

SEP 15 2021



**BETWEEN**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**CANADIAN SOCIETY FOR THE ADVANCEMENT  
OF SCIENCE IN PUBLIC POLICY**

No. S210831

Vancouver Registry

**PLAINTIFF**

**AND**

**HER MAJESTY THE QUEEN IN RIGHT  
OF THE PROVINCE OF BRITISH COLUMBIA  
AND  
DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH  
OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA**

**DEFENDANTS**

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

**AMENDED NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- a. file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- b. serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- a. file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

- b. serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

### **Time for response to civil claim**

A response to civil claim must be filed and served on the plaintiff,

- a. if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- b. if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- c. if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- d. if the time for response to civil claim has been set by order of the court, within that time.

## **CLAIM OF THE PLAINTIFF**

### **Part 1: STATEMENT OF FACTS**

#### ***Overview***

1. Pandemic is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over for the thousands fighting for their lives in hospitals, leading to unnecessary suffering and death.<sup>1</sup>
2. Science is the study of reality. It informs sound public policy.
3. In its response to the COVID-19 virus, the government of British Columbia has invoked extraordinary executive powers predicated on unsubstantiated scientific and legal grounds with catastrophic consequences for British Columbians.

#### ***Parties***

4. The plaintiff, the Canadian Society for the Advancement of Science in Public Policy (the "Society"), a not-for-profit society duly incorporated under the *Societies Act*, SBC 2015, c. 18 with its head office at 108-2115 Cypress Street, Vancouver, British Columbia.

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<sup>1</sup> WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020

5. The Society is a non-partisan and secular organization. Its mandate is to advocate for a greater role of science in the formation of public policy. Its directors, officers, donors, and patrons draw themselves from diverse communities and from across the political spectrum.

6. The defendant, Her Majesty the Queen in Right of the Province of British Columbia, may exclusively make laws in relation to matters that are not within the jurisdiction of the Government of Canada and its ministers may make orders pursuant to the *Emergency Program Act*, R.S.B.C. 1996, c. 111 (the “EPA”), and has an address for service care of the Attorney General, Ministry of Attorney General, PO Box 9290 Stn Prov Govt, Victoria, British Columbia (the “Provincial Government”).

7. The defendant, Dr. Bonnie Henry is British Columbia's Provincial Health Officer (the “Provincial Health Officer”) appointed under Part 6 of the *Public Health Act*, S.B.C. 2008, c 28.

### ***Proposed Class***

8. This action is brought on behalf of members of the class consisting of all persons residing or doing business in British Columbia who, since on or after March 17, 2020, have suffered personal injury or other damages as a result of the actions of the defendants in declaring a state of emergency pursuant to the *EPA* and Part 5 of the *Public Health Act* (the “Class”).

8a. The following are proposed subclasses within the Class:

- i. All members of the Class with physical or mental health conditions including inability to communicate verbally, physical or psychological conditions that make wearing mask or being vaccinated dangerous to their health (the “Disability Subclass”);
- ii. All members of the Class who had medical procedures scheduled from March 17, 2021 onward, which were cancelled or delayed by order, decree or other directive of the defendants or each of them (the “Medical Subclass”);
- iii. All members of the Class who, at any time from March 17, 2020 held sincere religious beliefs that prohibited vaccination (the “Religious Subclass”).

(collectively the “Subclass Members”)

9. It is estimated that the Class consists of hundreds of thousands of residents and businesses owners in British Columbia.

9.a. Subclass Members form a small subset of the larger Class.

### ***Government Declares an Emergency***

10. On March 17, 2020, the Provincial Health Officer issued a notice under the *Public Health Act* (the “PHA”) that the transmission of the infectious agent SARS-CoV-2, had caused cases and outbreaks of an illness known as COVID-19 in British Columbia.

11. The following day, on March 18, 2020, the Provincial Government declared a “state of emergency” under the *EPA*.

12. A declaration of a state of emergency enabled the Provincial Government to exercise sweeping statutory powers under the *EPA*. This legislation has its roots in the federal *War Measures Act* of 1914. The latter was originally intended to implement a declaration of war for the First World War.

13. The declaration of a public health emergency also provided for a range of emergency powers under the *PHA*, including empowering the Provincial Health Officer to issue verbal orders that had immediate effect.

### ***Rationale for State of Emergency***

14. In the period between January 1 to March 31, 2020, there were 3 reported deaths attributed to the COVID-19 virus in British Columbia.

15. In the following months, the mortality rate attributed to COVID-19 increased but clustered around care home facilities, and especially those that were understaffed and without sufficient medical supplies.

16. In its “emergency” response, the Provincial Government closed large sectors of the British Columbia economy issuing orders prohibiting attendance at restaurants, fitness facilities, shopping centres, religious and other peaceful gatherings, issued travel bans and cancelled medical treatments.

17. While hospitals prepared for an influx of COVID-19 patients, many medical procedures and operations were cancelled under the Provincial Government’s directives. However, the high number of intensive care COVID-19 patients did not materialize. Most people infected with COVID-19 experienced mild to moderate influenza-like symptoms that abated quickly.

18. By June 24, 2020, the Provincial Government and Public Health Officer’s restrictions on non-essential travel, hotels, and film industries were lifted. By September 2020, on site and in person instruction at public schools was reintroduced.

19. The authority to exercise emergency powers under Part 5 of the *PHA* ends when the Provincial Health Officer provides notice that the emergency has passed (s. 59(1)).

20. Despite the relatively low number of persons infected by COVID-19 in British Columbia, the Public Health Officer failed to provide notice that the emergency had passed and the Lieutenant Governor in Council continued to extend the emergency declaration under *EPA*.

21. British Columbia ~~is currently~~ was in the longest state of emergency in provincial history.

21.a. Although the state of emergency was cancelled as of June 30, 2021, the Provincial Health Officer continued to issue PHA Orders pursuant to Part 5 of the *Public Health Act*, despite there being insufficient evidence or reasonable evidence that the prerequisites of s. 52 of the PHA were met.

## **COVID-19**

22. The COVID-19 disease is similar in symptoms to influenza (also known as the common seasonal flu), but influenza, according to the World Health Organization can spread faster than COVID-19.

23. The most at risk for severe influenza infection are children, pregnant women, the elderly, those with underlying chronic medical conditions and those who are immunosuppressed. For COVID-19, older age and underlying conditions increase the risk for severe infection.

24. The infection fatality ratio of COVID-19 (the “IFR”) is extremely low, comparable to the seasonal flu. The all-cause mortality of British Columbia from June 30, 2019 to July 1, 2020, the period in which COVID-19 appeared, does not differ drastically from the all-cause mortality statistics since 2016.

25. The language the defendants have used, and continue to use, in public statements respecting COVID-19 deaths misrepresent the true fatality of this disease. The defendants only report the case fatality ratio (the “CFR”) rather than infection fatality ratio of COVID-19 (“IFR”). In reality, the number of persons infected but not reported is significantly higher than the cases reported. This means that the true fatality due to COVID-19 is significantly lower than reported by the defendants.

26. This misunderstanding of statistical data has caused, and continues to cause, unwarranted public alarm.

27. The defendants have refused to take responsibility for the inaccurate information provided to the public. For example, the British Columbia Centre for Disease Control (the “BCCDC”), states as follows in its disclaimer:

*“... the Province of British Columbia, including the British Columbia Centre for Disease Control, the Provincial Health Services Authority and the British Columbia Ministry of Health makes no representation or warranties regarding the accuracy of the information in the dashboard and the associated data, nor will it accept responsibility for errors or omissions. (...) Anyone using this information does so at his or her own risk, and by using such information agrees to indemnify the Province of British Columbia, including the British Columbia Centre for Disease Control, the Provincial Health Services Authority and the British Columbia Ministry of Health and its content providers from any and all liability, loss, injury, damages, costs and expenses (including legal fees and expenses) arising from such person’s use of the information on this website.”*

*pp. 3-4, British Columbia COVID-19 Disclaimer and Data Notes.*

### **COVID-19 Testing is Unreliable to a Significant Degree**

28. The tests which the Public Health Officer and the Provincial Government have used, and continue to use, to determine the presence of COVID-19 in a person inaccurately slant results towards a higher number of positive cases of COVID-19 in the population than there actually are. This in turn causes needless panic and unfounded justification of government emergency orders.

29. This has caused excessive public alarm.

30. The reverse transcriptase polymerase chain reaction (“PCR”) testing methodology used by the Provincial Government has produced significant COVID-19 false-positives.

31. A false-positive is a test that mistakenly appears positive, but in actuality is false.

32. This methodology has produced COVID-19 false-positives for a goat, a papaya, and a kiwi.

33. A growing number of scientists are condemning the use of PCR testing kits in COVID-19 testing, which can be used for multiple purposes.

34. According to the inventor of the PCR testing method, Dr. Kary Mullis, who earned a Nobel Prize for his work with PCR testing methodology, PCR identifies substances

qualitatively not quantitatively, detecting the genetic sequences of viruses, but not the viruses themselves.

35. The PCR test used in British Columbia purported to identify positive cases of COVID-19 is not sufficient to diagnose the presence of an infectious disease, including COVID-19. It is an aid to diagnosis only.

36. These false-positives inflate the number of alleged COVID-19 cases above the true case number of actual COVID-19 infected persons.

37. In 2019, provinces reported 147 lab-confirmed cases of flu the first week of November. This year, they reported four.

38. This comes despite testing more than twice as many people for flu than usual — almost 10,000 tests were done in the first week of November, 2020 compared to a six-year average of about 4,500.

39. Unsurprisingly, by January 18, 2021, the BCCDC confirmed it had not detected a single case of influenza circulating in the community.

40. The number of new cases reported without being qualified by information about the false-positive rate or false discovery rate also misleads the public about the danger represented by the new case number. Such danger is due to a lack of general public understanding about how disease prevalence, amount of testing, and the probability of obtaining a false-positive, affect the proportion of new cases accurately representing true-positive cases of COVID-19.

41. In spite of this a positive result has been used as a basis to enforce isolation of individuals on the grounds that they may have, and may be contagious for, a disease for which they show no symptoms, and from whom no COVID-19 virus had been isolated, purified, or shown to be biologically active.

42. This causes unnecessary fear and begets additional government policies that restrict the liberty of people to mitigate a problem which has been exaggerated by how these tests have been misused.

### ***Compromised Medical Treatments and Therapies***

43. In its “emergency” response, the Provincial Government cancelled medical treatments they deemed “non-essential” for which many residents had been on the waiting list for significant amounts of time.

44. In addition, the defendants have obstructed or discouraged licensed physicians and other treatment providers licensed under the *Health Professions Act*, R.S.B.C. 1996, c. 183, from advocating modalities or therapies with respect to the clinical approach in treating COVID-19 and related diseases, despite the physician having independently undertaken reasonable review of the scientific literature, that may improve a patient's immune system, reduce the potential negative outcome of a viral infection, and potentially accelerate the time required for recovery.

45. These include therapies that have been studied extensively in the scientific literature for more than half a century and are proven to be safe, inexpensive, ubiquitous, effective, and essential to the optimal function of the immune system (the "Complementary Therapies"), some of which are unpatentable.

46. The defendants knew, or ought to have known, that cancelling medical treatments or obstructing or discouraging the use of any of the Complementary Therapies in the treatment of disease was not grounded in science and would cause harm to the public.

### ***Ministerial Orders***

47. As of June 17, 2020, the Provincial Government had issued 30 orders under the authority of s. 10(1) of the *EPA*, including orders that were later repealed and replaced. More orders have been issued since then. All of the orders issued by the Minister contain a provision stating that they apply only for so long as the declaration of the state of emergency is in effect.

48. Most of the Provincial Government's orders do not reference a specific subparagraph in the s. 10(1) of the *EPA* and instead rely on the general provision in s. 10(1) that the Minister may "do all acts and implement all procedures necessary to prevent, respond to or alleviate the effects of any emergency or disaster."

49. The reality is that either all or some of the Ministerial orders were not necessary to "prevent, respond or alleviate" the effects of COVID-19 to the population of British Columbia.

50. The Provincial Government also failed to establish legally binding conditions on the use of sub-delegated powers to suspend, waive or otherwise alter statutory provisions for the following Ministerial orders and subsequent orders replacing them:

- i. Ministerial Order M083 was issued on March 26, 2020, after the initial declaration of a provincial state of emergency. This order applied to municipalities, regional districts and the City of Vancouver. Ministerial Order M083 was repealed and replaced by a new order on May 1, 2020, M139, subsequently in turn repealed and replaced by a new order, M192, on June 17, 2020.

- ii. M139, Local Government Meetings and Bylaw Process (COVID-19) Order No. 2, which repealed and replaced M083, Local Government Meetings and Bylaw Process (COVID-19) Order;
- iii. Ministerial Order M089, Residential Tenancy (COVID-19) Order, 30 March 2020.
- iv. Ministerial Order M179, Commercial Tenancy (COVID-19) Order, 29 May 2020;
- v. Ministerial Order M416, Food Liquor premises, Gatherings and Events (COVID-19) Order No. 2; and
- vi. Such further orders as will be provided at trial, but which are known to the defendants and listed in the Response to Demand for Particulars dated August 30, 2021.

(the “Ministerial Orders”)

51. The Provincial Health Officer has issued more than 50 orders under the authority of Part 5 of the *PHA*, including verbal orders (the “PHA Orders”).

52. ~~Most of~~ None of the Provincial Health Officer’s PHA Orders ~~do not~~ reference the medical or scientific basis for issuing the order and do not satisfy the requirements of s. 52 of the *PHA*.

52.a. Dr. Henry has admitted that the limit on the size of gatherings is arbitrary and is not grounded in science.

52.b. Dr. Henry has admitted that wearing a mask does not protect a person from contracting COVID-19.

53. Indeed, the Ministerial Orders and PHA Orders (collectively, the “Orders”) were and continue to be, inconsistent, contradictory, and contrary to reasonably established medical and scientific principles and research, and do not satisfy the requirements of s. 9 of the *EPA* and s. 52 of the *PHA*, particulars of which include, but are not limited to:

- ~~a. discouraging the public from wearing masks on the basis that they were ineffective;~~
- a. mandating that masks be worn in public places;
- b. closing in-house dining but permitting take-out;
- c. not mandating that cooks in public dining establishments wear masks while preparing food for take-out;

- d. allowing in-house dining for groups of the same household, that could sit next to groups of different households;
- e. ~~disallowing family gatherings; failing to enforce these orders;~~
- f. allowing shopping in large warehouse grocery and “big box” franchises such as Walmart, Costco, and others (the “Big Box Stores”);
- g. prohibiting religious gatherings;
- h. prohibiting peaceful gatherings if unrelated to work;
- i. limiting shopping in shopping malls;
- j. prohibiting certain travel throughout British Columbia but allowing travellers from other provinces to travel within British Columbia;
- k. ~~admitting that the limit on the size of gatherings is arbitrary and was never grounded in science;~~
- k. prohibiting entering restaurants and cafes if unvaccinated but allowing eating in food courts without being vaccinated against COVID-19;
- l. such other particulars as may be proven at trial.

### ***Effect of government measures on British Columbians***

53. A. Orders limiting travel within British Columbia have limited Class members' ability to move freely within British Columbia while not restricting movement of non-residents.

53. B. Orders limiting peaceful assembly have stopped or limited the Class members intent and right to publicly protest or otherwise express political and other views between November 7, 2020 and February 10, 2021. Public protests took place on December 1, 5, and 12, 2020 in Vancouver, B.C. and organizers and attendees were issued violation tickets for contravening PHA Orders titled “Gathering and Events” in place at the time.

53.C. The cancellation of surgeries and additional medical diagnostic and other procedures scheduled on or after March 17, 2020 have caused and continue to cause personal injury to members of the Medical Subclass and resulted in discrimination against the members of the Medical Subclass based on physical or mental disability.

53.D. PHA Orders mandating persons be vaccinated against COVID-19 in order to secure employment or participate in various activities, attend events, restaurants, book travel accommodation and other activities that allow these persons to fully participate in British Columbia and Canadian society are forms of compulsions and prohibitions that affect fundamental life choices of Class members.

53. E. The Defendants failed to provide reasonable accommodation to Class members such as exempting persons who have recovered from COVID-19, or those who produce a negative rapid antigen COVID-19 test as an alternative to proof of vaccination, and other reasonable accommodations that become apparent from time to time.

53.F. PHA Orders mandating persons be vaccinated against COVID-19 in order to secure employment or participate in various activities, attend events, restaurants, book travel accommodation and other activities require Religious Subclass members to choose between their religion or securing employment and participating in society were and continue to be unacceptable to the personal identity of the members of the Religious Subclass.

53. G. Orders mandating face coverings that did not provide exemptions for persons with disabilities that make wearing a mask difficult or impossible causing the Medical Subclass and Disabled Subclass to be unable to attend grocery and other stores, work, or communicate while out in public spaces;

53. H. The Subclass Members are a minority in British Columbia and do not pose a danger to public health while attending public venues or dealing with members of the public due to the high rates of vaccination in the province and other measures that limit the spread of COVID-19.

53.I. The Orders fail to take into account the Subclass Members already disadvantaged positions in Canadian society and have resulted in differential treatment between Subclass Members and other member of the British Columbian and Canadian society, without providing for reasonable accommodation. This has also resulted in the perpetuation of false stereotypes of Subclass Members, by being perceived as:

- a. dangerous to the public health;
- b. ignorant;
- c. not worthy of respect;
- d. undeserving of medical treatment;
- e. such other particulars as may be provided at trial.

53. J. The September 10, 2021 PHA Orders do not allow Subclass Members of to be exempted in a timely manner, which is contrary to the principles of fundamental justice, as little or no notice was provided to Class members on how to seek reconsideration of these orders.

53. K. The process of reconsideration of the Public Health Officer's PHA Orders was slow and lacked independence, and was not proportional to the rights affected, resulting in a discriminatory effects of the Orders on Class members, including Subclass Members.

53. L. Due to a large number of reconsideration requests, the Public Health Officer stopped requests for reconsideration, by issuing her order of April 12, 2021, titled "Variance of Existing Orders to Suspend Reconsideration – April 12, 2021". The Public Health Officer stopped all reconsideration requests in or around April 12, 2021.

54. The further effects of these restrictions placed on British Columbians have caused personal injury and damage disproportionate to any threat posed by COVID-19, including but not limited to the following (the "Restriction Effects"):

- a. Significant increase in overdose deaths. For example, approximately five people die per day in B.C. due to an overdose, which is more than the number of people attributed to COVID-19 related deaths in B.C.;
- b. Increase in suicide rates;
- c. Increase in depression and mental-health illness;
- d. Loss of gainful employment;
- e. Increase in domestic violence, including child battery;
- f. Increase in bankruptcies and foreclosures;
- g. Increase in divorces and deteriorations in personal relationships;
- h. Decrease in critical services for the homeless and low income;
- i. Increase in insurance premiums;
- ii. Refusal of medical treatment to unvaccinated persons;
- j. Such other effects as may be proved at trial.

55. To put this in perspective, in 2018, 314 British Columbians died in motor vehicle incidents. In 2019, 984 people died from illicit drug use in British Columbia and in 2020, 1,548 people died from illicit drug use.

56. In contrast, there were 678 deaths in British Columbia attributed to COVID-19 to the end of week 50 in 2020.

57. Commercial insurers have already paid out billions in claims globally as a result of damage caused by government COVID-19 measures rather than physical injuries caused

by the virus. The increase in insurance premiums affects the costs of everyday living and doing business in British Columbia.

58. This kind of economic harm has impacted and will continue to impact British Columbians and all those who do business in British Columbia for decades by making British Columbian goods and services less competitive in the global marketplace.

### **Hippocratic Oath**

58.a. The Hippocratic Oath (the "Oath") is an oath of ethics by which physicians are bound. It is one of the oldest legal documents in attested history.

58.b. The Oath's most sacrosanct tenet is *primum non nocere*, or first do no harm.

58.c. The Provincial Health Officer is in violation of her Oath.

### ***Economic security of defendants versus class members***

59. Many British Columbians have experienced, and continue to experience, severe economic hardship as a result of the Orders.

60. Meanwhile the Provincial Government, the Provincial Health Officer, and her staff continue to enjoy economic security through salaries, other benefits, and pensions. All government salaries, other benefits, and pensions are at public expense and far less subject to market conditions than the millions of British Columbians' lack of economic security caused by the continued state of "emergency".

61. Neither the Provincial Government nor the Public Health Officer to-date have conducted a risk assessment to assess the likelihood and severity of the negative consequences of the Orders, including those negative outcomes to economic, physical, emotional, and mental wellbeing mentioned but not limited to the Restriction Effects.

61.a. In failing to conduct a risk assessment the Provincial Government and the Public Health Officer, or each of them have:

- i. exhibited a clear disregard for the *Charter* rights of members of the Class;
- ii. failed to ensure their response to the COVID-19 virus measures impairs the constitutional rights and freedoms of Class members as little as possible.

61.b. In failing to provide reasonable accommodations to Subclass Members the Provincial Government and the Public Health Officer, or each of them have:

- i. exhibited a clear disregard for the *Charter* rights of Subclass Members;
- ii. failed to ensure their response to the COVID-19 virus measures impairs the constitutional rights and freedoms of Subclass Members as little as possible.

## **Part 2: RELIEF SOUGHT**

1. A declaration that all Ministerial Orders and/or Public Health Orders be set aside as unreasonable.
2. A declaration that the following Ministerial Orders are *ultra vires* the EPA:
  - ~~a. Ministerial Order M083, issued on March 26, 2020; repealed and replaced by a new order on May 1, 2020, M139, repealed and replaced by a new order, M192, on June 17, 2020;~~
  - ~~b. Ministerial Order M089, Residential Tenancy (COVID-19) Order, 30 March 2020;~~
  - ~~c. Ministerial Order M179, Commercial Tenancy (COVID-19) Order, 29 May 2020; and~~
  - ~~d. Ministerial Order M416, Food Liquor premises, Gatherings and Events (COVID-19) Order No. 2.~~
  - a. Declaration of State of Emergency – M073-2020;
  - b. Extension of State of Emergency – OIC 155-2020;
  - c. Extension of State of Emergency – OIC 173-2020;
  - d. Extension of State of Emergency – OIC 207-2020;
  - e. Extension of State of Emergency – OIC 241-2020;
  - f. Extension of State of Emergency – OIC 264-2020;
  - g. Extension of State of Emergency – OIC 310-2020;
  - h. Extension of State of Emergency – OIC 351-2020;
  - i. Extension of State of Emergency – OIC 389-2020;
  - j. Extension of State of Emergency – OIC 436-2020;

- k. Extension of State of Emergency – OIC 458-2020;
- l. Extension of State of Emergency – OIC 482/2020;
- m. Extension of State of Emergency – OIC 494-2020;
- n. Extension of State of Emergency – OIC 506-2020;
- o. Extension of State of Emergency – OIC 570-2020;
- p. Extension of State of Emergency – OIC 571-2020;
- q. Extension of State of Emergency – OIC 572-2020;
- r. Extension of State of Emergency – OIC 581-2020;
- s. Extension of State of Emergency – OIC 592-2020;
- t. Extension of State of Emergency – OIC 611-2020;
- u. Extension of State of Emergency – OIC 700-2020;
- v. Extension of State of Emergency – OIC 001-2021;
- w. Extension of State of Emergency – OIC 013-2021;
- x. Extension of State of Emergency – OIC 057-2021;
- y. Extension of State of Emergency – OIC 088-2021;
- z. Extension of State of Emergency – OIC 107-2021;
- aa. Extension of State of Emergency – OIC 161-2021;
- bb. Extension of State of Emergency – OIC 202-2021;
- cc. Extension of State of Emergency – OIC 258-2021;
- dd. Extension of State of Emergency – OIC 285-2021;
- ee. Extension of State of Emergency – OIC 313-2021;
- ff. Extension of State of Emergency – OIC 332-2021;
- gg. Extension of State of Emergency – OIC 366-2021;
- hh. Commercial Tenancy (COVID-19) Order – M179-2020;
- ii. Electronic Attendance at Corporate Meetings (COVID-19) Order – M116-2020;

- jj. Electronic Attendance at Credit Union Meetings (COVID-19) Order – M138-2020;
- kk. Electronic Attendance at Statutory Meetings (COVID-19) Order – M167-2020;
- ll. Electronic Attendance at Strata Property Meetings (COVID-19) Order – M114-2020;
- mm. Face Coverings (COVID-19) Order – M012-2021 [REPEALED]
- nn. Face Coverings (COVID-19) Order amendment – M200-2021;
- oo. Face Coverings (COVID-19) Order repeal – M274-2021;
- pp. Food and Liquor Premises, Gatherings and Events (COVID-19) Order – M358-2020;
- qq. Food and Liquor Premises, Gatherings and Events (COVID-19) Order No. 2 – M416-2020;
- rr. Food Delivery Services (COVID-19) Order – M480-2020;
- ss. Gatherings and Events (COVID-19) Order – M314-2020;
- tt. Limitation Periods (COVID-19) Order – M086-2020;
- uu. Limitation Periods (COVID-19) Order No. 2 – M098-2020;
- vv. Local Government Meetings and Bylaw Process (COVID-19) Order – M083-2020;
- ww. Local Government Meetings and Bylaw Process (COVID-19) Order No. 2 – M139-2020;
- xx. Local Government Meetings and Bylaw Process (COVID-19) Order No. 3 – M192-2020;
- yy. Prohibition on Unconscionable Prices for Essential Goods and Supplies (COVID-19) Order – M115-2020;
- zz. Residential Tenancy (COVID-19) Order – M089-2020;
- aaa. Residential Tenancy (COVID-19) Order No. 2 – M195-2020;
- bbb. Travel Restrictions (COVID-19) Order – M172-2021;
- ccc. Travel Restrictions (COVID-19) Order No. 2 – M182-2021;
- ddd. Travel Restrictions (COVID-19) Order No. 3 – M212-2021;

- eee. Travel Restrictions (COVID-19) Order No. 3 repeal – M242-2021;
  - fff. Use of Face Coverings in Indoor Public Space (COVID-19) Order – M425-2020.
2. A declaration that all decisions of municipal authorities made pursuant to M083, issued on March 26, 2020; repealed and replaced by a new order, M139, repealed and replaced by a new order, M192, on June 17, 2020, that do not otherwise comply with the *Local Government Act*, R.S.B.C. 2015, c. 1 or *Vancouver Charter*, S.B.C. 1953, c. 55 are of no force and effect.
  3. A declaration pursuant to s. 24(1) and 52(1) of the ~~*Canadian Charter of Rights and Freedoms (the "Charter")*~~, ~~*Part I of the Constitution Act, 1982 being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (the "Constitution Act, 1982")*~~ that each or all of the Orders made since March 17, 2020 and those currently in force are of no force or effect as they unjustifiably infringe and disproportionately limit the following:
    - a. s. 2 of the *Charter*;
    - b. s. 6(1) of the *Charter*;
    - c. s. 7 of the *Charter*;
    - d. s. 8 of the *Charter*;
    - e. s. 9 of the *Charter*, and
    - f. s. 15 of the *Charter*.
  4. A declaration that any of the Orders be read so that its effects do not limit rights established under the *Charter*.
  5. An injunction enjoining the defendants from issuing any administrative directive, order, or from exercising influence in any manner, including through its agents or regulators, that prevent or discourage any physician licensed under the *Health Professions Act*, R.S.B.C. 1996, c. 183 in the Province of British Columbia from advocating modalities or therapies that, in the physician's sole discretion, after the physician having independently undertaken reasonable review of the scientific literature, and having obtained their patient's informed consent, determines may improve their patient's immune system, reduce the potential negative outcome of a viral infection, and potentially accelerate the time required for recovery.
  6. An injunction enjoining the defendants from issuing further orders under the *EPA* and Part 5 of the *PHA*.

7. General damages;

7.a. Damages pursuant to s.24(1) of the *Charter*;

8. Special damages;

9. Special costs, or in the alternative Costs; and

10. An order certifying this action as a class proceeding;

11. Interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;

12. Such further and other relief as this Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

1. The defendants have failed to establish the legally binding conditions necessary to declare a state of emergency and erred in concluding that the criteria for declaring an "emergency" were satisfied under the *EPA* and *PHA*.

2. The continued state of emergency is disproportional and unnecessary to deal with the nature of the problems posed by COVID-19.

3. In the alternative, if the conditions under which the defendants could declare a state of emergency did exist in March 2020, such conditions no longer existed after May, 2020 and did not warrant the continued renewal of a state of emergency in British Columbia past May 2020.

### ***Public Health Act***

4. Part 5 of the *PHA* sets out the emergency powers available to medical health officers, the Provincial Health Officer, and the Minister of Health in a public health emergency.

5. The Provincial Health Officer did not have grounds to reasonably believe that the conditions set out in s. 52 of the *PHA* existed in declaring a state of "emergency".

6. In the alternative, if the Provincial Health Officer did have grounds to reasonably believe that the conditions set out in s. 52 of the *PHA* existed to provide the requisite

notice in March 2020, which is denied, then the Provincial Health Officer did not have grounds to continue to reasonably believe that such conditions existed past May 2020.

7. The authority to exercise emergency powers under Part 5 of the *PHA* ends as soon as reasonably practical after the emergency has passed, and in the case of a regional event, when the provincial health officer provides notice that the emergency has passed.

8. The Provincial Health Officer has failed to provide notice that the emergency has passed despite reasonable medical, statistical, and scientific evidence.

9. Following May 2020, the Public Health Officer continued to exercise emergency powers pursuant to Part 5 of the *PHA*, despite there being insufficient evidence or reasonable evidence that the prerequisites of s. 52 of the *PHA* were met.

10. In the alternative, if the Provincial Health Officer had grounds to be reasonably satisfied of the requirements of s. 52 of the *PHA* to continue a state of emergency, the *PHA* Orders exceeded her statutory authority and were inconsistent with established medical and scientific principles and the actual ramifications of COVID-19 in British Columbia.

11.a. The process of reconsideration of the Public Health Officer's *PHA* Orders and her order of April 12, 2021, titled "Variance of Existing Orders to Suspend Reconsideration – April 12, 2021" were contrary to the principles of fundamental justice.

### ***Hippocratic Oath***

11. [Intentionally blank] ~~The Hippocratic Oath (the "Oath") is an oath of ethics by which physicians are bound. It is one of the oldest legal documents in attested history.~~

12. [Intentionally blank] ~~The Oath's most sacrosanct tenet is *primum non nocere*, or first do no harm.~~

13. [Intentionally blank] ~~The Provincial Health Officer is in violation of her Oath.~~

### ***Emergency Program Act***

14. The *EPA* establishes the conditions under which the government can declare a state of emergency, for how long those declarations can last, and when they can deploy emergency powers to protect human lives and mitigate property damage.

15. Pursuant to the *EPA* an "emergency" means "a present or imminent event" that is "caused by accident, fire, explosion, technical failure or the forces of nature," and that "require[s] prompt coordination of action or special regulation of persons or property to protect the health, safety or welfare of a person or to limit damage to property" (s. 1(1)).

16. The effects of COVID-19 in British Columbia did not fit within the definition of an "emergency" under the *EPA*.

17. The Provincial Government's interpretation of the *EPA*, its assessment of the situation, and actions taken were "unreasonable" as a matter of administrative law.

18. In the alternative, if an "emergency" existed pursuant to s. 9 of the *EPA*, which is denied, the Provincial Government exceeded the limits on its power under s. 10(1) and s.10.1(1) of the *EPA*, by making Ministerial Orders that:

- a. did not fit into, or were inconsistent with, the powers specified in s. 10(1) and s. 10.1 of the *EPA*; and
- b. were not "necessary to prevent, respond to, or alleviate the effects of an emergency or disaster".

19. The *EPA* does not authorize or give the Provincial Government and its ministers absolute discretion to suspend, amend or override valid statutes or regulations when acting under s. 10(1) of the *EPA*.

20. The plaintiff says that COVID-19 mostly seriously affects senior citizens, and that the vast majority of British Columbians, even if infected, would not be in mortal or other danger, thus an emergency order affecting all citizens is a substantial and unnecessary overreach.

21. Section 26 of the *EPA*, is not a defence as it does not include ministerial orders.

22. The Provincial Government failed to establish legally binding conditions on the use of sub-delegated powers to suspend, waive or otherwise alter statutory provisions in Ministerial Orders. The Ministerial Orders do not sufficiently guard against arbitrary or inconsistent decision making by sub-delegates.

23. In addition to being unauthorized, the Ministerial Orders do not demonstrate consideration of the principle of proportionality.

24. The *EPA*'s lineage has its roots in the federal *War Measures Act* of 1914. The latter was originally intended to implement a declaration of war for the First World War.

25. The PHA Orders do not discriminate between the sick and the healthy, collectively punishing a whole group in violation of Article 33 of the *Fourth Geneva Convention* of 1949.

26. An emergency order is a hammer, and now, the defendants have seen all matters relating to COVID-19 as a nail.

***Doctrine of unconscionability***

27. The doctrine of unconscionability is applicable to any waiver of liability issued by the defendants in the “British Columbia COVID-19 Disclaimer and Data Notes” and related notices.

***The Canadian Charter of Rights and Freedoms (the “Charter”)***

28. The *Charter* limits British Columbia’s response to an emergency under the *EPA* and the *PHA*.

29. The Orders made under the *EPA* and *PHA* are inconsistent with the *Charter* as follows:

- a. Orders that prohibit religious gatherings infringe on the s. 2(a) *Charter* right of freedom of conscience and religion; particulars of which include:
  - i. PHA Orders: “Gatherings and Events” - August 7, 2020, September 18, 2020, November 19, 2020, December 2, 9, 15 and 24, 2020 and subsequent “Gatherings and Events” orders, each as amended from time to time;
  - ii. Ministerial Orders M314 (Aug. 20, 2020), M358 (Sept. 20, 2021), M416 (Nov. 13, 2020), M013 (January. 8, 2021); and
  - iii. Such further orders as may be advised at trial.
- b. Orders that prohibit peaceful gatherings infringe on the s. 2(c) *Charter* right of freedom of peaceful assembly and s. 2(d) *Charter* right of freedom of association, particulars of which include:
  - i. PHA Orders: “Gatherings and Events” - August 7, 2020, September 18, 2020, November 19, 2020, December 2, 9, 15 and 24, 2020, September 10, 2021 and subsequent “Gatherings and Events” orders, each as amended from time to time;
  - ii. PHA Orders: Post-secondary Institution Housing COVID-19 Preventive Measures’ – September 9, 2021

- iii. Ministerial Orders M314 (Aug. 20, 2020), M358 (Sept. 20, 2021), M416 (Nov. 13, 2020), M013 (January. 8, 2021); and
  - iv. Such further orders as may be advised at trial.
- c. Orders, directives, or decrees that prohibit or limit medical procedures infringe on the s. 7 *Charter* right of life, liberty and security of the person and s. 15 equality rights;
- d. Orders that control or prohibit travel to or from any area of British Columbia under s. 10(1)(f) of the *EPA* limit the freedom of peaceful assembly” under s. 2(c) of the *Charter*, or “the right ... to move to and take up residence in any province” under s. 6(2)(a) of the *Charter*, and the right not to be arbitrarily detained or imprisoned under s. 9 of the *Charter*; particulars of which include:
  - i. Ministerial Orders M172-2021 (April 21, 2021), M182 (April 30, 2021), M212 (May 25, 2021);
  - ii. Such further orders as may be advised at trial.
- e. Orders that require a person to render assistance of a type that the person is qualified to provide under s. 10(1)(e) of the *EPA* limit the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice under s. 7 of the *Charter*; and
- f. Orders that authorize the entry into any building or on any land, without warrant under s. 10(1)(i) of the *EPA* limit the right to be secure against unreasonable search or seizure under s. 8 of the *Charter*;
- g. Orders or actions or inactions that limit or prohibit reconsideration of PHA Orders infringe on the s. 7 *Charter* as they do not accord with the principles of fundamental justice, particulars of which include:
  - i. PHA Order “Variance of Existing Orders to Suspend Reconsideration – April 12, 2021”; and
  - ii. Such further orders as may be advised at trial.

- h. Orders that mandate vaccination infringe on the s. 7 *Charter* right of life, liberty and security of the person and s. 15 equality rights; particulars of which include:
- i. PHA Orders "Food and Liquor Serving Premises – September 10, 2021";
  - ii. "Gatherings and Events – September 10, 2021";
  - iii. "Post-secondary Institution Housing COVID-19 Preventive Measures" – September 9, 2021
  - iv. "Covid-19 Vaccination Status and Preventive Measures Order – August 20, 2021, September 9, 2021 and further amendments;
  - v. Residential Care Staff COVID-19 Preventive Measures PHO Order – September 2, 2021
  - vi. "Variance of Existing Orders to Suspend Reconsideration – April 12, 2021"; and
  - vii. Such further orders as may be advised at trial.

30. Therefore, the Orders violate ss. 2, 6-9 and 15 by infringing on these rights in a manner that does not accord with the principles of fundamental justice. These infringements cannot be justified pursuant to the criteria of s. 1 of the *Charter*.

31. The plaintiff relies on s. 52 of the *Constitution Act, 1982*, in seeking a declaration that the Orders are unconstitutional and of no force or effect.

32. The plaintiff seeks damages pursuant to s.24(1) of the *Charter* on behalf of members of the Class.

Plaintiff's address for service: Citadel Law Corporation  
1400 – 1125 Howe Street  
Vancouver, BC V6Z 2K8

Fax number address for service: N/A

E-mail address for service: N/A

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street, Vancouver, BC

Date: September 15, 2021

  
\_\_\_\_\_  
Signature of lawyer for the plaintiff  
Polina H. Furtula

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

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## Appendix

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

In its response to the COVID-19 virus, the government has invoked extraordinary executive powers predicated on unsubstantiated scientific and legal grounds with catastrophic consequences for British Columbians. In doing so, the defendants have overreached their authority under the *Emergency Program Act*, the *Public Health Act*, and have infringed on *Charter* rights in a manner that does not accord with the principles of fundamental justice.

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate

☒ a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☒ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

**Part 4:**

1. *Emergency Program Act*, RSBC 1996, c. 111;
2. *Public Health Act*, SBC 2008, c 28;
3. *Canadian Charter of Rights and Freedoms (the "Charter")*, Part I of the *Constitution Act, 1982 being Schedule B to the Canada Act 1982 (U.K.)*, 1982, c. 11.