one dose			
84%	92%	88%	55%
Fully vaccinated			
79%	89%	83%	16%
Fully vaccinated plus booster			
	50%	43%	

15. Canada's death rate from COVID-19 per 100,000 population is 92.4. Other Western democracies have death rates that are significantly higher than in Canada: France – 199, the United Kingdom – 238, and the United States – 275. In contrast to Canada's 89% fully vaccinated rate for persons over the age of 18, the overall fully vaccinated population rates are 77% in France, 72% in the United Kingdom and 65% in the United States.
16. The CNA Defendants rely upon judicial notice of facts about the Pandemic and vaccines, including: the Pandemic has resulted in a significant number of deaths and serious illness throughout Canada and the Province of Ontario; the main mitigatory steps recommended to "flatten the curve" of infection are social distancing, wearing personal protective equipment, and regular testing of the population; COVID-19 vaccines are safe and effective for use in humans; that vaccination is a safe and effective means of preventing the spread of COVID-19; and, vaccinations reduce the probability of the vaccine recipient from contracting the virus.

B. Protests Outside Hospitals (September 1, 2021)

17. On September 1, 2021, protests took place outside hospitals in various Canadian cities, including Vancouver, Kamloops, London, and Toronto. Some nurses participated in these protests that were opposing Pandemic measures such as mandates for vaccines at workplaces and the wearing of masks. The Plaintiff Canadian Frontline Nurses was reported by the media as the organizer of some of these protests.
18. Mainstream media and social media reported that some protesters made anti-science, anti-mask, anti-vaccination, and anti-public health statements.
19. Mainstream media and social media reported that some protesters had harassed health-care workers, inhibited their access to the hospitals, and threatened and assaulted health-care workers.
20. Mainstream media and social media reported that more protests were being organized nationwide to take place in mid-September 2021.
21. A reporter with the Canadian Press contacted the CNA requesting comment on its pending story about the frustrations of doctors and nurses with the protests taking place outside hospitals. Villeneuve provided comment to the Canadian Press for its story, which was published online by Global News on September 3, 2021 under the headline “‘The ultimate selfishness’: Doctors grow frustrated as anti-vaxxers protest hospitals”.

III. CNA'S STATEMENT (SEPTEMBER 9, 2021)

A. Introduction

22. In the aftermath of the protests opposing Pandemic measures at which some nurses participated, the CNA posted on its website (www.cna-aiic.ca) a statement: "Enough is enough: professional nurses stand for science-based health care" (the "**CNA Statement**"). The CNA Statement was also posted to CNA's Twitter account, LinkedIn account, and Facebook account.
23. The CNA Statement reaffirmed the CNA Defendants' belief in science and the best available evidence as the basis for professional nursing practice and decision-making. The CNA Statement assured the public that the vast majority of Canada's nurses operate from a stringent *Code of Ethics*, and they are duty bound to use science, evidence and facts in assessing, planning, and evaluating the care they deliver to people across the country.
24. The CNA Statement expressed public support for the nurses and other health-care professionals who had been harassed, demoralized, threatened, or assaulted at protests held in front of health-care settings. The CNA Statement called for an immediate stop to these protests that opposed Pandemic measures.
25. The CNA Statement commented that the anti-science, anti-mask, anti-vaccine, and anti-public health views of a handful of nurses put public health and safety at risk.

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B. The CNA Statement Does Not Refer To The Plaintiffs

26. The words complained of do not refer to the Plaintiffs, an essential element of a libel cause of action. The CNA Defendants deny that the words complained of in paragraph 15 of the Statement of Claim refer to, were understood to refer to, or are capable of referring to the Plaintiffs.

C. The Words Complained Of Are Not Defamatory

27. The CNA Defendants deny that the words complained of in paragraph 15 of the Statement of Claim are capable of bearing the meanings pleaded in paragraph 19 of the Statement of Claim. In addition, the words complained of, when read by a reasonable person, would not in fact convey the meanings pleaded in paragraph 19 of the Statement of Claim.

D. Qualified Privilege

28. The CNA Defendants state that the words complained of were published without malice on an occasion of privilege in that CNA Defendants were under a legal, moral or social duty to publish the CNA Statement and, in the circumstances existing at the time, those persons reading the CNA Statement had a corresponding interest in receiving the CNA Statement. The CNA Statement was published in good faith and without malice.

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29. The CNA's purpose includes: (i) advancing nursing excellence and positive health outcomes in the public interest, and (ii) acting in the public interest for Canadian nursing and nurses.
30. The CNA is a professional association of health-care professionals that has contributed to Canada's science-based policy-making in response to the COVID-19 Pandemic.
31. Historically, nurses have been at the forefront of immunization programs in Canada. One of the roles of the nursing profession is to build vaccine confidence through patient and family education. Nurses have an important role to play in educating the Canadian population on how to help curb the spread of COVID-19.
32. Nurses are trusted by the public. As the largest group of health-care providers in the country, nurses are uniquely positioned to inform the public about Pandemic measures such as vaccines. In doing so, to maintain public trust, nurses have an obligation to disseminate evidence-based information about Pandemic measures to the Canadian public.
33. In 2020 the CNA shifted nearly all operations to focus on responding to the deadly Pandemic. A COVID-19 section was launched on the CNA website to provide evidence-based practice information for nurses.
34. COVID-19 vaccines, the wearing of masks, social distancing, and other science-based measures for combatting the spread of COVID-19 represent the best

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presently-available means for protecting Canadians from COVID-19 and curtailing the virus' spread in Canada. The CNA supported government decisions to make the use of masks mandatory in indoor public spaces.

35. The Defendants Guest and Villeneuve are both registered nurses. Nursing in Canada is a self-regulating profession and nurses are guided by the CNA's *Code of Ethics for Registered Nurses* (the "**Code of Ethics**").
36. According to the CNA's *Code of Ethics*, nurses must practice according to the values and responsibilities in the CNA's *Code of Ethics* and in keeping with the professional standards, laws and regulations supporting ethical practice. As regards communicable disease outbreaks, the CNA's *Code of Ethics* requires nurses to provide care using appropriate safety precautions in accordance with legislation, regulations and guidelines provided by government, regulatory bodies, employers, unions and professional associations.
37. The CNA endorses evidence-informed decision-making in nursing practice. The CNA believes that all nurses must collaborate with other health-care stakeholders to facilitate evidence-informed decision-making and practice, and encourages nurses to critically appraise a source of evidence before incorporating that source's findings into their decision-making and practice.
38. Evidence is information acquired through research and the scientific evaluation of practice. Evidence acceptable for incorporation into decision-making and nursing practice include information derived from a broad range of rigorous methodologies

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including randomized controlled trials, observational studies, case studies, research studies, and peer-reviewed journals that summarize valid and clinically useful published studies. Evidence also includes expert opinion in the form of consensus documents, commission reports, regulations, and historical or experimental information.

39. Nurses are obligated to conduct themselves in a manner that upholds the integrity of the nursing profession and promotes a positive image of the nursing profession. Nurses who disseminate disinformation and fail to carry out due diligence to seek facts and evidence to inform their practices create unnecessary confusion and stress among members of the public and harm the public health response.
40. The College of Nurses of Ontario's *Code of Conduct* mandates the principle: "Nurses respect the dignity of patients and treat them as individuals". This principle requires that "Nurses do not impose their personal beliefs and biases on patients". Another principle set out in the College of Nurse's *Code of Conduct* is that "Nurses maintain public confidence in the nursing profession".
41. The College of Nurses of Ontario's *Code of Conduct* also mandates the principle that "Nurses maintain patients' trust by providing safe and competent care". This principle requires that nurses: (i) use accurate sources of information, such as research, to inform their practice; and (ii) are accountable to, and practice under, relevant laws and the College of Nurses of Ontario's standards of practice.

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E. Fair Comment Defence

42. The words complained of that constitute opinion are fair comment, made in good faith and without malice, on matters of public interest.
43. The CNA Statement expressed opinions that a reasonable person could honestly hold.

F. Public Interest Responsible Communication Defence

44. The words complained of constitute a responsible communication on a matter of public interest.
45. The matters of public interest addressed by the CNA Statement include:
- (i) science-based health care;
 - (ii) disinformation provided about Pandemic measures such as masks and vaccines put public health and safety at risk;
 - (iii) the well being and safety of health-care workers;
 - (iv) the public's trust in the nursing profession.
46. The CNA Defendants acted responsibly in publishing the CNA Statement.

G. Truth

47. The CNA Defendants plead the following are true facts:
- (i) the COVID-19 Pandemic is a public health emergency in Canada;
 - (ii) COVID-19 vaccines have been approved by Health Canada;

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- (iii) COVID-19 vaccines reduce the likelihood of a vaccinated person contracting COVID-19;
- (iv) COVID-19 vaccines lessen the severity of COVID-19 symptoms if the vaccinated person does contract COVID-19;
- (v) the Plaintiffs organized and participated in protests that opposed Pandemic measures such as vaccines and masks;
- (vi) masks and social-distancing measures reduce the spread of COVID-19;
- (vii) the wearing of properly fitted masks reduces the risk of transmission of COVID-19 between humans;
- (viii) prior to the date of the CNA Statement, the mainstream media and social media published images of unfriendly crowds protesting in front of health-care settings;
- (ix) health-care workers were threatened by some of the protesters;
- (x) health-care workers are exhausted;
- (xi) protests held outside health-care settings have stunned health-care workers;
- (xii) protests held outside health-care settings have saddened health-care workers;
- (xiii) the vast majority of Canada's registered nurses operate to standards underpinned by the CNA's *Code of Ethics*;
- (xiv) registered nurses and nurse practitioners in Canada are guided by the CNA's *Code of Ethics* to use science, evidence and facts in

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assessing, planning, and evaluating the care they deliver to people across Canada;

- (xv) anti-public health disinformation threatens to confuse the public about Pandemic measures and COVID-19;
- (xvi) disinformation contributes to vaccine hesitancy (a delay in acceptance or refusal of vaccines despite availability of vaccine services);
- (xvii) the Plaintiffs Nagle and Pitter have both been cautioned and required to participate in remedial activities by the College of Nurses of Ontario;
- (xviii) The College of Nurses of Ontario scheduled a disciplinary hearing to be held in June 2022 regarding the Plaintiff Sarah Choujounian. The Notice of Hearing issued by the College of Nurses of Ontario to Sarah A. Choujounian alleges at paragraphs 1 and 2:

“1. [Choujounian] committed an act of professional misconduct... in that while registered as a Registered Practical Nurse, [she] contravened a standard of practice of the profession or failed to meet the standards of practice of the profession in that [she] publicly made or shared statements, as set out in Appendix “A”, or caused others to make such statements on [her] behalf, which contained information which [she] knew or ought to have known was inaccurate, false and/or misleading in relation to the COVID-19 pandemic and/or the public health response to the COVID-19 pandemic, and/or which encouraged non-compliance of public health orders in relation to the COVID-19 pandemic.

2. [Choujounian] committed an act of professional misconduct... in that while registered as a Registered Practical Nurse, [she] engaged in conduct relevant to the practice of nursing that would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional in that [she] publicly made or shared statements, as set out in Appendix “A”, or caused others to

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make such statements on [her] behalf, which contained information which [she] knew or ought to have known was inaccurate, false and/or misleading in relation to the COVID-19 pandemic and/or the public health response to the COVID-19 pandemic, and/or which encouraged non-compliance of public health orders in relation to the COVID-19 pandemic.”

IV. THE TNI ARTICLE

48. The TNI article dated September 11, 2021 headlined “Quack Quack! These Pro-Virus Nurses Have Dangerous Ideas” (the "**TNI Article**") included several statements from the CNA Statement without the consent or knowledge of the CNA Defendants.
49. The CNA Defendants had no involvement in the drafting and dissemination of the TNI Article. The CNA Defendants deny that they are responsible or liable to the Plaintiffs regarding TNI's inclusion of statements from the CNA Statement in the TNI Article.
50. Prior to the date of the TNI article, the CNA Defendants had no control over TNI and no relationship with TNI.
51. The CNA Defendants plead that it was not foreseeable that TNI would include statements from CNA's Statement in the TNI Article and that it was not foreseeable that the TNI Article would name the Plaintiffs.
52. The CNA Defendants deny that the words complained of in paragraph 21 of the Statement of Claim are capable of bearing the meanings pleaded in paragraph 25 of the Statement of Claim. In addition, the words complained of, when read by a

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reasonable person, would not in fact convey the meanings pleaded in paragraph 21 of the Statement of Claim.

53. The CNA Defendants rely upon all of the defences pleaded above regarding the CNA Statement with respect to the words complained of in paragraph 21 of the Statement of Claim.

V. MALICE

54. The CNA Defendants acted in good faith and deny all of the allegations in the Statement of Claim that they were actuated by malice in publishing the CNA Statement.

VI. DAMAGES

55. The CNA Defendants deny that the Plaintiffs have suffered any damage to their reputations caused by the CNA Statement or caused by the statements from the CNA Statement that were included in the TNI Article.
56. The damages claimed by the Plaintiffs are too remote and excessive.
57. If the Plaintiffs have been ridiculed, that is as a direct result of their own conduct and their dissemination of anti-vaccine statements, anti-mask statements, anti-science statements, and other statements opposing Pandemic measures. In the event that the reputations of the Plaintiffs have been damaged, that damage was the result of other causes and not the CNA Statement.

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58. The CNA Defendants deny that the Plaintiffs are entitled to the aggravated, exemplary or punitive damages claimed in paragraphs 1(b) and 32 of the Statement of Claim.

59. The CNA Defendants deny that the Plaintiffs are entitled to the Orders sought in paragraphs 1 (c) and (d) of the Statement of Claim.

VII. OTHER

60. The CNA Defendants plead and rely upon the *Libel and Slander Act*, RSO 1990, c L.12 (as amended).

61. The CNA Defendants plead and rely upon section 137.1 of the *Courts of Justice Act*, RSO 1990, c C.43 (as amended). This action is a Strategic Lawsuit Against Public Participation and is intended to draw attention to the Plaintiffs' opposition to Pandemic measures such as vaccine mandates and mask mandates.

62. The CNA Defendants request that this action be dismissed with costs on a substantial indemnity basis.

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63. The CNA Defendants propose that the trial of this action take place in the City of Ottawa, Ontario.

Date: February 10, 2022

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CANADIAN FRONTLINE NURSES et al.

v.

CANADIAN NURSES ASSOCIATION et al.

PLAINTIFFS

DEFENDANTS

ONTARIO
SUPERIOR COURT OF JUSTICE
(PROCEEDING COMMENCED AT TORONTO)

**STATEMENT OF DEFENCE OF THE
DEFENDANTS CANADIAN NURSES
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