



No. S210831
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

Canadian Society for the Advancement of Science in Public Policy

Plaintiff

and

His Majesty the King in right of the Province of British Columbia and
Dr. Bonnie Henry in her Capacity as Provincial Health Officer for
the Province of British Columbia

Defendants

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

APPLICATION RESPONSE

Application response of: The Defendants, His Majesty the King in right of the Province of British Columbia (the “**Province**”) and Dr. Bonnie Henry in her capacity as Provincial Health Officer for the Province of British Columbia (the “**PHO**”) (collectively, the “**Provincial Defendants**”)

THIS IS A RESPONSE TO the notice of application of the Plaintiff, Canadian Society for the Advancement of Science in Public Policy (“**CSASPP**”) filed October 26, 2022.

Part 1: ORDERS CONSENTED TO

The Provincial Defendants consent to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: **NONE**.

Part 2: ORDERS OPPOSED

The Provincial Defendants oppose the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: **ALL**.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The Provincial Defendants take no position on the granting of the orders set out in the following paragraphs of Part 1 of the notice of application: **NONE**.

Part 4: FACTUAL BASIS

Overview

1. CSASPP applies to webcast and archive CSASPP's certification application and application to amend its claim and add plaintiffs, and the Provincial Defendants' application to dismiss this proceeding as disclosing no reasonable cause of action and an abuse of process. The three applications are scheduled to be heard together over 5 days beginning December 12, 2022 (the "**December Hearing**").
2. The Provincial Defendants oppose the application to webcast and archive the December Hearing for the same reasons as the Attorney General of British Columbia. In addition, the Provincial Defendants raise another consideration that weighs against granting the application: the safety of participants in the December Hearing.

Facts Relating to Safety of Hearing Participants

3. CSASPP has a public Facebook page where it posts information about the legal proceedings it has brought against the PHO and the Province challenging the public health response to the COVID-19 pandemic.¹ CSASPP also has a Go Fund Me page to raise funds in connection with these proceedings.²
4. The public comments on CSASPP's Facebook and Go Fund Me pages include comments that are incendiary, threatening, and violent. For example, the comments include:
 - a. allegations of corruption within the judiciary;³
 - b. a violent statement about "judges falling over dead";⁴
 - c. incendiary statements against government, e.g. the government is the "mafia" and the "enemy of the people",⁵ the "system is corrupt and needs to be over hauled by the people",⁶ "War is upon us and courts are too slow to act",⁷ public health measures are "an act of war" and "we the victims should react accordingly";⁸
 - d. statements that proponents of public health measures are "perpetrators of some of the greatest crimes against humanity of our time"⁹ and should be jailed;¹⁰

¹ Affidavit #3 of Heather Lewis, made November 1, 2022 ("**Lewis Affidavit**"), para. 3, Ex. B.

² Lewis Affidavit, para. 4, Ex. C.

³ Lewis Affidavit, Ex. B, pp. 4, 6, 12, 17.

⁴ Lewis Affidavit, Ex. B, p. 6.

⁵ Lewis Affidavit, Ex. B, p. 6.

⁶ Lewis Affidavit, Ex. B, p. 6.

⁷ Lewis Affidavit, Ex. B, p. 17.

⁸ Lewis Affidavit, Ex. C, p. 26.

⁹ Lewis Affidavit, Ex. B, p. 6.

¹⁰ Lewis Affidavit, Ex. C, p. 29.

- e. statements that the defendant PHO is a criminal who should be tossed in jail;¹¹ and
 - f. a violent comment in response to a post about CSASPP's application to webcast the December Hearing: "Someone spoil the ending for me... Hanging, guillotine, chair, injection, or drawn and quartered?".¹²
5. Similar comments were recently made in response to an October 29, 2022 article posted online by West Coast Standard about CSASPP's application to webcast the December Hearing, including: the PHO is "just another in the health field that needs locking up or worse"; and "In a just society she would be facing the death penalty".¹³
6. CSASPP has a website where Kipling Warner, CSASPP's Executive Director, posts information about CSASPP's various legal proceedings against the PHO and the Province. In a December 2, 2021 entry on CSASPP's website, Mr. Warner wrote:
- We routinely receive communications from the general public with knowledge of the personal residence of this or that cabinet minister, public official, their agents, various salacious details concerning the aforementioned's personal lives, and the desire to make their grievances heard.** I have gone to great length to dissuade them from harassing or in any way creating a provocation, generally with great success even when our opponents continue to act in bad faith.¹⁴
7. These comments raise safety concerns for participants in the December Hearing, including the Minister of Health, the Minister of Public Safety and Solicitor General, the PHO, government employees in the Ministry of Health and the Ministry of Public Safety and Solicitor General (including in particular, the Provincial Defendants' affiants), counsel for the Provincial Defendants, and the Court.

Part 5: LEGAL BASIS

Adoption of Attorney General's Pleadings

8. The Provincial Defendants expressly adopt and rely upon the pleadings in the application response filed by the Attorney General of British Columbia on November 2, 2022.

¹¹ Lewis Affidavit, Ex. B, pp. 9, 12, 14, 15.

¹² Lewis Affidavit, Ex. B, p. 12.

¹³ Lewis Affidavit, para. 5, Ex. D, p. 33.

¹⁴ Lewis Affidavit, para. 2, Ex. A, p. 1 (emphasis added).

An Additional Consideration: Safety of Hearing Participants

9. In addition to the considerations raised by the Attorney General, webcasting and archiving the December Hearing increases the risk to the safety of hearing participants. This factor weighs against granting the application.
10. In *R. v. Pilarinos*, the court identified safety concerns as a relevant factor in an application for expanded media coverage:

Television could jeopardize the safety and privacy of trial participants. This is an issue of real concern. Judges and counsel have been threatened in this province in relation to cases they have conducted. While no concerns have been raised in the Clark and Pilarinos trial, trial participants generally run the risk of becoming public figures through no choice of their own. They potentially become the targets for disgruntled citizens who are displeased with the conduct or outcome of a certain case.¹⁵

11. Similar concerns were raised in an application to webcast the sentencing hearing in a Stanley Cup Riot case before the Provincial Court.¹⁶
12. In this case, the incendiary, threatening, and violent public comments made about the PHO, the Province, government employees, and the judiciary on online platforms associated with CSASPP raise serious safety concerns in connection with the December Hearing.¹⁷
13. Although no witnesses will be present at the December Hearing, in their submissions counsel for the Provincial Defendants will refer to the Provincial Defendants' affiants who have been involved in the Province's response to the COVID-19 pandemic, as well as the public officials involved in the impugned decision making, including the Minister of Public Safety and Solicitor General, the Minister of Health, and the PHO. The webcast will also include images of the presiding judge and the Provincial Defendants' counsel.¹⁸
14. Once the webcast is online, the Court will have no meaningful control over how it is used by persons who are outside of British Columbia and beyond the territorial reach of the Court's contempt power. The evidence on this application demonstrates a heightened risk of rebroadcasting outside Canada.¹⁹

¹⁵ *R. v. Pilarinos*, 2001 BCSC 1332, para. 157(j).

¹⁶ *R. v. Dickinson*, 2012 BCPC 28, para. 16.

¹⁷ Threats to health care workers during the COVID-19 pandemic have prompted a legislative response provincially and federally: see, for example, the *Access to Services (COVID-19) Act*, SBC 2021, c. 33; Bill C-3, *An Act to amend the Criminal Code and the Canada Labour Code*.

¹⁸ Paragraph 1(b) of CSASPP's proposed order provides that one camera will be placed in the front row of the gallery and arranged to face and record the presiding judge and the backs of counsel: Schedule "A" to the Notice of Application.

¹⁹ Affidavit #3 of Kipling Warner, made October 20, 2022, paras. 8-9.

15. Based on the considerations raised by the Attorney General, together with the safety concerns raised by the Provincial Defendants, the Court ought to dismiss CSASPP's application to webcast and archive the December Hearing.

Costs

16. The Provincial Defendants do not seek costs and ask that no costs be awarded against them on this application.

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #3 of Heather Lewis made November 1, 2022;
2. The pleadings and other material filed herein; and
3. Such further and other materials as counsel may advise and this Honourable Court may permit.

The Provincial Defendants estimate that the application will take 1 day.

The Provincial Defendants have filed in this proceeding a document that contains the application respondents' address for service.

Date: November 2, 2022



Chantelle Rajotte / Emily Lapper / Trevor Bant
Counsel for His Majesty the King in right of the
Province of British Columbia and Dr. Bonnie
Henry in her capacity as Provincial Health Officer
for the Province of British Columbia