Court File No.:

Galati	-and-	Canuck Law et al
Plaintiff		Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

Name: ROCCO GALATI LAW FIRM
PROFESSIONAL CORPORATION
Samantha Coomara
LSUC No.: 75423R
Address: 1062 College Street
Lower Level
Toronto ON M6H 1A9

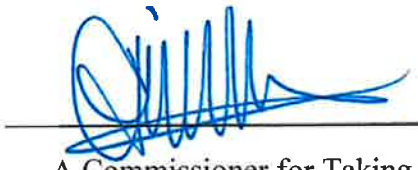
Telephone No.: 416-530-9684
Fax No.: 416-530-8129

Lawyer for the Plaintiff

This is Exhibit "V" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023



A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

CONSTITUTIONAL RIGHTS CENTRE INC.

FINANCIAL STATEMENTS

DECEMBER 31, 2020

INDEX

PAGE	
1	Notice to Reader
2	Balance Sheet
3	Statement of Deficit
4	Statement of Income (Loss)

NOTICE TO READER

On the basis of information provided by management, we have compiled the balance sheet of Constitutional Rights Centre Inc. as at December 31, 2020 and the statement of income (loss) and deficit for the year then ended.

We have not performed an audit or a review engagement in respect of these financial statements and, accordingly, we express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

Toronto, Ontario
June 01, 2021

CONSTITUTIONAL RIGHTS CENTRE INC.

STATEMENT OF INCOME (LOSS)
YEAR ENDED DECEMBER 31, 2020
(Unaudited - See Notice to Reader)

	2020	2019
REVENUE	$ 179,505	$ -
EXPENSES		
Subcontracting	173,445	-
Advertising	11,422	-
Amortization	720	-
Dues	696	-
Office and general	678	-
Bank charges and interest	80	-
	187,041	-
NET INCOME (LOSS)	$ (7,536)	$ -

Canada Revenue Agency | Agence du revenu du Canada

Sudbury ON P3A 5C1

0005405

CONSTITUTIONAL RIGHTS CENTRE INC.
[redacted]

Notice details

Business number	[redacted]
Date issued	Jun 18, 2021

Corporation income tax assessment

These notice(s) explain the results of our assessment of your T2 Corporation Income Tax Return(s). We assessed your T2 Corporation Income Tax Return(s) and calculated your balance.

Thank you,

Bob Hamilton
Commissioner of Revenue

Account summary

Total balance: **$0.00**

Go paperless!

Get your mail online through My Business Account.

1. Log in at **canada.ca/my-cra-business-account**
2. Select "Notification preferences"

T2 CORP 001 E X

Canada

Canada Revenue Agency | Agence du revenu du Canada

Sudbury ON P3A 5C1

CONSTITUTIONAL RIGHTS CENTRE
INC.
C/O ROCCO GALATI LAW FIRM
1062 COLLEGE ST
TORONTO ON M6H 1A9

Notice details

Business number	[redacted]
Tax year-end	Dec 31, 2020
Date issued	Jun 18, 2021

Corporation notice of assessment

Results

This notice explains the result of our assessment of your T2 Corporation Income Tax Return. It also explains any changes we may have made. For more information, please see the summary section of this notice.

Description	$ Amount	CR
Result of this Assessment	0.00	
Previous balance	0.00	
Total balance	**0.00**	

For more information, please see the summary and explanation of changes and other important information sections of this notice.

Thank you,

Bob Hamilton
Commissioner of Revenue

Canada

0005406

CONSTITUTIONAL RIGHTS CENTRE INC.

Notice details

Business number	[redacted]
Tax year-end	Dec 31, 2020
Date issued	Jun 18, 2021

Summary

Description	$ Reported CR	$ Assessed CR
Federal tax		
Part I	0.00	0.00
Total federal tax		**0.00**
Net balance		**0.00**
Result of this assessment		**0.00**
Total balance for this tax year-end		**0.00**

Explanation of changes and other important information

You sent us Schedule 546, Corporations Information Act Annual Return for Ontario Corporations, with your corporation income tax return. As of **May 15, 2021**, we no longer collect this information for the Ontario Ministry of Government and Consumer Services.

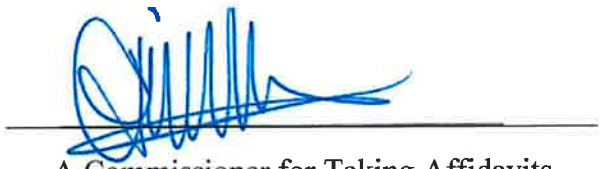
For updated information on filing an Ontario Corporations Information Act annual return, go to **ontario.ca/businessregistry** or contact ServiceOntario at:

Telephone: **416-314-8880** or **1-800-361-3223**
TTY: **416-325-3408** or **1-800-268-7095**

This is Exhibit "W" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023



A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

CONSTITUTIONAL RIGHTS CENTRE INC.

FINANCIAL STATEMENTS

DECEMBER 31, 2021

(Unaudited - See Notice to Reader)

INDEX

PAGE	
1	Notice to Reader
2	Balance Sheet
3	Statement of Retained Earnings (Deficit)
4	Statement of Income (Loss)

NOTICE TO READER

On the basis of information provided by management, we have compiled the balance sheet of Constitutional Rights Centre Inc. as at December 31, 2021 and the statement of income (loss) and retained earnings (deficit) for the year then ended.

We have not performed an audit or a review engagement in respect of these financial statements and, accordingly, we express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

Toronto, Ontario
July 13, 2022

[redacted]
Chartered Professional Accountants

CONSTITUTIONAL RIGHTS CENTRE INC.

STATEMENT OF INCOME (LOSS)
YEAR ENDED DECEMBER 31, 2021
(Unaudited - See Notice to Reader)

	2021	2020
REVENUE	$ 786,706	$ 179,505
EXPENSES		
Subcontracting	754,199	173,445
Advertising	17,191	11,422
Professional fees	3,045	-
Office and general	1,536	678
Amortization	264	720
Bank charges and interest	180	80
Dues	-	696
	776,415	187,041
INCOME (LOSS) BEFORE INCOME TAXES	10,291	(7,536)
INCOME TAXES	369	-
NET INCOME (LOSS)	**$ 9,922**	**$ (7,536)**

Canada Revenue Agency | Agence du revenu du Canada

Sudbury ON P3A 5C1

0003071

CONSTITUTIONAL RIGHTS CENTRE
INC.
C/O ROCCO GALATI LAW FIRM
1062 COLLEGE ST
TORONTO ON M6H 1A9

Notice details

Business number	[redacted]
Date issued	Aug 2, 2022

Corporation income tax assessment

These notice(s) explain the results of our assessment of your T2 corporation income tax return(s). We assessed your T2 corporation income tax return(s) and calculated your balance.

The amount you need to pay is **$861.34**.

To avoid additional interest charges, please pay by **August 22, 2022** .

Thank you,

Bob Hamilton
Commissioner of Revenue

Account summary

Previous payments may not appear if they have not been processed. If you have already paid the balance owing, please ignore this request.

Total balance:	**$861.34**
Pay by:	**August 22, 2022**

Go paperless!

Get your mail online through My Business Account.

1. Sign in at **canada.ca/my-cra-business-account**
2. Select "Notification preferences"

T2 CORP 001 E X

Canada

Canada Revenue Agency / Agence du revenu du Canada

Sudbury ON P3A 5C1

CONSTITUTIONAL RIGHTS CENTRE
INC.
C/O ROCCO GALATI LAW FIRM
1062 COLLEGE ST
TORONTO ON M6H 1A9

Notice details

Business number	[redacted]
Tax year-end	Dec 31, 2021
Date issued	Aug 2, 2022

Corporation notice of assessment

Results

This notice explains the result of our assessment of your T2 corporation income tax return. It also explains any changes we may have made. For more details, see the summary section of this notice.

Description	$ Amount	CR
Result of this assessment	861.34	
Previous balance	0.00	
Total balance	**861.34**	

If you pay the full amount by **August 22, 2022** , we will not charge more interest. If a credit becomes available on the same or a related business account, we will apply that credit to any amount you owe.

For more information, please see the summary and explanation of changes and other important information sections of this notice.

Thank you,

Bob Hamilton
Commissioner of Revenue

Canada

0003072

CONSTITUTIONAL RIGHTS CENTRE INC.

Notice details

Business number	[redacted]
Tax year-end	Dec 31, 2021
Date issued	Aug 2, 2022

Summary

Description	$ Reported CR	$ Assessed CR
Federal tax		
Part I	454.00	454.00
Total federal tax		**454.00**
Net provincial and territorial tax/credit		
Ontario	349.00	349.00
Total net provincial and territorial tax/credit		**349.00**
Net balance		**803.00**
Penalties		
Subsection 162(1) failure to file penalty		40.15
Interest		
Arrears interest		18.19
Result of this assessment		**861.34**
Total balance for this tax year-end		**861.34**

Explanation of changes and other important information

Net Ontario tax/credit consists of the following:

Description	$ Amount
Ontario basic income tax	349.00
Ontario corporate income tax payable	**349.00**
Total Ontario tax payable before refundable tax credits	**349.00**

We charged you a failure-to-file penalty. The penalty is 5% of the unpaid tax at the due date. It also includes a charge of 1% of the unpaid tax for each complete month the return was late, to a maximum of 12 months.

We charged arrears interest because you did not pay the amount owing by the due date.

This is Exhibit "X" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

(https://www.paypal.com/mep/dashboard)

Constitutional Rights Centre Inc.

Reports

Insights

Statements

Activity download (/merchantdata/dlog)

Financial summaries

Disputes and chargebacks ()

Transactions

Help and documentation

Electronically filed / Déposé par voie électronique : 15-Mar-2023
Toronto Superior Court of Justice / Cour supérieure de justice

Court File No./N° du dossier du greffe : CV-22-00683322-0000

Sales insights

Help us improve this section

Showing data for
2022

Compare data to last year

Sales
All PayPal sales

$43,876 CAD

▼ 91% from a year ago

Transactions
All PayPal sales

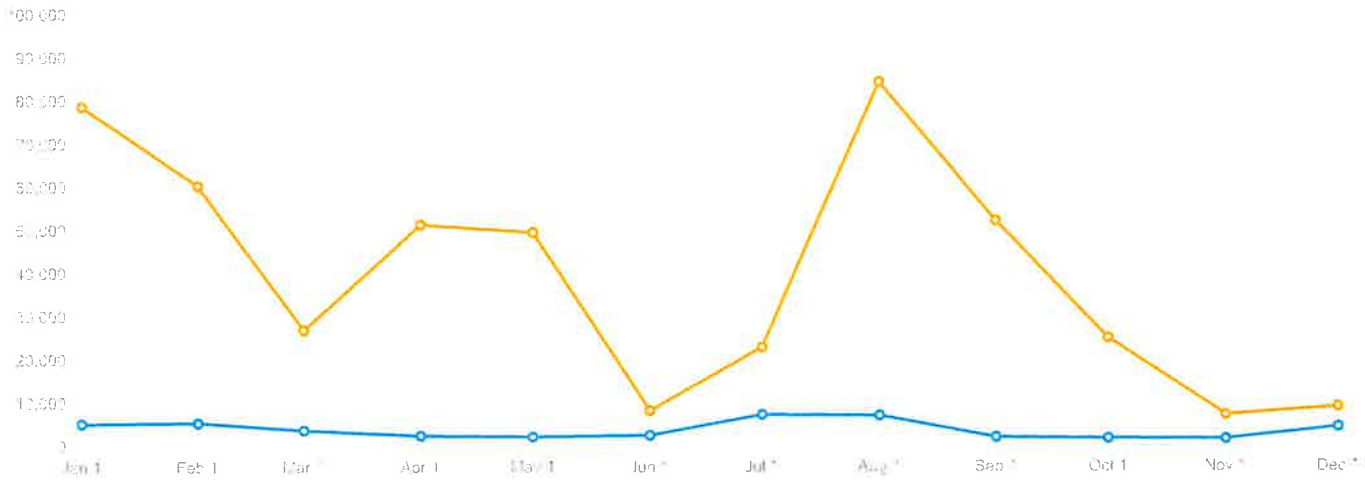
939

▼ 79% from a year ago

Average selling price
All PayPal sales

$47 CAD

▼ 56% from a year ago



All PayPal sales

All PayPal sales last year

Amounts are estimates based on the most recent currency conversion rate.

Sales Insights currently uses the Pacific (US) time zone (PDT/PST). If your PayPal account is based in another time zone, your daily sales data will vary accordingly and may reflect partial data for the most recent day.

This is Exhibit "Y" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

(https://www.paypal.com/mep/dashboard)

Constitutional Rights Centre Inc.

Reports

Insights

Statements

Activity download (/merchantdata/dlog)

Financial summaries

Disputes and chargebacks ()

Transactions

Help and documentation

Electronically filed / Déposé par voie électronique : 15-Mar-2023
Toronto Superior Court of Justice / Cour supérieure de justice

Sales insights

Help us improve this section

Showing data for
2023

Compare data to last year

Sales
All PayPal sales

$4,751 CAD

▼ 58% from a year ago

Transactions
All PayPal sales

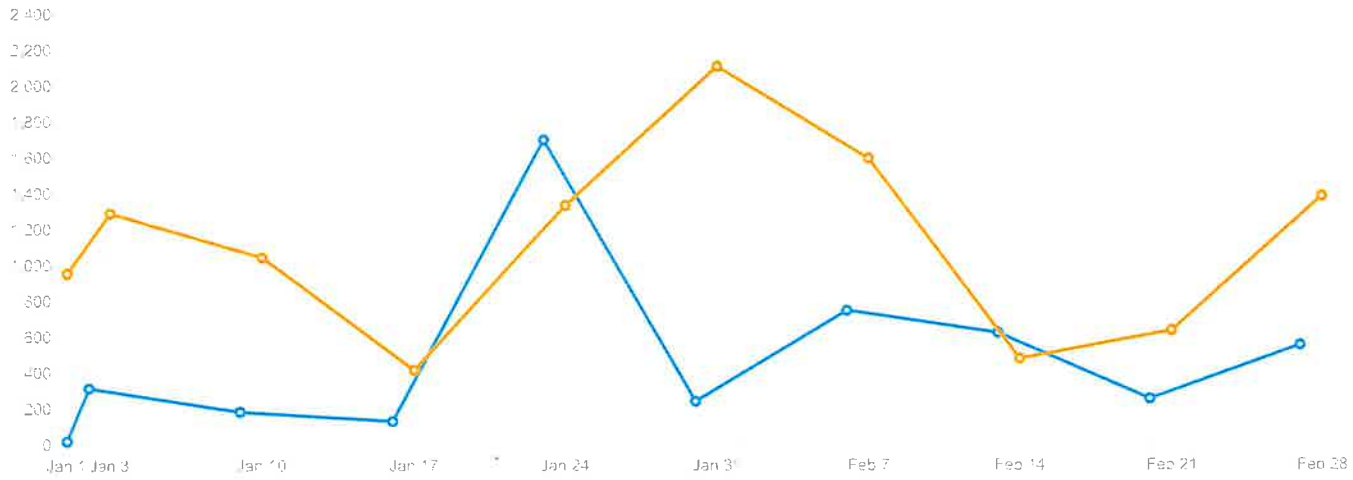
115

▼ 57% from a year ago

Average selling price
All PayPal sales

$41 CAD

▼ 1% from a year ago



All PayPal sales

All PayPal sales last year

Amounts are estimates based on the most recent currency conversion rate.

Sales Insights currently uses the Pacific (US) time zone (PDT/PST). If your PayPal account is based in another time zone, your daily sales data will vary accordingly and may reflect partial data for the most recent day.

This is Exhibit "Z" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

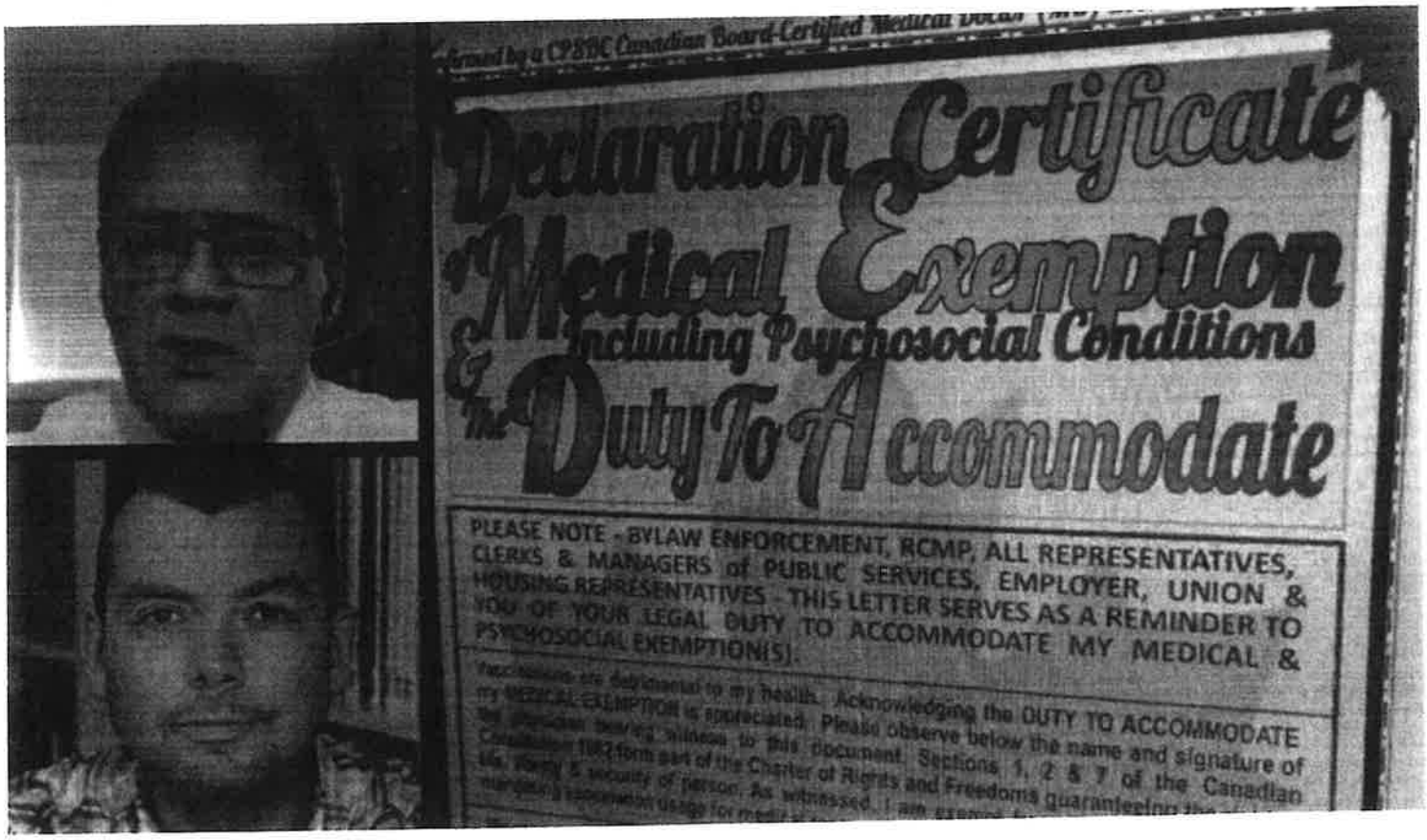
CBC

British Columbia

2 B.C. doctors linked to website selling bogus mask and vaccine exemption 'certificates'

Document obtained by CBC allegedly signed by Dr. Stephen Malthouse, produced through Kelowna business

Bethany Lindsay · CBC News · Posted: Oct 24, 2021 2:01 PM PT | Last Updated: October 29



CBC News has obtained a phoney mask and vaccine exemption 'certificate' purportedly signed by Dr. Stephen Malthouse, shown here at top left. It appears to have been produced through the website EnableAir.com, which has been linked to Dr. Gwyllyn Goddard, bottom left. (Canadian Doctors Speak Out/Gwyllyn.com/CBC)

comments

investigation for allegedly writing phoney mask and vaccine exemptions offered through a Kelowna-based website.

CBC News has obtained a four-page "declaration certificate of medical exemption including psychosocial conditions" that was purportedly signed by Dr. Stephen Malthouse and produced through a service called EnableAir.com.

That website appears to be connected to another B.C. doctor, Dr. Gwyllyn Goddard, whose medical licence is temporarily inactive.

A copy of the same certificate has been sent to the College of Physicians and Surgeons of B.C. and they are investigating, CBC has confirmed.

A spokesperson for B.C.'s Health Ministry did not answer direct questions about EnableAir.com, but confirmed there is no such thing as an exemption certificate for either masks or vaccines.

EnableAir.com promises "authentic medical exemptions," including QR codes, for people who are "concerned with totalitarian mainstream narratives," and advertises the services of five unnamed Canadian physicians.

It's not clear how much the service costs, but the website warns prospective customers to "mentally prepare for the invoice."

- **AUDIO Divorced Sask. parents fight in court over COVID-19 vaccination for teen daughter**

The certificate allegedly signed by Malthouse includes a two-page preamble invoking the Canadian Human Rights Act, the Constitution, the UN's Universal Declaration on Bioethics and Human Rights and the Nuremberg Code.

It doesn't offer any specifics about why the bearer should be exempted from mask and vaccine mandates, but offers a long list of possible reasons, including vaccine allergies but also HIV, autism, "impaired social development," asthma, eczema, migraines and "personal belief."

Doctor already faces discipline related to COVID-19

contact information for Goddard. The Kelowna post office box is connected to his cannabis consulting firm, CanaBC Services Ltd., and the fax number is listed on his personal website.

Goddard did not respond to emailed questions or text messages, and hung up on a reporter when contacted by phone. The full contents of EnableAir.com were taken offline within hours of that phone call.

- **B.C. doctor disciplined for 'harmful' COVID-19 misinformation claims free speech violations**

Neither Malthouse nor his lawyer, Rocco Galati of Toronto, responded to questions about the certificate.

EnableAir.com advertises that 50 per cent of "post-administrative fees" will be donated to Galati and the Constitutional Rights Centre, an organization he founded. However, Galati told CBC he has no connection to the website.

Dr. Stephen Malthouse appeared at a rally against COVID-19 restrictions in Duncan, B.C., last November, referring to the disease as a 'so-called pandemic.' (Garden Gate Society/YouTube)

Malthouse, a family doctor who lives on Denman Island but is not associated with the island's medical clinic, is already the subject of disciplinary proceedings at the college as well as complaints from at least 10 other physicians.

Over the last year, he's appeared at several rallies against pandemic-related measures, falsely claiming that COVID-19 is no more deadly than the flu and that vaccines are more dangerous. His musings have gone viral online.

According to a petition Malthouse filed in B.C. Supreme Court in June, he faces a reprimand from the college, which wants to bar him from speaking on issues related to COVID-19. Malthouse has asked the court to block those measures, arguing they're an infringement on his right to free speech.

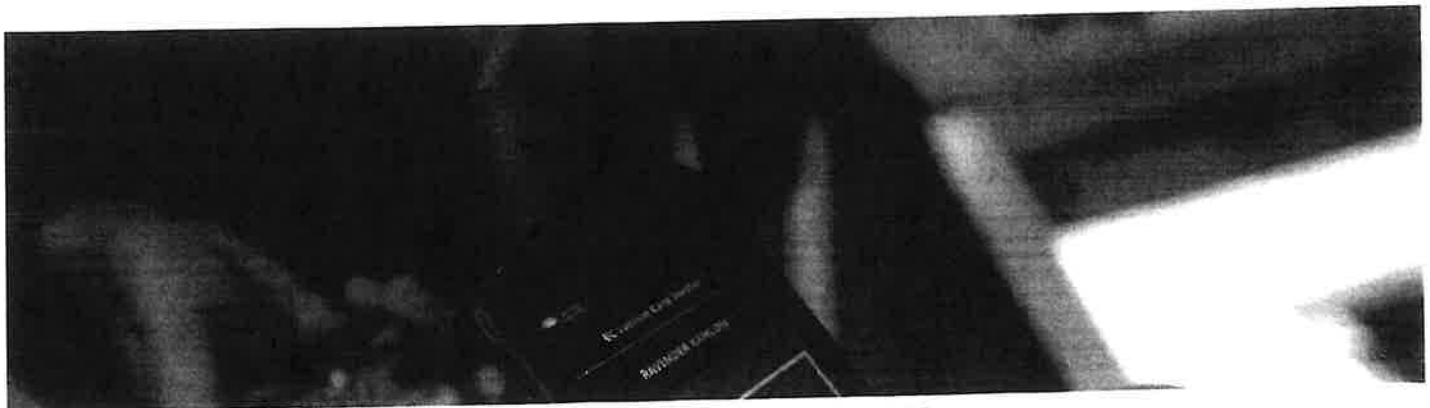
Doctors 'need to provide objective medical evidence'

College registrar Dr. Heidi Oetter said she couldn't comment on any investigations into Malthouse or EnableAir.com, but the college has a standard for what's expected of any doctor writing exemptions.

"It's very clear about the need to provide objective medical evidence. You can't simply restate something just because the patient wants you to do that," she said.

"If somebody is signing a letter that is inconsistent with those expectations, they may face an investigation by the college and, if warranted, regulatory action."

The college posted a notice last week in response to reports of fraudulent exemption letters circulating in the province. It includes guidance for businesses or employers about how to identify a valid exemption.



In B.C., proof of vaccination is required to access many non-essential services, and there are very few valid exemptions. (Darryl Dyck/The Canadian Press)

There's a very short list of acceptable reasons for an exemption or deferral from a COVID-19 vaccine, including a history of anaphylactic reactions to both mRNA vaccines like Pfizer-BioNTech and Moderna, and adenovirus vector vaccines like AstraZeneca.

Ontario's College of Physicians and Surgeons has barred three doctors from issuing mask and vaccine exemptions in recent weeks. A spokesperson for that college said he couldn't comment on any possible connection to EnableAir.com.

- **B.C. doctors urge action on colleague spreading COVID-19 misinformation**
- **Ontario doctor accused of spreading COVID-19 misinformation barred from providing vaccine, mask exemptions**

But one of those physicians, Dr. Patrick Phillips, has promoted EnableAir.com on social media.

Another has a B.C. connection — Dr. Rochagne Kilian previously worked in Williams Lake, and held a medical licence in this province from 2009 to 2014.

Oetter said while the rules are slightly different in B.C., similar restrictions could be placed on doctors here if evidence suggested they were providing fraudulent exemptions.

Mobile users: View the document
(PDF KB)

CBC is not responsible for 3rd party content

Clarifications

- This article was updated to reflect that Dr. Stephen Malthouse is not associated with Denman Island's only medical clinic.
  Oct 29, 2021 12:07 PM PT

Popular Now in News

1 **Surgeon handed 4-month suspension for noose incident at Alberta hospital**
870 reading now

2 CBC INVESTIGATES
'She robbed me of experiences,' says Winnipeg man suing teacher over past sexual relationship
831 reading now

3 **Banned for decades, releasing oilsands tailings water is now on the horizon**
564 reading now

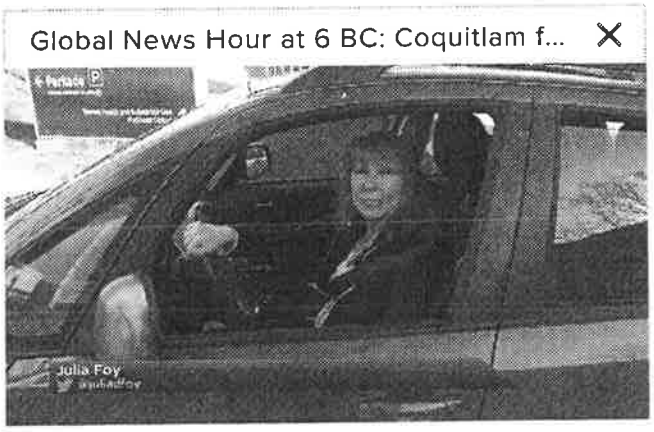
4 CBC INVESTIGATES
Warning signs present in 1 in 3 homicides of intimate partners, CBC investigation finds
550 reading now

5 NEW
539 new COVID-19 cases, 6 deaths reported in Manitoba over 3 days
514 reading now

HEALTH

RCMP launches investigation into website selling fake COVID-19 vaccine and mask exemptions

By **Ashleigh Stewart** · **Global News**
Posted January 27, 2022 4:57 pm



Experts are calli
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2022

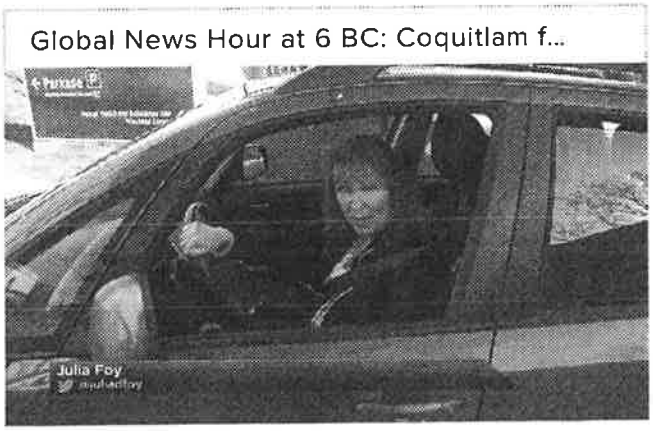
re alleged to
concern
am – Jan 20,

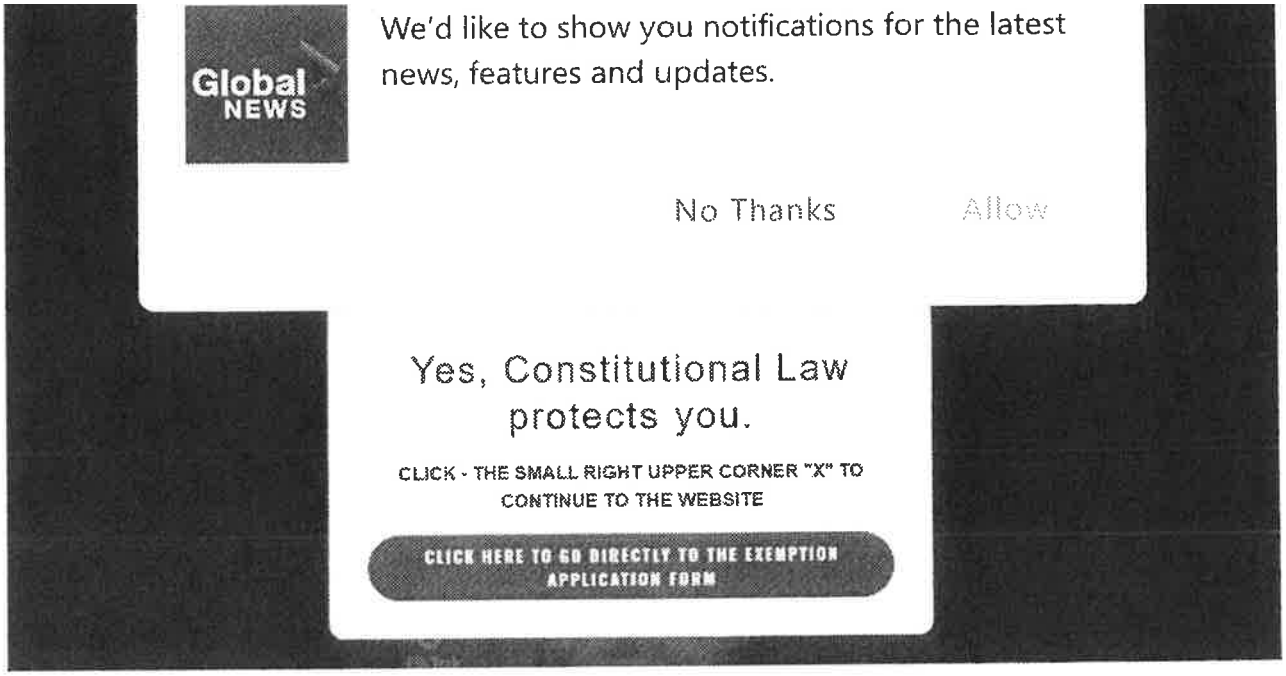
A police investigation has been launched into a B.C. website offering allegedly false COVID-19 vaccine and mask exemptions for a fee, after it was highlighted in a Global News investigation.

A spokesperson for the Chilliwack RCMP confirmed it is now investigating Enable Air, which works with unnamed "licensed physicians" to grant vaccination and mask exemptions for an undisclosed fee.

It comes a week after a Global News investigation detailed the vaccine exemption service, which has been linked to B.C. physicians Gwyllyn Goddard and Stephen Malthouse.

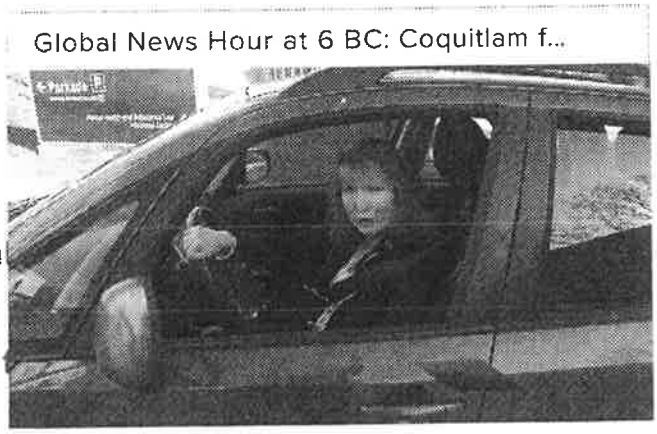
Goddard is based in Cultus Lake, an area under the jurisdiction of the Chilliwack RCMP.





Enable Air's website, as pictured on Jan. 7, 2022. **Screenshot**

Goddard's phone number, listed on his website, can be matched to the mobile number listed in the HTML code under the "Message us on WhatsApp" widget on Enable Air's website.



Goddard did not answer calls from Globa

READ MORE: Revealed — How a web o
the fight against COVID-19

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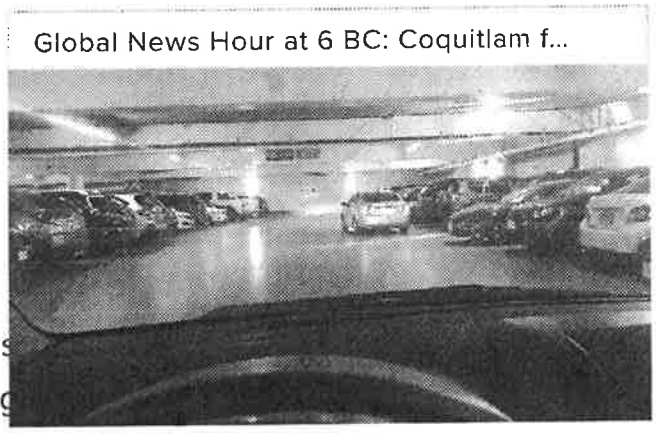
Goddard then said he had to go and hung up.

Half an hour later, Enable Air's website was taken down.

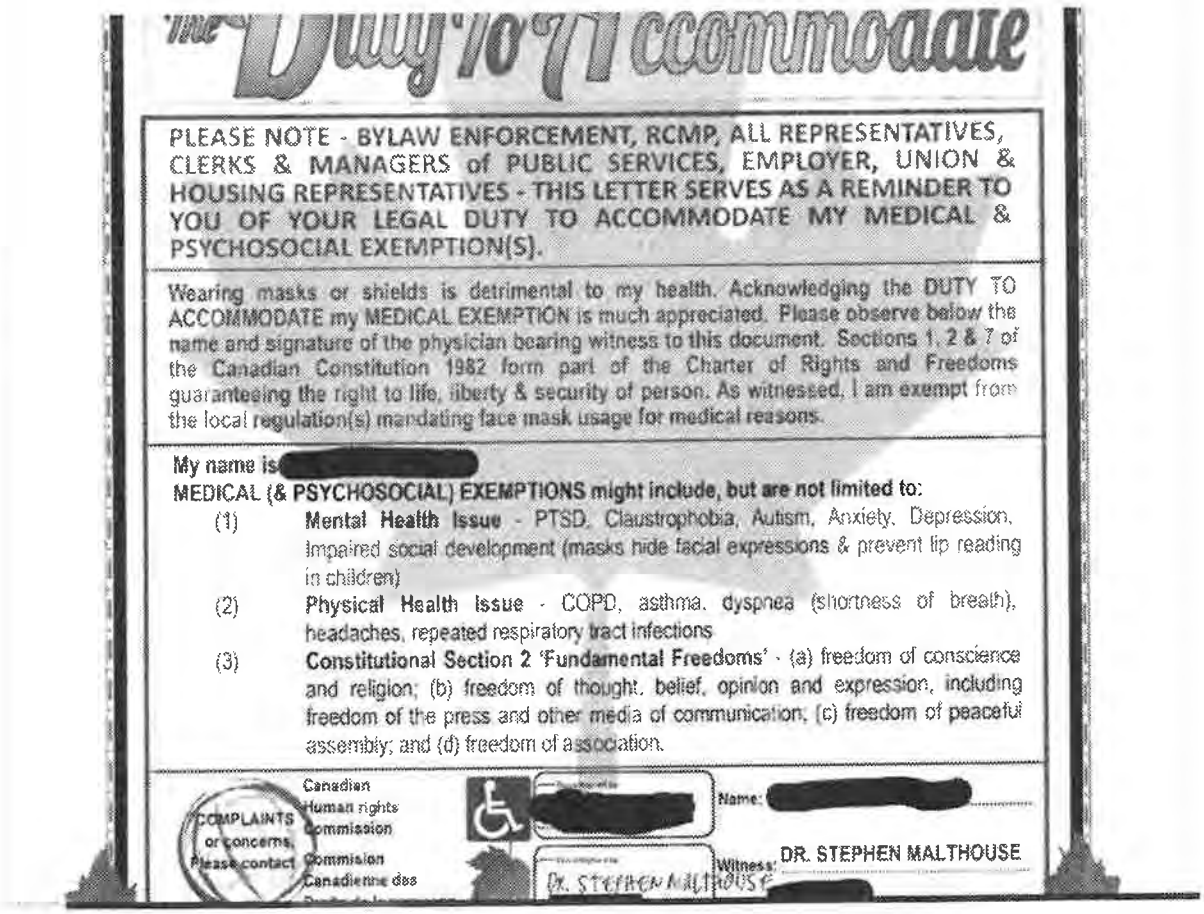
An RCMP spokesperson said police "are in the evidence gathering stages of an investigation." They refused to comment further.

Doctors on Tour events return

A medical exemption for the service, obtained by Global News from a source, was signed by Malthouse. The exemption states that the patient should be exempt from wearing a mask and receiving a vaccine, citing a wide-ranging list of medical reasons the exemption "might include," from claustrophobia to migraines.



When contacted about the news on Thurs
comment for Global News" and then hung



The Duty to Accommodate

PLEASE NOTE - BYLAW ENFORCEMENT, RCMP, ALL REPRESENTATIVES, CLERKS & MANAGERS of PUBLIC SERVICES, EMPLOYER, UNION & HOUSING REPRESENTATIVES - THIS LETTER SERVES AS A REMINDER TO YOU OF YOUR LEGAL DUTY TO ACCOMMODATE MY MEDICAL & PSYCHOSOCIAL EXEMPTION(S).

Wearing masks or shields is detrimental to my health. Acknowledging the DUTY TO ACCOMMODATE my MEDICAL EXEMPTION is much appreciated. Please observe below the name and signature of the physician bearing witness to this document. Sections 1, 2 & 7 of the Canadian Constitution 1982 form part of the Charter of Rights and Freedoms guaranteeing the right to life, liberty & security of person. As witnessed, I am exempt from the local regulation(s) mandating face mask usage for medical reasons.

My name is [redacted]

MEDICAL (& PSYCHOSOCIAL) EXEMPTIONS might include, but are not limited to:

(1) **Mental Health Issue** - PTSD, Claustrophobia, Autism, Anxiety, Depression, Impaired social development (masks hide facial expressions & prevent lip reading in children)

(2) **Physical Health Issue** - COPD, asthma, dyspnea (shortness of breath), headaches, repeated respiratory tract infections

(3) **Constitutional Section 2 'Fundamental Freedoms'** - (a) freedom of conscience and religion; (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication; (c) freedom of peaceful assembly; and (d) freedom of association.

COMPLAINTS or concerns, Please contact Canadian Human rights Commission Commision Canadienne des

[redacted] Name: [redacted]

Witness: DR. STEPHEN MALTHOUSE

Dr. STEPHEN MALTHOUSE [redacted]

A vaccine exemption reportedly signed by B.C. physician Stephen Malthouse. **Screenshot**

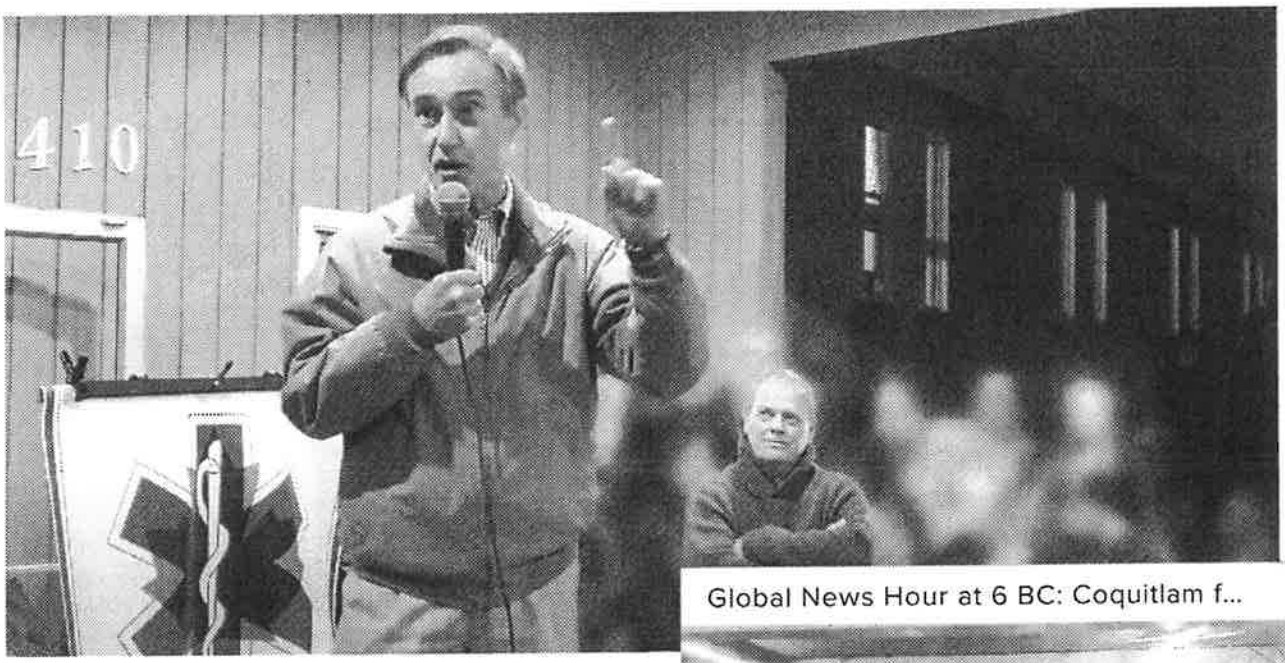
Goddard's College of Physicians and Surgeons of BC (CPSBC) listing shows he resigned in 2016. Malthouse's CPSBC page shows he is still practising.

It comes as pressure mounts on the CPSE
sharing unverified medical information on

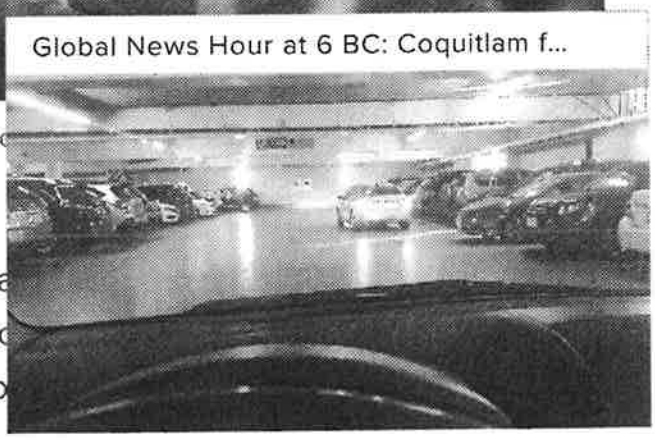
Malthouse is also part of a contingent of r
country to persuade the general public th
"Doctors on Tour."

through

Spearhe ffe.



Doctors Charles Hoffe, left, and Stephen Malthous
Doctors on Tour event. **YouTube**



In a previous video from these events, Ma
to act as "emissaries" and to "pass the wo
about the vaccine, including that they "co

blood te tested p contradi patients

cipants direct ACI).

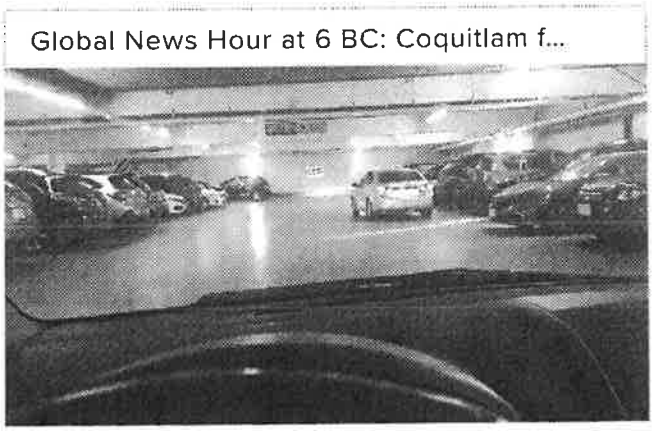
He concluded by stating the vaccines are "lethal," describes them as "clot shots" and "death shots," and falsely claims that "more people have died from these shots than from all vaccines in history combined."

TRENDING STORIES

I'm a Canadian nurse fighting abuse and Omicron. I'm at a breaking point

'Increasingly severe' penalties for convoy protesters who break law, feds warn

According to federal data, 269 deaths have occurred following the administration of 72.9 million vaccine doses and most cannot be definitively linked to the vaccine. This pales in comparison to the number of COVID-19-related deaths in Canada, which now stands at 33,192.



The RMCP says it has received no complaints about the Doctors on Tour events and is not investigating.

Doctors 'beyond frustrated' with CPSBC

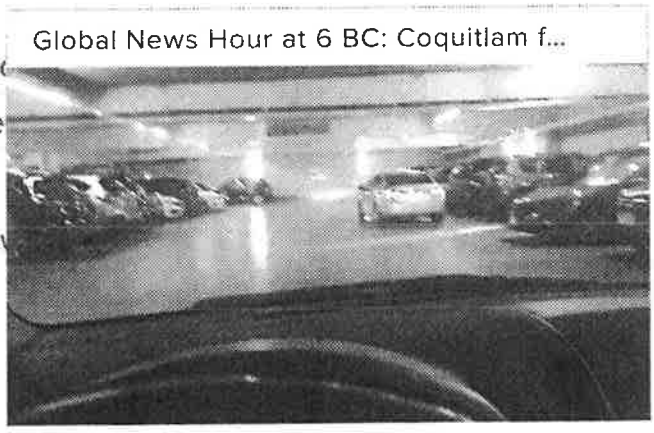
Alastair McAlpine, a pediatric infectious diseases doctor at BC Children's Hospital in Vancouver, says he and 12 other physicians filed a group complaint about Hoffe's conduct in December 2021.

The complaint centred around Hoffe's "inappropriate" use of d-dimer tests, his unverified claims around the vaccines and included a warning that Hoffe was intending to appear at a B.C. rally where effigies of politicians and health officials were hanged by the neck. McAlpine says the complaint was 10 pages long.

"What he's doing is profoundly unethical," McAlpine says.

READ MORE: COVID-19 — Ontario docto
ivermectin now director of company offe

STORY CONTINUES BELO



He said is aware of other doctors filing similar complaints. The doctors are "at our wits' end" with CPSBC inaction, McAlpine says.

"We are beyond frustrated at the inability of the CPSBC to take even basic steps to protect the public during the pandemic."

The CPSBC has refused to go into detail about Hoffe's case but confirms that he has not yet had a hearing, despite Hoffe telling Global News that his first CPSBC complaint occurred in March 2020 and in the months since he "keeps getting new complaints" sent to him by the college about his conduct.

Authorities at odds over who should act

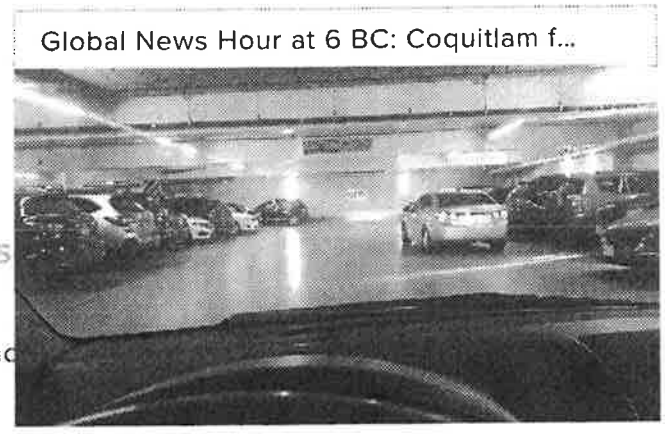
The CPSBC and the B.C. Ministry of Health are at odds with where the responsibility lies with properly investigating these doctors.

A ministry spokesperson said in response to questions from Global News that it is "aware of some medical practitioners misleading statements about COVID-19 a

STORY CONTINUES BELO

The incidents had been referred to the CPSBC, which is "the authority under provincial legislation to govern the practice of their registrants in the public interest," the spokesperson said.

But the CPSBC argues its hands are tied. A spokesperson said it "made recommendations to the tri-party steering committee," including amendments to the Health Professions Act, but "only the government can update legislation."



'Unacceptable' for doctors to spread COVID-19 vac
– Jan 19, 2022

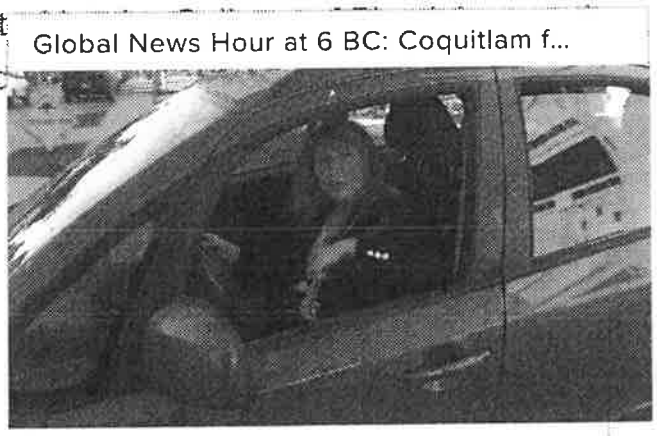
recomm overhau released

was

The CPS received on COVID-19-related issues of how many active investigations are underway.

Under BC's Health Protection Act, the CPSBC has the power to suspend a physician's licence, or impose limits or conditions on it, before a hearing, if it is necessary to "protect the public."

Ontario has similar provisions. Currently, Ontario has suspended two doctors for COVID-19-related infringements and restricted four. More than 40 physicians in Ontario are being investigat Surgeons of Ontario for COVID-19-relatec



Ontario family physician says more must be done to hold doctors with anti-vaccine views accountable – Jan 18, 2022

None of the B.C. doctors Global News highlighted for sharing unverified medical information or allegedly issuing false vaccine exemptions have restrictions or suspensions placed on their licences.

A CPSBC spokesperson said this action could only be taken as an "extraordinary remedy" that must be used "sparingly" because it "interferes with a registrant's ability to practice before any misconduct has been proven."

Enable Air also linked to Ontario

This issue is not constrained to B.C. The College of Physicians and Surgeons of Ontario (CPSO) and Ontario Ministry of Health continue to spar about how to deal with physicians operating in a medical grey area.

Toronto

In an arc the
"post ad Galati,
who is also the executive director of the Toronto-based Constitutional Rights Centre.

Galati is also representing Ontario doctor Rochagne Kilian, who has been connected to the service.

3:18
Doug Ford satisfied with CPSO process restricting Ont...

Doug Ford satisfied with CPSO process restricting Ontario doctors – Oct 18, 2021

Kilian is awaiting a hearing with the Ontar
by the CPSO that she has refused to com
Kilian's issuing of false medical exemptior

As a result, the Owen Sound family docto
suspended late last year.

Galati has been hospitalized since Jan. 2 for a "private medical matter," according to the organization's website. As such, Kilian's hearing was postponed until February.

Kilian's husband, Abrie Kilian, speaking on her behalf, declined to comment on the hearing.

Questions to Galati's office and associates were not answered.

Canadian cases

CONFIRMED	DEATHS	FULLY VACCINATED	BOOSTED
3,180,027	35,371	83.66% of Canadians aged 5+	45.51% of Canadians aged 5+

Source: Esri Canada

Check out our Coronavirus Tracker for more details and maps Last Updated: February 12, 2022, at 11:00:00 am EST

COVID-19 COVID Omicron COVID

This is Exhibit "AA" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

ROCCO GALATI LAW FIRM
PROFESSIONAL CORPORATION
1062 College Street, Lower Level
Toronto, Canada M6H 1A9
Direct Line (416) 530-9684 Fax (416) 530-8129

December 12th, 2021

VIA FAX & MAIL

Chilliwack RCMP
45924 Airport Road
Chilliwack, British Columbia V2P 1A2
Fax: (604) 702-4243

ATTN: Chilliwack RCMP

RE: Dr. Gywllyn Goddard and "Enable Air"

I am a practicing lawyer in Ontario, called to the Ontario bar in 1989. I am also the Executive Director of the Constitutional Rights Centre Inc. ("CRC") incorporated in Ontario in November, 2004.

Please consider this letter, along with attached sworn affidavits of Dr. Rochangé Kilian, Dr. Stephen Malthouse, Abraham Kilian, and a CBC article, as a criminal complaint against Dr. Goddard and "Enable Air" (the corporation) in fraud, false pretences, and uttering forged documents.

It recently came to my attention that Dr. Goddard, through "Enable Air", solicits and charges a "referral fee", a substantial amount of money, to refer patients to other doctors for assessment for medical "exemptions" from COVID-19 inoculations. He charges approximately $800.00 as the referral fee, and forwards 10% ($80.00) to the physician.

However, on the website, which I understand has now been taken down, he falsely and fraudulently misrepresented that he forwards "50% of post-administrative" fees collected to "Rocco Galati and the Constitutional Rights Centre". This is false and has never happened.

I categorically state, and would testify under oath that:

1. I have **never** spoken to, emailed, corresponded, nor received any communication from Dr. Goddard whatsoever;
2. I was **never** contacted either by Dr. Goddard, nor anyone else connected with Enable Air with respect to their false representations, neither would I, nor the CRC, have ever agreed to such an arrangement; and

..../2

3. Lastly, that neither I, nor the CRC, have ever received any funds from Dr. Goddard and/or Enable Air, and that **neither** would I, nor the CRC, ever agree with such an arrangement.

The amounts received by Enable Air are staggering, considering that $800,000.00 would be collected for every 1,000 exemptions.

I would therefore request a criminal investigation against Dr. Goddard and Enable Air with whom I nor the CRC have ever had any contact or relationship whatsoever.

For full disclosure I am legal counsel to both Dr. Malthouse and Dr. Kilian, in B.C. and Ontario, respectively.

Should you have any questions please feel free to contact me.

Yours Truly,

ROCCO GALATI LAW FIRM PROFESSIONAL CORPORATION

Per:

Rocco Galati, B.A., LL.B, LL.M.
RG*sc

IN THE MATTER OF "Enable Air" and Dr. Gwyllyn S. Goddard

AFFIDAVIT OF DR. STEPHEN MALTHOUSE

I, STEPHEN MALTHOUSE, in the City of Denman Island, in the Province of British Columbia, MAKE OATH AND SAY:

1. I am a licensed medical doctor in British Columbia.
2. I know Gwyllyn S. Goddard, the individual who created Enable Air and the Enable Air website.
3. I was made aware that the Enable Air website proclaimed the following:

   "DONATIONS: Reminder that 50% of the post-administrative fees are donated to Rocco Galati and the Constitutional Rights Centre to pay for the fees required to win cases that support Employee's & other people's Right to Informed Medical Consent."
4. I know the above statement to be false and inaccurate.
5. While I do not know the original intentions of Dr. Gwyllyn Goddard in putting that statement on the Enable Air website, I know for a fact it is not true because he has stated to me that Enable Air has never made any donations to either Rocco Galati or to the Constitutional Rights Centre, and that Rocco Galati has never had any contact with him. Dr. Goddard stated to me that the above-quoted reference in paragraph 3 of this my affidavit, with respect to Mr. Galati and the Constitutional Rights Centre was removed from his website.

SWORN BEFORE ME BY VIDEO CONFERENCE)
By Stephen Malthouse of Denman Island)
In the Regional District of Comox Valley,)
In the province of British Columbia Columbia)
Before me at the City of Toronto)
In the Province of Ontario, on this 11th day of)
December, 2021, in accordance with O. Reg. 431/20:)
Administering Oath or Declaration Remotely.)

A Commissioner for Taking Oaths
Samantha Coomara, Barrister and Solicitor

Stephen Malthouse

IN THE MATTER OF
a complaint pursuant to the
Criminal Code of Canada Against
GWYLLYN S. GODDARD

AFFIDAVIT OF
ROCHAGNÉ KILIAN

I, Rochagné Kilian, in the City of Kemble, in the Province of Ontario, MAKE OATH AND SAY:

PERSONAL INFORMATION

1. I am an adult female medical doctor residing at 319173 Grey Road 1, Kemble, Ontario and as such have knowledge of the matters.
2. The facts contained herein are within my personal knowledge and are to the best of my belief both true and correct. Where I do not have personal knowledge, it is based on information and belief.
3. In 2005, I earned a Bachelor of Medicine and Bachelor of Surgery (MBChB) degree, which required me to complete five years of theory, two years of internship (this is similar to residency) and then one year of community service. Community service consists of being a doctor in a rural area, where you are sometimes the only physician in the town. This meant that I would run the emergency department, run the surgery department, perform c-sections, sterilizations and minor traumas that come my way. I helped run the

clinics with hundreds of people coming through daily. I also dealt a lot with issues regarding, TB, HIV/AIDS, malnutrition and dealt with trauma patients.

4. I completed my Medical Council Qualification Examinations (MCQE II), certified by the Medical Council of Canada, during or about 2011 in order to practice medicine in Canada.
5. In addition to the above, I completed my CCFP examination, certified by the College of Family Physicians of Canada, as a family medicine specialist during or about 2012.
6. Furthermore, I completed my CCFP (EM) examination, certified by the College of Family Physicians of Canada, as an emergency medicine specialist during or about 2013.
7. I practiced as an emergency room physician at several hospitals, the most recent was Grey Bruce Health Services Owen Sound, from or about December 2016 until or about 23 August 2021.
8. Attached and marked as **Exbibit "A"** is a copy of my Resumé.

ENABLE AIR INFORMATION

9. I am advised by my spouse and do verily believe that according to an internet search he performed on the Ministry of Citizens' Services of British Columbia website, under the Corporate Registries of British Columbia it is indicated that GODDARD REAL ESTATE HOLDINGS INC., incorporation number 0784400 and 1012110 B.C. LTD., incorporation number 1012110 and DR. GWYLLYN S. GODDARD INC., incorporation number 0748633 were amalgamated as one company under the name DR. GWYLLYN S. GODDARD INC. amalgamated at 12:01 AM Pacific Time on 1 February 2020. Attached and marked as **Exbibit "B"** is proof of incorporation.
10. 1012110 B.C. LTD. with incorporation number 1012110 operated by Dr Gwyllyn Goddard and trading as Enable Air, is a corporation that provides a doctor finding service

to their clients and provides a non-medical front-end administrative service to medical doctors.

11. Administrative services provided by Enable Air to medical doctors include the following:-

    i. Connecting patients with contracted medical doctors;

    ii. Providing non-medical front-end administrative services to contracted medical doctors;

    iii. Payment to contracted medical doctors for services rendered to patients.

ENABLE AIR RELATIONS

12. On or about the summer of 2021, I came to know, through social media groups, that Enable Air was a patient referral company that needed medical doctors to provide uninsured longitudinal[1] health care for patients in Ontario. At the time I was working full time as an ER doctor with Grey Bruce Health Services but did not have my own private practise. In the process of my work in ER I was approached by many patients requesting primary family health care. I decided, that given the demand I would explore starting a private family practise to offer health care to patients in Ontario and obtaining referrals from Enable Air would be a good start.

13. On or around the summer of 2021, I approached Enable Air and made known my willingness to provide uninsured longitudinal care to their clients in Ontario.

14. Enable Air and I engaged in a verbal agreement, to which Enable Air will provide me with a non-medical front-end administrative service and I, as an independent contractor,

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[1] A longitudinal care is a holistic, dynamic, and integrated care that documents important disease prevention and treatment goals and plans. A longitudinal plan is patient-centered, reflecting a patient's values and preferences, and is dependent upon bidirectional communications. See Dykes, Patricia & Samal, Lipika & Donahue, Moreen & Greenberg, Jeffrey & Hurley, Ann & Hasan, Omar & O'Malley, Terrance & Venkatesh, Arjun & Volk, Lynn & Bates, David. (2014). A patient-centered longitudinal care plan: Vision versus reality. Journal of the American Medical Informatics Association: JAMIA. https://www.researchgate.net/publication/263710012_A_patient-centered_longitudinal_care_plan_Vision_versus_reality/

will provide uninsured longitudinal care to Enable Air clients. I would be paid a fee from Enable Air but I would not bill and I would not receive any fees or monies from the patient directly.

15. Dr. Goddard requested time to allow him to be able to draft a written agreement and provide me with same. However, I have not now and have never been provided with a written agreement.
16. I consider my contractual obligations to Enable Air, and my fiduciary relationship with a patient, which are both separate relationships, are established the moment I receive a patient's charts from Enable Air.
17. When I received a patient referral from Enable Air, I consulted the patient.
18. I was not privy to either the contractual agreement that was established between the patients and Enable Air or, the amount paid by each patient to Enable Air. However, on or about the 16th of September 2021 some patients did inquire about the payments they made to Enable Air and the extent of care I will be providing. As a result, for the first time I became concerned about Enable Air's financial impropriety.
19. Due to my concern, on or about the 17th of September 2021 I inquired with Dr. Goddard about the payments. Upon inquiring what the rate is which patients pay Enable Air, Dr Goddard informed me that rates are determined on a case-to-case basis, which was also influenced by the patient's financial means. Dr Goddard did not disclose any amount and did not provide any further particulars.

CPSO INVESITIGATION

20. On or about the 5th of October 2021, the CPSO initiated investigation for providing Covid-19 exemptions to patients. I informed Dr Goddard of the CPSO's investigation and

inquired if Enable Air was going to support me in any way. I did this in a phone conversation on or about the 8th of October 2021with my spouse present and he was privy to the conversation as it was on speaker phone. During this call Dr Goddard clearly refused to provide any support to me in my defense against the CPSOs investigation. He stated that Enable Air only provides administrative services to medical doctors and "will not get involved in my legal battle with the CPSO".

14 OCTOBER 2021

21. At the advice of my spouse, I scheduled a virtual meeting between myself and Enable Air in order to obtain:-
    i. more information and particulars of the "agreement" between us,
    ii. invoices and accounting of payments provided by my patients by Enable Air and,
    iii. invoices and accounting of payments made by Enable Air to me for services rendered to Enable Air. This meeting was scheduled for 14th of October 2021
22. The purpose of the meeting was to record the following:-
    i. The particulars of the contractual relationship that existed between Enable Air and I;
    ii. To obtain financial statements regarding the payments made by patients to Enable Air as the quotes claimed to be provided by patients to me seemed excessive.
    iii. To ensure that I obtain proof of payment for each patient I attended to from Enable Air and have same added to each patients' file.
    iv. To ensure that Enable Air is held accountable to me by providing accounting for front-end administrative services as I had not means to establish how much each patient paid Enable Air.
23. The meeting was held by Zoom video conference on the 14th of October 2021 at 9:00 am

EST and the following persons were in attendance:

i. Myself, Dr Rochagné Kilian;

ii. Abrie JF Kilian, my spouse;

iii. Dr Gwyllyn Goddard;

iv. Lawrence Bintner, Enable Air Accountant and Dr. Goddard's father-in-law;

v. Heather Belanger; Enable Air administrative personnel and

vi. Georgia Jardine, Enable Air administrative personnel.

(Attached and marked as **Exbibit "C** letter forwarded to Enable dated the 17th of October 2021 confirming the Zoom meeting and the points of discussion.)

24. During the meeting Dr Goddard confirmed that Enable Air provides front-end administrative services in the following manner:

i. Connecting patients with contracted medical doctors;

ii. Providing non-medical front-end administrative services, which includes an intake process of patients and the creation of patient medical charts, to contracted doctors;

iii. A one-time payment to contracted medical doctors for assessment of patient referred.

25. Dr. Goddard confirmed that Enable Air pays my practice 10% of the total gross amount paid by patients to Enable Air, for services provided by me to these patients.

26. I confirmed that my contractual obligation to Enable Air and my fiduciary relationship with a patient, are both established the moment I receive a patient's charts from Enable Air.

27. I confirmed that I will finalise the consultations of patients already referred, however, I will not continue consulting patients until Enable Air provides me with a statement of account for each patient I attended to or any new patients, given my concerns and

unanswered questions about fees Enable Air charged patients.

28. I also added that on completion of all patients already referred the contractual relationship between myself and Enable Air will be re-evaluated.

29. At the October 14, 2021, virtual meeting Enable I verbally demanded that Enable Air provide me with a statement of account of all moneys received by Enable Air from patients and moneys paid to me, as well as moneys paid by each patient individually to Enable Air. My demand was prompted by:

    i. my concern that some patients may be exploited by the circumstances, following an inquiry by an acquaintance known to me as Peter Libicz, that informed me that their family was quoted almost $8,000.00 to receive care from Enable Air, which seemed excessive to me;

    ii. my inability to answer the numerous patients' questions requesting clarification on the amount they paid to Enable Air;

    iii. my desire to ensure that I had adequate proof of payment on file for each patient attended to; and

    iv. the fact that I was under the impression that the provision of patient invoices and payment receipts were expected from a company that provides front-end administrative service to medical doctor, but nothing of this sort was forthcoming from Enable Air.

30. Given my concerns regarding lack of proper financial diligence by Enable Air, I ceased my involvement with the front-end administrative service provided by Enable Air to my practice.

PAYMENTS RECEIVED

31. I never billed patients and I never billed The Ontario Health Insurance Plan (OHIP) for any of the patients that were referred by Enable Air. I also did not bill Enable Air for any of my patients, and finally I did not bill or receive money from any of the patients referred by Enable Air directly.
32. I received sporadic payments approximately every two weeks from Enable Air for the contractual services I provided to my patients. It was unclear what the payments were for since these payments were not patient specific and/or detailed.

SUSPENSION OF AGREEMENT

33. According to the College of Physicians and Surgeons of Ontario (CPSO), my license was restricted on the 15th of October 2021, rendering me unable to provide comprehensive uninsured longitudinal care to Enable Air patients on the basis of the restrictions.
34. I was officially notified of the restrictions imposed by the CPSO on or about the 18th of October 2021.
35. I immediately informed Enable Air of the restrictions on my license, which resulted in me being unable to provide Enable Air patients with comprehensive uninsured longitudinal care.
36. My agreement with Enable Air was subsequently suspended on or about 18th of October 2021.

FINANCIAL STATEMENTS

37. On or about the 18th of October 2021, Enable Air provided me, for the first time, with a statement of account of alleged moneys paid by my patients to Enable Air.

38. According to that Statement of Account, Enable Air paid me 10% of total moneys received by Enable Air from my patients, which constitute on average $80.74 per patient. Logically, this means that for every $ 80.00 I received for the medical consultation and assessment, Enable Air was receiving up to $800.00 for the referral fee. Yet there was no accounting provided to me for the approximately $720.00 which was unaccounted for and I had no means to establish how much each patient paid Enable Air.

MISREPRESENTATION

39. During the period I was contracted with Enable Air, Dr Goddard did (mis)represent to me that a portion of the funds paid by patients to Enable Air, will be donated to a lawyer representing medical doctors in any legal proceedings "to win cases" against them. No accounting confirmation of this fact was ever produced.

40. I am informed through the CPSO proceedings that the Enable Air website proclaimed the following, with respect to "donations":

"DONATIONS: Reminder that 50% of the post-administrative fees are donated to Rocco Galati and the Constitutional Rights Centre to pay for the fees required to win cases that support Employee's & other people's Right to Informed Medical Consent."

41. I am advised by the Executive Director of the Constitutional Rights Centre (hereinafter "CRC"), Rocco Galati, and do verily believe that he has never been in communication with Dr. Goddard. I am further advised by Mr. Galati and do verily believe, that he was not aware of either Dr. Goddard or his Enable Air donation claim prior to receiving a call from a CBC reporter doing a story on the matter. Attached and marked as **Exhibit "D"** is a copy of the CBC story, wherein the reporter notes that Mr. Galati has no

connection with the Enable Air website. He further advises, and I verily believe, that he told the CBC reporter that he had no connection with Dr. Goddard, nor has the CRC ever received donations from Enable Air.

42. I am further advised by Mr. Galati, and do verily believe, that neither he, nor the CRC, have ever either requested, or received, any funds or "donations" from Enable Air and/or Dr. Goddard.

43. I make this affidavit in support of a complaint to the RCMP and for no other or improper purpose.

SWORN BEFORE ME by videoconference by Rochagane Kilian of the Town of Kemble, in Grey County before me in the City of Toronto, province of Ontario, this 10th day of December, 2021, in accordance with O. Reg. 431/20, *Administering Oath or Declaration Remotely*

A Commissioner for Taking Affidavits in the Province of Ontario.
Samantha Coomara

ROCHAGNÉ KILIAN

This is Exhibit..."A"..... referred to in the
affidavit of ...Buchagné...Kilian.....
of the City of ...Kemble.....
in the province of ...Ontario.....
sworn before me by video teleconference, at
the City of Toronto in the Province of Ontario
this ...10th day of ..December..... 2021
in accordance with O. Reg. 431/20:
administering Oath or Declaration Remotely.

.....

A Commissioner for Taking Affidavits
Samantha Coomara B.A. J.D.

DR ROCHAGNE KILIAN

MB.Ch.B, CCFP, CCFP.EM

CONTACT

Phone +1 (226) 974 0274

Email rochagnekilian@gmail.com

Address 319173 Grey Road 1
Kemble, ON, Canada
N0H 1S0

TERTIARY QUALIFICATION

2001 - 2005 - MB.Ch.B
University of the Free State

2005 - 2007 - 2-Year Internship
Bloemfontein Academic Hospital

REFERENCES

Dr. Greg Siren
Myoactivation Certificate
gregsiren@anatomicmedicine.org

Dr. Cornelius van Zyl
Colleague GBHS
keimouth@rogers.com

Dr. Mark Gracia
Former Colleague Cariboo Memorial Hospital (CCFP EM Qualified)
markgracia@hotmail.com

AJF Kilian
Gallup Strength Assessment
abriekilian@gmail.com

HEALTHCARE AND I

Goal-focused, collaborative and seasoned Medical practitioner, with specialised qualifications in both Family- and Emergency Medicine and more than 16 years of experience. Presently a practising Emergency Physician at Owen Sound Hospital (Ontario, Canada), a stroke referral facility, conducting 8 (eight-hour) shifts and 2 (24-hours) shifts per month. On average attending to 30 patients per 8-hour shift, which include, (i) Resuscitation, (ii) Acute Stroke Management, (iii) Cardioversions, (iv) Conscious Sedations, (v) Fracture Management, (vi) In-Hospital Admissions and (vii) Pain Management through myoActivation (Trigger Point Injections). The innovative and novel use of myoActivation in the ER environment has resulted in decreased utilization of Diagnostic Radiology, decreased use of pharmaceutical analgesics, increased patient satisfaction and pain relief, decreased dependence on Opioids, as well as more efficient patient turn-over times. Currently a Doctorate and PhD candidate in Integrative Medicine at Quantum University, with a keen interest in a Holistic approach to healthcare through preventative medicine and patient education.

EXPERIENCE

2020 - PRESENT
Part-time myoActivation Practice focusing on Chronic Pain management and Sports Injury Rehabilitation

2016 - PRESENT
Full-time ER Physician at Grey Bruce Health Services

2014 - 2015
Employed at Vryheid District Hospital at MO Level Gr II
Part-time services rendered to Old Mutual Insurance Company

2013
Locum ER Physician at Cariboo Memorial Hospital in Williams Lake, BC, Canada

2012
Family Physician and ER Locum at Bulkley Valley District Hospital in Smithers, BC, Canada

2011 - 2012
Full-time ER Physician at Cariboo Memorial Hospital in Williams Lake, BC, Canada with Part-time Operating Room assistance at same hospital and Family Physician Locum services in the same community

2009 - 2010
Full-time Family Physician at the Atwood Medical Clinic and Part-time ER shift coverage at Cariboo Memorial Hospital in Williams Lake, BC, Canada

ASSOCIATION MEMBERSHIP

Member of the CFPC
(College of Family Physicians of Canada)

Member of CPSO
(College of Physicians and Surgeons of Ontario)

Member of OMA
(Ontario's Medical Association)

Member of the CPSBC
(College of Physicians and Surgeons of British Columbia)

Member of the EMSSA
(Emergency Medicine Society of South Africa)

Member of HPCSA
(Health Profession Council of South Africa)

Member of the Trauma Society of South Africa

Healthcare Provider with the Resuscitation Council of South Africa

ACLS & PALS Provider with the Resuscitation Council of South Africa

GALLUP STRENGTHS

- Input
- Intellection
- Strategic
- Learner
- Achiever
- Futuristic
- Connectedness
- Activator
- Relator
- Command

2008
Community Service Medical Practitioner employed by the Free State Provincial Dept of Health at Nketoana District Hospital, Reitz (MP: 0651133)

2005 - 2007
Medical Intern employed by the Free State Provincial Department of Health (IN: 0449091)

QUALIFICATIONS

2020
myoActivation Certification through Anatomic Medicine Foundation
2017
Commenced Doctorate & PhD in Integrative Medicine at Quantum University
2013
CCFP EM Graduate
2012
2CCFP Graduate
2011
MCQE II Passed
2011
University of British Columbia Shock Course
2011
American Seminar Institute Cardiology Review
2011
The Difficult Airway Course: Emergency
2011
Recertification as ACLS Provider
2011
Recertification as PALS Provider
2010
American Seminar Institute Infectious Disease Review
2010
American Seminar Institute Emergency Medicine Review
2010
American Seminar Institute Endocrinology
2010
Review MCQE I Passed
2009
Hands-On Diagnostic Ultrasound Training

This is Exhibit..."J"..... referred to in the
affidavit of ...Rochagné..Kilian.....
of the City of ....Kemble.....
in the province of ....Ontario.....
sworn before me by video teleconference, at
the City of Toronto in the Province of Ontario
this ...10th day of ...December..... 20.21
in accordance with O. Reg. 431/20:
administering Oath or Declaration Remotely.

.....

A Commissioner for Taking Affidavits
Samantha Coomara B.A. J.D.

Volume: CLX, No. 6 February 6, 2020	Ministry of Citizens' Services Corporate Registries

AMALGAMATIONS

BC Company(s)

The Registrar of Companies hereby gives notice that the following companies have amalgamated:

January 26, 2020

1238362 E88TLC90 HOLDINGS LTD., incorporation number 0709758 and VILLAGE MARKETS LTD., incorporation number 0353147 were amalgamated as one company under the name VILLAGE MARKETS LTD. amalgamated at 12:01 AM Pacific Time.

January 27, 2020

1238486 3 TIER LOGIC INC., incorporation number 0837587 and DATABLE TECHNOLOGY CORPORATION, incorporation number 0916840 were amalgamated as one company under the name DATABLE TECHNOLOGY CORPORATION amalgamated at 12:28 PM Pacific Time.

January 28, 2020

1238802 CROW'S NEST HOLDINGS INC., incorporation number 0949067 and 0743154 B.C. LTD., incorporation number 0743154 and PEACEY'S DRUG STORE LIMITED, incorporation number 0801247 were amalgamated as one company under the name PEACEY'S DRUG STORE LIMITED amalgamated at 11:59 PM Pacific Time.

1238702 EPAC CANADA VENTURES ULC, incorporation number 1210843 and EPAC FLEXIBLE PACKAGING VANCOUVER LTD., incorporation number 1237544 were amalgamated as one company under the name EPAC FLEXIBLE PACKAGING VANCOUVER LTD. amalgamated at 12:01 PM Pacific Time.

January 30, 2020

1239143 0742631 B.C. LTD., incorporation number 0742631 and 1215804 B.C. LTD., incorporation number 1215804 were amalgamated as one company under the name 1215804 B.C. LTD. amalgamated at 03:30 PM Pacific Time.

1239036 1238546 B.C. LTD., incorporation number C1238546 and 1234719 B.C. LTD., incorporation number 1234719 were amalgamated as one company under the name 1239036 B.C. LTD. amalgamated at 10:17 AM Pacific Time.

1239009 AERO COMPONENT SUPPORT INC., incorporation number C1239007 and 1234010 B.C. LTD., incorporation number 1234010 were amalgamated as one company under the name 1234010 B.C. LTD. amalgamated at 08:35 AM Pacific Time.

1239018 PREMIUM COMFORT HEATING & AIR CONDITIONING LTD., incorporation number 0552973 and 1236288 B.C. LTD., incorporation number 1236288 were amalgamated as one company under the name 1236288 B.C. LTD. amalgamated at 09:09 AM Pacific Time.

1239132 WACHSTUM ASSETS INC., incorporation number C1238660 and WACHSTUM GP INC.,

incorporation number 1135016 and WACHSTUM PRODUCE (DELTA) INC., incorporation number 0796542 and WACHSTUM PRODUCE (HOLDINGS) INC., incorporation number 0780439 and BC TWEED JOINT VENTURE INC., incorporation number C1234805 were amalgamated as one company under the name BC TWEED JOINT VENTURE INC. amalgamated at 03:04 PM Pacific Time.

1239008 WORLD AVIATION CORP., incorporation number C1239006 and 1234008 B.C. LTD., incorporation number 1234008 were amalgamated as one company under the name 1234008 B.C. LTD. amalgamated at 08:30 AM Pacific Time.

January 31, 2020

1239333 0898993 B.C. LTD., incorporation number 0898993 and MITCHELL LATIMER 73 INC., incorporation number 1162932 were amalgamated as one company under the name MITCHELL LATIMER 73 INC. amalgamated at 03:48 PM Pacific Time.

1238418 0960564 B.C. LTD., incorporation number 0960564 and 1075459 B.C. LTD., incorporation number 1075459 were amalgamated as one company under the name 1075459 B.C. LTD. amalgamated at 12:01 AM Pacific Time.

1239267 1238247 B.C. LTD., incorporation number 1238247 and CVD VFX LIMITED, incorporation number 1000075 were amalgamated as one company under the name CVD VFX LIMITED amalgamated at 12:40 PM Pacific Time.

1239252 ANU K. KHANNA LAW CORPORATION, incorporation number 0597158 and DANIEL CORRIN LAW CORPORATION, incorporation number 0859187 were amalgamated as one company under the name DANIEL CORRIN LAW CORPORATION amalgamated at 11:27 AM Pacific Time.

1238762 BUDGEN GEOMATICS AND LAND SURVEYING INC., incorporation number 0683953 and 0769916 B.C. LTD., incorporation number 0769916 were amalgamated as one company under the name 0769916 B.C. LTD. amalgamated at 11:59 PM Pacific Time.

1239352 DR. P. C. NEATE INC., incorporation number 0520267 and DR. PAUL C. NEATE DENTAL CORPORATION, incorporation number 0466262 and DR. PAUL C. NEATE INC., incorporation number 0973316 were amalgamated as one company under the name DR. PAUL C. NEATE INC. amalgamated at 05:01 PM Pacific Time.

1239358 DR. ROBERT LOH INC., incorporation number 0478478 and DR. CHRISTOPHER HSIA INC., incorporation number 1236569 were amalgamated as one company under the name DR. CHRISTOPHER HSIA INC. amalgamated at 05:52 PM Pacific Time.

1239311 GREENVIEW ENTERPRISES LTD., incorporation number 0606830 and 77 VETERINARY HOLDINGS LTD., incorporation number 1230927 were amalgamated as one company under the name 77 VETERINARY HOLDINGS LTD. amalgamated at 04:31 PM Pacific Time.

1239321 H & G HOLDINGS LTD., incorporation number 0734609 and VAN OOSTRUM HOLDINGS LTD., incorporation number 0083558 and 1184449 B.C. LTD., incorporation number 1184449 were amalgamated as one company under the name 1184449 B.C. LTD. amalgamated at 03:03 PM Pacific Time.

1239214 MEDIEVAL MEDIA INC., incorporation number 0887552 and PACIFIC FLEET PRODUCTIONS INC., incorporation number 0839346 and PARALLAX FILM PRODUCTIONS INC., incorporation number 0506140 were amalgamated as one company under the name PARALLAX FILM PRODUCTIONS INC. amalgamated at 09:20 AM Pacific Time.

1239334 RED NOTEBOOK INC., incorporation number 1013921 and 1233380 B.C. LTD., incorporation number 1233380 were amalgamated as one company under the name 1233380 B.C. LTD. amalgamated at 04:05 PM Pacific Time.

1239265 REDAWNING CANADA, INC., incorporation number [illegible] and [illegible] VACATIONS INC., incorporation number 0941913 were amalgamated as one company under the name LEAVETOWN.COM VACATIONS INC. amalgamated at 11:59 PM Pacific Time.

1239310 ROYAL CITY FIRE SUPPLIES LTD., incorporation number 0273698 and COBING BUILDING SOLUTIONS LTD., incorporation number 0908680 were amalgamated as one company under the name COBING BUILDING SOLUTIONS LTD. amalgamated at 02:46 PM Pacific Time.

1238711 SEVEN SEAS FISH MARKET ON 152ND LTD., incorporation number 0691946 and SEVEN SEAS FISH MARKET ON FOURTH LTD., incorporation number 0653628 and SEVEN SEAS RETAIL LTD., incorporation number 0552995 were amalgamated as one company under the name SEVEN SEAS RETAIL LTD. amalgamated at 11:59 PM Pacific Time.

1239205 TRINE ENTERPRISES CO. LTD., incorporation number 0112991 and 485831 B.C. LTD., incorporation number 0485831 were amalgamated as one company under the name 485831 B.C. LTD. amalgamated at 11:59 PM Pacific Time.

February 1, 2020

1239373 0323234 B.C. LTD., incorporation number 0323234 and N.B.R. ENTERPRISES LTD., incorporation number 0107831 were amalgamated as one company under the name N.B.R. ENTERPRISES LTD. amalgamated at 09:53 AM Pacific Time.

1238499 0955230 B.C. LTD., incorporation number 0955230 and KEN MILLEN HOLDINGS LTD., incorporation number 1097816 were amalgamated as one company under the name KEN MILLEN HOLDINGS LTD. amalgamated at 12:01 AM Pacific Time.

1239028 1145876 B.C. LTD., incorporation number 1145876 and DR. ROBERT GAULTOIS INC., incorporation number 0454100 were amalgamated as one company under the name DR. ROBERT GAULTOIS INC. amalgamated at 12:01 AM Pacific Time.

1238734 1193979 B.C. LTD., incorporation number 1193979 and 601438 B.C. LTD., incorporation number 0601438 were amalgamated as one company under the name 601438 B.C. LTD. amalgamated at 12:01 AM Pacific Time.

1238642 1204571 B.C. LTD., incorporation number 1204571 and 0759624 B.C. LTD., incorporation number 0759624 were amalgamated as one company under the name 0759624 B.C. LTD. amalgamated at 12:01 AM Pacific Time.

1238640 1204577 B.C. LTD., incorporation number 1204577 and 0786151 B.C. LTD., incorporation number 0786151 were amalgamated as one company under the name 0786151 B.C. LTD. amalgamated at 12:01 AM Pacific Time.

1238701 398314 B.C. LTD., incorporation number 0398314 and 0870149 B.C. LTD., incorporation number 1026496 and 0956763 B.C. LTD., incorporation number 1026498 and WHITEWATER WEST INDUSTRIES LTD., incorporation number 1063243 were amalgamated as one company under the name WHITEWATER WEST INDUSTRIES LTD. amalgamated at 12:01 AM Pacific Time.

1238862 423317 B.C. LTD., incorporation number 0963654 and 423317 HOLDINGS LTD., incorporation number 0787519 and DELSUMAS PROPERTIES INC., incorporation number 0802316 and BOULEVARD GROUP DEVELOPMENT CO. LTD., incorporation number 0961322 were amalgamated as one company under the name BOULEVARD GROUP DEVELOPMENT CO. LTD. amalgamated at 12:01 AM Pacific Time.

1239226 451152 B. C. LTD., incorporation number 0451152 and EMTECH HOLDINGS LTD., incorporation number 0258765 were amalgamated as one company under the name EMTECH HOLDINGS LTD. amalgamated at 12:01 AM Pacific Time.

1239319 585457 B.C. LTD., incorporation number 0585457 and COWICHAN PROFESSIONAL

INSTALLATION & WELDING LTD., incorporation number 0141278 were amalgamated as one company under the name COWICHAN PROFESSIONAL INSTALLATION & WELDING LTD. amalgamated at 12:01 AM Pacific Time.

1238943 ACADEMY SPA INC., incorporation number 0870284 and DR. RACHEL C. STAPLES INC., incorporation number 1047379 were amalgamated as one company under the name DR. RACHEL C. STAPLES INC. amalgamated at 12:01 AM Pacific Time.

1239296 AGRIFOREST BIO-TECHNOLOGIES LTD., incorporation number 1221864 and BHC ACQUISITION CORP., incorporation number 1219143 were amalgamated as one company under the name BHC ACQUISITION CORP. amalgamated at 12:01 AM Pacific Time.

1239166 ANDREWS REALTY LTD., incorporation number 0272243 and 415616 B.C. LTD., incorporation number 0415616 were amalgamated as one company under the name 415616 B.C. LTD. amalgamated at 12:01 AM Pacific Time.

1239312 ARCH EAGLE ENTERPRISES LTD., incorporation number 0516016 and 4236 INVESTMENTS LTD., incorporation number 0576638 were amalgamated as one company under the name 4236 INVESTMENTS LTD. amalgamated at 12:01 AM Pacific Time.

1239330 CEDAR CREEK HOLDINGS LIMITED, incorporation number 0865575 and 1043816 B.C. LTD., incorporation number 1043816 and ARROW EQUIPMENT LTD., incorporation number 0870290 were amalgamated as one company under the name ARROW EQUIPMENT LTD. amalgamated at 12:01 AM Pacific Time.

1238344 CEDAR DEVELOPMENT CORP., incorporation number 0543729 and LANDS END DEVELOPMENTS LTD., incorporation number 0415829 were amalgamated as one company under the name LANDS END DEVELOPMENTS LTD. amalgamated at 12:01 AM Pacific Time.

1239228 DIRT DEVIL ENTERPRISES LTD., incorporation number 0522932 and A-COMBINED AUTO WRECKING (1984) LTD., incorporation number 0285943 were amalgamated as one company under the name A-COMBINED AUTO WRECKING (1984) LTD. amalgamated at 12:01 AM Pacific Time.

1238308 DR. C. SAVOIE INC., incorporation number 1104312 and C. SAVOIE HOLDINGS INC., incorporation number 0487240 were amalgamated as one company under the name C. SAVOIE HOLDINGS INC. amalgamated at 12:01 AM Pacific Time.

1239236 EAGLE DALLAS SPRING SUBCO INC., incorporation number C1239101 and EAGLE DALLAS SPRING INVESTORS ULC, incorporation number 0989998 were amalgamated as one company under the name EAGLE DALLAS SPRING INVESTORS ULC amalgamated at 12:01 AM Pacific Time.

1239126 EDVAN CONSTRUCTION LTD., incorporation number 0245378 and GOODACRE CONTRACTING LTD., incorporation number 0222024 were amalgamated as one company under the name GOODACRE CONTRACTING LTD. amalgamated at 12:01 AM Pacific Time.

1239284 EYESPY INNOVATIONS LTD., incorporation number 0946787 and JAYLYN JEWELLERS LTD., incorporation number 0655519 were amalgamated as one company under the name JAYLYN JEWELLERS LTD. amalgamated at 12:01 AM Pacific Time.

1238759 GODDARD REAL ESTATE HOLDINGS INC., incorporation number 0784400 and 1012110 B.C. LTD., incorporation number 1012110 and DR. GWYLLYN S. GODDARD INC., incorporation number 0748633 were amalgamated as one company under the name DR. GWYLLYN S. GODDARD INC. amalgamated at 12:01 AM Pacific Time.

1238941 GORDON'S AUTO BODY WORKS LTD., incorporation number 0032211 and CABLE AUTO LEASING LTD., incorporation number 0288848 were amalgamated as one company under the name CABLE AUTO LEASING LTD. amalgamated at 12:01 AM Pacific Time.

1239337	GRANMOUR HOLDINGS LTD., incorporation number [illegible] and [illegible] LTD., incorporation number 0257631 and SAMHILL HOLDINGS LTD., incorporation number 0395930 were amalgamated as one company under the name SAMHILL HOLDINGS LTD. amalgamated at 12:01 AM Pacific Time.
1238379	INTERIOR BEVERAGES LTD., incorporation number 1150676 and SMART DISTRIBUTING INC., incorporation number 1093579 were amalgamated as one company under the name SMART DISTRIBUTING INC. amalgamated at 12:01 AM Pacific Time.
1239218	INTERMEDIA PRESS LIMITED, incorporation number 0174519 and 1748 HOLDINGS LTD., incorporation number 0349313 were amalgamated as one company under the name 1748 HOLDINGS LTD. amalgamated at 12:01 AM Pacific Time.
1239317	KS DOMAINS LTD., incorporation number 1069358 and MEDIASIREN ADVERTISING INC., incorporation number 0791367 and HEXONET SERVICES INC., incorporation number 0793786 and INSTRA DOMAIN DIRECTORS INC., incorporation number 1056960 were amalgamated as one company under the name INSTRA DOMAIN DIRECTORS INC. amalgamated at 12:01 AM Pacific Time.
1238090	MALAMUTE HOLDINGS LTD., incorporation number 0961512 and CORDUST ENTERPRISES LTD., incorporation number 0527372 were amalgamated as one company under the name CORDUST ENTERPRISES LTD. amalgamated at 12:01 AM Pacific Time.
1239269	MERRITT AUTOMOTIVE SUPPLIES LTD., incorporation number 0119342 and RAEMAND HOLDINGS LTD., incorporation number 0562382 were amalgamated as one company under the name RAEMAND HOLDINGS LTD. amalgamated at 12:01 AM Pacific Time.
1238555	NICLI'S NEXT DOOR TRATTORIA LTD., incorporation number 0939355 and R.W.C. MCCAIG HOLDINGS LTD., incorporation number C1196562 were amalgamated as one company under the name R.W.C. MCCAIG HOLDINGS LTD. amalgamated at 12:01 AM Pacific Time.
1238720	NORTHVIEW FARMS (2014) LTD., incorporation number 0271020 and NORTHVIEW FARMS LTD., incorporation number 0992425 were amalgamated as one company under the name NORTHVIEW FARMS LTD. amalgamated at 12:01 AM Pacific Time.
1238716	OBERO TECHNOLOGIES INC., incorporation number C1236245 and KHARKHOURIN TECHNOLOGIES INC., incorporation number C1236254 and BALIUC TECHNOLOGIES INC., incorporation number C1236247 and HARJOT GHAI TECHNOLOGIES INC., incorporation number C1236250 and XACTLY CANADA, INC., incorporation number 1150615 were amalgamated as one company under the name XACTLY CANADA, INC. amalgamated at 12:01 AM Pacific Time.
1238544	OCTAGOLD VENTURES LTD., incorporation number 0416248 and KD GOLD ENTERPRISES LTD., incorporation number 0827486 were amalgamated as one company under the name KD GOLD ENTERPRISES LTD. amalgamated at 12:01 AM Pacific Time.
1239259	ODDITY KOMBUCHA TEA INC., incorporation number 1070277 and FACULTY BREWING CO. INC., incorporation number 1026743 were amalgamated as one company under the name FACULTY BREWING CO. INC. amalgamated at 12:01 AM Pacific Time.
1238469	PEACE ARCH MOTORS LTD., incorporation number 0272456 and PAM LEASING LTD., incorporation number 0211462 and 686907 B.C. LTD., incorporation number 0976371 were amalgamated as one company under the name 686907 B.C. LTD. amalgamated at 12:01 AM Pacific Time.
1239123	PLETT HOLDINGS LTD., incorporation number 0570803 and 1016444 B.C. LTD., incorporation number 1016444 and 0799597 B.C. LTD., incorporation number 0799597 and PLETT INVESTMENTS LTD., incorporation number 0867197 were amalgamated as one

company under the name PLETT INVESTMENTS LTD. amalgamated at 12:01 AM Pacific Time.

1238233 RENAUD HOLDINGS LTD., incorporation number 0071043 and RENCO ENTERPRISES LTD., incorporation number 0901497 were amalgamated as one company under the name RENCO ENTERPRISES LTD. amalgamated at 12:01 AM Pacific Time.

1239182 ROYALE BRITISH COLUMBIA FINANCIAL INC., incorporation number 0962549 and AKHAVAN HOLDINGS INC., incorporation number 0913000 were amalgamated as one company under the name AKHAVAN HOLDINGS INC. amalgamated at 12:01 AM Pacific Time.

1239266 SIMPLEX ENT. CORPORATION, incorporation number 0334862 and AA-TWO CONSTRUCTION LTD., incorporation number 0204564 were amalgamated as one company under the name AA-TWO CONSTRUCTION LTD. amalgamated at 12:01 AM Pacific Time.

1238325 UNDER THE CAR REPAIRS INC., incorporation number 0373897 and MORE THAN MUFFLERS LTD., incorporation number 0600370 were amalgamated as one company under the name MORE THAN MUFFLERS LTD. amalgamated at 12:01 AM Pacific Time.

1238270 W.K. INVESTMENTS INC., incorporation number 0348465 and 401422 B.C. LTD., incorporation number 0401422 and ANSU DEVELOPMENT LTD., incorporation number 0284270 were amalgamated as one company under the name ANSU DEVELOPMENT LTD. amalgamated at 12:01 AM Pacific Time.

This is Exhibit....C..... referred to in the
affidavit of ...Rochagné..Kilian....
of the City of .....Kemble.....
in the province of ...Ontario.....
sworn before me by video teleconference, at
the City of Toronto in the Province of Ontario
this ....10th day of ...December..... 20.21
in accordance with O. Reg. 431/20:
administering Oath or Declaration Remotely.

.....

A Commissioner for Taking Affidavits
Samantha Coomara B.A. J.D.

Gmail

Rochagne Kilian <rochagnekilian@gmail.com>

RE: CONFIRMATION OF ZOOM MEETING - 14 OCTOBER 2021

1 message

Abrie JF Kilian <abriekilian@gmail.com> Tue, Dec 7, 2021 at 10:35 AM
To: Rochagne Kilian <rochagnekilian@gmail.com>

Sien aangeheg.

---------- Forwarded message ---------
From: **Abrie JF Kilian** <abriekilian@gmail.com>
Date: Sun, Oct 17, 2021 at 5:09 PM
Subject: RE: CONFIRMATION OF ZOOM MEETING - 14 OCTOBER 2021
To: <enableair@gmail.com>
Cc: Rochagne Kilian <rochagnekilian@gmail.com>

We refer to the aforementioned matter and the video conference meeting held on the 14th of October 2021.

In attendance at this meeting was the following individuals:
- Dr Rochagné Kilian;
- Abrie Kilian;
- Dr Gwyllyn Goddard;
- Lawrence Bintner;
- Heather Belanger;
- Georgia Jardine.

We confirm the following:-

1. 1012110 B.C. LTD. with incorporation number 1012110 is operated by Dr Gwyllyn Goddard and trading as Enable Air, is a corporation that provides a doctor-finding service to their clients and provides a non-medical administrative service to medical doctors.

2. The Administrative services provided by Enable Air to Dr Kilian include the following: -
   2.1 Connecting patients with contracted medical doctors;
   2.2 Providing non-medical front end administrative services to contracted medical doctors;
   2.3 Payment to contracted medical doctors for services rendered to patients.

3. Dr Kilian's contractual obligations to Enable Air and my fiduciary relationship with a patient, are both established the moment she receives a patient's charts.

4. Dr Kilian will finalise the consultations of part 1 patients and will not commence consultation of new patients at which point Enable Air will provide Dr Kilian with a statement of account for each patient and an agreement.

5. Enable Air will also provide Dr Kilian with invoices of each and every patient that made payment to Enable Air seeking services with Dr Kilian.

6. Following the completion of consulting all part 1 patients, Enable Air and Dr Kilian will reevaluate the contractual relationship.

We trust you find the above in order.

Sincerely yours,

Abrie JF Kilian, Esq, LLB, LLM (Und)
obo Dr Rochagné Kilian, M.B. Ch.B, CCFP, CCFP (EM)

This is Exhibit "D" referred to in the
affidavit of Rochagné KILIAN
of the City of Kemble
in the province of Ontario
sworn before me by video teleconference, at
the City of Toronto in the Province of Ontario
this 12 day of December 20 22
in accordance with O. Reg. 431/20:
administering Oath or Declaration Remotely.

.....

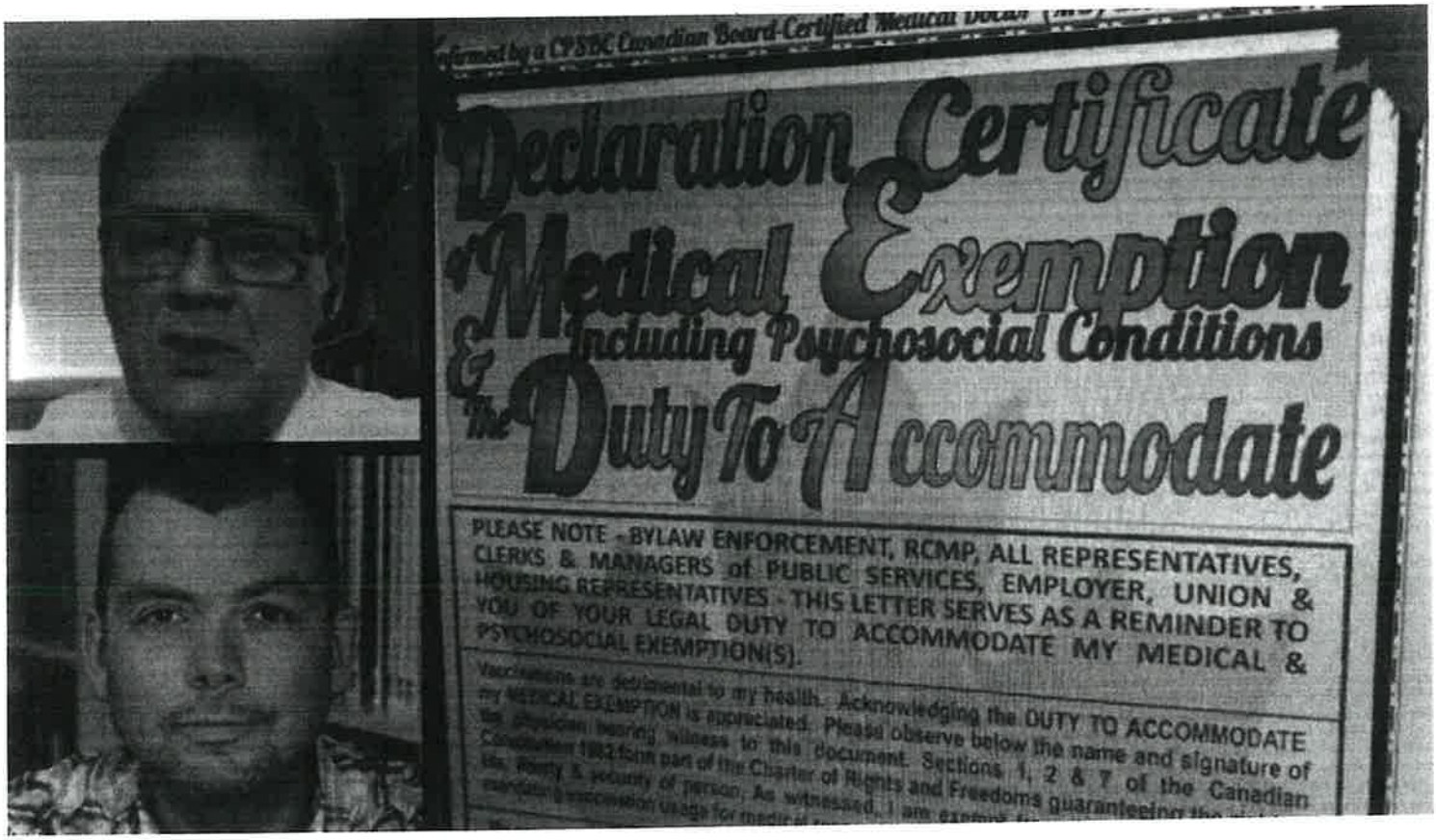
A Commissioner for Taking Affidavits
Samantha Coomara B.A. J.D.

British Columbia

2 B.C. doctors linked to website selling bogus mask and vaccine exemption 'certificates'

Document obtained by CBC allegedly signed by Dr. Stephen Malthouse, produced through Kelowna business

Bethany Lindsay · CBC News · Posted: Oct 24, 2021 2:01 PM PT | Last Updated: October 29



CBC News has obtained a phoney mask and vaccine exemption 'certificate' purportedly signed by Dr. Stephen Malthouse, shown here at top left. It appears to have been produced through the website EnableAir.com, which has been linked to Dr. Gwyllyn Goddard, bottom left. (Canadian Doctors Speak Out/Gwyllyn.com/CBC)

comments

investigation for allegedly writing phoney mask and vaccine exemptions offered through a Kelowna-based website.

CBC News has obtained a four-page "declaration certificate of medical exemption including psychosocial conditions" that was purportedly signed by Dr. Stephen Malthouse and produced through a service called EnableAir.com.

That website appears to be connected to another B.C. doctor, Dr. Gwyllyn Goddard, whose medical licence is temporarily inactive.

A copy of the same certificate has been sent to the College of Physicians and Surgeons of B.C. and they are investigating, CBC has confirmed.

A spokesperson for B.C.'s Health Ministry did not answer direct questions about EnableAir.com, but confirmed there is no such thing as an exemption certificate for either masks or vaccines.

EnableAir.com promises "authentic medical exemptions," including QR codes, for people who are "concerned with totalitarian mainstream narratives," and advertises the services of five unnamed Canadian physicians.

It's not clear how much the service costs, but the website warns prospective customers to "mentally prepare for the invoice."

- **AUDIO Divorced Sask. parents fight in court over COVID-19 vaccination for teen daughter**

The certificate allegedly signed by Malthouse includes a two-page preamble invoking the Canadian Human Rights Act, the Constitution, the UN's Universal Declaration on Bioethics and Human Rights and the Nuremberg Code.

It doesn't offer any specifics about why the bearer should be exempted from mask and vaccine mandates, but offers a long list of possible reasons, including vaccine allergies but also HIV, autism, "impaired social development," asthma, eczema, migraines and "personal belief."

Doctor already faces discipline related to COVID-19

contact information for Goddard. The Kelowna post office box is connected to his cannabis consulting firm, CanaBC Services Ltd., and the fax number is listed on his personal website.

Goddard did not respond to emailed questions or text messages, and hung up on a reporter when contacted by phone. The full contents of EnableAir.com were taken offline within hours of that phone call.

- **B.C. doctor disciplined for 'harmful' COVID-19 misinformation claims free speech violations**

Neither Malthouse nor his lawyer, Rocco Galati of Toronto, responded to questions about the certificate.

EnableAir.com advertises that 50 per cent of "post-administrative fees" will be donated to Galati and the Constitutional Rights Centre, an organization he founded. However, Galati told CBC he has no connection to the website.

Dr. Stephen Malthouse appeared at a rally against COVID-19 restrictions in Duncan, B.C., last November, referring to the disease as a 'so-called pandemic.' (Garden Gate Society/YouTube)

Malthouse, a family doctor who lives on Denman Island but is not associated with the island's medical clinic, is already the subject of disciplinary proceedings at the college as well as complaints from at least 10 other physicians.

Over the last year, he's appeared at several rallies against pandemic-related measures, falsely claiming that COVID-19 is no more deadly than the flu and that vaccines are more dangerous. His musings have gone viral online.

According to a petition Malthouse filed in B.C. Supreme Court in June, he faces a reprimand from the college, which wants to bar him from speaking on issues related to COVID-19. Malthouse has asked the court to block those measures, arguing they're an infringement on his right to free speech.

Doctors 'need to provide objective medical evidence'

College registrar Dr. Heidi Oetter said she couldn't comment on any investigations into Malthouse or EnableAir.com, but the college has a standard for what's expected of any doctor writing exemptions.

"It's very clear about the need to provide objective medical evidence. You can't simply restate something just because the patient wants you to do that," she said.

"If somebody is signing a letter that is inconsistent with those expectations, they may face an investigation by the college and, if warranted, regulatory action."

The college posted a notice last week in response to reports of fraudulent exemption letters circulating in the province. It includes guidance for businesses or employers about how to identify a valid exemption.

In B.C., proof of vaccination is required to access many non-essential services, and there are very few valid exemptions. (Darryl Dyck/The Canadian Press)

There's a very short list of acceptable reasons for an exemption or deferral from a COVID-19 vaccine, including a history of anaphylactic reactions to both mRNA vaccines like Pfizer-BioNTech and Moderna, and adenovirus vector vaccines like AstraZeneca.

Ontario's College of Physicians and Surgeons has barred three doctors from issuing mask and vaccine exemptions in recent weeks. A spokesperson for that college said he couldn't comment on any possible connection to EnableAir.com.

- **B.C. doctors urge action on colleague spreading COVID-19 misinformation**
- **Ontario doctor accused of spreading COVID-19 misinformation barred from providing vaccine, mask exemptions**

But one of those physicians, Dr. Patrick Phillips, has promoted EnableAir.com on social media.

Another has a B.C. connection — Dr. Rochagne Kilian previously worked in Williams Lake, and held a medical licence in this province from 2009 to 2014.

Oetter said while the rules are slightly different in B.C., similar restrictions could be placed on doctors here if evidence suggested they were providing fraudulent exemptions.

Mobile users: View the document
(PDF KB)

CBC is not responsible for 3rd party content

Clarifications

- This article was updated to reflect that Dr. Stephen Malthouse is not associated with Denman Island's only medical clinic.
  Oct 29, 2021 12:07 PM PT

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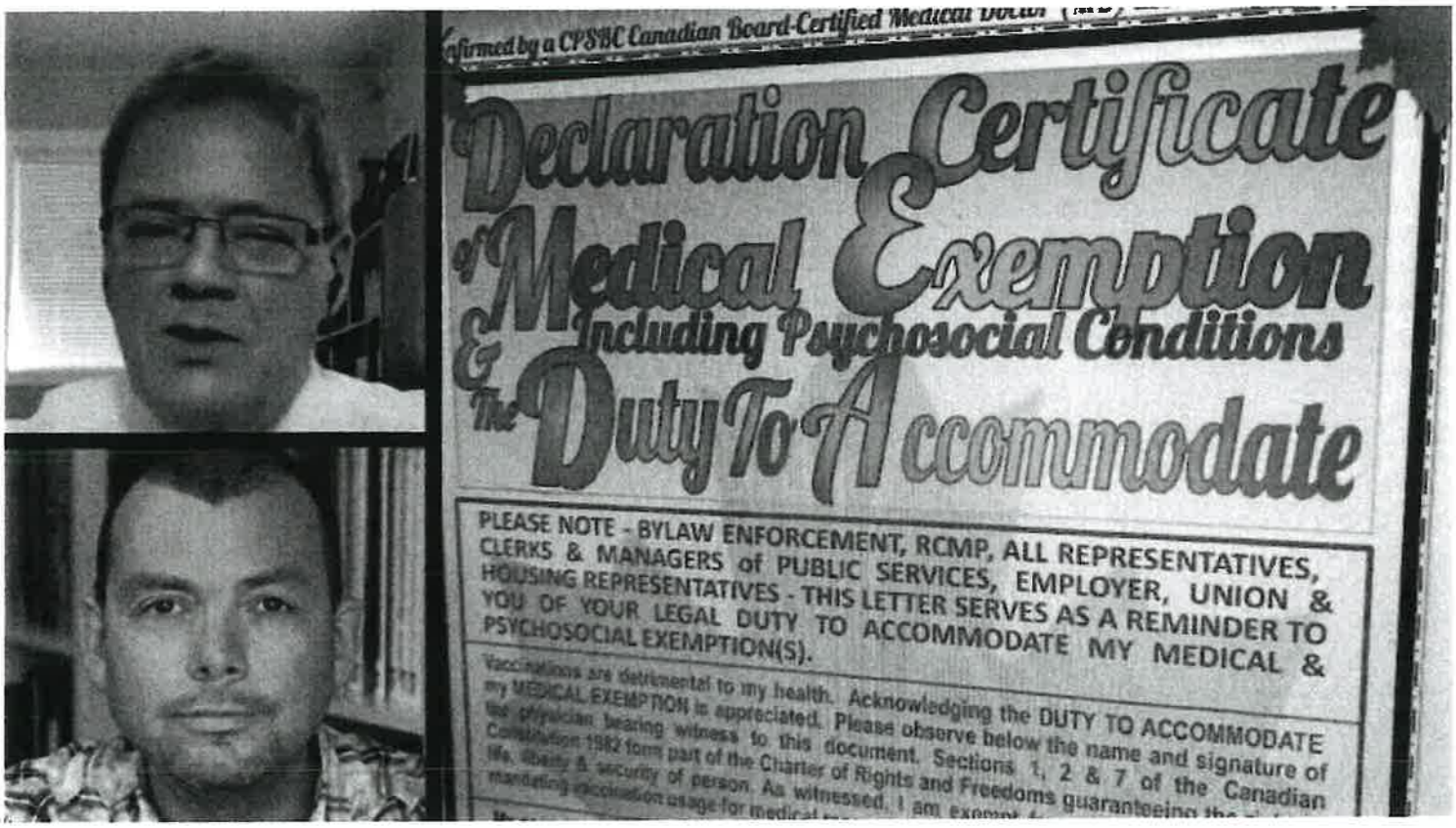
5 **NEW**
539 new COVID-19 cases, 6 deaths reported in Manitoba over 3 days
514 reading now

British Columbia

2 B.C. doctors linked to website selling bogus mask and vaccine exemption 'certificates'

Document obtained by CBC allegedly signed by Dr. Stephen Malthouse, produced through Kelowna business

Bethany Lindsay · CBC News · Posted: Oct 24, 2021 2:01 PM PT | Last Updated: October 29



CBC News has obtained a phoney mask and vaccine exemption 'certificate' purportedly signed by Dr. Stephen Malthouse, shown here at top left. It appears to have been produced through the website EnableAir.com, which has been linked to Dr. Gwyllyn Goddard, bottom left. (Canadian Doctors Speak Out/Gwyllyn.com/CBC)

comments

A B.C. physician accused of spreading misinformation about COVID-19 is now under investigation for allegedly writing phoney mask and vaccine exemptions offered through a Kelowna-based website.

CBC News has obtained a four-page "declaration certificate of medical exemption including psychosocial conditions" that was purportedly signed by Dr. Stephen Malthouse and produced through a service called EnableAir.com.

That website appears to be connected to another B.C. doctor, Dr. Gwyllyn Goddard, whose medical licence is temporarily inactive.

A copy of the same certificate has been sent to the College of Physicians and Surgeons of B.C. and they are investigating, CBC has confirmed.

A spokesperson for B.C.'s Health Ministry did not answer direct questions about EnableAir.com, but confirmed there is no such thing as an exemption certificate for either masks or vaccines.

EnableAir.com promises "authentic medical exemptions," including QR codes, for people who are "concerned with totalitarian mainstream narratives," and advertises the services of five unnamed Canadian physicians.

It's not clear how much the service costs, but the website warns prospective customers to "mentally prepare for the invoice."

- AUDIO **Divorced Sask. parents fight in court over COVID-19 vaccination for teen daughter**

The certificate allegedly signed by Malthouse includes a two-page preamble invoking the Canadian Human Rights Act, the Constitution, the UN's Universal Declaration on Bioethics and Human Rights and the Nuremberg Code.

It doesn't offer any specifics about why the bearer should be exempted from mask and vaccine mandates, but offers a long list of possible reasons, including vaccine allergies but also HIV, autism, "impaired social development," asthma, eczema, migraines and "personal belief."

The contact information displayed on the certificate obtained by CBC matches publicly listed contact information for Goddard. The Kelowna post office box is connected to his cannabis consulting firm, CanaBC Services Ltd., and the fax number is listed on his personal website.

Goddard did not respond to emailed questions or text messages, and hung up on a reporter when contacted by phone. The full contents of EnableAir.com were taken offline within hours of that phone call.

- **B.C. doctor disciplined for 'harmful' COVID-19 misinformation claims free speech violations**

Neither Malthouse nor his lawyer, Rocco Galati of Toronto, responded to questions about the certificate.

EnableAir.com advertises that 50 per cent of "post-administrative fees" will be donated to Galati and the Constitutional Rights Centre, an organization he founded. However, Galati told CBC he has no connection to the website.

Malthouse, a family doctor who lives on Denman Island but is not associated with the island's medical clinic, is already the subject of disciplinary proceedings at the college as well as complaints from at least 10 other physicians.

Over the last year, he's appeared at several rallies against pandemic-related measures, falsely claiming that COVID-19 is no more deadly than the flu and that vaccines are more dangerous. His musings have gone viral online.

According to a petition Malthouse filed in B.C. Supreme Court in June, he faces a reprimand from the college, which wants to bar him from speaking on issues related to COVID-19. Malthouse has asked the court to block those measures, arguing they're an infringement on his right to free speech.

Doctors 'need to provide objective medical evidence'

College registrar Dr. Heidi Oetter said she couldn't comment on any investigations into Malthouse or EnableAir.com, but the college has a standard for what's expected of any doctor writing exemptions.

"It's very clear about the need to provide objective medical evidence. You can't simply restate something just because the patient wants you to do that," she said.

"If somebody is signing a letter that is inconsistent with those expectations, they may face an investigation by the college and, if warranted, regulatory action."

The college posted a notice last week in response to reports of fraudulent exemption letters circulating in the province. It includes guidance for businesses or employers about how to identify a valid exemption.

In B.C., proof of vaccination is required to access many non-essential services, and there are very few valid exemptions. (Darryl Dyck/The Canadian Press)

There's a very short list of acceptable reasons for an exemption or deferral from a COVID-19 vaccine, including a history of anaphylactic reactions to both mRNA vaccines like Pfizer-BioNTech and Moderna, and adenovirus vector vaccines like AstraZeneca.

Ontario's College of Physicians and Surgeons has barred three doctors from issuing mask and vaccine exemptions in recent weeks. A spokesperson for that college said he couldn't comment on any possible connection to EnableAir.com.

- **B.C. doctors urge action on colleague spreading COVID-19 misinformation**
- **Ontario doctor accused of spreading COVID-19 misinformation barred from providing vaccine, mask exemptions**

But one of those physicians, Dr. Patrick Phillips, has promoted EnableAir.com on social media.

Another has a B.C. connection — Dr. Rochagne Kilian previously worked in Williams Lake, and held a medical licence in this province from 2009 to 2014.

Oetter said while the rules are slightly different in B.C., similar restrictions could be placed on doctors here if evidence suggested they were providing fraudulent exemptions.

(PDF KB)

(Text KB)

CBC is not responsible for 3rd party content

Clarifications

- This article was updated to reflect that Dr. Stephen Malthouse is not associated with Denman Island's only medical clinic.
  Oct 29, 2021 12:07 PM PT

HP LaserJet Pro MFP M225dw

Fax Confirmation

14-Dec-2021 20:17

Job	Date	Time	Type	Identification	Duration	Pages	Result
4866	14/12/2021	19:29:51	Send	16047024243	47:13	63	OK

ROCCO GALATI LAW FIRM
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facsimile transmittal

To: Chilliwack RCMP Fax: 604-702-4243

From: Rocco Galati Date: December 14, 2021

Pages: 63 (Including cover)

ATTN: Chilliwack RCMP

☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Recycle

This is in regards to Mr. Rocco Galati's earlier communication with the Chilliwack RCMP. Mr. Galati is seeking a criminal investigation and charges Dr. Gwyllyn Goddard. Please find attached a two-page self-explanatory letter along with supporting affidavits. Please note that the original documents are also being Fed-Exed tomorrow.

Rocco Galati
per:

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Rocco Galati

per: R.G.

- Mems - 6:20 p.m. Jennifer May, R.C.M.P., Ch. Warwick called, will look at material. / R.G.

HP LaserJet Pro MFP M225dw

Fax Confirmation

14-Dec-2021 20:17

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Rocco Galati

per: _____

0418

FedEx Express

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Not all services and options available to all destinations.
Certains services et options ne sont pas disponibles pour toutes les destinations.

YBZA68

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The service order has changed in Section 4a. Signature options have been added to Section 6.
L'ordre des services a changé dans la rubrique 4a. Des options de signature ont été ajoutées à la rubrique 6.

Freight / Fret | G.S.T./H.S.T. T.P.S./T.V.H. | P.S.T./Q.S.T. T.V.P./T.V.Q. | Other / Autre | Total

1 From *Please print and press firmly.* **/Expéditeur** *Écrivez en caractères d'imprimerie. Appuyez fermement SVP.*

Date: 12 14 21
Sender's FedEx Account Number / N° de compte FedEx de l'expéditeur: 428930002
Sender's Name / Nom de l'expéditeur: ROCCO GALATI
Phone / Téléphone: (416) 530 9684
Company / Nom de la société: ROCCO GALATI LAW FIRM P.C
Address / Adresse: 1062 COLLEGE ST
Dept./Floor/Service/Etage
Address / Adresse: LOWER LEVEL
City / Ville: TORONTO
Province: ON
Postal Code / Code postal: M6H 1A9
Email Address / Adresse courriel: ROCCO@IDIRECT.COM
Internal Billing Reference / Référence pour facturation interne: RCMP COMPLAINT

2 To/Destinataire ☐ Residential Delivery / Livraison résidentielle

Recipient's Name / Nom de destinataire: CHILLIWACK RCMP
Phone / Téléphone: (604) 792 4611
Company / Nom de la société: CHILLIWACK RCMP
Address / Adresse: 45924 AIRPORT ROAD
We cannot deliver to P.O. boxes. / Nous ne livrons pas aux casiers postaux.
Address / Adresse:
City / Ville: CHILLIWACK
Province: BC
Postal Code / Code postal: V2P 1A2
Email Address / Adresse courriel:

3 Shipment Information/Informations sur l'envoi

Total Packages / Nombre total de colis: 1
Total Weight / Poids total: 0.10 ☑ lbs. ☐ kg
DIM / Poids VOL: / / ☐ in. ☐ cm
Total Declared Value / Valeur totale déclarée: $ Documents

4a Express Package Service/Service colis express

☑ FedEx First Overnight ☐ FedEx Priority Overnight ☐ FedEx Standard Overnight
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4b Express Freight Service/Service fret express

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FedEx Tracking Number / Numéro de suivi de FedEx: 8101 7410 4290
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5 Packaging/Emballage *Declared Value Limit $100 CDN. / *Limite de valeur déclarée de 100 $CAN

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☐ ____ *Restrictions apply for dangerous goods — see the current FedEx Service Guide. / Des restrictions s'appliquent aux marchandises dangereuses — voir le Guide des services de FedEx en vigueur.

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Credit Card No / N° de carte de crédit:
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8 Required Signature/Signature requise

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03/16

This is Exhibit "BB" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

COURT OF APPEAL FOR ONTARIO

BEFORE: THE HONOURABLE JUSTICE GILLESE

DATE: WEDNESDAY, MAY 11, 2022

COURT FILE NO.: M53387 (C70498)

TITLE OF PROCEEDING: DR. GILL, KULVINDER KAUR ET AL. v. DR. MACIVER ET AL.

DISPOSITION OF COURT HEARING:

Rocco Galati personally and his law firm Rocco Galati Law Firm Professional Corporation (the "Law Firm") are counsel of record for the appellants in this matter. Unfortunately, Mr. Galati had a lengthy hospitalization and was in a coma, from which he is still recovering. He has not yet returned to practice and is not currently competent to attend to the appeal.

Accordingly, Mr. Galati brought this motion asking that he and his Law Firm be removed as counsel of record for the appellants. The appellants oppose the motion because they would like Mr. Galati to remain as their lawyer due to the complexity of the evidentiary record underlying the appeal and the appeal's connection to their other legal proceedings in which Mr. Galati is counsel.

In light of Mr. Galati's medical condition and consequent inability to competently attend to the appeal, in my view, this court must grant the requested withdrawal: *R. v. Cunningham,* 2010 SCC 10, [2010] 1 S.C.R. 331, at paras. 48-49.

Accordingly, the motion is granted, and I order that:

1. Mr. Galati and the Law Firm are removed from the record as counsel for the appellants in this matter; and
2. the deadline for perfecting the appeal is extended to ninety (90) days from the date of this endorsement to allow the appellants time to retain and instruct new lawyers.

J.J. Gillese J.A.

This is Exhibit "CC" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

Reopening Ontario (A Flexible Response to COVID-19) Act, 2020

ONTARIO REGULATION 364/20

formerly under Emergency Management and Civil Protection Act

RULES FOR AREAS IN STAGE 3

Consolidation Period: From November 23, 2020 to the e-Laws currency date.

Last amendment: 655/20.

Legislative History: 415/20, 428/20, 453/20, 456/20, 501/20, 519/20, 529/20, 530/20, 531/20, 546/20, 574/20, 579/20, 588/20, 642/20, 655/20.

This is the English version of a bilingual regulation.

Terms of Order

1. The terms of this Order are set out in Schedules 1, 2 and 3.

2. REVOKED: O. Reg. 574/20, s. 1.

Application

3. (1) This Order applies to the areas listed in Schedule 3 to Ontario Regulation 363/20 (Stages of Reopening). O. Reg. 364/20, s. 3.

(2) This Order applies throughout the Green Zone, the Yellow Zone and the Orange Zone. O. Reg. 642/20, s. 1.

(3) Despite subsection (2),

(a) if this Order specifies that a particular requirement, condition, rule or other restriction applies in the Yellow Zone only, then the requirement, condition, rule or other restriction does not apply in the Green Zone or the Orange Zone;

(b) if this Order specifies that a particular requirement, condition, rule or other restriction applies in the Orange Zone only, then the requirement, condition, rule or other restriction does not apply in the Green Zone or the Yellow Zone; and

(c) if this Order specifies that a particular requirement, condition, rule or other restriction applies in both the Yellow Zone and the Orange Zone, then the requirement, condition, rule or other restriction does not apply in the Green Zone. O. Reg. 642/20, s. 1.

Green Zone

3.1 In this Order, a reference to the Green Zone is a reference to all areas listed as being in the Green Zone of Stage 3 in section 1 of Schedule 3 to Ontario Regulation 363/20 (Stages of Reopening) made under the Act. O. Reg. 642/20, s. 2.

Yellow Zone

3.2 In this Order, a reference to the Yellow Zone is a reference to all areas listed as being in the Yellow Zone of Stage 3 in section 2 of Schedule 3 to Ontario Regulation 363/20 (Stages of Reopening) made under the Act. O. Reg. 642/20, s. 2.

Orange Zone

3.3 In this Order, a reference to the Orange Zone is a reference to all areas listed as being in the Orange Zone of Stage 3 in section 3 of Schedule 3 to Ontario Regulation 363/20 (Stages of Reopening) made under the Act. O. Reg. 642/20, s. 2.

Indoor vs. outdoor

4. (1) The outdoor capacity limits set out in this Order apply to a business, place, event or gathering if the people attending it are only permitted to access an indoor area,

(a) to use a washroom;

(b) to access an outdoor area that can only be accessed through an indoor route; or

(c) as may be necessary for the purposes of health and safety.

(2) The indoor capacity limits set out in this Order apply to a business, place, event or gathering if the business, place, event or gathering is fully or partially indoors.

(3) An indoor event or gathering cannot be combined with an outdoor event or gathering so as to increase the applicable limit on the number of people at the event or gathering.

Safety plan

5. (1) A person who is required under this Order to prepare and make available a safety plan in accordance with this section, or to ensure that one is prepared and made available, shall comply with the requirement no later than seven days after the requirement first applies to the person. O. Reg. 642/20, s. 3.

(2) The safety plan shall describe the measures and procedures which have been implemented or will be implemented in the business, place, facility or establishment to reduce the transmission risk of COVID-19. O. Reg. 642/20, s. 3.

(3) Without limiting the generality of subsection (2), the safety plan shall describe how the requirements of this Order will be implemented in the location including by screening, physical distancing, masks or face coverings, cleaning and disinfecting of surfaces and objects, and the wearing of personal protective equipment. O. Reg. 642/20, s. 3.

(4) The safety plan shall be in writing and shall be made available to any person for review on request. O. Reg. 642/20, s. 3.

(5) The person responsible for the business, place, facility or establishment shall ensure that a copy of the safety plan is posted in a conspicuous place where it is most likely to come to the attention of individuals working in or attending the location. O. Reg. 642/20, s. 3.

SCHEDULE 1
BUSINESSES AND PLACES

Closures

1. (1) Each person responsible for a business or place, or part of a business or place, that is required to be closed by Schedule 2 shall ensure that the business or place, or part of the business or place, is closed in accordance with that Schedule.

(2) Each person responsible for a business or place, or part of a business or place, that Schedule 2 describes as being permitted to open if certain conditions set out in that Schedule are met shall ensure that the business or place, or part of the business or place, either meets those conditions or is closed.

(3) Each person responsible for a business or place, or part of a business or place, that does not comply with sections 2 to 6 of this Schedule shall ensure that it is closed.

(4) Despite subsections (1), (2) and (3), temporary access to a business or place, or part of a business or place, that is required to be closed by Schedule 2 is authorized, unless otherwise prohibited by any applicable law, for the purposes of,

(a) performing work at the business or place in order to comply with any applicable law;

(b) preparing the business or place to be reopened;

(c) allowing for inspections, maintenance or repairs to be carried out at the business or place;

(d) allowing for security services to be provided at the business or place; and

(e) attending at the business or place temporarily,

(i) to deal with other critical matters relating to the closure of the business or place, if the critical matters cannot be attended to remotely, or

(ii) to access materials, goods or supplies that may be necessary for the business or place to be operated remotely.

(5) Nothing in this Order precludes a business or organization from operating remotely for the purpose of,

(a) providing goods by mail or other forms of delivery, or making goods available for pick-up; and

(b) providing services online, by telephone or other remote means.

General compliance

2. (1) The person responsible for a business or organization that is open shall ensure that the business or organization operates in accordance with all applicable laws, including the *Occupational Health and Safety Act* and the regulations made under it.

(2) The person responsible for a business or organization that is open shall operate the business or organization in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting.

(3) The person responsible for a business or organization that is open shall operate the business or organization in compliance with the advice, recommendations and instructions issued by the Office of the Chief Medical Officer of Health on screening individuals.

(4) The person responsible for a business or organization that is open shall ensure that any person in the indoor area of the premises of the business or organization, or in a vehicle that is operating as part of the business or organization, wears a mask

or face covering in a manner that covers their mouth, nose and chin during any period when they are in the indoor area unless the person in the indoor area,

(a) is a child who is younger than two years of age;

(b) is attending a school or private school within the meaning of the *Education Act* that is operated in accordance with a return to school direction issued by the Ministry of Education and approved by the Office of the Chief Medical Officer of Health;

(c) is attending a child care program at a place that is in compliance with the child care re-opening guidance issued by the Ministry of Education;

(d) is receiving residential services and supports in a residence listed in the definition of "residential services and supports" in subsection 4 (2) of the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*;

(e) is in a correctional institution or in a custody and detention program for young persons in conflict with the law;

(f) is performing or rehearsing in a film or television production or in a concert, artistic event, theatrical performance or other performance;

(g) has a medical condition that inhibits their ability to wear a mask or face covering;

(h) is unable to put on or remove their mask or face covering without the assistance of another person;

(i) needs to temporarily remove their mask or face covering while in the indoor area,

(i) to receive services that require the removal of their mask or face covering,

(ii) to engage in an athletic or fitness activity,

(iii) to consume food or drink, or

(iv) as may be necessary for the purposes of health and safety;

(j) is being accommodated in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*;

(k) is being reasonably accommodated in accordance with the *Human Rights Code*; or

(l) performs work for the business or organization, is in an area that is not accessible to members of the public and is able to maintain a physical distance of at least two metres from every other person while in the indoor area.

(5) Subsection (4) does not apply with respect to premises that are used as a dwelling if the person responsible for the business or organization ensures that persons in the premises who are not entitled to an exception set out in subsection (4) wear a mask or face covering in a manner that covers their mouth, nose and chin in any common areas of the premises in which persons are unable to maintain a physical distance of at least two metres from other persons.

(6) For greater certainty, it is not necessary for a person to present evidence to the person responsible for a business or place that they are entitled to any of the exceptions set out in subsection (4).

(7) A person shall wear appropriate personal protective equipment that provides protection of the person's eyes, nose and mouth if, in the course of providing services, the person,

(a) is required to come within 2 metres of another person who is not wearing a mask or face covering in a manner that covers that person's mouth, nose and chin during any period when that person is in an indoor area; and

(b) is not separated by plexiglass or some other impermeable barrier from a person described in clause (a).

Capacity limits for businesses or facilities open to the public

3. (1) The person responsible for a place of business or facility that is open to the public shall limit the number of persons in the place of business or facility so that every member of the public is able to maintain a physical distance of at least two metres from every other person in the business or facility, except where Schedule 2 allows persons to be closer together.

(2) For greater certainty, subsection (1) does not require persons who are in compliance with public health guidance on households to maintain a physical distance of at least two metres from each other while in a place of business or facility.

Meeting or event space

4. (1) The person responsible for a business or place that is open may only rent out meeting or event space if the total number of members of the public permitted to be in all of the rentable meeting or event space in the business or place at any one time is limited to the number that can maintain a physical distance of at least two metres from every other person in the business or place, and in any event is not permitted to exceed,

(a) 50 persons, if the meeting or event is indoors; or

(b) 100 persons, if the meeting or event is outdoors.

(1.1) The person responsible for a business or place that is open shall not permit the booking of more than one room for any particular event or a social gathering.

(1.2) In the Yellow Zone, the following additional rules apply to a person who is responsible for a business or place that rents out meeting or event space:

1. The person must ensure that a safety plan is prepared and made available in accordance with section 5 of this Order.
2. The person must ensure that no more than six people are seated together at any table in the rented space.
3. The person must ensure that the meeting or event space is closed to the public between the hours of 12 a.m. and 5 a.m.
4. The person must ensure that music is not played at a decibel level that exceeds the level at which normal conversation is possible.
5. The person responsible for the business or place must,
   i. record the name and contact information of every member of the public who attends a meeting or event,
   ii. maintain the records for a period of at least one month, and
   iii. only disclose the records to a medical officer of health or an inspector under the *Health Protection and Promotion Act* on request for a purpose specified in section 2 of that Act or as otherwise required by law.

(1.3) In the Orange Zone, the following additional rules apply to a person who is responsible for a business or place that is open and that rents out meeting or event space:

1. The person must ensure that a safety plan is prepared and made available in accordance with section 5 of this Order.
2. The person must ensure that no more than four people are seated together at any table in the rented space.
3. The person must ensure that the meeting or event space is closed to the public between the hours of 10 p.m. and 5 a.m.
4. The person must ensure that music is not played at a decibel level that exceeds the level at which normal conversation is possible.
5. The person responsible for the business or place must,
   i. record the name and contact information of every member of the public who attends a meeting or event,
   ii. maintain the records for a period of at least one month, and
   iii. only disclose the records to a medical officer of health or an inspector under the *Health Protection and Promotion Act* on request for a purpose specified in section 2 of that Act or as otherwise required by law.

(2) Subsections (1) to (1.3) do not apply to the rental of meeting or event space for the purpose of a wedding, funeral or religious service, rite or ceremony that is authorized under section 3, 4 or 5 of Schedule 3.

(3) Subsections (1) to (1.3) do not apply to the rental of meeting or event space for the purpose of delivering or supporting the delivery of court services.

(4) Subsections (1) to (1.3) do not apply to the rental of meeting or event space,

(a) for operations by or on behalf of a government; or

(b) for the purpose of delivering or supporting the delivery of government services.

(5) Subsection (1) does not apply in Stage 3 areas outside of the Orange Zone if the rental of meeting or event space is in compliance with a plan for the rental of meeting or event space approved by the Office of the Chief Medical Officer of Health.

(6) In the Yellow Zone and the Orange Zone, despite anything else in this section, the person responsible for a business or place in which a rental described in subsection (2), (3) or (4) takes place must,

(a) record the name and contact information of every member of the public who attends a meeting or event,

(b) maintain the records for a period of at least one month, and

(c) only disclose the records to a medical officer of health or an inspector under the *Health Protection and Promotion Act* on request for a purpose specified in section 2 of that Act or as otherwise required by law.

Sale and service of liquor

4.1 (1) In the Yellow Zone, the person responsible for a business or place that is open and in which liquor is sold or served under a licence or a special occasion permit shall ensure that,

(a) liquor is sold or served only between 9 a.m. and 11 p.m.; and

(b) no consumption of liquor is permitted in the business or place between the hours of 12 a.m. and 9 a.m.

(1.1) In the Orange Zone, the person responsible for a business or place that is open and in which liquor is sold or served under a licence or a special occasion permit shall ensure that,

(a) liquor is sold or served only between 9 a.m. and 9 p.m.; and

(b) no consumption of liquor is permitted in the business or place between the hours of 10 p.m. and 9 a.m.

(2) The conditions set out in subsections (1) and (1.1) do not apply with respect to businesses and places in airports.

(3) The conditions set out in subsection (1.1) do not apply with respect to,

(a) the sale of liquor for removal from licensed premises in accordance with section 56.1 of Regulation 719 (Licences to Sell Liquor) made under the *Liquor Licence Act*; and

(b) the sale of liquor for delivery in accordance with section 56.2 of Regulation 719 (Licences to Sell Liquor) made under the *Liquor Licence Act*.

In-person teaching and instruction

5. (1) Subject to subsection (2), the person responsible for a business or place that is open and that provides in-person teaching or instruction shall ensure that every instructional space complies with the following conditions:

1. The instructional space must be operated to enable students to maintain a physical distance of at least two metres from every other person in the instructional space, except where necessary for teaching and instruction that cannot be effectively provided if physical distancing is maintained.
2. The total number of students permitted to be in each instructional space at any one time must be limited to the number that can maintain a physical distance of at least two metres from every other person in the business or place, and in any event cannot exceed,
    i. 50 persons, if the instructional space is indoors, or
    ii. 100 persons, if the instructional space is outdoors.

(2) If the teaching or instruction involves singing or the playing of brass or wind instruments,

(a) every person who is singing or playing must be separated from every other person by plexiglass or some other impermeable barrier; and

(b) the exception in paragraph 1 of subsection (1) that allows persons to be closer than two metres where necessary for teaching and instruction does not apply.

(3) Subsections (1) and (2) do not apply to,

(a) a school or private school within the meaning of the *Education Act* that is operated in accordance with a return to school direction issued by the Ministry of Education and approved by the Office of the Chief Medical Officer of Health;

(b) a school operated by,

(i) a band, a council of a band or the Crown in right of Canada,

(ii) an education authority that is authorized by a band, a council of a band or the Crown in right of Canada, or

(iii) an entity that participates in the Anishinabek Education System; and

(c) the Ontario Police College, training facilities operated by a police force or fire department, the Correctional Services Recruitment and Training Centre and the Ontario Fire College.

School teaching person holding study permit

5.1 A school or private school within the meaning of the *Education Act* may provide in-person teaching or instruction to a person who holds a study permit issued under the *Immigration and Refugee Protection Act* (Canada) and who enters Canada on or after November 17, 2020, only if the school or private school,

(a) has a plan respecting COVID-19 that has been approved by the Minister of Education; and

(b) operates in accordance with the approved plan.

Cleaning requirements

6. (1) The person responsible for a business or place that is open shall ensure that,

(a) any washrooms, locker rooms, change rooms, showers or similar amenities made available to the public are cleaned and disinfected as frequently as is necessary to maintain a sanitary condition; and

(b) any equipment that is rented to, provided to or provided for the use of members of the public must be cleaned and disinfected as frequently as is necessary to maintain a sanitary condition.

This is Exhibit "PP" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

Federal Court | Cour fédérale

Date: 20230221

Docket: T-1089-22

Citation: 2023 FC 252

Toronto, Ontario, February 21, 2023

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

KAREN ADELBERG, MATTHEW ANDERSON, WYATT GEORGE BAITON, PAUL BARZU, NEIL BIRD, CURTIS BIRD, BEAU BJARNASON, LACEY BLAIR, MARK BRADLEY, JOHN DOE #1 , DANIEL BULFORD, JOHN DOE #2, SHAWN CARMEN , JOHN DOE #3, JONATHAN COREY CHALONER, CATHLEEN COLLINS, JANE DOE #1 , JOHN DOE #4, KIRK COX, CHAD COX, NEVILLE DAWOOD, RICHARD DE VOS, STEPHANE DROUIN, MIKE DESSON, PHILIP DOBERNIGG, JANE DOE #2, STEPHANE DROUIN, SYLVIE FILTEAU, KIRK FISLER, THOR FORSETH, GLEN GABRUCH, BRETT GARNEAU, TRACY LYNN GATES, KEVIN GIEN, JANE DOE #3, WARREN GREEN, JONATHAN GRIFFIOEN, ROHIT HANNSRAJ, KAITLYN HARDY, SAM HILLIARD, RICHARD HUGGINS, LYNNE HUNKA, JOSEPH ISLIEFSON, LEPOSAVA JANKOVIC, JOHN DOE #5, PAMELA JOHNSTON, ERIC JONES-GATINEAU, ANNIE JOYAL, JOHN DOE #6, MARTY (MARTHA) KLASSEN, JOHN DOE #7, JOHN DOE #8, JOHN DOE #9 , RYAN KOSKELA, JANE DOE #4, JULIANS LAZOVIKS, JASON LEFEBVRE, KIRSTEN LINK, MORGAN LITTLEJOHN, JOHN DOE #10, DIANE MARTIN, JOHN DOE #11, RICHARD MEHNER, CELINE MOREAU, ROBIN MORRISON, MORTON NG, GLORIA NORMAN, STEVEN O'DOHERTY, DAVID OBIREK, JOHN ROBERT QUEEN, NICOLE QUICK, GINETTE ROCHON, LOUIS-MARIE ROY, EMAD SADR, MATT SILVER, JINJER SNIDER, MAUREEN STEIN, JOHN DOE #12, JOHN DOE #13, ROBERT TUMBAS, KYLE VAN DE SYPE, CHANTELLE VIEN, JOSHUA (JOSH) VOID, CARLA WALKER, ANDREW WEDLOCK, JENNIFER WELLS, JOHN WELLS, MELANIE WILLIAMS, DAVID GEORGE JOHN WISEMAN, DANIEL YOUNG, GRATCHEN GRISON, (OFFICERS WITH THE ROYAL CANADIAN MOUNTAIN POLICE)

and

NICOLE AUCLAIR, MICHAEL BALDOCK, SABRINA BARON, WILLIAM DEAN BOOTH, CHARLES BORG, MARIE-EVÉ CARON, THOMAS DALLING, JOSEPH ISRAEL MARC ERIC DE LAFONTAINE, RICARDO GREEN, JORDAN HARTWIG, RODNEY HOWES, CHRISTOPHER MARK JACOBSON, JANE DOE #5, PASCAL

LEGENDRE, KIMBERLY LEPAGE, KIM MACDONALD, CINDY MACKAY, KIM MARTIN MCKAY, DAVID MASON, ALEXANDRA KATRINA MOIR, JOSEPH DANIEL ERIC MONTGRAIN, RADOSLAW NIEDZIELSKI, LEANNA JUNE NORDMAN, DONALD POOLE, EDWARD DOMINIC POWER, NORMAN L. REED, JANE DOE #6, BRENDEN SANGSTER, TIMOTHY JOSEPH SEIBERT, ANN-MARIE LEE TRAYNOR, CARL BARRY WOOD, EDDIE EDMOND ANDRUKAITIS, RUBY DAVIS, JENNIFER SCHROEDER, JOSEPH SHEA EMPLOYED BY THE (DEPARTMENT OF NATIONAL DEFENCE)

and

STEFANIE ALLARD, JAKE DANIEL BOUGHNER, BRENT CARTER, BRIAN COBB, LAURA CONSTANTINESCU, SONIA DINU, ALDONA FEDOR, JANE DOE #7, MALORIE KELLY, MATTHEW STEPHEN MACDONALD, MITCHELL MACINTYRE, HERTHA MCLENDON, MARCEL MIHAILESCU, MICHAEL MUNRO , SEBASTIAN NOWAK, DIANA RODRIGUES, NATALIE HOLDEN , ADAM DAWSON WINCHESTER, (CANADA BORDER SERVICES AGENCY)

and

CHRISTINE CLOUTHIER, DEBBIE GRAY, JENNIFER PENNER, DALE WAGNER, JOSEPH AYOUB, (AGRICULTURE AND AGRI-FOOD CANADA)

and

JANE DOE #8, (ATLANTIC CANADA OPPORTUNITIES AGENCY)

and

MELANIE DUFOUR, (BANK OF CANADA)

and

JENNIFER AUCIELLO, SHARON ANN JOSEPH, ERIC MUNRO, (CANADA MORTGAGE AND HOUSING CORPORATION)

and

JANE DOE #9, (CANADA PENSION PLAN)

and

NATALIE BOULARD, BEATA BOZEK, JOHN DOE #14, NERIN ANDREA CARR, SARA JESSICA CASTRO, DEBBIE (DUBRAVKA) CUNKO, JOSÉE CYR, JANE DOE #10, CAROL GABOURY, TANIA GOMES, JULITA GROCHOCKA, MONIQUE HARRIS, WILLIAM HOOKER, KIRSTIN HOUGHTON, LEILA KOSTYK, DIANE C LABBÉ, MICHELLE LAMARRE, NICOLAS LEBLOND, SUANA-LEE LECLAIR, PAULETTE MORISSETTE, JENNIFER NEAVE, PIERRE-ALEXANDRE RACINE,

BENJAMIN RUSSELL, ROBERT SNOWDEN, AABID THAWER, HEIDI WIENER, SVJETLANA ZELENBABA, NADIA ZINCK, AARON JAMES THOMAS SHORROCK, DEIRDRE MCINTOSH, (CANADA REVENUE AGENCY)

and

TAMARA STAMMIS, (CANADA SCHOOL OF THE PUBLIC SERVICE)

and

JASMIN BOURDON, (CANADA SPACE AGENCY)

and

SHARON CUNNINGHAM, ALLEN LYNDEN, RORY MATHESON, (CANADIAN COAST GUARD)

and

TATJANA COKLIN, JOHN DOE #15, RAQUEL DELMAS, JANE DOE #11, CHELSEA HAYDEN, HELENE JOANNIS, ZAKLINA MAZUR, JANE DOE #12, JESSICA SIMPSON, KATARINA SMOLKOVA, (CANADIAN FOOD INSPECTION AGENCY)

and

ALEXANDRE CHARLAND, (CANADIAN FORESTRY SERVICE)

and

CATHERINE PROVOST, KRISTINA MARTIN, (CANADIAN HERITAGE)

and

JANE DOE #13, (CANADIAN INSTITUTES OF HEALTH RESEARCH)

and

BETH BLACKMORE, ROXANNE LORRAIN, (CANADIAN NUCLEAR SAFETY COMMISSION)

and

RÉMI RICHER, (CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION)

and

OCTAVIA LA PRAIRIE, (CANADIAN SECURITY INTELLIGENCE SERVICE)

and

ROBERT BESTARD, (CITY OF OTTAWA GARAGE FED REGULATED)

and

KIMBERLY ANN BECKERT, (CORE PUBLIC SERVICE)

and

SARAH ANDREYCHUK, FRANCOIS BELLEHUMEUR, PAMELA BLAIKIE, NATASHA CAIRNS, ANGELA CIGLENECKI, VERONIKA COLNAR, RANDY DOUCET, KARA ERICKSON, JESSE FORCIER, VALÉRIE FORTIN, ROXANE GUEUTAL, MELVA ISHERWOOD, MILO JOHNSON, VALERIA LUEDEE, LAURIE LYNDEN, ANNETTE MARTIN, CRAIG MCKAY, ISABELLE METHOT, SAMANTHA OSYPCHUK, JANE DOE #14, WILNIVE PHANORD, ALEXANDRE RICHER LEVASSEUR, KATHLEEN SAWYER, TREVOR SCHEFFEL, (CORRECTIONAL SERVICE OF CANADA)

and

JORDAN ST-PIERRE, (COURTS ADMINISTRATION SERVICE)

and

BRIGITTE SURGUE, JANE DOE #15, (DEPARTMENT OF CANADIAN HERITAGE)

and

GHISLAIN CARDINAL, HEATHER HALLIDAY, PAUL MARTEN, CELINE RIVIER, NGOZI UKWU, JEANNINE BASTARACHE, JANE DOE #16, HAMID NAGHDIAN-VISHTEH, (DEPARTMENT OF FISHERIES AND OCEAN)

and

ISHMAEL GAY-LABBE, JANE DOE #17, LEANNE JAMES, (DEPARTMENT OF JUSTICE)

and

DANIELLE BARABE-BUSSIERES, (ELECTIONS CANADA)

and

TANYA DAECHERT, JANE DOE #18, FRANCOIS ARSENEAU, CHANTA AUTHIER, NATHALIE BENOIT, AERIE BIAFORE, ROCK BRIAND, AMAUD BRIEN THIFFAULT, SHARON CHIU, MICHEL DAIGLE, BRIGITTE DANIELS, LOUISE GAUDREAULT, KARRIE GEVAERT, MARK GEVAERT, PETER IVERSEN, DERRIK LAMB , JANE DOE #19, ANNA MARINIC, DIVINE

MASABARAKIZA, JAMES MENDHAM, MICHELLE MARINA MICKO, JEAN RICHARD, STEPHANIE SENECAL, JANE DOE #20, RYAN SEWELL, KARI SMYTHE, OLIMPIA SOMESAN, LLOYD SWANSON, TYRONE WHITE, ELISSA WONG, JENNY ZAMBELAS, LI YANG ZHU, PATRICE LEVER, (EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA)

and

JANE DOE #21, BRIAN PHILIP CRENNA, JANE DOE #22, BRADLEY DAVID HIGNELL, ANDREW KALTECK, DANA KELLETT, JOSÉE LOSIER, KRISTIN MENSCH, ELSA MOUANA, JANE DOE #23, JANE DOE #24, VALENTINA ZAGORENKO, (ENVIRONMENT AND CLIMATE CHANGE CANADA)

and

PIERRE TRUDEL, (EXPORT DEVELOPMENT CANADA)

and

STEPHEN ALAN COLLEY, (FEDERAL ECONOMIC DEVELOPMENT AGENCY FOR SOUTHERN ONTARIO)

and

VLADIMIR RASKOVIC, (GARDA SECURITY SCREEING INC)

and

MÉLANIE BORGIA, JONATHAN KYLE SMITH, DONNA STAINFLELD, ANNILA THARAKAN, RENEE MICHIKO UMEZUKI, (GLOBAL AFFAIRS CANADA)

and

DENNIS JOHNSON, (GLOBAL CONTAINER TERMINALS CANADA)

and

ALEXANDRE GUILBEAULT, TARA (MARIA) MCDONOUGH, FRANCE VANIER, (GOVERNMENT OF CANADA)

and

ALEX BRAUN, MARC LESCELLEUR-PAQUETTE, (HOUSE OF COMMONS)

and

AIMEE LEGAULT, (HUMAN RESOURCE BRANCH)

and

DORIN ANDREI BOBOC, JANE DOE #25, SOPHIE GUIMARD, ELISA HO, KATHY LEAL, CAROLINE LEGENDRE, DIANA VIDA, (IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA)

and

NATHALIE JOANNE GAUTHIER, (INDIGENOUS AND NORTHERN AFFAIRS CANADA)

and

CHRISTINE BIZIER, AMBER DAWN KLETZEL, VERONA LIPKA, KERRY SPEARS, (INDIGENOUS SERVICES CANADA)

and

SUN-HO PAUL JE, (INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA)

and

GILES ROY, (NATIONAL FILM BOARD OF CANADA)

and

RAY SILVER, MICHELLE DEDYULIN, LETITIA EAKINS, JULIE-ANNE KLEINSCHMIT, MARC-ANDRE OCTEAU, HUGUES SCHOLAERT, (NATIONAL RESEARCH COUNCIL CANADA)

and

FELIX BEAUCHAMP, (NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY)

and

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and

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and

MUHAMMAD ALI, (OFFICE OF THE AUDITOR GENERAL OF CANADA)

and

RYAN ROGERS, (ONTARIO NORTHLAND TRANSPORTATION COMMISSION)

and

THERESA STENE, MICHAEL DESSUREAULT, JOHN DOE #16, (PARK CANADA)

and

CHARLES-ALEXANDRE BEAUCHEMIN, BRETT OLIVER, (PARLIMENTARY PROTECTION SERVICE)

and

CAROLE DUFORD, (POLAR KNOWLEDGE CANADA)

and

JOANNE GABRIELLE DE MONTIGNY, IVANA ERIC, JANE DOE #26, SALYNA LEGARE, JANE DOE #27, ANGIE RICHARDSON, JANE DOE #28, (PUBLIC HEALTH AGENCY OF CANADA)

and

FAY ANNE BARBER, (PUBLIC SAFETY CANADA)

and

DENIS LANIEL, (PUBLIC SECTOR PENSION INVESTMENT BOARD)

and

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and

ISABELLE DENIS, (REGISTRAR OF THE SUPREME COURT OF CANADA)

and

JANE BARTMANOVICH, (ROYAL CANADIAN MINT)

and

NICOLE BRISSON, (SERVICE CANADA)

and

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and

STEVE YOUNG, (TELESTAT CANADA)

and

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SCOTT ERROLL HENDERSON, DENIS THERIAULT, (TREASURY BOARD OF CANADA)

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JOSIANE BROUILLARD, ALEXANDRA MCGRATH, NATHALIE STE-CROIX, JANE DOE #31, (VETERANS AFFAIRS CANADA)

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OLUBUSAYO (BUSAYO) AYENI, JOHN DOE #17, CYNTHIA BAUMAN, JANE DOE #32, LAURA CRYSTAL BROWN, KE(JERRY) CAI, NICOLINO CAMPANELLI, DONALD KEITH CAMPBELL, COLLEEN CARDER, KATHY CARRIERE, MELISSA CARSON, DAVID CLARK, BRADLEY CLERMONT, LAURIE COELHO, ESTEE COSTA, ANTONIO DA SILVA, BRENDA DARVILL, PATRICK DAVIDSON, EUGENEDAVIS, LEAH DAWSON, MARC FONTAINE, JACQUELINE GENAILLE, ELDON GOOSSEN, JOYCE GREENAWAY, LORI HAND, DARREN HAY, KRISTA IMIOLA,CATHERINE KANUKA, DONNA KELLY, BENJAMIN LEHTO, ANTHONY LEON, AKEMI MATSUMIYA, JANE DOE #33, JANE DOE #34, JANE DOE #35, ANNE MARIE MCQUAID-SNIDER, LINO MULA, PAMELA OPERSKO, GABRIEL PAQUET CHRISTINE PAQUETTE, CAROLIN JACQUELINE PARIS, JODIE PRICE, KEVIN PRICE, GIUSEPPE QUADRINI, SAARAH QUAMINA, SHAWN ROSSITER, ANTHONY RUSH, ANTHONY SHATZKO, CHARLES SILVA, RYAN SIMKO, NORMAN SIROIS, BRANDON SMITH, CATHARINE SPIAK, SANDRA

STROUD, ANITA TALARIAN, DARYL TOONK, RYAN TOWERS, LEANNE VERBEEM, ERAN VOOYS, ROBERT WAGNER, JASON WEATHERALL, MELANIE BURCH, STEVEN COLE, TONI DOWNIE, AMBER RICARD, JODI STAMMIS, (CANADA POST)

and

NICOLAS BELL, JOHN DOE #18, JOHN DOE #19, JANE DOE #36, JOHN DOE #20, PAOLA DI MADDALENA, NATHAN DODDS, JOHN DOE #21, JANE DOE #37, NUNZIO GIOLTI, MARIO GIRARD, JANE DOE #38, JANE DOE #39, YOU-HUI KIM, JANE DOE #40, SEBASTIAN KORAK, ADA LAI, MIRIUM LO, MELANIE MAILLOUX, CAROLYN MUIR, PATRIZIA PABA, RADU RAUTESCU, ALDO REANO, JACQUELINE ELISABETH ROBINSON, JOHN DOE #22, FREDERICK ROY, JOHN DOE #23, TAEKO SHIMAMURA, JASON SISK, BEATA SOSIN, JOEL SZOSTAK, MARIO TCHEON, REBECCA SUE THIESSEN, JANE DOE #41, MAUREEN YEARWOOD, (AIR CANADA)

and

JOHN DOE #24, JOSÉE DEMEULE, JACQUELINE GAMBLE, DOMENIC GIANCOLA, SADNA KASSAN, MARCUS STEINER, CHRISTINA TRUDEAU, (AIR CANADA JAZZ)

and

JOHN DOE #25, EMILIE DESPRES, (AIR INUIT)

and

REJEAN NANTEL, (BANK OF MONTREAL)

and

LANCE VICTOR SCHIIKA, (BC COAST PILOTS LTD)

and

ELIZABETH GODLER, (BC FERRIES)

and

JOHN DOE #26, JANE DOE #42, TAMARA DAVIDSON, JANE DOE #43, KARTER CUTHBERT FELDHOFF DE LA NUEZ, JEFFREY MICHAEL JOSEPH GOUDREAU, BRAD HOMEWOOD, CHAD HOMEWOOD, CHARLES MICHAEL JEFFERSON, JOHN DOE #27, JANICE LARAINE KRISTMANSON, JANE DOE #44, DARREN LOUIS LAGIMODIERE, JOHN DOE #28, JOHN DOE #29, MIRKO MARAS, JOHN DOE #30, JOHN DOE #31, JOHN DOE #32, JOHN DOE #33, JOHN DOE #34, JANE DOE #45, JOHN DOE #35, KENDAL STACE-SMITH, JOHN DOE

#36, STEVE HEATLEY, (BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION)

and

PAUL VEERMAN, (BROOKFIELD GLOBAL INTEGRATED SOLUTIONS)

and

MARK BARRON, TREVOR BAZILEWICH, JOHN DOE #37, BRIAN DEKKER, JOHN GAETZ, ERNEST GEORGESON, KYLE KORTKO, RICHARD LETAIN, JOHN DOE #38, DALE ROBERT ROSS, (CANADIAN NATIONAL RAILWAY)

and

TIM CASHMORE, ROB GEBERT, MICHEAL ROGER MAILHIOT, (CANADIAN PACIFIC RAILWAY)

and

KARIN LUTZ, (DP WORLD)

and

CRYSTAL SMEENK, (FARM CREDIT CANADA)

and

SYLVIE M.F. GELINAS, SUSIE MATIAS, STEW WILLIAMS, (G4S AIRPORT SCREENING)

and

SHAWN CORMAN, (GEOTECH AVIATION)

and

JUERGEN BRUSCHKEWITZ, ANDRE DEVEAUX, BRYAN FIGUEIRA, DAVID SPRATT, GUY HOCKING, SEAN GRANT, (GREATER TORONTO AIRPORTS AUTHORITY)

and

DUSTIN BLAIR, (KELOWNA AIRPORT FIRE FIGHTER)

and

HANS-PETER LIECHTI, (NATIONAL ART CENTRE)

and

BRADLEY CURRUTHERS, LANA DOUGLAS, ERIC DUPUIS, SHERRI ELLIOT, ROBEN IVENS, JANE DOE #46, LUKE VAN HOEKELEN, KURT WATSON, (ONTARIO POWER GENERATION)

and

THERESA STENE, MICHAEL DESSUREAULT, ADAM PIDWERBESKI, (PARKS CANADA)

and

JOHN DOE #39, (PACIFIC PILOTAGE AUTHORITY)

and

ANGELA GROSS, (PUROLATOR INC.)

and

GERHARD GEERTSEMA, (QUESTRAL HELICOPTERS)

and

AMANDA RANDALL, JANE DOE #47, FRANK VERI, (RBC ROYAL BANK)

and

JAMES (JED) FORSMAN, (RISE AIR)

and

JANE DOE #48, (ROGERS COMMUNICATIONS INC)

and

JERRILYNN REBEYKA, (SASKTEL)

and

EILEEN FAHLMAN, MARY TREICHEL, (SCOTIABANK)

and

JUDAH GAELAN CUMMINS, (SEASPAN VICTORIA DOCKS)

and

DARIN WATSON, (SHAW)

and

RICHARD MICHAEL ALAN TABAK, (SKYNORTH AIR LTD)

and

DEBORAH BOARDMAN, MICHAEL BRIGHAM, (VIA RAIL CANADA)

and

KEVIN SCOTT ROUTLY, (WASAYA AIRWAYS)

and

SAILOR, (WATERFRONT EMPLOYERS OF BRITISH COLUMBIA)

and

BAYDA, JAMIE ELLIOTT, JOHN DOE #40, RANDALL MENGERING, SAMANTHA NICASTRO, VERONICA STEPHENS, JANE DOE #49, (WESTJET)

and

MELVIN GEREIN, (WESTSHORE TERMINALS)

Plaintiffs

and

HIS MAJESTY THE KING, PRIME MINISTER JUSTIN TRUDEAU, DEPUTY PRIME MINISTER AND MINISTER OF FINANCE CHRYSTIA FREELAND, CHIEF MEDICAL OFFICER TERESA TAM, MINISTER OF TRANSPORT OMAR ALGHABRA, DEPUTY MINISTER OF PUBLIC SAFETY MARCO MENDICINO, JOHNS AND JANES DOE

Defendants

ORDER AND REASONS

I. Overview

[1] The Defendants have brought a motion pursuant to Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-106 [Rules] to strike the Plaintiffs' Statement of Claim in its entirety, without leave to amend.

[2] The Statement of Claim was filed on May 30, 2022. The Plaintiffs comprise approximately 600 individuals who allege they suffered harm as a result of the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* issued by the Treasury Board of Canada on October 6, 2021 [TB Policy], and the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61* issued by Transport Canada on April 24, 2022 [Interim Order].

[3] The Plaintiffs are current or former employees of the Government of Canada, federal Crown corporations, and federally-regulated businesses or organizations. The precise circumstances of the Plaintiffs' employment are not pleaded in the Statement of Claim.

[4] Unusually, the style of cause groups the Plaintiffs by their employers. For example, the first group of Plaintiffs is identified as employed by the Royal Canadian Mounted Police; the second as employed by the Department of National Defence; the third as employed by the Canada Border Services Agency; and so on.

[5] There are numerous groups of Plaintiffs identified as employees of a wide variety of federal government institutions and Crown corporations. Other Plaintiffs are identified as employees of federally-regulated businesses or organizations such as Air Canada, Bank of Montreal, BC Ferries, Canadian National Railway, Ontario Power Generation, Purolator, and Rogers Communications.

[6] According to the Defendants, approximately two-thirds of the Plaintiffs appear to be employed within the Core Public Administration [CPA], as defined in the *Financial Administration Act*, RSC 1985, c F-11, s 11(1) and Schedules I, IV [FAA]. The Defendants say these Plaintiffs' claims are barred by s 236 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [FPSLRA].

[7] The remaining one-third of the Plaintiffs appear to fall within two other categories: employees of federal Crown corporations and employees of businesses or organizations that operate in a variety of federally-regulated sectors, principally transportation, telecommunications, logistics, finance, and courier services. The Defendants do not dispute the Court's potential jurisdiction over the claims brought by these Plaintiffs, but nevertheless maintain that the Statement of Claim fails to disclose any reasonable causes of action.

[8] With respect to those Plaintiffs who are subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety without leave to amend. With respect to those Plaintiffs who are not subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety, but with leave to amend.

II. Issues

[9] The issues raised by the Defendants' motion are whether the Statement of Claim should be struck and, if so, whether leave should be granted to amend the pleading.

A. *Plaintiffs Subject to the FPSLRA*

[10] The Plaintiffs who are employed within the organizations listed in Schedule A hereto are members of the CPA, as defined in the FAA. Persons employed within the CPA are subject to s 236 of the FPSLRA. This provision reads as follows:

No Right of Action	**Absence de droit d'action**
Disputes relating to employment	**Différend lié à l'emploi**
236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.	**236 (1)** Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.
Application	**Application**
(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.	**(2)** Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.
[...]	[...]

[11] The right to grieve is available to employees as defined in s 206(1) of the FPSLRA. Both unionized and non-unionized employees may file a grievance. The Defendants say that the Plaintiffs' right to grieve encompasses the allegations contained in the Statement of Claim, because they concern their "terms and conditions of employment", as that expression is used in s 208 of the FPSLRA:

Right of employee	**Droit du fonctionnaire**
208 (1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved (a) by the interpretation or application, in respect of the employee, of	**208 (1)** Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé a) par l'interprétation ou l'application à son égard :
(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or	(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,
(ii) a provision of a collective agreement or an arbitral award; or	(ii) soit de toute disposition d'une convention collective ou d'une décision arbitrale;
(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.	b) par suite de tout fait portant atteinte à ses conditions d'emploi.

[12] In *Hudson v Canada*, 2022 FC 694 [*Hudson*], I granted the defendant's motion to strike the statement of claim without leave to amend on the ground that the plaintiffs' claims were barred by s 236 of the FPSLRA. The analysis that follows is adapted from the one I applied in *Hudson*.

[13] Subsection 236(1) of the FPSLRA has been recognized as an "explicit ouster" of the courts' jurisdiction (*Bron v Canada (Attorney General)*, 2010 ONCA 71 [*Bron*] at para 4). Once it is established that a matter must be the subject of a grievance, the grievance process cannot be circumvented, even for reasons of efficiency, by relying on a court's residual jurisdiction (*Bouchard c Procureur général du Canada*, 2019 QCCA 2067).

[14] Subsection 236(1) of the FPSLRA was enacted in 2005 in direct response to the Supreme Court of Canada's decisions in *Vaughan v Canada*, 2005 SCC 11 [*Vaughan*] and *Weber v Ontario Hydro*, [1995] 2 SCR 929 [*Weber*] (see *Attorney General of Canada, on behalf of Correctional Service of Canada v Robichaud and MacKinnon*, 2013 NBCA 3 [*Robichaud*] at para 3). *Vaughan* and *Weber* stand for the proposition that courts should usually decline to exercise any residual jurisdiction they may have to intervene in employment-related matters. Before a court will intervene in an employment-related dispute, there must be a gap in labour adjudication that causes a "real deprivation of ultimate remedy" (*Weber* at para 57).

[15] This principle was succinctly stated by the Federal Court of Appeal in *Canada v Greenwood*, 2021 FCA 186 [*Greenwood*] at paragraph 130 (leave to appeal ref'd, 2022 CanLII 19060 (SCC)):

> *Vaughan* and the cases that apply it hold that, in most instances, claims from employees subject to federal public sector labour legislation in respect of matters that are not adjudicable before the FPSLREB should not be heard by the courts, as this would constitute an impermissible incursion into the statutory scheme. However, an exception to this general rule allows courts to hear claims that may only be grieved under internal grievance mechanisms if the internal mechanisms are incapable of providing effective redress.

[16] The Defendants say the effect of s 236 of the FPSLRA is to remove any residual discretion this Court may have to intervene in labour disputes involving employees with grievance rights. The Defendants argue that s 236 serves to revoke any statutory grant of jurisdiction this Court might otherwise possess.

[17] Following the enactment of s 236 of the FPSLRA, it appears that no court has intervened in a labour dispute that involves employees who possess grievance rights. The most one can find in the jurisprudence is *obiter* commentary suggesting that an exception might be found if the integrity of the grievance procedure is shown to be compromised based on the evidence presented in a particular case (*Lebrasseur v Canada*, 2007 FCA 330 [*Lebrasseur*]). The onus of establishing that there is room for the exercise of a court's residual discretion lies with a plaintiff (*Lebrasseur* at paras 18-19).

[18] In *Robichaud*, the Court of Appeal of New Brunswick suggested that if the residual discretion to hear a labour dispute continues to exist despite s 236 of the FPSLRA, it will be only in "exceptional" cases: "The truly problematic cases will be those where the grievance process is itself 'corrupt'" (at para 10).

[19] While evidence is not generally admissible on a motion to strike, it may be admitted where a jurisdictional question arises. Evidence as to the nature and efficacy of the suggested alternate processes is necessary to provide a basis for the Court's determination of whether it ought to decline jurisdiction in favour of the alternate administrative remedies (*Greenwood* at paras 95-96).

[20] The Defendants have adduced evidence in support of their motion to strike, but this consists only of an affidavit appending the relevant policy documents as exhibits. No evidence has been tendered respecting "the nature and efficacy of the suggested alternate processes", as contemplated in *Greenwood* (at para 95).

[21] The Defendants maintain that it is sufficient for them to invoke the FAA to demonstrate that the claims of approximately two-thirds of the Plaintiffs are barred by s 236 of the FPSLRA. The Defendants note that the Plaintiffs do not allege the available internal grievance process is "corrupt" or incapable of providing redress. Indeed, the Statement of Claim is silent regarding the potential availability or adequacy of alternative remedies.

[22] It would have been helpful for the Defendants to provide evidence, or alternatively detailed legal submissions, regarding which of the Plaintiffs are subject to s 236 of the FPSLRA and which are not. Instead, considerable time was expended during the hearing of this motion reviewing the Schedules to the FAA in order to determine which groups of Plaintiffs are employed within the CPA. Following the hearing of the motion, the Court directed the parties to confirm the accuracy of the lists of employers that appear in Schedules A and B hereto. Schedules A and B were subsequently approved by the parties through their counsel. To their credit, this was done on consent.

[23] According to paragraph 6 of the Statement of Claim:

> The Plaintiffs are all either:

> (a) Federal (former) Employees of various agencies and Ministries of the Government of Canada and servants, officials, and/or agents of the Crown;
>
> (b) Employees of Federal Crown Corporations; and
>
> (c) Employees of federally regulated sectors;
>
> As set out and categorized in the style of cause in the within claim.

[24] While this manner of pleading is unorthodox, it is sufficiently clear. In effect, the categories of employment disclosed in the style of cause are incorporated by reference into the body of the pleading. For the purposes of the Defendants' motion to strike, the Plaintiffs' assertions respecting their places of employment, as identified in the style of cause, must be assumed to be true.

[25] Taken at face value, I am satisfied the pleading confirms that the majority of the Plaintiffs are employed within the CPA. Their claims are therefore barred by s 236 of the FPSLRA.

[26] Before determining whether to exercise any discretion to consider a proceeding, the Court must first be satisfied that the grievance process is not available and would not provide any remedy (*Murphy v Canada (Attorney General)*, 2022 FC 146 [*Murphy*], at para 32, citing *Public Service Alliance of Canada v Canada (Attorney General)*, 2020 FC 481). As Prothonotary (now Associate Judge) Mireille Tabib explained in *Murphy* in paragraph 33:

> Consequently, and as also suggested in *Lebrasseur v Canada*, 2007 FCA 330, at para 19, once it is established that a person has recourse to a statutory grievance scheme, it is up to the applicant, and not the respondent seeking to have the application dismissed as premature, to establish that the procedure is clearly not available. That is the necessary conclusion, since concluding otherwise and allowing access to the courts whenever the admissibility of a

> grievance is challenged would have the effect of bypassing the exhaustive scheme Parliament intended. It would amount to asking the Court to prejudge the admissibility of a grievance and to usurp the role of the grievance authority in respect of the interpretation and application of the provisions governing the grievance procedure.

[27] Associate Judge Tabib's ruling in *Murphy* was recently upheld by Justice Vanessa Rochester in *Murphy v Canada (Attorney General)*, 2023 FC 57 [*Murphy (Appeal)*].

[28] Even at this preliminary stage, the onus is on the Plaintiffs to establish the Court's jurisdiction over the claims advanced in the Statement of Claim (*Hudson* at para 91; *Murphy (Appeal)* at para 82). I am not persuaded that the Plaintiffs who are employed within the CPA have done so.

[29] On a motion to strike, a plaintiff will satisfy the requirement that the pleadings disclose a reasonable cause of action unless, assuming all facts pleaded to be true, it is plain and obvious that the plaintiff's claim cannot succeed (*Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57 at para 63). However, this does not mean that the Plaintiffs' assertions respecting this Court's jurisdiction must be assumed to be true. As Justice Rochester explained in *Murphy (Appeal)* at paragraph 86:

> It is clear that on a motion to strike an application for judicial review, the facts asserted by the applicant in its Notice of Application must be presumed to be true (*Prairies Tubulars (2015) Inc v Canada (Border Services Agency)*, 2018 FC 991 at para 26 and the cases cited therein). This presumption does not extend to the arguments that an applicant may make or any evidence they may submit in response to a motion to strike the Notice of Application. Concluding otherwise would run counter to the teaching of the Federal Court of Appeal in [*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013

> FCA 250] and have the effect of rendering such motions to strike incapable of success, thereby hampering the Court's power to restrain the misuse or abuse of its process (*JP Morgan* at para 48).

[30] Plaintiffs who enjoy statutory grievance rights and allege they have been harmed by the TB Policy or Interim Order must exhaust the grievance process before seeking redress in this Court (*Murphy (Appeal)* at paras 75-76). As I held in *Wojdan v Canada (Attorney General)*, 2021 FC 1341 at paragraph 31, permitting premature access to the Court:

> [...] would have the effect of undermining the labour grievance process enacted by Parliament. The Court would be preempting the primary role of labour adjudicators in determining questions that pertain to the application of the Vaccination Policy, the extent to which it may be said to infringe employees' rights, whether any infringement can be justified on the grounds of public health, and if not, whether the Applicants are entitled to financial or other compensation. Premature judicial intervention would not be complementary to fundamental principles of labour relations, but destructive of them.

[31] The Plaintiffs argue that their claims are not barred by s 236 of the FPSLRA, because some of the remedies they seek are beyond the powers of a labour adjudicator to grant. They emphasize the declaratory relief sought in the Statement of Claim regarding the constitutional validity of the TB Policy and Interim Order, citing ss 91 and 92(10) of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5 and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

[32] The Plaintiffs cannot escape the operation of s 236 of the FPSLRA by pleading that their claims are not ordinary workplace disputes, or that some of the remedies they seek are not

available through the internal grievance process. As the Ontario Court of Appeal held in *Bron*, the right to grieve is "very broad" and "[a]lmost all employment-related disputes can be grieved under s 208 of the FPSLRA" (at paras 14-15).

[33] In *Ebadi v Canada*, 2022 FC 834 [*Ebadi*], the plaintiff advanced the argument (at para 35) that:

> [...] *Bron* maintains the court's residual discretion to hear a claim when a grievance procedure does not provide an adequate remedy. Further, the Court may assume jurisdiction over claims that, in the usual course, may be barred by section 236, where there is a gap in the statutory scheme, where the events produce a difficulty unforeseen by the scheme, or where "no adequate alternative remedy already exists," as set out in *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v Canadian Pacific Ltd.*, [1996] 2 SCR 495 at para 8 [*Brotherhood*].

[34] Justice Henry Brown rejected this argument, holding that alleged Charter violations may be addressed through the grievance process under the FPSLRA (*Ebadi* at 43-44, citing *Green v Canada (Border Services Agency)*, 2018 FC 414 at paras 10-11). He also affirmed that the grievance procedure operates "in lieu of any right of action", even when a plaintiff's preferred remedy (in that case third-party adjudication) is not available (at paras 49-50):

> In accordance with the analysis in *Green*, the Plaintiff could have challenged the Harassment Policy and Grievance Procedure themselves under sections 208 and 236 of the *FPSRLA*. In addition and in my respectful view, the statutory bar to court litigation set out in subsection 236(2) pre-empts any cause of action in this Court notwithstanding there is no access to third party-adjudication.
>
> Here, the ONCA's reasoning in *Bron* is again relevant:

> [32] Finally, the appellant argues that a superior court must maintain an inherent jurisdiction despite whatever language may be used in s. 236. He relies on *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd.*, 1996 CanLII 215 (SCC), [1996] 2 S.C.R. 495, [1996] S.C.J. No. 42, at para. 8. As I read that case, it stands for the proposition that a superior court has inherent jurisdiction to provide a remedy where the relevant statutory scheme does not speak to the circumstances at hand. In other words, the court's inherent jurisdiction can fill remedial lacunae in legislation. There is no legislative gap here. Section 236 speaks directly to workplace complaints that are grievable under the legislation. For those complaints, even when there is no access to third-party adjudication, the grievance procedure operates "in lieu of any right of action". [Emphasis added]

[35] Canadian courts have consistently found that harms allegedly suffered by employees as a result of their employers' policies and practices in response to the COVID-19 pandemic are properly addressed by way of grievance, in both unionized and non-unionized workplaces (see *National Organized Workers Union v Sinai Health System*, 2022 ONCA 802 [*Sinai Health*] at para 39 and the cases cited therein). As the Court of Appeal for Ontario held in *Sinai Health* (at para 38):

> At its core, the harm at issue was the potential for being placed on leave without pay or terminated under the Policy, if an employee chose to remain unvaccinated. The appellant's members were not being forced to be vaccinated, denied bodily autonomy, or denied the right to give informed consent to vaccination. They could choose to be vaccinated or not. If they chose not to be vaccinated, they faced being placed on unpaid leave or having their employment terminated. This potential harm is fundamentally related to employment. It is harm which an arbitrator has the tools to remedy. If the appellant were to prevail in the arbitration, an arbitrator could order reinstatement without loss of seniority and compensation for lost wages. There is no palpable and overriding error in the application judge's conclusion that there was no remedial gap in the labour relations regime that warranted the exercise of the Superior Court's residual jurisdiction.

[36] The Plaintiffs who are subject to s 236 of the FPSLRA have not demonstrated that their circumstances constitute "exceptional cases", or that there is a gap in labour adjudication that causes a "real deprivation of ultimate remedy" (*Weber* at para 57; *Vaughan* at paras 22, 39). For these Plaintiffs, the Statement of Claim must be struck in its entirety without leave to amend.

B. *Plaintiffs Not Subject to the FPSLRA*

[37] The Plaintiffs who are employed within the organizations listed in Schedule B hereto are not members of the CPA, as defined in the FAA. The Defendants concede that these Plaintiffs' claims potentially fall within this Court's jurisdiction.

[38] The Defendants nevertheless maintain that the Statement of Claim is drafted so poorly that it fails to disclose any reasonable causes of action. They therefore argue that the Statement of Claim must be struck in its entirety without leave to amend, regardless of whether or not the Plaintiffs are subject to s 236 of the FPSLRA.

[39] The Rules that govern pleadings in this Court provide in relevant part:

Form of pleadings	**Modalités de forme**
173 (1) Pleadings shall be divided into consecutively numbered paragraphs.	**173 (1)** Les actes de procédure sont divisés en paragraphes numérotés consécutivement.
Allegations set out separately	**Présentation**
(2) Every allegation in a pleading shall, as far as is practicable, be set out in a separate paragraph.	**(2)** Dans la mesure du possible, chaque prétention contenue dans un

Material facts

174 Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

[...]

Particulars

181 (1) A pleading shall contain particulars of every allegation contained therein, including

(a) particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence; and

(b) particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.

acte de procédure fait l'objet d'un paragraphe distinct.

Exposé des faits

174 Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.

[...]

Précisions

181 (1) L'acte de procédure contient des précisions sur chaque allégation, notamment :

a) des précisions sur les fausses déclarations, fraudes, abus de confiance, manquements délibérés ou influences indues reprochés;

b) des précisions sur toute allégation portant sur l'état mental d'une personne, tel un déséquilibré mental, une incapacité mentale ou une intention malicieuse ou frauduleuse.

[40] It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and the relief sought (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 [*Mancuso*] at para 16). Pleadings play an important role in providing notice and defining the issues to be tried.

[41] The Court and defendants cannot be left to speculate as to how the facts might be variously arranged to support various causes of action. If the Court were to allow parties to plead

bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues (*Mancuso* at paras 16-17).

[42] A plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability. Plaintiffs cannot file inadequate pleadings and rely on a defendant to request particulars, nor can they supplement insufficient pleadings to make them sufficient through particulars (*Mancuso* at paras 19-20).

[43] To establish a reasonable cause of action, a statement of claim must "(1) allege facts that are capable of giving rise to a cause of action; (2) indicate the nature of the action which is to be founded on those facts; and (3) indicate the relief sought, which must be of a type which the action could produce and the court has jurisdiction to grant" (*Zbarsky v Canada*, 2022 FC 195 at para 13, citing *Bérubé v Canada*, 2009 FC 43 at para 24, aff'd, 2010 FCA 276).

[44] As Justice Beth Allen of the Ontario Superior Court of Justice observed in *Guillaume v Toronto (City)*, 2010 ONSC 5045 (at para 54):

> The importance of clearly drafted and structured pleadings does not require much explanation. Pleadings should be drafted with sufficient clarity and precision so as to give the other party fair notice of the case they are required to meet and of the remedies being sought. The role of pleadings is to assist the court in its quest for the truth. Clearly, confusing, run on and poorly organized pleadings cannot accomplish those goals. Courts have held a pleading may be struck out on the grounds it is unintelligible and lacks clarity [...]

[45] The Statement of Claim in this proceeding is almost 50 pages long. Nine pages are devoted to the remedies sought. There are allegations of constitutional invalidity and criminal culpability, broad assertions of scientific knowledge regarding the COVID-19 pandemic, and a claim that some of the public health measures instituted by the Government of Canada amounted to crimes against humanity. Some of the requested remedies are unavailable in a civil action, including administrative declarations and injunctive relief.

[46] For example, the Statement of Claim seeks a declaration that "vaccine passports" violate the Plaintiffs' right to move freely within Canada, or to enter and leave Canada, contrary to s 6 of the Charter. However, the pleading does not particularize any facts suggesting that any of the Plaintiffs were prevented from travelling either within or outside Canada.

[47] The Statement of Claim includes claims for re-instatement of lost employment, payment of back pay, and various benefits. But the pleading is devoid of any material facts pertaining to the personal circumstances of any of the Plaintiffs' employment.

[48] The Statement of Claim alleges that the Defendants have "knowingly engaged in the misfeasance of their public office, and abuse of authority, through their public office" by "[e]xercising a coercive power to force unwanted "vaccination"" under the TB Policy and Interim Order. However, the pleading fails to engage with the substance of the TB Policy and Interim Order, which do not force vaccination and also offer various exemptions and accommodations.

[49] In *Turmel v Canada*, 2021 FC 1095, aff'd, 2022 FCA 166, Justice Russel Zinn upheld a decision of Prothonotary (now Justice) Mandy Aylen to strike a statement of claim challenging certain measures implemented by the Government of Canada to address the COVID-19 pandemic. The plaintiff in that case alleged violations of Charter rights, but neglected to plead material facts or to particularize the alleged Charter infringements. As in this case, the pleading consisted largely of bare assertions.

[50] The Defendants say the Statement of Claim in this proceeding is comparable to the one filed by the same counsel on behalf of the plaintiffs in *Action4Canada v British Columbia (Attorney General)*, 2022 BCSC 1507 [*Action4Canada*]. In that case, the plaintiffs sought damages and other relief from various government entities and employees for harms they allegedly suffered as a result of various restrictions instituted in British Columbia due to the COVID-19 pandemic (*Action4Canada* at para 1).

[51] Justice Alan Ross of the British Columbia Supreme Court granted the defendants' motion to strike the pleading in its entirety, holding as follows (*Action4Canada* at paras 45-48):

> [...] the [Notice of Civil Claim [NOCC]], in its current form, is not a pleading that can properly be answered by a responsive pleading. It describes wide-ranging global conspiracies that may, or may not, have influenced either the federal or the provincial governments. It seeks rulings of the court on issues of science. In addition, it includes improper allegations, including criminal conduct and "crimes against humanity". In my opinion, it is "bad beyond argument".
>
> [46] I further find that it is not a document that the court can mend by striking portions. I find that this NOCC is analogous to the Statement of Claim considered by Justice K. Smith (as he then

> was) in *Homalco Indian Band v. British Columbia* (1998), 25 C.P.C. (4th) 107 (B.C.S.C.) [*Homalco*]. He wrote:
>
> > [11] In my view, the statement of claim is an embarrassing pleading. It contains much that appears to be unnecessary. As well, it is constructed in a manner calculated to confuse the defendants and to make it extremely difficult, if not impossible, to answer. As a result, it is prejudicial. Any attempt to reform it by striking out portions and by amending other portions is likely to result in more confusion as to the real issues. …
>
> [47] As was the case in *Homalco*, attempting to bring the NOCC into compliance with the Rules by piecemeal striking and amending would invite more confusion and greater expenditure of the resources of all concerned.
>
> [48] I find that the NOCC is prolix. It is not a proper pleading that can be answered by the defendants. It cannot be mended. Given that finding, I have no hesitation in ruling that it must be struck in whole.

[52] The Statement of Claim in this proceeding is similarly "bad beyond argument". For substantially the same reasons identified by Justice Ross in *Action4Canada*, it must be struck in its entirety.

[53] Justice Ross granted leave to the plaintiffs in *Action4Canada* to amend their pleading. However, he specified that numerous claims, some of which are also advanced in the present proceeding, are improper in a civil action (*Action4Canada* at paras 52-53). These include allegations of criminal behaviour, broad declarations respecting the current state of medical and scientific knowledge, and a declaration that administering medical treatment without informed consent is a crime against humanity.

[54] To this list of impermissible claims must be added the remedies sought in paragraph 4 of the Statement of Claim, which may be obtained only on judicial review and not by action (see *Wojdan v Canada*, 2021 FC 1244):

> (a) An interim stay/injunction of the Federal "vaccine mandates" and "passports" *nunc pro tunc*, effective the day before they were announced and/or implemented;
>
> (b) A final stay/injunction of the Federal "vaccine mandates" and "passports" *nunc pro tunc*, effective the day before they were announced and/or implemented.

[55] For those Plaintiffs who are employed outside the federal public administration, *e.g.*, with airlines, banks, transportation companies, *etc.*, any amended pleading will have to allege sufficient material facts to provide a basis for the federal Crown's liability.

[56] The Plaintiffs who are not subject to s 236 of the FPSLRA have standing to question whether the TB Policy and Interim Order infringed their rights. There is a prospect that the Plaintiffs could put forward a valid claim that certain COVID-related health measures instituted by the Government of Canada contravened their Charter rights. It is possible that other valid claims may exist.

[57] It will be for the Plaintiffs to plead those causes of action in accordance with the Rules. The claims must be framed in a manner that is intelligible and allows the Defendants to know the case they have to meet. The claims must also be confined to matters that are capable of adjudication by this Court, and seek relief this Court is capable of granting (*Action4Canada* at para 71).

III. Conclusion

[58] The Plaintiffs who are employed within the CPA have not established that the available internal recourse mechanisms are incapable of providing them with adequate redress. This Court is therefore without jurisdiction to determine the claims advanced in the Statement of Claim, or should decline to exercise any residual discretion it may have. For those Plaintiffs who are subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety without leave to amend.

[59] For those Plaintiffs who are not subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety, but with leave to amend. Should the Plaintiffs who are not subject to s 236 of the FPSLRA wish to proceed with a civil action respecting the TB Policy and Interim Order, they must plead their causes of action in accordance with the Rules. The claims must be framed in a manner that is intelligible and allows the Defendants to know the case they have to meet. The claims must also be confined to matters that are capable of adjudication by this Court, and seek relief this Court is capable of granting.

ORDER

THIS COURT ORDERS that:

1. The Statement of Claim is struck in its entirety without leave to amend in respect of all Plaintiffs who are subject to s 236 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2.

2. For the remaining Plaintiffs, the Statement of Claim is struck in its entirety with leave to amend in accordance with the Reasons that accompany this Order.

3. Costs are awarded to the Defendants, payable forthwith and in any event of the cause, in the all-inclusive sum of $5,000.

"Simon Fothergill"
Judge

Schedule "A"

PLAINTIFFS WHO ARE MEMBERS OF THE CORE PUBLIC ADMINISTRATION

Persons employed within the following organizations and who therefore have grievance rights under the *Federal Public Sector Labour Relations Act* (Schedule I, Schedule IV and Schedule V of the *Financial Administration Act*):

- Atlantic Canada Opportunities Agency
- Canada Border Services Agency
- Canada Revenue Agency
- Canada School of Public Service
- Canadian Coast Guard (Department of Fisheries and Oceans)
- Canadian Food Inspection Agency*
- Canadian Forestry Service (Department of Natural Resources)
- Canadian Institutes of Health Research*
- Canadian Nuclear Safety Commission*
- Canadian Radio-television and Telecommunications Commission
- Canada Revenue Agency*
- Canadian Security Intelligence Service*
- Core Public Service
- Canadian Space Agency
- Correctional Service of Canada
- Courts Administration Service
- Department of Agriculture and Agri-Food
- Department of Canadian Heritage
- Department of Employment and Social Development
- Department of Fisheries and Oceans
- Department of Justice
- Department of National Defence
- Department of Natural Resources
- Department of Transport
- Department of Veterans Affairs
- Elections Canada ("Office of the Chief Electoral Officer" and "The portion of the federal public administration in the Office of the Chief Electoral Officer in which the employees referred to in section 509.3 of the Canada Elections Act occupy their positions")
- Environment and Climate Change Canada (Department of the Environment)
- Federal Economic Development Agency for Southern Ontario
- Global Affairs Canada (Department of Foreign Affairs, Trade and Development)
- Government of Canada

- Immigration, Refugees and Citizenship Canada (Department of Citizenship and Immigration)
- Indigenous and Northern Affairs Canada (Department of Crown-Indigenous Relations and Northern Affairs)
- Indigenous Services Canada (Department of Indigenous Services)
- Innovation, Science and Economic Development Canada
- National Film Board of Canada (National Film Board)*
- National Research Council Canada*
- National Security and Intelligence Review Agency (National Security and Intelligence Review Agency Secretariat)*
- Office of the Auditor General of Canada*
- Parks Canada*
- Polar Knowledge Canada (Canadian High Arctic Research Station)*
- Public Health Agency of Canada
- Public Safety Canada (Department of Public Safety and Emergency Preparedness)
- Public Services and Procurement Canada
- Royal Canadian Mounted Police**
- Service Canada (Department of Employment and Social Development)
- Shared Services Canada
- Staff of the Supreme Court
- Statistics Canada
- Treasury Board

NOTES:

All organizations are part of the core public administration as defined at s 11(1) of the *Financial Administration Act* (Schedules I and IV), except as noted.

* Organizations that are portions of the federal public administration listed in Schedule V (Separate Agencies of the *Financial Administration Act*, whose employees have rights to grieve under the *Federal Public Sector Labour Relations Act*).

** The RCMP is part of the core public administration and is listed in Schedule IV of the *Financial Administration Act*; RCMP members have limited rights to grieve under s 238.24 the *Federal Public Sector Labour Relations Act*, but have other grievance rights under the *Royal Canadian Mounted Police Act*.

Schedule "B"

PLAINTIFFS WHO ARE NOT MEMBERS OF THE CORE PUBLIC ADMINISTRATION

Persons employed within the following organizations:

- Air Canada
- Air Canada Jazz
- Air Inuit
- Bank of Canada
- Bank of Montreal
- BC Coast Pilots Ltd
- BC Ferries
- British Columbia Maritime Employers Association
- Brookfield Global Integrated Solutions
- Canada Mortgage and Housing Corporation
- Canada Pension Plan
- Canada Post
- Canadian National Railway
- Canadian Pacific Railway
- City of Ottawa Garage Fed Regulated
- DP World
- Export Development Canada
- Farm Credit Canada
- G4S Airport Screening
- Garda Security Screening Inc
- Geotech Aviation
- Global Container Terminals Canada
- Greater Toronto Airports Authority
- House of Commons
- Human Resources Branch, Innovation
- Kelowna Airport Fire Fighters
- National Arts Centre
- NAV Canada
- Ontario Northland Transportation Commission
- Ontario Power Generation
- Pacific Pilotage Authority
- Parliamentary Protection Service
- Public Sector Pension Investment Board
- Purolator Inc
- Questral Helicopters

- RBC Royal Bank
- Rise Air
- Rogers Communications Inc
- Royal Canadian Mint
- Sasktel
- Scotiabank
- Seaspan Victoria Docks
- Shaw
- Skynorth Air Ltd
- Telesat Canada
- Via Rail Canada
- Wasaya Airways
- Waterfront Employers of British Columbia
- Westjet
- Westshore Terminals

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1089-22
STYLE OF CAUSE:	KAREN ADELBERG ET AL. v HIS MAJESTY THE KING ET AL.
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JANUARY 19, 2023
JUDGMENT AND REASONS:	FOTHERGILL J.
DATED:	FEBRUARY 21, 2023

APPEARANCES:

Rocco Galati	FOR THE PLAINTIFFS
Adam Gilani Renuka Koilpillai	FOR THE DEFENDANTS

SOLICITORS OF RECORD:

Rocco Galati Law Firm Professional Corporation	FOR THE PLAINTIFFS
Attorney General of Canada Toronto, Ontario	FOR THE DEFENDANTS

This is Exhibit "EE" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

Court File No.: A-67-23

FEDERAL COURT OF APPEAL

Karen **Adelberg**, Matthew **Anderson**, Wyatt George **Baiton**, Paul **Barzu**, Neil **Bird**, Curtis **Bird**, Beau **Bjarnason**, Lacey **Blair**, Mark **Bradley**, John **Doe** #1 , Daniel **Bulford**, John **Doe** #2, Shawn **Carmen** , John **Doe** #3, Jonathan Corey **Chaloner**, Cathleen **Collins**, Jane **Doe** #1 , John **Doe #4**, Kirk **Cox**, Chad **Cox**, Neville **Dawood**, Richard **de Vos**, Stephane **Drouin**, Mike **Desson**, Jane **Doe** #2 , Stephane **Drouin**, Sylvie **Filteau**, Kirk **Fisler**, Thor **Forseth**, Glen **Gabruch**, Brett **Garneau**, Tracy Lynn **Gates**, Kevin **Gien**, Jane **Doe** #3 , Warren **Green**, Jonathan **Griffioen** , Rohit **Hannsraj**, Kaitlyn **Hardy**, Sam **Hilliard**, Richard **Huggins**, Lynne **Hunka**, Joseph **Isliefson**, Leposava **Jankovic**, John **Doe** #5 , Pamela **Johnston**, Eric Jones-**Gatineau**, Annie **Joyal** , John **Doe** #6 , Marty (Martha) **Klassen**, John **Doe** #7 , John **Doe** #8 , John **Doe** #9 , Ryan **Koskela**, Jane **Doe** #4, Julians **Lazoviks**, Jason **Lefebvre**, Kirsten **Link**, Morgan **Littlejohn**, John **Doe** #10, Diane **Martin**, John **Doe** #11, Richard **Mehner**, Celine **Moreau**, Robin **Morrison**, Morton **Ng**, Gloria **Norman** , Steven **O'Doherty**, David **Obirek**, John Robert **Queen**, Nicole **Quick**, Ginette **Rochon**, Louis-Marie **Roy**, Emad **Sadr** , Matt **Silver**, Jinjer **Snider**, Maureen **Stein**, John **Doe** #12, John **Doe** #13, Robert **Tumbas**, Kyle Van de **Sype**, Chantelle **Vien**, Joshua (Josh) **Vold** , Carla **Walker**, Andrew **Wedlock** , Jennifer **Wells**, John **Wells**, Melanie **Williams**, David George John **Wiseman**, Daniel **Young**, Gratchen **Grison** , (officers with the **Royal Canadian Mountain Police)**

- and –

Nicole **Auclair**, Michael **Baldock**, Sabrina **Baron**, William Dean **Booth**, Charles **Borg**, Marie-Ève **Caron**, Thomas **Dalling**, Joseph Israel Marc Eric De **Lafontaine**, Ricardo **Green**, Jordan **Hartwig**, Rodney **Howes**, Christopher Mark **Jacobson**, Jane **Doe** #5, Pascal **Legendre**, Kimberly **Lepage**, Kim **MacDonald**, Cindy **Mackay**, Kim Martin-**McKay**, David **Mason**, Alexandra Katrina **Moir**, Joseph Daniel Eric **Montgrain**, Radoslaw **Niedzielski**, Leanna June **Nordman**, Donald **Poole**, Edward Dominic **Power**, Norman L. **Reed**, Jane **Doe** #6, Brenden **Sangster**, Timothy Joseph **Seibert**, Ann-Marie Lee **Traynor**, Carl Barry **Wood**, Eddie Edmond **Andrukaitis**, Ruby **Davis**, Jennifer **Schroeder**, Joseph **Shea** employed by the **(Department of National Defence)**

- and -

Stefanie **Allard**, Jake Daniel **Boughner**, Brent **Carter**, Brian **Cobb**, Laura **Constantinescu**, Sonia **Dinu**, Aldona **Fedor**, Jane **Doe** #7, Malorie **Kelly**, Matthew Stephen **MacDonald**, Mitchell **Macintyre**, Hertha **McLendon**, Marcel **Mihailescu**, Michael **Munro**, Sebastian **Nowak**, Diana **Rodrigues**, Natalie **Holden** , Adam Dawson **Winchester**, **(Canada Border Services Agency)**

- and -

Christine **Clouthier**, Debbie **Gray**, Jennifer **Penner**, Dale **Wagner**, Joseph **Ayoub**, **(Agriculture and Agri-food Canada)**

- and -

Jane **Doe** #8, **(Atlantic Canada Opportunities Agency)**

- and -

Melanie **DuFour, (Bank of Canada)**

- and -

Jennifer **Auciello**, Sharon **Ann Joseph**, Eric **Munro**, **(Canada Mortgage and Housing Corporation)**

- and -

Jane **Doe** #9, **(Canada Pension Plan)**

- and -

Natalie **Boulard**, Beata **Bozek**, John **Doe** #14, Nerin **Andrea Carr**, Sara Jessica **Castro**, Debbie (Dubravka) **Cunko**, Josée **Cyr**, Jane **Doe** #10, Carol **Gaboury**, Tania **Gomes**, Julita **Grochocka**, Monique **Harris**, William **Hooker**, Kirstin **Houghton**, Leila **Kostyk**, Michelle **Lamarre**, Nicolas **LeBlond**, Suana-Lee **Leclair**, Paulette **Morissette**, Jennifer **Neave**, Pierre-Alexandre **Racine**, Benjamin **Russell**, Robert **Snowden**, Aabid **Thawer**, Heidi **Wiener**, Svjetlana **Zelenbaba**, Nadia **Zinck**, Aaron James Thomas **Shorrock**, Deirdre **McIntosh** , **(Canada Revenue Agency)**

- and -

Tamara **Stammis**, **(Canada School of the Public Service)**

- and -

Jasmin **Bourdon**, **(Canada Space Agency)**

- and -

Sharon **Cunningham**, Allen **Lynden**, Rory **Matheson**, **(Canadian Coast Guard)**

- and -

Tatjana **Coklin**, John **Doe** #15, Raquel **Delmas**, Jane **Doe** #11, Chelsea **Hayden**, Helene **Joannis**, Zaklina **Mazur**, Jane **Doe** #12, Jessica **Simpson**, Katarina **Smolkova**, **(Canadian Food Inspection Agency)**

- and -

Alexandre **Charland**, **(Canadian Forestry Service)**

- and -

Catherine **Provost**, Kristina **Martin**, **(Canadian Heritage)**

- and -

Jane **Doe** #13, **(Canadian Institutes of Health Research)**

- and -

Beth **Blackmore**, Roxanne **Lorrain**, **(Canadian Nuclear Safety Commission)**

- and -

Rémi **Richer**, **(Canadian Radio-television and Telecommunications Commission)**

- and –

Octavia **La Prairie**, **(Canadian Security Intelligence Service)**

- and –

Robert **Bestard**, **(City of Ottawa Garage Fed regulated)**

- and -

Kimberly Ann **Beckert**, **(Core Public Service)**

- and -

Sarah **Andreychuk**, Francois **Bellehumeur**, Pamela **Blaikie**, Natasha **Cairns**, Angela **Ciglenecki**, Veronika **Colnar**, Randy **Doucet**, Kara **Erickson**, Jesse **Forcier**, Valérie **Fortin**, Roxane **Gueutal**, Melva **Isherwood**, Milo **Johnson**, Valeria **Luedee**, Laurie **Lynden**, Annette **Martin**, Craig **McKay**, Isabelle **Methot**, Samantha **Osypchuk**, Jane **Doe** #14, Wilnive **Phanord**, Alexandre Richer **Levasseur**, Kathleen **Sawyer**, Trevor **Scheffel**, **(Correctional Service of Canada)**

- and -

Jordan **St-Pierre**, **(Courts Administration Service)**

- and-

Brigitte **Surgue**, Jane **Doe** #15, **(Department of Canadian Heritage)**

- and-

Ghislain **Cardinal**, Heather **Halliday**, Paul **Marten**, Celine **Rivier**, Ngozi **Ukwu**, Jeannine **Bastarache**, Jane **Doe** #16, Hamid **Naghdian-Vishteh**, **(Department of Fisheries and Ocean)**

- and –

Ishmael **Gay-Labbe**, Jane **Doe** #17, Leanne **James**, **(Department of Justice)**

- and -

Danielle **Barabe-Bussieres**, **(Elections Canada)**

- and -

Tanya **Daechert**, Jane **Doe** #18, Francois **Arseneau**, Chantal **Authier**, Nathalie **Benoit**, Aerie **Biafore** , Rock **Briand**, Arnaud **Brien-Thiffault**, Sharon **Chiu**, Michel **Daigle**, Brigitte **Daniels**, Louise **Gaudreault**, Karrie **Gevaert**, Mark **Gevaert**, Peter **Iversen**, Derrik **Lamb**, Jane **Doe** #19, Anna **Marinic** , Divine **Masabarakiza**, James **Mendham** , Michelle Marina **Micko**, Jean **Richard**, Stephanie **Senecal** , Jane **Doe** #20, Ryan **Sewell**, Kari **Smythe**, Olimpia **Somesan**, Lloyd **Swanson**, Tyrone **White**, Elissa **Wong**, Jenny **Zambelas**, Li yang Zhu, Patrice **Lever**, **(Employment and Social Developement Canada)**

-and-

Jane **Doe** #21, Brian Philip **Crenna**, Jane **Doe** #22, Bradley David **Hignell**, Andrew **Kalteck**, Dana **Kellett**, Josée **Losier**, Kristin **Mensch**, Elsa **Mouana**, Jane **Doe** #23, Jane **Doe** #24, Valentina **Zagorenko**, **(Environment and Climate Change Canada)**

- and -

Pierre **Trudel**, **(Export Development Canada)**

- and –

Stephen Alan **Colley**, **(Federal Economic Development Agency for Southern Ontario)**

- and -

Vladimir **Raskovic**, **(Garda Security Screeing Inc)**

- and –

Mélanie **Borgia**, Jonathan Kyle **Smith**, Donna **Stainfield**, Annila **Tharakan**, Renee Michiko **Umezuki, (Global Affairs Canada)**

- and –

Dennis **Johnson**, **(Global Container Terminals Canada)**

- and –

Alexandre **Guilbeault**, Tara (Maria) **McDonough**, France **Vanier**, **(Government of Canada)**

- and –

Alex **Braun**, Marc **Lescelleur-Paquette**, **(House of Commons)**

- and –

Aimee **Legault**, **(Human Resource Branch)**

- and –

Dorin Andrei **Boboc**, Jane **Doe** #25, Sophie **Guimard**, Elisa **Ho**, Kathy **Leal**, Caroline **Legendre**, Diana **Vida**, **(Immigration, Refugees and Citizenship Canada)**

- and -

Nathalie Joanne **Gauthier**, **(Indigenous and Northern Affairs Canada)**

- and –

Christine **Bizier**,Amber Dawn **Kletzel**, Verona **Lipka**, Kerry **Spears**, **(Indigenous Services Canada)**

- and -

Sun-Ho **Paul Je**, **(Innovation, Science and Economic Development Canada)**

- and -

Giles **Roy**, **(National Film Board of Canada)**

- and -

Ray **Silver**, Michelle **Dedyulin**, Letitia **Eakins**, Julie-Anne **Kleinschmit**, Marc-Andre **Octeau**, Hugues **Scholaert**, **(National Research Council Canada)**

- and –

Felix **Beauchamp**, **(National Security and Intelligence Review Agency)**

- and -

Julia May **Brown**, Caleb **Lam**, Stephane **Leblanc**, Serryna **Whiteside**, **(Natural Resources Canada)**

- and -

Nicole **Hawley**, Steeve **L'italien**, Marc **Lecocq**, Tony **Mallet**, Sandra **McKenzie**, **(NAV Canada)**

- and –

Muhammad **Ali**, **(Office of the Auditor General of Canada)**

- and –

Ryan **Rogers**, **(Ontario Northland Transportation Commission)**

- and -

Theresa **Stene**, Michael **Dessureault**, John **Doe** #16, **(Park Canada)**

- and -

Charles-Alexandre **Beauchemin**, Brett **Oliver**, **(Parlimentary Protection Service)**

- and -

Carole **Duford**, **(Polar Knowledge Canada)**

- and –

Joanne Gabrielle **de Montigny**, Ivana **Eric**, Jane **Doe** #26, Salyna **Legare**, Jane **Doe** #27, Angie **Richardson**, Jane **Doe** #28, **(Public Health Agency of Canada)**

- and -

Fay Anne **Barber**, **(Public Safety Canada)**

- and -

Denis **Laniel, (Public Sector Pension Investment Board)**

- and –

Kathleen Elizabeth **Barrette**, Sarah **Bedard**, Mario **Constantineau**, Karen **Fleury**, Brenda **Jain**, Megan **Martin**, Jane **Doe** #29, Isabelle **Paquette**, Richard **Parent**, Roger Robert **Richard**, Nicole **Sincennes**, Christine **Vessia**, Jane **Doe** #30, Pamela **McIntyre**, **(Public Services and Procurement Canada)**

- and -

Isabelle **Denis, (Registrar of the Supreme Court of Canada)**

- and -

Jane **Bartmanovich, (Royal Canadian Mint)**

- and -

Nicole **Brisson, (Service Canada)**

- and -

Denis **Audet**, Mathieu **Essiambre**, Alain **Hart**, Andrea **Houghton**, Natalia **Kwiatek**, Dany **Levesque**, David **McCarthy**, Pascal **Michaud**, Mervi **Pennanen**, Tonya **Shortill**, Stephanie **Tkachuk**, Marshall **Wright, (Shared Services Canada)**

- and -

Eve Marie **Blouin-Hudon**, Marc-Antoine **Boucher**, Christopher **Huszar** , **(Statistics Canada)**

- and -

Steve **Young**, **(Telestat Canada)**

- and –

Nathan **Aligizakis**, Stephen **Daniel**, Alain **Douchant**, Krystal **McColgan**, Debbie **Menard**, Clarence **Ruttle**, Dorothy **Barron**, Robert **McLachlan**, **(Transport Canada)**

- and –

Scott Erroll **Henderson**, Denis **Theriault, (Treasury Board of Canada)**

- and –

Josiane **Brouillard**, Alexandra **McGrath**, Nathalie **Ste-Croix**, Jane **Doe** #31, **(Veterans Affairs Canada)**

- and -

Olubusayo (Busayo) **Ayeni**, John **Doe** #17, Cynthia **Bauman**, Jane **Doe** #32, , Laura Crystal **Brown** , Ke(Jerry) **Cai**, Nicolino **Campanelli**, Donald Keith **Campbell**, Colleen **Carder**, Kathy **Carriere**, Melissa **Carson**, David **Clark**, Bradley **Clermont**, Laurie **Coelho**, Estee **Costa**, Antonio **Da Silva**, Brenda **Darvill**, Patrick **Davidson**, Eugene **Davis**, Leah **Dawson**, Marc **Fontaine**, Jacqueline **Genaille**, Eldon **Goossen**, Joyce **Greenaway**, Lori **Hand**, Darren **Hay**, Krista **Imiola**, Catherine **Kanuka**, Donna **Kelly**, Benjamin **Lehto**, Anthony **Leon**, Akemi **Matsumiya**, Jane **Doe** #33, Jane **Doe** #34, Jane **Doe** #35, Anne Marie **McQuaid-Snider**, Lino **Mula**, Pamela **Opersko**, Gabriel **Paquet**, Christine **Paquette**, Carolin Jacqueline **Paris** , Jodie **Price**, Kevin **Price**, Giuseppe **Quadrini**, Saarah **Quamina**, Shawn **Rossiter**, Anthony **Rush**, Anthony **Shatzko**, Charles **Silva**, Ryan **Simko**, Norman **Sirois**, Brandon **Smith**, Catharine **Spiak**, Sandra **Stroud**, Anita **Talarian**, Daryl **Toonk**, Ryan **Towers**, Leanne **Verbeem**, Eran **Vooys**, Robert **Wagner**, Jason **Weatherall**, Melanie **Burch**, Steven **Cole**, Toni **Downie**, Jodi Stammis, **(Canada Post)**

- and -

Nicolas **Bell,** John **Doe** #18, John **Doe** #19, Jane **Doe** #36, John **Doe** #20, Paola Di **Maddalena**, Nathan **Dodds,** John **Doe** #21, Jane **Doe** #37, Nunzio **Giolti**, Mario **Girard**, Jane **Doe** #38, Jane **Doe** #39, You-Hui **Kim,** Jane **Doe** #40, Sebastian **Korak**, Ada **Lai**, Mirium **Lo,** Melanie **Mailloux**, Carolyn **Muir**, Patrizia **Paba,** Radu **Rautescu,** Aldo **Reano**, Jacqueline Elisabeth **Robinson**, John **Doe** #22, Frederick **Roy**, John **Doe** #23, Taeko **Shimamura,** Jason **Sisk**, Beata **Sosin,** Joel **Szostak**, Mario **Tcheon**, Rebecca Sue **Thiessen**, Jane **Doe** #41, Maureen **Yearwood**, **(Air Canada)**

- and -

John **Doe** #24, JOSÉE **Demeule**, Jacqueline **Gamble**, Domenic **Giancola,** Sadna **Kassan,** Marcus **Steiner**, Christina **Trudeau**, **(Air Canada Jazz)**

- and –

John **Doe** #25, Emilie **Despres**, **(Air Inuit)**

- and –

Rejean **Nantel**, **(Bank of Montreal)**

- and –

Lance Victor **Schilka**, **(BC Coast Pilots Ltd)**

- and –

Elizabeth **Godler, (BC Ferries)**

- and -

John **Doe** #26, Jane **Doe** #42, Tamara **Davidson,** Jane **Doe** #43, Brad **Homewood**, Chad **Homewood,** Charles Michael **Jefferson,** John **Doe** #27, Janice Laraine **Kristmanson**, Jane **Doe** #44, Darren Louis **Lagimodiere**, John **Doe** #28, John **Doe** #29, Mirko **Maras,** John **Doe** #30, John **Doe** #31, John **Doe** #32, John **Doe** #33, John **Doe** #34, Jane **Doe** #45, John **Doe** #35, Kendal Stace-**Smith**, John **Doe** #36, Steve **Wheatley, (British Columbia Maritime Employers Association)**

- and -

Paul **Veerman, (Brookfield Global Integrated Solutions)**

- and -

Mark **Barron**, Trevor **Bazilewich**, John **Doe** #37, Brian **Dekker**, John **Gaetz**, Ernest **Georgeson**, Kyle **Kortko**, Richard **Letain**, John **Doe** #38, Dale Robert **Ross, (Canadian National Railway)**

- and –

Tim **Cashmore**, Rob **Gebert** , Micheal Roger **Mailhiot, (Canadian Pacific Railway)**

- and –

Karin **Lutz, (DP World)**

- and –

Crystal **Smeenk, (Farm Credit Canada)**

- and –

Sylvie M.F. **Gelinas**, Susie **Matias**, Stew **Williams, (G4S Airport Screening)**

- and –

Shawn **Corman, (Geotech Aviation)**

- and –

Juergen **Bruschkewitz**, Andre **Deveaux**, Bryan **Figueira**, David **Spratt**, Guy **Hocking**, Sean **Grant**, **(Greater Toronto Airports Authority)**

- and –

Dustin **Blair**, **(Kelowna Airport Fire Fighter)**

- and -

Hans-Peter **Liechti**, **(National Art Centre)**

- and –

Bradley **Curruthers**, Lana **Douglas**, Eric **Dupuis**, Sherri **Elliot** , Roben **Ivens**, Jane **Doe** #46, Luke Van **Hoekelen**, Kurt **Watson**, **(Ontario Power Generation)**

- and –

Theresa **Stene**, Michael **Dessureault**, Adam **Pidwerbeski**, **(Parks Canada)**
-and-

John **Doe** #39, **(Pacific Pilotage Authority)**

- and –

Angela **Gross**, **(Purolator Inc.)**

- and -

Gerhard **Geertsema**, **(Questral Helicopters)**

- and -

Amanda **Randall**, Jane **Doe** #47, Frank **Veri**, **(RBC Royal Bank)**

- and –

James (Jed) **Forsman**, **(Rise Air)**

- and -

Jane **Doe** #48, **(Rogers Communications Inc)**

- and –

Jerrilynn **Rebeyka**, **(SaskTel)**

- and –

Eileen **Fahlman**, Mary **Treichel**, **(Scotiabank)**

- and -

Judah Gaelan **Cummins**, **(Seaspan Victoria Docks)**

- and –

Darin **Watson**, **(Shaw)**

- and -

Richard Michael Alan **Tabak**, **(SkyNorth Air Ltd)**

- and –

Deborah **Boardman**, Michael **Brigham**, **(Via Rail Canada)**

- and -

Kevin Scott **Routly**, **(Wasaya Airways)**

- and -

Bryce **Sailor**, **(Waterfront Employers of British Columbia)**

- and -

Joseph **Bayda**, Jamie **Elliott**, John **Doe** #40, Randall **Mengering**, Samantha **Nicastro**, Veronica **Stephens**, Jane **Doe** #49, **(WestJet)**

- and -

Melvin **Gerein**, **(Westshore Terminals)**

PLAINTIFFS
APPELLANTS 93

AND:

~~Her Majesty The Queen~~, Prime Minister Justin **Trudeau**, Deputy Prime Minister and Minister of Finance Chrystia **Freeland**, Chief Medical Officer Teresa **Tam**, Minister of Transport Omar **Alghabra**, Deputy Minister of Public Safety Marco **Mendicino**, Johns and Janes **Doe**

DEFENDANTS

NOTICE OF APPEAL

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Issued by:

REBECCA DUONG
REGISTRY OFFICER
AGENT DU GREFFE

Address of the local office:

Federal Court of Appeal
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

TO:

Adam Gilani
Ontario Regional Office
National Litigation Sector
Government of Canada
Suite 400, 120 Adelaide Street West, Toronto
Ontario M5H 1T1

APPEAL

THE APPELLANTS APPEAL to the Federal Court of Appeal, pursuant to s. 27 of the ***Federal Courts Act***, from the order of the Federal Court, Mr. Justice Fothergill, dated February 21st, 2023 in Federal Court Docket # T-1089-22, by which the Federal Court struck the claim, with prejudice, with respect to two thirds of the Plaintiffs, and further struck the claim with respect to one third of the Plaintiffs, with leave to amend.

THE APPELLANT ASKS that:

(a) The decision be set aside and that the matter proceed to trial with the Plaintiffs permitted to pursue the relief sought in this Statement of Claim;

(b) The order (judgment) of granting costs against the Plaintiffs be set aside;

(c) Costs of the motion to strike and within appeal, and,

(d) in accordance with ***Native Womens Assn. of Canada v Canada {1994} 3 SCR 627*** such further and other relief as counsel may request and this Honourable Court deems just.

THE GROUNDS OF APPEAL are as follows:

(a) That the Learned motions judge erred, in law, and contrary to the jurisprudence with respect to Justice Fothergill' ruling on ***in rem*** declaratory and other relief;

(b) That the Learned motions judge erred in ruling that two thirds of the Plaintiffs were required to pursue the Labour dispute regime under Federal Law and, in doing so:

(i) Blatantly ignored, and did not respond to, submissions from counsel, that the analysis in ***Weber (SCC)*** required a review of the terms of employment under the labour bargaining agreement which was ***not*** before the Court on the motion to strike;

(ii) That the claim was restricted to:

A. Declaratory relief (**in rem**) on constitutional grounds; and

B. Common-law, and constitutional torts, **all** grounded in misfeasance of public office;

C. Did not address, and biasedly ignored, counsel's submissions **and jurisprudence** which ruled that the tort of public misfeasance **can** be pursued within the context of unionized employees under a collective bargaining agreement;

(iii) Breached the Plaintiffs' rights to intelligible reasons for Appellate review contrary to, **inter alia, *Sheppard* (SCC),** and further breached the Plaintiffs' right to reasons n refusing to address counsel's submissions that took both a central part of the Plaintiffs' Memorandum of Argument, as well as the lion's share of the Plaintiffs' oral submissions before the Court, contrary to ***Baker*** (SCC) and the Appellate jurisprudence that a Court must directly address counsel submissions in the reasons, as set out by **inter alia, *Johnson*** (Ont. C.A) and ***Taylor*** (BCCA);

(iv) Ruling that the pleadings were "deficient" and "bad beyond argument" without setting out what is deficient about them, but blindly applying a ruling from another case which is not similar case to this one, nor on point;

(v) Exhibited clear (reasonable apprehension of) bias.

(c) The Learned judge further erred, in law, contrary to the Supreme Court of Canada jurisprudence on the test to be applied on a motion to dismiss/strike;

(d) The Learned motions judge erred, in law, in ruling sufficient facts were not pleaded to support the causes of action advanced;

(e) The Learned motions judge erred, in law, in usurping the function of the trial judge, and making determinations of fact, mixed fact and law, on the basis of bare pleading(s);

(f) Awarded of costs to the Defendants in circumstances where no costs should have been awarded, or an order of costs in the cause should have been awarded, in that the results of the motion were split;

(g) Such further and other grounds as counsel may advise and this Honourable Court permit

The Appellants propose that this appeal be heard in Toronto.

March 3rd, 2023

ROCCO GALATI LAW FIRM
PROFESSIONAL CORPORATION
Rocco Galati, B.A., LL.B., LL.M.
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Toronto, Ontario M6H 1A9

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Solicitor for the Appellants

Court File No.:

FEDERAL COURT OF APPEAL

B E T W E E N:

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants

NOTICE OF APPEAL

ROCCO GALATI LAW FIRM
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Solicitor for the Appellants

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the _____ day of _____ A.D. 20___

03 MAR 2023

Dated this _____ day of 03 MAR 2023 20___

REBECCA DUONG
REGISTRY OFFICER
AGENT DU GREFFE

This is Exhibit "FF" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

Court File No./N° du dossier du greffe : CV-22-00683322-0000

ONTARIO SUPERIOR COURT OF JUSTICE (TORONTO REGION)

CIVIL ENDORSEMENT FORM

(Rule 59.02(2)(c)(i))

BEFORE	Judge/Case Management Master	Court File Number:
	Vermette J.	CV-21-00661200-0000

Title of Proceeding:

Sgt. Julie Evans *et al.* Applicants

-v-

Attorney General for Ontario *et al.* Respondents

Case Management: ☐ **Yes** If so, by whom: | **X No**

Participants and Non-Participants: *(Rule 59.02(2)((vii))*

Party	Counsel	E-mail Address	Phone #	Participant (Y/N)
1) **Respondent Attorney General for Ontario**	**S. Zachary Green**	**zachary.green@ontario.ca**		**N**
2) **Applicants**	**Rocco Galati**	**rocco@idirect.com**		**N**
3)				
4)				
5)				

Date Heard: *(Rule 59.02(2)(c)(iii))* **May 5, 2021**

Nature of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

☐ Motion ☐ Appeal ☐ Case Conference ☐ Pre-Trial Conference ☐ Application

Format of Hearing (mark with an "X"): *(Rule 59.02(2)(c)(iv))*

☒ In Writing ☐ Telephone ☐ Videoconference ☐ In Person

If in person, indicate courthouse address:

Relief Requested: *(Rule. 59.02(2)(c)(v))*

Request by the Respondent Attorney General for Ontario that the court make an order under Rule 2.1.01(1) of the *Rules of Civil Procedure* dismissing this Application because it appears on its face to be frivolous or vexatious or otherwise an abuse of the process of the court.

Disposition made at hearing or conference (operative terms ordered): *(Rule 59.02(2)(c)(vi))*

The request is denied.

Court File No./N° du dossier du greffe : CV-22-00683322-0000

Costs: On a **N/A** indemnity basis, fixed at $ are payable by to [when]

Brief Reasons, if any: *(Rule 59.02(2)(b))*

Without commenting on the merits of the Application, there is no basis on the face of the pleading for this matter to be dealt with under Rule 2.1.01 of the *Rules of Civil Procedure* rather than by way of motion.

Additional pages attached: ☐ Yes **X** No

May 5, , 20 **21**
Date of Endorsement *(Rule 59.02(2)(c)(ii))*

Signature of Judge/Case Management Master *(Rule 59.02(2)(c)(i))*

This is Exhibit "GG" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

CITATION: M.A. v. De Villa, 2021 ONSC 3828
COURT FILE NO.: CV-21-661284
DATE: 20210527

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: M.A. and L.A. (Minors represented by their Litigation Guardian Renata Dziak), E.P. and R.P. (Minors represented by their Litigation Guardian Catherine Braund-Pereira), L.S. (Minor represented by his Litigation Guardian Bojan Sajlovic), N.K. (Minor represented by his Litigation Guardian Helena Kosin) (Students at the Toronto District School Board), Nancy O'Brien (Toronto District School Board Teacher);
G.M., W.M., J.M., and L.M. (Minors represented by their Litigation Guardian Scarlett Martyn), M.D. (Minor represented by Litigation Guardian Lindsay Denike) (Students at the Durham District School Board), Katrina Wiens (Teacher at Durham District School Board);
M.L.J. and M.G.J. (Minors represented by their Litigation Guardian Angela Johnston), C.V., E.W., and M.V. (Minors represented by their Litigation Guardian Jeff Varcoe) (Students at the Halton District School Board), David Sykes (Teacher, Resource Consultant for the Deaf, Provincial Schools Authority);
N.M. (Minor represented by his Litigation Guardian Lorie Lewis) J.R.B. (Minor represented by his Litigation Guardian Jocelyne Bridle), Children's Health Defence (Canada), and Educators for Human Rights, Applicants

AND:

Eileen De Villa, (Chief Medical Officer, City of Toronto Public Health), City of Toronto, Dr. Lawrence Loh, (Chief Medical Officer for Peel Public Health), Hamidah Meghani, (Chief Medical Officer for Halton Public Health), Robert Kyle, (Chief Medical Officer for Durham Public Health), Dr. Nicola Mercer, (Chief Medical Officer for Wellington-Dufferin-Guelph Public Health), Dr. David Williams (Ontario Chief Medical Officer of Health), The Attorney General for Ontario, The Minister of Education, The Minister of Health and Long-Term Care, The Toronto District School Board, The Halton District School Board, The Durham District School Board, Robert Hochberg, Principal at Runnymede Public School, Superintendent Debbie Donsky of Toronto District School Board, Johns and Janes Does (Officials of the Defendants Minister of Education, Health and Long-Term Care and School Boards), Respondents

BEFORE: E.M. Morgan J.

COUNSEL: *Rocco Galati*, for the Applicants

Padriac Ryan, for the Respondents

HEARD: In writing

ENDORSEMENT

[1] Counsel for the Attorney General of Ontario has written to the Court asking for a ruling in writing for this Application to be dismissed as being frivolous and vexatious. The Applicants bring a Charter challenge against numerous public officials alleging that the formulation and implementation of various public health policies and measures relating to the ongoing COVID 19 pandemic violate the rights of Canadians.

[2] I do not have before me a full record. I only have the Notice of Application issued April 9, 2021, setting out the grounds for the Application and the remedies sought.

[3] The grounds described in the Notice are wide-ranging and, perhaps, a tad outlandish in content and tone. Without the benefit of a complete record and full legal argument, however, I would not want to opine on whether the Application promises to be a success or failure. Counsel for the Attorney General obviously believes that the entire litigation is problematic. But the Notice of Application does cite known grounds of Charter challenge while at the same time it seems to stretch existing legal concepts in an effort to perhaps make new law.

[4] It strikes me that there are serious legal challenges awaiting the Applicants, not the least of which is that some of their claims at first blush appear to be potentially in the jurisdiction of Divisional Court rather than this Court. But those questions require the Court to have before it an Application Record, and not just a Notice. They also require the input of counsel. As it is, I only have a letter from counsel for the Attorney General and it does not appear that counsel for the Applicants has had notice of the Attorney General's request.

[5] For the moment, I can only repeat the words of the Court of Appeal in *Khan v. Krylov & Company*, 2017 ONCA 625, at para. 12: "Rule 2.1 is an extremely blunt instrument. It is reserved for the clearest of cases, where the hallmarks of frivolous, vexatious, or abusive litigation are plainly evident on the face of the pleading. Rule 2.1 is not meant to be an easily accessible alternative to a pleadings motion, a motion for summary judgment, or a trial." The Notice of Application does not meet this test. I cannot say that the Application is frivolous and vexatious within the meaning of Rule 2.1.01 of the *Rules of Civil Procedure*.

[6] This Application is in need of some case management, and the sooner the better. Counsel for the Attorney General and counsel for the Applicants are to be in touch with my assistant in order to schedule a case conference prior to any responding materials being served.

Morgan J.

Date: May 27, 2021

This is Exhibit "HH" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Action4Canada v. British Columbia (Attorney General)*, 2022 BCSC 1507

Date: 20220829
Docket: S217586
Registry: Vancouver

Between:

Action4Canada, Kimberly Woolman, The Estate of Jacqueline Woolman, Linda Morken, Gary Morken, Jane Doe #1, Brian Edgar, Amy Muranetz, Jane Doe #2, Ilona Zink, Federico Fuoco, Fire Productions Limited, F2 Productions Incorporated, Valerie Ann Foley, Pastor Randy Beatty, Michael Martinz, Makhan S. Parhar, North Delta Real Hot Yoga Limited, Melissa Anne Neubauer, Jane Doe #3

Plaintiffs

And

Her Majesty the Queen in Right British Columbia, Prime Minister Justin Trudeau, Chief Public Health Officer Theresa Tam, Dr. Bonnie Henry, Premier John Horgan, Arian Dix, Minister of Health, Jennifer Whiteside, Minister of Education, Mable Elmore, Parliamentary Secretary for Seniors' Services and Long-Term Care, Mike Farnworth, Minister of Public Safety and Solicitor General, British Columbia Ferry Services Inc. (operating as British Columbia Ferries), Omar Alghabra, Minister of Transport, Vancouver Island Health Authority, The Royal Canadian Mounted Police (RCMP), and the Attorney General of Canada, Brittney Sylvester, Peter Kwok, Providence Health Care, Canadian Broadcasting Corporation, Translink (British Columbia)

Defendants

Before: The Honourable Justice A. Ross

Reasons for Judgment

Counsel for the Plaintiffs: R. Galati

Counsel for the Defendants, Her Majesty the Queen in Right British Columbia, Premier John Horgan, Adrian Dix Minister of Health, Jennifer Whiteside, Minister of Education, Mable Elmore, Parliamentary Secretary for Seniors' Services and Long-Term Care, Mike Farnworth, Minister of Public Safety and Solicitor General, Dr. Bonnie Henry:	M.A. Witten
Counsel for the Defendants, Translink (British Columbia), Peter Kwok:	T.J. Delaney J. Hamilton
Counsel for the Defendants, Providence Health Care, Vancouver Island Health Authority:	T. Wedge L. Miller
Counsel for the Defendants, Attorney General of Canada, Prime Minister Justin Trudeau Chief Public Health Officer Theresa Tam, Omar Alghabra, Minister of Transport, Royal Canadian Mounted Police (RCMP)	A.C. Gatti O. French
Counsel for the Defendants, British Columbia Ferry Services Inc., Brittney Sylvester	C. Bildfell
Place and Date of Hearing:	Vancouver, B.C. May 31, 2022
Place and Date of Judgment:	Vancouver, B.C. August 29, 2022

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Introduction

[1] In this action, the plaintiffs seek relief for various hardships and damages they say they have suffered. They seek damages, and other relief, from various government entities and employees. The plaintiffs allege that their damages flow from various restrictions instituted due to the COVID-19 pandemic.

[2] In this application, the defendants, individually and collectively, seek an order striking the notice of civil claim ("NOCC") on the basis that it is deficient in both form and substance. The defendants further submit that the action should be dismissed. I set out their arguments below.

[3] In response, counsel for the plaintiffs submits that the claim should be allowed to proceed in its current form. Alternatively, counsel submits that if I find that the current pleading is improper, I should grant leave to amend it.

Issues

[4] The issues for me to decide are:

a) Should the NOCC be struck in whole or in part?

b) Should the plaintiffs be granted leave to amend?

[5] For the reasons set out below, my answers to these questions are:

a) Yes, the NOCC is prolix and must be struck.

b) Yes, the plaintiffs should be granted leave to amend.

[6] I set out my reasoning below.

The Notice of Civil Claim

[7] In order to understand my reasons below, it is necessary to describe the basis of the plaintiffs' claims and the characteristics of the NOCC.

[8] First, this action derives from the health orders, restrictions and lockdowns declared by the Federal and Provincial governments in relation to the COVID-19 pandemic. In broad overview, the plaintiffs say that the government measures:

a) were not based on science;

b) exceeded the authority of the government agencies;

c) resulted in restrictions that breached the *Charter* rights of the plaintiffs; and

d) caused damages.

[9] The plaintiffs complain about government actions in four general areas:

a) coercive vaccination mandates;

b) masking;

c) lockdowns, restrictions on gatherings and social distancing; and

d) PCR testing.

[10] I should note that my understanding of the claim, as described in the prior two paragraphs, derives primarily from the submissions of plaintiffs' counsel at the hearing of this application and not from my reading of the NOCC itself.

[11] The NOCC is 391 pages long.

[12] The original NOCC named as plaintiffs:

a) Action4Canada;

b) twelve named individuals;

c) three individuals identified as Jane Doe 1, 2 and 3;

d) one estate; and

e) three corporate entities.

[13] Action4Canada is described as a grassroots organization centered in British Columbia. It was "co-founded" in 2019. It has no legal existence. It is not an incorporated entity.

[14] Four of the original plaintiffs are no longer involved in the action:

a) One individual plaintiff and the estate discontinued their participation in the proceeding.

b) One individual, Mr. Makhan Parhar, died. His claim, and the claim of his business, North Delta Real Hot Yoga Limited, have abated.

[15] Thus, as the matter now stands there are ten individual named plaintiffs, three Jane Does and two corporate entities. In addition, there is Action4Canada.

[16] The plaintiffs' claims fall into several categories of allegations. I describe them briefly below. In summarizing the allegations, I do not mean to diminish the alleged harm suffered by any of these plaintiffs. My purpose is simply to categorize the nature of their claims. For context, the next ten subparagraphs describe the allegations set out in more than 290 subparagraphs comprising 75 pages of the NOCC.

a) Two individual plaintiffs ran businesses that were negatively affected by the public health orders.

b) One plaintiff alleges she was assaulted and unlawfully arrested by transit police while riding the SkyTrain without a mask.

c) Two plaintiffs allege they were harassed by grocery store employees in Sooke, and then unlawfully arrested by the RCMP because they were not masked.

d) Two plaintiffs allege that they were mistreated, or banned, by BC Ferries staff as a result of their refusal to wear masks.

e) One plaintiff is a pastor who continued to hold church services after public health orders required his church to cease. The continuation of church services led to interactions with RCMP and threats of by-law infraction tickets being issued if the conduct continued.

f) One plaintiff arrived at Vancouver Airport from an international flight and proceeded through the airport without a mask, leading to a fine of $3,450. There is no indication whether he contested that ticket in another forum.

g) One plaintiff, a teacher in the BC Public School system, obtained accommodations regarding mask-wearing from her employer in the 2020-2021 school year but was later advised that she would not be rehired for the next school year. There is no indication whether her employment relationship would be governed by a collective agreement.

h) One plaintiff was a patient at St. Paul's Hospital and was forced to leave the hospital because she (and her parents) refused to wear a mask.

i) One plaintiff is a nurse-aid in a long-term care facility who alleges that the public health measures created a stressful environment for her and many people like her. She "feels concerned not only for herself but also for her clients."

j) One plaintiff is a health-care worker at Royal Inland Hospital who faced employer mandates to wear masks and get vaccinated. Again, there is no indication whether her employment relationship would be governed by a collective agreement.

[17] These individual claims occurred at what I will describe as the "operational" level. In each of these interactions, the public agencies involved were enforcing the

health mandates issued by the Federal Government and the Province of British Columbia.

[18] The allegations at the operational level are then linked to the allegedly overreaching and ill-advised health mandates imposed by each level of government. Those mandates, in turn, are linked to individuals within government, either elected or employed.

[19] The description of the defendants comprises 20 paragraphs set out over three pages of the NOCC. The defendants fall into five separate categories:

a) the Crown (both Federal and Provincial);

b) Ministers of the Crown (both Federal and Provincial);

c) Public Health Officers (both Federal and Provincial);

d) Crown agencies, including the Canadian Broadcasting Corporation, British Columbia Ferry Services Inc., The Royal Canadian Mounted Police, Vancouver Island Health Authority, Providence Health Care and Translink (British Columbia); and

e) individual employees of Crown agencies.

[20] The description of "THE FACTS" in the NOCC comprises 316 paragraphs set out over 226 pages. This section of the NOCC also includes 399 footnotes, the majority of which contain links to websites.

[21] I note, for the clarity of anyone reading the pleadings, that the numbering of the paragraphs in the NOCC leads to further confusion. First, there are two paragraphs numbered "12". More problematic, the paragraphs proceed from 1-331 followed, for no reason, by paragraphs 255-363. As a result, the section labelled "THE FACTS" appears to comprise only 240 paragraphs (44-284), when it actually consists of 316 paragraphs. It follows that the reader must be careful to address

either the first, or the second, paragraph 255 etc. I return to this issue below when discussing the second paragraph 289.

[22] The "RELIEF SOUGHT" section of the NOCC comprises 40 paragraphs, most with multiple subparagraphs, set out over 43 pages.

[23] The plaintiffs (individual, corporate and Action4Canada) seek general damages for breaches of their Charter rights. Each plaintiff claims a set amount of general damages. In addition, as against the defendant, Canadian Broadcasting Corporation, the plaintiffs collectively seek general damages of $10,000,000 and punitive damages of $10,000,000. I note that the pleading of specific amounts for general damages is clearly in violation of Rule 3-7(14) of the *Supreme Court Civil Rules*, B.C. Reg 168/2009 [*Rules*].

[24] The first paragraph under the "THE FACTS" heading states:

> 44. In 2000 Bill Gates steps down as Microsoft CEO and creates the "Gates Foundation" and (along with other partners) launches the 'Global Alliance for Vaccines and Immunization ("GAVI"). The Gates Foundation has given GAVI approximately $4.1 Billion. Gates has further lobbied other organizations, such as the World Economic Forum ("WEF") and governments to donate to GAVI including Canada and its current Prime Minister, Justin Trudeau, who has donated over $1 billion dollars to Gates/GAVI.

[25] I set out this paragraph to illustrate the wide-ranging and unconstrained nature of the allegations in the NOCC. The defendants submit that the NOCC makes allegations about the acts and motivations of many non-parties. That submission is correct.

[26] Many of the allegations contained in the NOCC do not accord with, and specifically challenge, the mainstream understanding of the science underlying both the existence of, and the government's responses to the COVID-19 pandemic. The defendants submit that the allegations in the NOCC constitute "conspiracy theories". In response, the plaintiffs submit that they have pled material facts that expose "conspiracies". The former expression, used by the defendants, is recognized as a pejorative term. The latter, used by the plaintiffs, alleges that the NOCC is exposing

an underlying systemic issue relating to the pandemic. Those allegations are, in turn, tied to allegations of misfeasance in public office. The plaintiffs also allege criminal conduct by the defendants.

[27] To be clear, in these reasons, I have not attempted any weighing, limited or otherwise, in respect of the facts alleged by the plaintiffs. I have undertaken my assessment on the assumption that the plaintiffs' allegations, if properly pleaded, are capable of being proven at trial.

Basis of the Defendants' Application

[28] A summary of the defendants' submissions is as follows:

a) The NOCC is prolix.

   i. The *Rules* provide that a pleading must set out a concise statement of the material facts, the relief sought and a concise summary of the legal basis.

   ii. The *Rules* on pleadings are mandatory. Failure to follow the *Rules* will lead to a striking of the pleading.

b) Because of the prolix and wide-ranging nature of the NOCC, it is not capable of being answered by the defendants.

c) The entirety of the claim is frivolous and vexatious. After striking the NOCC, I should not allow the plaintiffs an opportunity to amend it.

[29] In response to the application, the plaintiffs submit that the court should look to first principles:

a) On an application to strike:

   a. the allegations pleaded in the NOCC must be taken as true or capable of being proven to be true; and

   b. the court's role is not to reach a decision on the claim's chance of success.

b) The fact that a pleading reveals an arguable, difficult or important point of law, is not a justification to strike it: *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959.

c) The plaintiffs' right to seek declaratory relief is neither constrained by form nor bounded by substantive content: *Solosky v. The Queen*, [1980] 1 S.C.R. 821 at 830.

d) The constitutionality of legislation is always a justiciable issue: *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138 at 151.

e) The writ of *mandamus* is the proper writ to correct government overreach.

[30] In summary, the plaintiffs submit that there are *Charter* rights affected by government policies. This may be a long and complex piece of litigation, with difficult and troubling allegations, but that does not mean that it should be dismissed. Again, I garner that summary from the plaintiff's submissions on this application, not from the NOCC.

Analysis

[31] I will deal with the defence submission in two stages. First, whether the NOCC should be struck. Second, whether the plaintiffs should be granted liberty to amend.

Should the NOCC be struck on the basis that it is prolix?

[32] The Oxford English Dictionary defines "prolix" as writing that is "tediously lengthy". At 391 pages, the NOCC is clearly prolix.

[33] Prolixity can warrant striking a claim pursuant to R. 9-5(1), which reads:

> **Scandalous, frivolous or vexatious matters**
>
> (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
>
> (a) it discloses no reasonable claim or defence, as the case may be,

> (b) it is unnecessary, scandalous, frivolous or vexatious,
>
> (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
>
> (d) it is otherwise an abuse of the process of the court,
>
> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[34] The defendants submit the NOCC's prolixity renders it scandalous within the meaning of subrule 9-5(1)(b). The defendants also submit that prolixity falls under subrule 9-5(1)(c) and constitutes a further basis to strike:

a) Pleadings are embarrassing where they are prolix, contain argument, or fail to state the real issue in an intelligible way: *Sahyoun v. Ho*, 2015 BCSC 392 at para. 62 [*Sahyoun*].

b) Regardless of the subrule, the law is clear that prolixity can be a basis for striking where the pleadings are prolix and confusing or they render it impossible for the opposing party to know the case they must meet: *The Owners, Strata Plan LMS3259 v. Sze Hang Holding Inc.*, 2009 BCSC 473 at para. 36.

c) In certain cases, the pleadings are so overwhelmed with difficulties that it will not be possible to categorize them into specific subparagraphs of R. 9-5(1): see, for instance, *Sahyoun* at para. 64.

[35] The defendants submit that, more important than the length of the NOCC is the unlimited scope of the document. It is not a piece of legal drafting that complies with the *Rules*, or basic tenets, of pleading. It is not a document that can be properly answered in a response to civil claim. The defendants submit that those problems arise, in part, because there are multiple allegations against the defendants individually and jointly. It would be extremely difficult, if not impossible, for any individual defendant to determine whether it is required to respond to any particular allegation. Were the action to proceed in its current form, individual defendants would not be in a position to know whether they were tasked with a burden of

disproving or countering the myriad allegations. They would not know what case they were required to meet.

[36] The defendants rely on the decision in *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.,* 2021 BCCA 362 [*Mercantile*] wherein Voith J.A. wrote, in relation to the requirements of pleadings:

> [44] Nevertheless, none of a notice of claim, a response to civil claim, and a counterclaim is a story. Each pleading contemplates and requires a reasonably disciplined exercise that is governed, in many instances in mandatory terms, by the *Rules* and the relevant authorities. Each requires the drafting party to "concisely" set out the "material facts" that give rise to the claim or that relate to the matters raised by the claim. None of these pleadings are permitted to contain evidence or argument.

[37] I note again paragraph 44 of the NOCC (above at paragraph 24). It is, quite clearly, the beginning of a "story".

[38] Justice Voith continued in his conclusion in *Mercantile*:

> [58] I am of the view that the Response and Counterclaim suffer from the numerous and pervasive difficulties that I have described. These difficulties cause the Response and Counterclaim to be prolix and both confusing and inconsistent in various respects. They offend various mandatory requirements of the *Rules* and they frustrate the important objects that are served by proper pleadings.

[39] I note, for context, that the response to civil claim in under discussion in *Mercantile* was 12 pages and the counterclaim was five pages.

[40] In addition, the defendants submit that the NOCC breaches other tenets of pleading. Among other problems: it pleads evidence, includes non-justiciable claims and alleges criminal conduct by the defendants. These deficiencies fall largely within the scope of R. 9-5(1)(a), in that they disclose no reasonable claim.

[41] As an example of the plaintiffs' non-justiciable claims, the defendants point to (the second) paragraph 289 of the NOCC which seeks the following declaration:

> 289. A Declaration that the purported order, by Dr. Bonnie Henry, purportedly pursuant to s. 52(2) of the *Public Health Act*, that "the transmission of the infectious agent SARS-CoV-2, based on high "case

counts", based on a PCR test, is *ultra vires* the *Act* and *non est factum*, in that:

...

(b) The classification as such is not scientifically nor medically based;

(c) The evidence is lacking and contrary to the scientific and medical evidence;

(d) That "cases' [*sic*] do not equate to "deaths" and that the purported death rate is no higher than complications from the annual influenza;

(e) That the distorted "case" counts are fraudulent, based on the fraudulent use generating cases of "PCR" test, which is a test that:

a) At best was designed as a "screening test" which requires a follow-up culture and blood test to ensure the detection of an infectious virus, and was never designed, nor equipped to be a diagnostic test;

b) That is is [*sic*] fraudulently being used as a diagnostic test;

c) That the PCR test has scientifically been debunked, as well as judicially determined, based on the scientific evidence, that when used at a "threshold cycle" of thirty five (35) or higher, to cause between 82% to 96.5% "false positives";

...

[42] The defendants submit that this is (or these are) issues and remedies that are non-justiciable.

[43] In response to these submissions, counsel for the plaintiffs submits:

a) the NOCC pleads all material facts necessary to support the causes of action;

b) all causes of action have been fully and properly pled;

c) there is no basis in law to strike the NOCC, in whole or in part;

d) the court should only strike a pleading where it is plain and obvious that it is "bad beyond argument": *Nelles v. Ontario*, [1989] 2 S.C.R. 170 at 176; and

e) The extent and complexity of the NOCC is proportionate to the extent and complexity of the issues at hand. Counsel describes those issues as: "the purported global pandemic, these scientific/medical bases or non-basis of the

> [COVID] measures, its history, and the constitutional violations imposed in Canada and abroad."

[44] On that basis, the plaintiffs submit that they should be allowed to proceed with the litigation under the current version of the NOCC.

[45] On the first issue, whether the NOCC is prolix, I agree with the defendants' submission: the NOCC, in its current form, is not a pleading that can properly be answered by a responsive pleading. It describes wide-ranging global conspiracies that may, or may not, have influenced either the federal or the provincial governments. It seeks rulings of the court on issues of science. In addition, it includes improper allegations, including criminal conduct and "crimes against humanity". In my opinion, it is "bad beyond argument".

[46] I further find that it is not a document that the court can mend by striking portions. I find that this NOCC is analogous to the Statement of Claim considered by Justice K. Smith (as he then was) in *Homalco Indian Band v. British Columbia* (1998), 25 C.P.C. (4th) 107 (B.C.S.C.) [*Homalco*]. He wrote:

> [11] In my view, the statement of claim is an embarrassing pleading. It contains much that appears to be unnecessary. As well, it is constructed in a manner calculated to confuse the defendants and to make it extremely difficult, if not impossible, to answer. As a result, it is prejudicial. Any attempt to reform it by striking out portions and by amending other portions is likely to result in more confusion as to the real issues. …

[47] As was the case in *Homalco*, attempting to bring the NOCC into compliance with the *Rules* by piecemeal striking and amending would invite more confusion and greater expenditure of the resources of all concerned.

[48] I find that the NOCC is prolix. It is not a proper pleading that can be answered by the defendants. It cannot be mended. Given that finding, I have no hesitation in ruling that it must be struck in whole.

Should the plaintiff's claim be dismissed (or should the plaintiffs be granted leave to amend)?

[49] The second issue in this case is whether the plaintiffs should be granted leave to amend the pleadings.

[50] In my discussion below, I have indicated that there may be legitimate claims that a plaintiff could advance against one or more of the defendants. However, I wish to be clear that:

a) as noted above, I have assumed that allegations are capable of being proved;

b) hence, by ruling that there may be claims that might properly be brought, I make no finding on the prospect of success of such claims;

c) although I have specifically noted certain types of claims that are improperly included in the current NOCC, the absence of any comment by me should not be considered an endorsement of any specific cause of action that is in the NOCC but omitted in my discussion; and

d) I make no ruling on the proper plaintiffs, or the proper defendants, in this action. Those will be issues for the plaintiffs to decide, in line with the proper tenets of pleading. In turn, the defendants will be at liberty to make an application, if necessary, to determine the proper parties.

[51] To put those points another way, I have indicated above that the prolix nature of the NOCC makes it impossible for the defendants to respond to it. For the same reason, I am not able to parse the 391 pages of the improperly drafted NOCC and indicate whether paragraphs, categories or claims should remain in, or should be struck. That is not the proper role of this court. It is counsel's obligation to draft pleadings that do not offend the mandatory requirements of the *Rules.*

[52] The defendants submit that the NOCC pleads to a number of claims that are improper in a civil action. In part, the defendants point to the following elements of the NOCC as inappropriate:

a) alleging criminal conduct;

b) seeking a declaration that the preponderance of the scientific community is of the view that masks are ineffective in preventing transmission;

c) seeking a declaration that the motive and execution of the COVID-19 prevention measures by the World Health Organization are not related to a *bona fide* "pandemic";

d) seeking a declaration that administering medical treatment without informed consent constitutes experimental medical treatment which is contrary to the Nuremberg Code, the Helsinki Declaration and is a crime against humanity under the *Criminal Code* of Canada;

e) seeking a declaration that the unjustified, irrational, and arbitrary decisions of which businesses would remain open, and which would close, as being "essential", or not, was designed and implemented to favour mega-corporations and to *de facto* put most small businesses out of business; and

f) seeking a declaration that the measures of masking, social distancing, PCR testing, and lockdowns are not scientifically based, and are based on a false and fraudulent use of the PCR test.

[53] I agree with the defendants that these are improper claims.

[54] I note the remarkably apposite comments of Strayer J. in *Vancouver Island Peace Society v. Canada,* [1992] 3 F.C. 42 at 51:

> … It is not the role of the Court in these proceedings to become an academy of science to arbitrate conflicting scientific predictions, or to act as a kind of legislative upper chamber to weigh expressions of public concern and determine which ones should be respected. Whether society would be well served by the Court performing either of these functions, which I gravely doubt, they are not roles conferred upon it in the exercise of judicial review ...

[55] A significant underlying theme of the NOCC is the pursuit of rulings from this court on the proper interpretation of scientific data. As such, much of the NOCC

relates to non-justiciable issues. I note the extract from (the second) paragraph 289 of the NOCC quoted above (at paragraph 41). It is beyond doubt that the plaintiffs seek to turn this court into an academy of science wherein a judge will be asked to prefer their science over the government's science. Alternatively, the plaintiffs hope that this court will act as a further legislative chamber to review, criticize or overturn the policies of the legislative and executive branches of government. That is not the proper role of this court except in circumstances where those actions infringe on protected *Charter* rights or exceed the bounds of delegated authority.

[56] An additional issue, related to justiciability, is that the NOCC seeks a number of declarations of fact. In *West Moberly First Nations v. British Columbia*, 2020 BCCA 138 at para. 312, the Court of Appeal reviewed the law concerning the propriety of declaratory relief. The Court noted that even when the requirements set out in *S.A. v. Metro Vancouver Housing Corp.*, 2019 SCC 4 at para. 60 are met, declaratory relief remains discretionary:

> [310] Where these factors are met, a court looks at the practical value of the declaration in assessing if it should exercise its discretion to grant such a remedy:
>
> > A declaration can only be granted if it will have practical utility, that is, if it will settle a "live controversy" between the parties: see also *Solosky v. The Queen*, 1979 CanLII 9 (SCC), [1980] 1 S.C.R. 821; *Borowski v. Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 S.C.R. 342.
> >
> > *Daniels* at para. 11; see also *S.A.* at para. 61.
>
> [311] This Court has also phrased the question as "whether a 'useful purpose' would be served by granting the order": *Wakelam v. Wyeth Consumer Healthcare/Wyeth Soins de Sante Inc.*, 2014 BCCA 36 at para. 71; see also *Greater Vancouver Regional District v. British Columbia (Attorney General)*, 2011 BCCA 345 at para. 52 [*GVRD*].
>
> [312] An assessment of the practical utility of a declaration necessarily looks at the effect of the requested remedy on the parties' rights. Declarations must be connected to legal rights, rather than, for example, facts "detached" from those rights or "law generally": *1472292 Ontario Inc. (Rosen Express) v. Northbridge General Insurance Company*, 2019 ONCA 753 at para. 30; *Gouriet v. Union of Post Office Workers*, [1978] A.C. 435 at 501. Detached facts and general pronouncements of law have little utility.
>
> [Emphasis added.]

[57] A good example of a proposed declaration of fact is set out at (the second) para. 302 of the NOCC where the plaintiffs seek:

> A Declaration that the declared rationales and motives, and execution of COVID Measures, by the WHO, are not related to a bona fide, nor an actual 'pandemic', and declaration of a bona fide pandemic, but for other political and socio-economic reasons, motives, and measures at the behest of global Billionaire, Corporate and Organizational Oligarchs

[58] This is just one example, among many, of a declaration that is detached from law generally. It has little to do with the rights of the parties and instead seeks a declaration of fact about the motives of a non-party international organization. Pleading declaratory relief of this nature is improper.

[59] The defendants urge upon me that the problems with the NOCC are sufficient grounds for me to conclude that this entire action is an abuse of process and should be dismissed on the basis that it is clearly frivolous and vexatious.

[60] I do not accept that submission on behalf of the defendants. For the reasons set out below, I decline to dismiss the action.

[61] In support of the claims made within the NOCC, counsel for the plaintiffs directed me to several Canadian decisions, plus two from other countries:

a) The Supreme Court of the United States decision indexed as *Roman Catholic Diocese of Brooklyn, New York v. Andrew M. Cuomo, Governor of New York*, 592 U.S. ___ (2020) [*Diocese of Brooklyn*]; and

b) *Jacob Puliyel v. Union of India* (2 May 2022), Writ Petition (Civil) No. 607 of 2021 (Supreme Court of India) [*Puliyel*].

[62] In the *Diocese of Brooklyn* decision, the Court enjoined the state from enforcing the "severe" restrictions on religious services. The majority wrote, at page 5:

> Members of this Court are not public health experts, and we should respect the judgment of those with special expertise and responsibility in this area. But even in a pandemic, the Constitution cannot be put away and forgotten.

> The restrictions at issue here, by effectively barring many from attending religious services, strike at the very heart of the First Amendment's guarantee of religious liberty. Before allowing this to occur, we have a duty to conduct a serious examination of the need for such a drastic measure.

[63] Hence, the *Diocese of Brooklyn* decision assists the plaintiffs for the (obvious) proposition that constitutional rights must be protected, even within a pandemic.

[64] The plaintiffs also rely upon the *Puliyel* case from India as an example of a court striking down the COVID-vaccine measures of a government on the basis that they offended protections of bodily integrity and hence, were unconstitutional.

[65] I note that cases from the Indian Supreme Court are very rarely referenced in this jurisdiction. I accept that the judge in the *Puliyel* case engaged in a review of vaccine mandates and their impact on constitutionally protected rights. However, in my opinion, the *Puliyel* case provides limited assistance to the plaintiffs. In very brief overview, the highest level of intervention by the court consisted of directions that:

a) the government could not force vaccinations on the populace. But, the court was clear to note that the government was not forcing vaccines on the populace. At the same time, the court confirmed that, given the pandemic, the government could restrict the activities of unvaccinated persons and is "entitled to regulate issues of public health concern by imposing certain limitations on individual rights…"

b) required the government to release statistics to the public relating to vaccination programs; and

c) in addition, the court made a "suggestion", that in the context of the rapidly-evolving situation presented by the COVID-19 pandemic, the government should review the vaccine mandates.

[66] However, in my opinion, the case provides more support for the defendants' position than the plaintiffs'. For example, at para. 89, Justice Rao wrote:

> (iv) On the basis of substantial material filed before this Court reflecting the near-unanimous views of experts on the benefits of vaccination in

> addressing severe disease from the infection, reduction in oxygen requirement, hospital and ICU admissions, mortality and stopping new variants from emerging, this Court is satisfied that the current vaccination policy of the Union of India is informed by relevant considerations and cannot be said to be unreasonable or manifestly arbitrary. Contrasting scientific opinion coming forth from certain quarters to the effect that natural immunity offers better protection against COVID-19 is not pertinent for determination of the issue before us.

[67] There are several other statements in the *Puliyel* decision that do not align with the plaintiffs' position in this case. For example, on paediatric vaccinations, Rao J. ruled "it is beyond the scope of review for this Court to second-guess expert opinion, on the basis of which the Government has drawn up its policy."

[68] Boiled down to its core, the *Puliyel* case provides support for two basic points that assist the plaintiffs:

a) government policies cannot unnecessarily infringe upon the Charter rights of individuals; and

b) the decision is an example of a court hearing, and (to some extent) ruling upon, an analogous claim on its merits. In doing so, the court dismissed the preliminary objection of the Union of India.

[69] I note that there is little need to exceed our province's borders for either of these two propositions. There is binding authority for those propositions much closer to home. In particular, Chief Justice Hinkson, in *Beaudoin v. British Columbia,* 2021 BCSC 512, ruled that the petitioners' *Charter* rights (s. 2(c) and (d)) were infringed by specific "Gathering and Events" orders issued by the Provincial Health Officer. (I note that decision is under appeal. However, at present it is binding upon me pursuant to the principles enunciated in *Hansard Spruce Mills Limited (Re)*, [1954] 4 D.L.R. 590.)

[70] On whether the issues are "justiciable" I note the decision of Justice Coval in *Canadian Society for the Advancement of Science in Public Policy v Henry*, 2022 BCSC 724, where he wrote, at para. 39:

> [39] Regarding justiciability, the Petition challenges state action based on legislatively-delegated discretionary powers. In my view, the petitioners are correct that whether those actions comply with the *Charter* and *JRPA* are clearly questions suitable for judicial determination (*CCD*, para 90).

[71] Put simply, individuals have standing to question whether state actions infringe their *Charter* protected rights. Hence, in this case, there is a prospect that the plaintiffs could put forward a valid claim that certain of the COVID-based health restrictions instituted by the Federal or Provincial governments infringed their *Charter* rights. In addition, it is possible that other valid claims may exist. It will be for the plaintiff to plead those causes of action in accordance with the *Rules.* Such claims need to be framed in a manner that is intelligible and allows the defendants to know the case they have to meet. It must also confine itself to matters that are capable of adjudication by this court and relief this court is capable of granting.

[72] The existence of a single potential, viable cause of action means that it would be improper for me, at this stage, to foreclose upon the plaintiffs' right to bring their claims. I note that, in the *Homalco* decision, despite finding that the plaintiff's pleading was "embarrassing" Smith J. granted leave to amend because potential causes of action existed. In doing so, he stayed further steps pending the filing and delivery of a fresh pleading by the plaintiff. I make the same order. This action is stayed until the filing of a fresh pleading by the plaintiff.

[73] I noted above the defendants' submission that there are sufficient grounds for me to conclude that, based on the NOCC, this entire action is an abuse of process or clearly frivolous and vexatious. For the reasons set out above, I do not accept that submission. However, if the next iteration of NOCC contains the same, or similar, problems, then the defendants' arguments on these issues will be strengthened.

Summary and Conclusion

[74] In summary:

a) I find that the NOCC, in its current form, is prolix and must be struck in its entirety;

b) I grant the plaintiffs liberty to amend the NOCC; and

c) This action is stayed pending the filing of a fresh pleading.

[75] On the issue of costs, I note that each plaintiff is pursuing this action seeking money damages from one or more defendant. In responding to those claims each defendant has been put to the expense of answering (if not filing a response) to the NOCC. In addition, the defendants have all been required to prepare for and conduct this application. None of those steps would have been necessary if the matter was properly pleaded.

[76] On that basis, I find it appropriate to award each defendant the costs for the necessary steps of "defending a proceeding", and for preparing for and attending an application (opposed). Those costs are payable forthwith in any event of the cause.

"A. Ross J."

This is Exhibit "I.F" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

CITATION: Turek v. The College of Physicians and Surgeons of Ontario, 2021 ONSC 8105
DIVISIONAL COURT FILE NO.: 642/21
DATE: 2021/12/13

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: DR. CAROLINE TUREK, Applicant

AND:

THE COLLEGE OF PHYSICIANS AND SURGEONS OF ONTARIO ET AL., Respondents

BEFORE: Sachs, Backhouse and Mandhane JJ.

COUNSEL: *Rocco Galati*, for the Applicant

Rob (Rabinder) Sidhu, for the Respondents

HEARD at Toronto: December 8, 2021

ENDORSEMENT

Sealing Order

[1] The Respondents seek a sealing order that information that identifies patients and individuals who have provided information to the College should be sealed and not form part of the public record.

[2] Corbett J. issued an interim order, subject to further order of this Panel, requiring that the College redact the record of proceeding to remove information tending to identify persons who have provided information to the College in connection with the investigation of the Applicant.

[3] The sealing order in this case is to protect names and identifying information of the reporting individual and of a patient from public disclosure and, by extension, to protect the integrity of the College's investigative process. The order sought does not contemplate sealing the entire record before the court but only information that tends to identify the two individuals whose identification information is irrelevant to the issues on the application.

[4] The parties consent to the requested order. The media have been given notice of this motion pursuant to Justice Corbett's direction. We are satisfied that the three factors set out in *Sherman Estate v. Donovan*, 2021 SCC 25 at para.38 for granting a sealing order have been met in this case : 1) the integrity of the open investigation and of the College investigations generally

are important public interests; 2) the order sought is necessary to prevent the serious risk that court openness poses in this case; and 3) as a matter of proportionality the benefits of the order outweigh its negative effect.

[5] The sealing order is granted upon the terms as set out in the draft order.

Prematurity

[6] The Respondents submit that the application for judicial review should be dismissed on the basis of prematurity. In doing so they rely on a number of authorities where applications have been found to be premature in similar circumstances.

[7] In *Sutherland v. College of Physicians and Surgeons of Ontario* 2007 CanLII 51785 the Divisional Court struck an application to judicially review a decision to refer an allegation of professional misconduct to a formal hearing on the basis that the appointment of investigators that led to the referral was a nullity. The Divisional Court dismissed the application as premature. In doing so the Court found that threshold issues of jurisdiction should be raised before the Discipline Committee.

[8] In *Foulds v. Justice of the Peace Review Council* 2017 ONSC 5807 the applicant sought to judicially review a decision to refer an allegation of judicial misconduct to a formal hearing on the basis that the Complaints Committee lacked the jurisdiction to proceed and on the basis of procedural unfairness and bias. The Divisional Court held that the application was premature and that all of the issues raised on the application could be dealt with at the formal hearing on the merits.

[9] In *Halifax (City) v. Nova Scotia (Human Rights Commission)*, 2012 SCC 10, the Supreme Court of Canada considered an appeal from an early judicial review of a screening committee's decision to refer a complaint to a board of inquiry. In that case the chambers judge granted the application and quashed the decision under review. The Court of Appeal overturned the chambers judge's decision and the Supreme Court agreed with the Court of Appeal that the chambers judge should have not intervened in the proceeding at such an early stage. Doing so only caused unwarranted delay.

[10] The Applicant argues that her application for judicial review should not be dismissed for prematurity because only a court can grant the relief she is seeking. That relief includes a request for three declarations: (1) a declaration that the Respondent College, as a creature of provincial authority, has no jurisdiction under s. 92 of the Constitution Act to regulate free speech; (2) a declaration that the order for investigation of the Applicant was a nullity since there was no basis for an allegation of unprofessional conduct or incompetence, and (3) a declaration that a Statement on Public Health Misinformation issued by the Respondent College on April 30, 2021 is invalid and unconstitutional.

[11] The basis for the Applicant's first declaratory request is an argument that the Respondents' conduct has nothing to do with professional regulation, but is simply an attempt to regulate free speech. If there is a decision to refer the matter for a hearing on the merits, that is an issue that the

tribunal hearing the merits can consider and rule upon. While administrative tribunals cannot grant declarations of invalidity, they have the authority to consider and rule upon any arguments directed at their own jurisdiction, including any arguments under sections 91 and 92.

[12] The basis for the second declaratory request is similar to the first – the Respondents are not investigating professional misconduct or incompetence; they are investigating speech. This, too, is an argument that can be considered by a tribunal who hears the merits of any complaint, if any complaint is laid after the investigation. If no complaint is laid, then the matter will be moot.

[13] With respect to the third request for a declaration, the Statement that the College issued on April 30, 2021 is not an instrument that can attract a declaration of invalidity. It is a guideline and a recommendation only. As such, it is not binding on any tribunal that may consider the matter further. The Applicant is not being investigated for breaching or violating the Statement; she is being investigated for professional misconduct and/or incompetence. If there is a hearing on the merits, and the Respondent College takes a position similar to the one outlined in the Statement or relies on the Statement, at that point the tribunal hearing the merits will have an opportunity to consider and rule upon whether the position taken in the Statement constitutes an unconstitutional violation of the Applicant's free speech rights.

[14] For these reasons we find that the application is premature and should be dismissed. In accordance with the agreement of the parties, the Applicant shall pay the Respondents their costs of this application, fixed in the amount $5000.00, all inclusive.

Sachs J.

I agree

Backhouse J.

I agree

Mandhane J.

Date: December 13, 2021

This is Exhibit "D" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Canadian Society for the Advancement of Science in Public Policy v. Henry,* 2022 BCSC 724

Date: 20220504
Docket: S2110229
Registry: Vancouver

In the Matter Concerning the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241; and the *Public Health Act*, S.B.C. 2008, c. 28

Between:

Canadian Society for the Advancement of Science in Public Policy and Kipling Warner

Petitioners

And

Dr. Bonnie Henry in her capacity as Provincial Health Officer for the Province of British Columbia

Respondent

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

Counsel for the Petitioners:	P.H. Furtula
Counsel for the Respondent:	J. Gibson A.C. Bjornson
Place and Date of Hearing:	Vancouver, B.C. April 7, 2022
Place and Date of Judgment:	Vancouver, B.C. May 4, 2022

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Introduction

[1] The respondent applies to dismiss this Petition on the basis that the petitioners lack legal standing. The petitioners argue, in response, that the Canadian Society for the Advancement of Science in Public Policy ("CSASPP") has public interest standing and Mr. Warner has private interest standing.

[2] The Petition challenges public health orders made under the *Public Health Act*, S.B.C. 2008, c. 28 [*PHA*], requiring two COVID-19 vaccinations for healthcare providers in wide-ranging healthcare facilities across British Columbia.

[3] It alleges that the impugned orders fail to provide reasonable exemptions and accommodations for persons with religious objections, vaccination risks, immunity from prior infection, and recent negative COVID-19 testing. It seeks to set aside the orders for infringing the *Charter* rights of unvaccinated healthcare workers, and as an unreasonable exercise of statutory powers contrary to the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*].

[4] The respondent, the Provincial Health Officer, Dr. Bonnie Henry ("PHO"), submits that the orders are reasonable, precautionary public health measures. Implemented to limit transmission in higher-risk public settings, they protect public health, vulnerable populations, and functioning of the healthcare system.

[5] For the reasons that follow, I find that CSASPP has public interest standing to bring the Petition. Mr. Warner does not, however, have private interest standing to do so, and his claims are therefore dismissed.

Parties

[6] CSASPP is a not-for-profit society incorporated under the *Societies Act,* S.B.C. 2015, c. 18.

[7] With a head-office in Vancouver, it describes itself as a non-partisan, secular organization, advocating for the development and advancement of science in the formation of public policy in British Columbia.

[8] Mr. Warner, a British Columbia resident, is a software engineer and the executive director of CSASPP. He describes CSASPP's directors, officers, donors, and patrons as drawn from diverse communities across the political spectrum.

[9] He deposes that, when the impugned healthcare vaccination requirements were ordered, CSASPP was contacted by more than a thousand self-identified healthcare workers in British Columbia, including many registered nurses, concerned about the medical justification for the vaccination mandates and the threat of losing their jobs.

[10] As the Public Health Officer under s. 64 of the *PHA*, Dr. Henry is the Province's senior public health official. In that role, she has led the public health response to the emergencies created by the transmission of the novel coronavirus SARS-CoV-2 and the illness known as COVID-19.

Background Facts

Emergency Powers under the PHA

[11] On March 18, 2020, the Minister of Public Safety declared a state of emergency throughout British Columbia because of the COVID-19 pandemic. The declaration expired on June 30, 2021.

[12] On March 17, 2020, Dr. Henry issued a notice, under s. 52(2) of the *PHA,* that the transmission of the infectious SARS-CoV-2 virus constituted a "regional event" under s. 51. The *PHA* defines "regional event" as an "immediate and significant risk to public health throughout a region or the province".

[13] Under s. 52, the notice enabled the PHO to exercise the "emergency powers" in Part 5 of the *PHA*. These powers include the issuance of orders for persons to do anything that the PHO reasonably believes is necessary "to prevent or stop a health hazard, or mitigate the harm or prevent further harm from a health hazard". They include the power to prohibit a class of persons from entering a particular place (*PHA,* ss. 31(1)(b), 39(3)).

The Impugned Orders

[14] The Petition challenges three sets of orders, issued and updated by the PHO under the *PHA* emergency powers (the "Impugned Orders"):

(i) *Covid-19 Vaccination Status Information and Preventative Measures* order of September 9, 2021, September 27, 2021 ("Vaccination Status Order");

(ii) *Residential Care Covid-19 Preventative Measures* order of October 21, 2021 ("Residential Care Order"); and

(iii) *Hospital and Community (Health Care and other Services) Covid-19 Vaccination Status Information and Preventative Measures* order of October 21, 2021 ("Hospital Order").

[15] Broadly speaking, the Impugned Orders mandate that, as of mid-October 2021, only double-vaccinated persons may provide healthcare services in a wide-range of British Columbia healthcare settings, including long-term care facilities, hospitals and community care settings.

Reconsideration Request

[16] By letter to the PHO of November 8, 2021, pursuant to s. 43 of the *PHA*, the petitioners requested a reconsideration of the Impugned Orders ("Reconsideration Request") on behalf of a broad class of healthcare workers in British Columbia.

[17] Section 43(1) of the *PHA* says in part:

> **Reconsideration of orders**
>
> **43** (1) A person affected by an order, or the variance of an order, may request the health officer who issued the order or made the variance to reconsider the order or variance if the person
>
> (a) has additional relevant information that was not reasonably available to the health officer when the order was issued or varied,
>
> (b) has a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would
>
> (i) meet the objective of the order, and
>
> (ii) be suitable as the basis of a written agreement under section 38 *[may make written agreements]*, or
>
> (c) requires more time to comply with the order.

[18] The Reconsideration Request contained a lengthy critique of the Impugned Orders from Dr. J. Kettner, Chief Medical Officer of Health and Chief Public Health Officer for the Province of Manitoba from 1999 to 2012. Arguing that the Impugned Orders failed to comply with generally accepted principles of public health governance and the *Charter*, it contained voluminous research, submissions regarding the principles governing public health orders, and examples of less restrictive measures in other jurisdictions.

[19] The Reconsideration Request proposed, among other things, alternative approaches to satisfy the objectives of the Impugned Orders, including the following:

i. Natural immunity through a positive RT-PCR or rapid antigen test result demonstrating recovery from COVID-19, issued no less than 11 days and no more than 6 months after the date on which a person first tested positive (e.g. France).

ii. Negative PCR or antigen test less than 48 hours prior to attendance at a facility (e.g. Alberta).

iii. Single vaccination after contracting COVID-19 after an interval of at least 21 days following the illness (e.g. Quebec).

iv. Documentation from a physician or registered nurse providing medical reason for not being fully vaccinated (e.g. Ontario).

[20] On November 9, 2021, under *PHA s.* 54(1)(h), the PHO issued a variance, with retroactive effect, halting s. 43 reconsideration requests except for medical reasons ("Reconsideration Variance").

[21] The evidence filed on behalf of the PHO suggests that, due to hundreds of s. 43 requests, the Reconsideration Variance was necessary to protect public health until there was a significant reduction in transmissions, serious disease, and strain on the public health care system.

[22] Section 54(1)(h) says:

> **General emergency powers**
>
> **54** (1) A health officer may, in an emergency, do one or more of the following:
>
> ...

> (h) not reconsider an order under section 43 *[reconsideration of orders]*, not review an order under section 44 *[review of orders]* or not reassess an order under section 45 *[mandatory reassessment of orders]*;

[23] By letter of January 17, 2022, relying on the Reconsideration Variance, the PHO declined to respond to the Reconsideration Request because it sought exemption from the Impugned Orders on non-medical grounds ("Reconsideration Response").

The Petition

[24] The Petition alleges that the materials in the Reconsideration Request demonstrate the *Charter* violations and unreasonableness of the Impugned Orders.

[25] It seeks a declaration that the Impugned Orders are of no force and effect for unjustifiably infringing the following rights and freedoms of unvaccinated healthcare workers:

- section 2(a) (freedom of conscience and religion);
- section 2(b) (freedom of thought, belief, opinion and expression);
- section 7 (life, liberty and security of the person); and
- section 15(1) (equality rights).

[26] It seeks orders, under the *JRPA,* quashing and setting aside the Impugned Orders, or declaring them *ultra vires*, as unreasonable or exceeding the PHO's statutory authority.

[27] The petitioners also challenge the Reconsideration Response as an unreasonable refusal to consider the Reconsideration Request.

Governing Law

[28] Public interest standing permits public-spirited litigants to prosecute issues of general interest and importance, thereby causing courts to fulfill their "constitutional role of scrutinizing the legality of government action, striking it down when it is

unlawful and thus establishing and enforcing the rule of law" (*Council of Canadians with Disabilities v. British Columbia (Attorney General),* 2020 BCCA 241, [*CCD*], para. 2).[1]

[29] Challenges to standing focus on whether "the public interest litigant is an appropriate party to advance a justiciable claim, not on the detail of intended trial evidence or the claim's ultimate prospect of success" (*CCD,* para. 87).

[30] The litigant has the onus to demonstrate that public interest standing is warranted in the circumstances. The assessment focuses on three factors identified in *Canada (Minister of Justice) v. Borowski*, [1981] 2 S.C.R. 575 [*Borowski*]:

(i) does the claim raise a serious justiciable issue?

(ii) is the plaintiff directly affected by the action or does the plaintiff have a genuine interest in its outcome? and

(iii) is the action a reasonable and effective means to bring the claim to court?

[31] The assessment should be flexible and generous, to serve the underlying purposes of upholding the legality principle and providing access to justice, particularly so for vulnerable and marginalized citizens broadly affected by legislation of questionable constitutional validity (*Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society,* 2012 SCC 45 [*Downtown Eastside*], paras. 31, 51).

[32] On the other side of the balance are the limiting factors of allocation of scarce judicial resources, screening of "busybody" litigants, and obtaining the viewpoints of those who are actually most directly impacted by the issues in question. For these reasons, a party with private interest standing is generally preferred to a public interest litigant seeking to advance a duplicative claim (*Downtown Eastside*, para. 37; *CCD*, paras. 71, 79-80, 83).

[1] Leave to appeal granted by the Supreme Court of Canada, 2021 CanLII 24821.

Analysis and Findings

The Society's Public Interest Standing

[33] I turn to consider whether the Society satisfies the *Borowski* factors.

Serious Justiciable Issue

[34] A serious justiciable issue is one that is appropriate for judicial determination and clearly not frivolous.

[35] Justiciability asks whether the case suits the court's place in our constitutional system of government: *Canada (Auditor General) v. Canada (Minister of Energy, Mines and Resources)*, [1989] 2 S.C.R. 49 [*Auditor General*] at 90–91. Ultimately, the answer "depends on the appreciation by the judiciary of its own position in the constitutional scheme" (*Auditor General* at 91).

[36] So long as the pleading reveals at least one serious issue, it will usually be unnecessary to examine every pleaded claim for the purpose of standing (*Downtown Eastside,* para. 42; *CCD*, paras. 90, 94).

[37] The petitioners argue that challenges such as this -- to the constitutionality and legality of legislation -- are always considered justiciable (*CCD*, para 90). They say serious issues are raised by questioning the "circumvention of the legislature … in the name of public health," to achieve goals normally achieved through the "legislative process, which is transparent, public, and fosters democratic debate."

[38] The PHO argues the Petition "discloses no adjudicative facts and so is non-justiciable". The Petition, the PHO says, is devoid of any meaningful particulars permitting the inquiry sought (*CCD,* paras. 104, 107). The PHO relies on *Beaudoin v. British Columbia*, 2021 BCSC 512 [*Beaudoin*], to argue that the Reconsideration Request raises no serious issue, as in that case a similar request for reconsideration based on similar evidence from Dr. Kettner was ruled inadmissible.

[39] Regarding justiciability, the Petition challenges state action based on legislatively-delegated discretionary powers. In my view, the petitioners are correct

that whether those actions comply with the *Charter* and *JRPA* are clearly questions suitable for judicial determination (*CCD*, para 90).

[40] Regarding a serious issue, the Impugned Orders directly impact members of a defined and identifiable group in a serious way that, at least on the surface, relates to their *Charter* rights. CSASPP alleges that its alternative proposals reflect a superior approach, taken in other Provinces and elsewhere around the world, much less intrusive on healthcare workers' *Charter* rights. In my view, this raises substantial questions that meet the threshold of "clearly not frivolous."

[41] I do not accept the PHO's argument that *Beaudoin* shows there is no serious issue to be tried regarding the Reconsideration Response. In *Beaudoin,* the reconsideration materials were ruled inadmissible because the petitioners did not challenge the reconsideration decision. In this case, however, CSASPP seeks to impugn the PHO's Reconsideration Response.[2]

[42] In *Beaudoin*, religious leaders challenged the PHO's prohibition of certain religious gatherings, for allegedly violating the *Charter* rights of freedoms of religion, expression, assembly and association. After the petition was filed, the PHO reconsidered the impugned orders and issued a conditional variance allowing outdoor worship services subject to certain conditions.

[43] The petitioners challenged only the PHO's initial orders, however, not the decision responding to their reconsideration request. Chief Justice Hinkson ruled the reconsideration materials inadmissible for that reason:

> [79] Moreover, as the religious petitioners have chosen not to amend their petition to seek judicial review of Dr. Henry's reconsideration decision, the main evidence they seek to rely on, namely the affidavits of Dr. Warren and

[2] At least for purposes of this application, the Reconsideration Request and Response appear central to CSASPP's case. They are prominent in the Petition, Part 2: Factual Basis, and CSASPP's evidence and argument at the hearing. The PHO acknowledged in argument that the petitioners' written submissions sought to impugn, by judicial review, the Reconsideration Response.

Having said that, I make no findings about the adequacy of CSASPP's current pleadings regarding the Reconsideration Request and Response. As the PHO points out, they are not referred to in the Petition, Part 1: Orders Sought, and are only indirectly referred to in Part 3: Legal Basis.

> Dr. Kettner, is not admissible on this petition because that evidence was not before Dr. Henry when she made the G&E Orders. ...
>
> [102] Had the religious petitioners amended their petition to seek judicial review of Dr. Henry's decision to grant them a variance to her G&E Orders, then the "record of proceeding" would include all of the information before Dr. Henry when she made her decision on the variance (but not before her when she issued the G&E Orders). But then the review would be of only her variance decision, not the G&E Orders.

[44] Overall, the serious justiciable issue factor supports standing.

Genuine Interest

[45] The genuine interest factor asks if a litigant has a real stake in the proceedings or is engaged with the issues in question (*CCD*, para. 98). Its purpose is to achieve "concrete adverseness", and thereby ensure sharp debate, thorough argument, and economical use of judicial resources. A litigant's engagement is assessed by its reputation, continuing interest, and link with the claim (*Downtown Eastside,* paras. 29, 43).

[46] CSASPP claims genuine interest, based on its membership, purposes, and Reconsideration Request. While not tracking personal information about its approximately 170 current members, it estimates at least 41 work in the healthcare field in British Columbia based on participation in its confidential forum for healthcare issues.

[47] The purposes described in CSASPP's constitution of January 14, 2021 are:

> To challenge the provincial COVID-19 measures instituted in British Columbia.
>
> To advocate and promote the development and advancement of science in public policy in British Columbia.

[48] Its constitution of October 12, 2021 revised the purposes to include the following:

> (a) To improve health outcomes of people by advocating for the development and implementation of government and public health policy initiatives to be based on research conducting using the scientific method;

> (b) To improve access to information on pandemic and epidemic threats and events;
>
> ...
>
> (d) To oppose the dissemination of information that is not based on research conducted according to the scientific method;
>
> ...
>
> (f) To promote critical thinking and public discussion that includes the widest possible expression of opinions and viewpoints in all public policy debates or discussion, regardless of the level of government of Canada or of any province or territory therein.

[49] The PHO submits that CSASPP has no history of involvement in the issues raised by the Petition, and the evidence connecting its membership to healthcare is vague and weak. The PHO says CSASPP is merely a "purpose-built anti-COVID-19 measures entity".

[50] The PHO relies on *Atkins v. Anmore (Village)*, 2014 BCSC 2402, a petition to quash municipal bylaws brought by a petitioner in her capacity "as a citizen of the municipality" (para. 5). Justice Williams found this insufficient for a genuine interest in the validity of the bylaws and declined public interest standing:

> [35] ... the petitioner has [not] established that she has an interest that is materially different than any other member of the community. While it may be inferred that she brings these proceedings in some role that is supported by the two councillors, that, in my view, does not provide the basis for a finding of the type of interest that the jurisprudence suggests is necessary.

[51] In my view, creating a society committed to one side of an issue is not sufficient to create a genuine stake for purposes of standing. As in *Atkins,* the members of such a group are obviously interested in the issue but do not necessarily have a stake different from the community generally.

[52] The genuine interest factor is concerned not just with a genuine stake in an issue, however, but also with engagement. Engagement tests for "concrete adverseness" and economical use of judicial resources (*CCD*, para. 98; *Downtown Eastside*, paras. 29, 43).

[53] In my view, CSASPP's Reconsideration Request and allegations regarding the Reconsideration Response show an engaged, concrete adverseness counting in favour of standing. Also counting somewhat in favour is the evidence, albeit vague and inferential, of CSASPP's stake based on the healthcare workers amongst its membership.

[54] Overall, the genuine interest factor supports standing.

Reasonable and Effective Means

[55] This third *Borowski* factor is concerned with "whether the proposed suit is, in all of the circumstances, a reasonable and effective means of bringing the matter before the court".

[56] The circumstances that the court should consider in making this inquiry include (*Downtown Eastside*, paras. 51-52):

(a) The plaintiff's capacity to bring forward a claim and "whether the issue will be presented in a sufficiently concrete and well-developed factual setting";

(b) Whether the case transcends the interests of those most directly affected by the challenged law or action;

(c) Whether there are realistic alternative means which would favour a more efficient and effective use of judicial resources and would present a context more suitable for adversarial determination; and

(d) The potential impact of the proceedings on the rights of others who are equally or more directly affected, especially where private and public interests may come into conflict.

[57] The petitioners submit they have the necessary resources and expertise to prosecute the claim. They point to Dr. Kettner's report and the other materials in their Reconsideration Request. They say the importance of their case transcends the interests of individual healthcare workers and concerns society's interest in having healthcare decisions made in accordance with scientific research.

[58] The PHO argues the petition is not a reasonable and effective way to bring the issue before the courts. It says that directly impacted healthcare workers are

better suited to challenge the Impugned Orders. As stated by Dickson J.A. in *CCD*, "all other relevant considerations being equal, a plaintiff with private interest standing will usually be preferred over a public interest litigant seeking to advance a duplicative claim in a separate action" (para. 83).

[59] As discussed in the hearing, numerous individual healthcare workers, allegedly having lost their jobs due to being unvaccinated, are challenging the Impugned Orders in another proceeding that is also in its early stages: *Tatlock v. Attorney General for the Province of British Columbia*, Vancouver Registry Court File No. S-222427.

[60] Given the *Tatlock* proceedings, CSASPP's standing appears unnecessary for access to justice for impacted healthcare workers. Nevertheless, guided by Crowell J.'s flexible, purposive approach in *Downtown Eastside*, CSASPP's petition appears to be a reasonable and effective means of bringing forward the evidence and claims regarding the Reconsideration Request and Response. It appears that no similar issue is being pursued in *Tatlock*.

[61] In my view, subject to the comments above about the shortcomings in its pleadings, the Petition represents a reasonable and effective means to bring forward the important and complex healthcare issues in the Reconsideration Request that transcend the interests of those directly involved.

[62] Overall, the reasonable and effective means factor supports standing.

Conclusion

[63] In my view, all three *Borowski* factors support CSASPP's public interest standing particularly given its role in the Reconsideration Request.

Mr. Warner's Private Interest Standing

[64] Private interest standing is based on personal and direct interest in an issue by virtue of its impact on the party. It arises if the party has a private right at stake, or

was specially impacted by the issue beyond the effect on the general public (*Downtown Eastside*, para. 1).

[65] The PHO argues that Mr. Warner is a software engineer, without any apparent connection to healthcare, and his evidence discloses no actual personal or direct interest in the issues.

[66] In argument, Mr. Warner withdrew his claim to public interest standing and argued only for private interest standing. His evidence of the personal impact of the Impugned Orders is limited to this:

> … my ability to access medical services in a timely manner has been affected. For example, I have been on the waitlist for approximately one year for surgery related to a sports injury.

[67] In my view, Mr. Warner offers no evidentiary basis, beyond this unsupported, conclusory statement, to suggest any right at stake, or any personal or special impact from the Impugned Orders. There is nothing, for example, to suggest his wait for surgery was unusual or impacted by the Impugned Orders.

[68] In my view, for these reasons he does not satisfy the requirements for private interest standing.

Substitute Petitioners

[69] The petitioners brought a back-up application, in case both were denied standing, to substitute, as petitioners, two healthcare workers who allege losing their jobs due to the Impugned Orders.

[70] The PHO did not dispute the private interest standing of these two healthcare workers, but opposed their substitution because it fundamentally altered the pleadings and record. The PHO's position was therefore that, if standing were denied to the petitioners, the substitutes should commence new proceedings.

[71] Having found CSASPP to have public interest standing, I will not decide this alternative application to substitute these two petitioners.

Conclusion

[72] CSASPP is found to have public interest standing.

[73] Mr. Warner is found not to have private interest standing and his claims are dismissed.

[74] Costs of the application are in the cause unless the parties wish to speak to them.

"Coval J."

This is Exhibit "KK" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Canadian Society for the Advancement of Science in Public Policy v. British Columbia,* 2022 BCSC 1606

Date: 20220912
Docket: S219760
Registry: Vancouver

Between:

Canadian Society for the Advancement of Science in Public Policy and Kipling Warner

Petitioners

And

Dr. Bonnie Henry in Her Capacity as Provincial Health Officer for the Province of British Columbia

Respondent

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Petitioners:	P.H. Furtula
Counsel for the Respondent:	J.K. Gibson A.C. Bjornson
Place and Date of Hearing:	Vancouver, B.C. May 18 and 19, 2022
Place and Date of Judgment:	Vancouver, B.C. September 12, 2022

Introduction

[1] The petitioners challenge the constitutional validity of the Food and Liquor Serving Premises Order ("FLSP Order") and the Gathering and Events Order ("G&E Order") (together "the impugned Orders"), both issued on September 10, 2021, in response to the COVID-19 pandemic by Dr. Bonnie Henry, British Columbia's Provincial Health Officer (the "PHO").

The Parties

[2] The Canadian Society for the Advancement of Science in Public Policy (the "Society"), is a not-for-profit society duly incorporated under the *Societies Act*, S.B.C. 2015, c. 18.

[3] The petitioner, Kipling Warner, is a software engineer and the executive director of the Society, which he asserts has 171 members.

[4] The respondent, PHO, is the senior public health official for British Columbia, and is appointed pursuant to Part 6 of the *Public Health Act*, SBC 2008, c. 28 [*PHA*].

Background

[5] On January 27, 2020, the first diagnosed case of COVID-19 in British Columbia occurred.

[6] On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic.

[7] "Public health" is one component of British Columbia's health system and seeks generally to reduce the incidence of premature death and to minimize the effects of disease, disability, and injury.

[8] The PHO leads the public health response to public health emergencies in the Province, including addressing the pandemic causing COVID-19.

[9] In response to the pandemic, the Province and the PHO undertook a variety of measures that included health promotion, prevention, testing, case identification, isolation of cases, contact tracing and vaccination.

[10] On March 17, 2020, the PHO issued a Notice of Regional Event under s. 52(2) of the *PHA*. This allowed the Office of the PHO ("OPHO") to exercise powers under Part 5 of the *PHA*, including making oral and written public health orders in response to the pandemic.

[11] On March 18, 2020, the Minister of Public Safety and Solicitor General declared a state of emergency throughout the Province pursuant to the *Emergency Program Act*, RSBC 1996, c. 111. That declaration was extended multiple times and eventually expired at 11:59 p.m. on June 30, 2021.

[12] On September 10, 2021, the PHO issued the impugned Orders. Those Orders introduced the "Vaccine Passport Regime" providing for proof of vaccination by way of a QR code or proof of an exemption from vaccination, as well as various other requirements for attending various venues such as maximum capacity limits, seating requirements, availability of sanitation stations, and staffing requirements.

[13] Individuals who had received two COVID-19 vaccines (and were therefore "double vaccinated") had a right to a vaccine passport. The Vaccine Orders provided that only double vaccinated persons could access the following:

(a) restaurants, cafes and other establishments serving food and liquor (both indoor and outdoor);

(b) indoor ticketed sporting events;

(c) indoor concerts;

(d) indoor theatre/dance/symphony events;

(e) night clubs;

(f) casinos;

(g) movie theatres;

(h) fitness centres/gyms (excluding youth recreational sport);

(i) businesses offering indoor high-intensity group exercise activities;

(g) organized indoor events (e.g., weddings, parties, conferences, meetings, workshops); and

(k) discretionary organized indoor group recreational classes and activities.

[14] Individuals who lacked a vaccine passport could not access those spaces and/or participate in those activities, but the Vaccine Passport Regime did not apply to many locations, such as retail stores and libraries, among others.

[15] The impugned Orders included preambles explaining the PHO's considerations in their implementation, including the protection of more vulnerable populations such as people over 70, those too young to be immunized, and those who have underlying conditions that cause them to develop lower levels of immunity to vaccines than average.

[16] The objectives of the impugned Orders were said to include:

(a) reducing the risk of infection, severe illness and death for all vaccination-eligible age groups and those not eligible for vaccination;

(b) reducing the likelihood of transmission in the higher risk setting of social mingling coupled with alcohol consumption, which is associated with increased SARS-CoV-2 transmission;

(c) increasing vaccination uptake in populations, thereby reducing the public health risk of COVID-19;

(d) implementing full vaccination for those without medical exemptions, because doing so provides more effective and durable protection against infection and severe illness than natural immunity from prior COVID-19 infection alone; and

(e) preserving the ability and resources of public health and the health care system to protect and care for the health needs of the public, including providing care for health needs other than COVID-19 (such as cancer care and cardiac care).

[17] The impugned Orders included an assertion that the current scientific evidence indicated that testing was generally not an adequate substitute for vaccination, but might form part of additional layers of protection needed to protect higher risk populations such as during the roll out of vaccinations.

[18] The impugned Orders also included the PHO's assertion that they were made after the consideration of the rights and freedoms guaranteed under the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act* 1982 (U.K.), 1982, c. 11 [*Charter*] as considered in a context where proportionate, precautionary and evidence-based measures, including vaccination, are necessary to prevent loss of life, serious illness and disruption of the health care system and society.

Reconsideration of Public Health Orders

[19] Section 43 of the *PHA* provides that persons can seek a reconsideration of a public health order. Specifically, it states:

> 43(1) A person affected by an order, or the variance of an order, may request the health officer who issued the order or made the variance to reconsider the order or variance if the person
>
> (a) has additional relevant information that was not reasonably available to the health officer when the order was issued or varied,
>
> (b) has a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would

(i) meet the objective of the order, and

(ii) be suitable as the basis of a written agreement under section 38 *[may make written agreements]*, or

(c) requires more time to comply with the order.

(2) A request for reconsideration must be made in the form required by the health officer.

(3) After considering a request for reconsideration, a health officer may do one or more of the following:

(a) reject the request on the basis that the information submitted in support of the request

(i) is not relevant, or

(ii) was reasonably available at the time the order was issued;

(b) delay the date the order is to take effect or suspend the order, if satisfied that doing so would not be detrimental to public health;

(c) confirm, rescind or vary the order.

(4) A health officer must provide written reasons for a decision to reject the request under subsection (3) (a) or to confirm or vary the order under subsection (3) (c).

(5) Following a decision made under subsection (3) (a) or (c), no further request for reconsideration may be made.

(6) An order is not suspended during the period of reconsideration unless the health officer agrees, in writing, to suspend it.

(7) For the purposes of this section,

(a) if an order is made that affects a class of persons, a request for reconsideration may be made by one person on behalf of the class, and

(b) if multiple orders are made that affect a class of persons, or address related matters or issues, a health officer may reconsider the orders separately or together.

(8) If a health officer is unable or unavailable to reconsider an order he or she made, a similarly designated health officer may act under this section in respect of the order as if the similarly designated health officer were reconsidering an order that he or she made.

[20] Section 54(1)(h) of the *PHA* provides:

> 54(1) A health officer may, in an emergency, do one or more of the following:
>
> […]
>
> (h) not reconsider an order under section 43 *[reconsideration of orders]*, not review an order under section 44 *[review of orders]* or not reassess an order under section 45 *[mandatory reassessment of orders]*;

[21] The process under s. 43 of the *PHA* requires that a decision to vary an order be made by the PHO or her delegate. As such, the *PHA* does not permit a process where individual physicians who are not PHO delegates may determine and register medical exemptions.

[22] The OPHO received hundreds of *PHA s.* 43 requests during the pandemic, including over 800 related to the Vaccine Passport Regime and the healthcare workers' vaccination requirement. Many of those requests were based on the requesting person not agreeing with the PHO's orders or proposing alternative measures such as rapid testing or reliance on natural immunity.

Mr. Curtis's Reconsideration Request

[23] Stefan Curtis is a member of what the petitioners assert to be in the class of persons on whose behalf the petitioners' reconsideration request was made. It was his evidence that on or about August 20, 2021, he tested positive for COVID-19, while travelling in the Republic of Bulgaria, a member state of the European Union ("EU").

[24] He deposed that he was tested in a government approved laboratory in Sofia, Bulgaria and obtained an EU Digital Covid Certificate confirming his recovery from COVID-19 stated to be valid from September 2, 2021 to February 15, 2022 (the "Certificate").

[25] On September 30, 2021, Mr. Curtis emailed a request for reconsideration to the OPHO along with supporting materials. After explaining his background, his reconsideration request stated in part as follows:

> According to EU laws, the Certificate allows me to attend restaurants, events, etc. just as a double Covid-19 vaccinated person can.
>
> The reason for this is that my natural immunity to Covid-19 is as good as or better than a double vaccinated person, according to the World Health Organization May 10, 2021 bulletin – a copy of which is found at the link below, and is also attached to this email.
>
> https://apps.who.int/iris/bitstream/handle/10665/341241/WHO-2019-nCoV-Sci- Brief-Natural-immunity-2021.1-eng.pdf
>
> There are more recent studies supporting this, which undoubtedly, you are aware of considering your background and expertise.
>
> Accordingly, please reconsider the Orders as they apply to me, and to the class of people who have tested positive and recovered from Covid-19.
>
> Please allow me and the class of people like me to be exempt from the Orders, and allow me to be given the equivalent to a Covid-19 BC Vaccine Card.
>
> Otherwise, I will not be able to fully participate in my community, while presenting no danger to the public health.
>
> If you reject my request, please provide detailed reasons for doing so including why I would be considered a "health hazard" as defined in the *Public Health Act*, and the scientific basis on which you rely on, including specific scientific or medical studies, etc.

[26] Mr. Curtis did not receive a response to his reconsideration request from the OPHO.

[27] Under s. 43(7) of the *PHA* a request for reconsideration can be summitted on behalf of a class of affected persons. On October 20, 2021, the petitioners submitted a request for reconsideration to the PHO, on behalf of what they assert to be the following class of persons in British Columbia:

(a) persons who attend events; and

(b) patrons of restaurants with table service, cafes, food primary or liquor primary establishments, including pubs, bars, lounges, and nightclubs, liquor manufacturing facilities that have tasting rooms with seating or private clubs.

[28] The petitioners claim that Mr. Curtis is a member of this class.

[29] The request for reconsideration set out the following bases for it:

(a) the petitioners presented additional relevant information that was not reasonably available to the PHO when the impugned Orders were issued or varied; and

(b) the petitioners made a proposal that was not presented to the PHO when the impugned Orders were issued or varied but if implemented, would meet the objective of the impugned Orders, and be suitable as the basis of a written agreement under s. 38 of the *PHA*.

[30] The reconsideration request included, and asserted that it was based on:

(a) a report from Dr. J. Kettner, MD, MSC, FRCSC, FRCPC, the former Chief Medical Officer of Health and Chief Public Health Officer for the Province of Manitoba from 1999 to 2012; and

(b) peer reviewed and other medical research.

[31] The reconsideration request included proposals that purported to draw on policies in other jurisdictions, including Ontario, Alberta, the United Kingdom and the European Union, as alternatives to the Vaccine Passport Regime set out in the impugned Orders, proposing that persons be considered "safe" or equivalent to being double vaccinated, so they might enjoy the same rights and freedoms as persons who are double vaccinated in the impugned Orders:

- those with “natural immunity” through a positive RT-PCR or rapid antigen test result demonstrating recovery from COVID-19 issued no less than 11 days and no more than six months after the date on which a person first tested positive,

- those with a negative PCR or antigen test less than 48 hours prior to attendance at an event,

- those with a single vaccination after contracting COVID-19 after an interval of at least 21 days following the illness, and

- those who provided a written document, completed and supplied by a physician or registered nurse, setting out a documented medical reason for not being fully vaccinated against COVID-19, and the effective time-period for the medical reason, be permitted to attend events.

[32] The reconsideration request also proposed that children up to and including age 18 or that children between the ages of 12 and 17 be excluded from the impugned Orders.

[33] By October 24, 2021, proof of vaccination or an exemption became a requirement for adult patrons of certain food and liquor-serving establishments. The FLSP Order also set out other requirements, such as operators' requirements to monitor the number of patrons, prevent people from congregating, provide sufficient seating, and so on.

[34] Given the significant time and resources occupied by the reconsideration process, the PHO determined that, in the interests of public health, it was necessary for her to decline such requests, other than on a medical deferral basis, until transmission, serious disease, and strain on the system were significantly reduced.

[35] On November 9, 2021, the PHO issued an order under s. 54(1)(h) of the *PHA* stating with retroactive effect that she would no longer consider s. 43 requests in respect of certain public health orders, other than those seeking medical deferral to vaccination where the health of the individual would be seriously jeopardized if the individual were to comply with the Vaccine Passport Regime Orders (the "Variance Order").

[36] On November 12, 2021, the PHO suspended the s. 43 reconsideration process, including for requests already received by the PHO but not yet considered.

[37] On January 17, 2022, the Deputy PHO, Dr. Brian Emerson responded to Mr. Warner stating:

> On November 12, 2021, the PHO exercised her discretion under section 54(1)(h) of the *PHA* to not reconsider any orders pursuant to section 43 unless that exemption is being sought for medical reasons (the "Variance Order").
>
> The Variance Order is posted on the PHO website at https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-theprovincial-health-officer/covid-19/covid-19-variance-of-gatherings-events-food-liquor-orderssuspend-reconsideration-proof-of-vaccination.pdf. The PHO's Variance Order is final and binding.
>
> I have reviewed your request for an exemption, the details of which are set out above. You have not sought an exemption on medical grounds. Therefore, pursuant to the Variance Order, I decline to reconsider the Proof of Vaccination Orders, and your request is dismissed.

Relief Sought

[38] Included in the relief the petitioners seek are:

1. A declaration pursuant to section 24(1) of the *Charter*, and/or section 52(1) of the *Constitution Act, 1982*, that the impugned Orders and the Variance Order are of no force and effect as they unjustifiably infringe the petitioners' and others *Charter* rights to freedom of religion (s. 2(a)), freedom of expression (s. 2(b)), life, liberty, and security of the person (s. 7), and equality (s. 15(1)); and/or
2. An order in the nature of *certiorari*, pursuant to sections 2(2)(a) and/or 7 of the *Judicial Review Procedure Act*, RSBC 1996, c. 241 ("JRPA"), quashing and setting aside the impugned Orders and the Variance order as unreasonable; and/or
3. A declaration pursuant to section 2(2)(b) of the *JRPA* that the impugned Orders and the Variance Order are *ultra vires* and of no force or effect, and specifically
   (a) a declaration that the Variance Order is *ultra vires* and of no force or effect, because it suspended the reconsideration process, and because it limited exemptions from vaccination requirements to medical reasons only and limited the procedure for individuals to seek reconsideration; and
   (b) A declaration that the January 17, 2022 response to the Reconsideration Request was *ultra vires*, because it only considered exemptions sought on specific medical grounds; and
4. An interlocutory injunction staying the enforcement of the impugned Orders, pending the final determination of this Application.

Standing

[39] The petitioners say that Mr. Warner has private interest standing and that he and the Society have public interest standing to bring this petition.

Private Interest Standing

[40] Private interest standing exists where a party or parties have a personal and direct interest in an issue being litigated by virtue of its effect on them. Such an interest arises where the party has a private right infringed by a respondent, or where a decision will cause or threaten to cause special damage to the party, beyond that suffered by the general public; *Downtown Eastside Sex Workers United Against Violence Society v. Canada (Attorney General)*, 2012 SCC 45 [*DTES*] at para. 1.

[41] Mr. Warner says he is not double vaccinated and has "a personal interest in ensuring the defendants do not interfere with my *Charter* rights and employment rights". Notwithstanding this assertion, Mr. Warner's employment rights are not the basis for the petition. Mr. Warner did depose that, in general terms, he has not been able to attend restaurants, theatres, yoga classes, or events, and specifically that he was unable to attend a candlelight musical performance.

[42] The respondent asserts that Mr. Warner is a frequent litigant who regularly attempts to act as a representative petitioner in class proceedings and has personally commenced various proceedings before this Court. While that may be true, it is not a basis upon which I would deny him standing.

[43] Notwithstanding the reliance in the petition on s. 2(a) of the *Charter*, neither Mr. Warner nor the Society purports to act on behalf of religious groups.

[44] Similarly, while the petition focuses on the Vaccine Passport Regime aspect of the impugned Orders, neither Mr. Warner nor the Society purports to act on behalf of those who are unable or unwilling to be vaccinated, nor do they purport to act on behalf of restaurant owners, event organizers, or any other group specifically alleged to be impacted by the public health orders.

[45] I find that Mr. Warner is entitled to private interest standing to bring the petition before me, on his own behalf, and for Mr. Curtis as a member of a class that he can represent under s. 43 of the *PHA*.

Public Interest Standing

[46] A grant of public interest standing is discretionary. In restating the test for public interest standing in *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 [*CCD*], the Court commented that public interest standing is intended "to ensure that legislation and state action are lawful, that courts are accessible and that judicial resources are deployed economically and appropriately" and reaffirmed the three step test for such standing established in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; *Minister of Justice of Canada v. Borowski*, [1981] 2 S.C.R. 575 [*Borowski*]:

i) there is a serious and justiciable issue raised by the claim;

ii) they are directly affected by the proposed action or, if not, have a genuine interest in the outcome of the claim; and

iii) the action is a reasonable and effective means of bringing the claim(s) to court.

[47] Section. 43(7)(a) of the *PHA* specifically allows reconsideration requests to be made on behalf of a class of persons.

Serious and Justiciable Issue

[48] A challenge to the constitutionality of legislation is justiciable.

Direct Effect or Genuine interest

[49] The respondent asserts that the petitioners do not have the direct and personal interest in the impugned Orders required to establish private interest standing, and thus lack standing to request judicial review of those Orders.

[50] The respondent contends that I should assess the *bona fides* of the Society with caution, as Mr. Warner is a controlling mind of the Society. At its highest, the respondent argues that this litigation seems to be informed by Mr. Warner's self-described status as a concerned Canadian citizen, interested and concerned about prominent political and public issues, ranging from the opioid crisis to the

international drug trade, to money laundering, and to cryptocurrency. While this may be laudable, it no doubt describes many Canadians. I accept the respondent's submission that granting Mr. Warner public interest standing through his society could open the door for any repeat or busybody litigant to challenge laws or orders through corporate vehicles.

[51] The respondent also argues that the Society is recently-formed and created for the purpose of challenging the Province's response to the COVID-19 pandemic, and does not represent any particular group or segment of society, and does not meet the second or third *Borowski* criteria.

[52] The Society was created in January 2021. Its stated purpose is a specific one; to challenge COVID-19 measures instituted in British Columbia. Mr. Warner asserts that the Society has received thousands of communications regarding COVID-19 policies but he did not include any such communications in his material in support of the petition.

[53] The Society argues that it has advocated on behalf of British Columbians with respect to the vaccination mandates for healthcare workers, students, and film workers, and members of the public in general.

[54] In *Coalition of Citizens for a Charter Challenge v. Metropolitan Authority*, 1993 103 D.L.R. (4th) 409, standing was granted to a recently formed society incorporated for the purpose of challenging certain government actions, but the decision was overturned by the Nova Scotia Court of Appeal: *Coalition of Citizens for a Charter Challenge v. Metropolitan Authority*, 1993,108 D.L.R. (4th) 145.

[55] The respondent contends that although its name asserts an interest in science and public policy, the Society does not have a history of engagement with either of those issues nor a *bona fide* or genuine interest in the issues presented by the petition here. The respondent argues that simply creating a group committed to one side of an issue is insufficient to justify public interest standing.

[56] The bare assertion by the Society that it makes the request on behalf of a "class" does not mean that it acts for the class. Nor does it obviate the need to establish the test for public standing. It is not enough to say one acts in the public interest; the test must be met.

[57] The respondent contrasts the Society to the respondents in *DTES* and those in *CCD*, who presented themselves as advocate societies connected with a discernible group.

[58] The respondent argues that the Society's claim for standing in this case can be contrasted with its claim for standing recently granted by Justice Coval in *Canadian Society for the Advancement of Science in Public Policy v. British Columbia (Provincial Health Officer)*, 2022 BCSC 724. In that case, Justice Coval found that the Society should be granted standing because it represented healthcare workers challenging healthcare worker vaccination policies. Here, the Society does not assert a claim of membership comprising those who identify as directly impacted by the impugned Orders.

[59] The respondent points out that while the Society claims to represent all British Columbians, its evidence is that it has a negligible membership base. The respondent asserts that to ground an interest on that basis would be a significant expansion of public interest standing which should not be given to a group or class of people that is so vague and ill-defined.

[60] Thus, the respondent asserts that the Society has no real stake or genuine interest here. It is unnecessary for me to resolve this part of the test, given my finding on the third part of the test below, and thus I will not grant public interest standing to the Society.

Reasonable and Effective Means

[61] The respondent contends that neither the Society as petitioner, nor this petition, offer a reasonable and effective means to bring the matters addressed in the petition before the Court.

[62] In *DTES* at para. 51, Justice Cromwell set out a non-exhaustive list of issues the court may consider in determining whether the legal proceeding is a reasonable and effective means to bring the claim to court:

> • The court should consider the plaintiff's capacity to bring forward a claim. In doing so, it should examine amongst other things, the plaintiff's resources, expertise and whether the issue will be presented in a sufficiently concrete and well-developed factual setting.
>
> • The court should consider whether the case is of public interest in the sense that it transcends the interests of those most directly affected by the challenged law or action. Courts should take into account that one of the ideas which animates public interest litigation is that it may provide access to justice for disadvantaged persons in society whose legal rights are affected. Of course, this should not be equated with a licence to grant standing to whoever decides to set themselves up as the representative of the poor or marginalized.
>
> • The court should turn its mind to whether there are realistic alternative means which would favour a more efficient and effective use of judicial resources and would present a context more suitable for adversarial determination. Courts should take a practical and pragmatic approach. The existence of other potential plaintiffs, particularly those who would have standing as of right, is relevant, but the practical prospects of their bringing the matter to court at all or by equally or more reasonable and effective means should be considered in light of the practical realities, not theoretical possibilities. Where there are other actual plaintiffs in the sense that other proceedings in relation to the matter are under way, the court should assess from a practical perspective what, if anything, is to be gained by having parallel proceedings and whether the other proceedings will resolve the issues in an equally or more reasonable and effective manner. In doing so, the court should consider not only the particular legal issues or issues raised, but whether the plaintiff brings any particularly useful or distinctive perspective to the resolution of those issues. As, for example, in *McNeil*, even where there may be persons with a more direct interest in the issue, the plaintiff may have a distinctive and important interest different from them and this may support granting discretionary standing.
>
> • The potential impact of the proceedings on the rights of others who are equally or more directly affected should be taken into account. Indeed, courts should pay special attention where private and public interests may come into conflict. As was noted in *Danson v. Ontario (Attorney General)*, 1990 CanLII 93 (SCC), [1990] 2 S.C.R. 1086, at p. 1093, the court should consider, for example, whether "the failure of a diffuse challenge could prejudice subsequent challenges to the impugned rules by parties with specific and factually established complaints". The converse is also true. If those with a more direct and personal stake in the matter have deliberately refrained from suing, this may argue against exercising discretion in favour of standing.
>
> [Emphasis added]

[63] The mere possibility that a private litigant may challenge the provisions is not sufficient to negate the third *Borowski* factor.

[64] Section 43 of *the PHA* provides that "[a] person affected by an order, or the variance of an order, may request the health officer [...] to reconsider the order or variance". The respondent contends that the Society cannot rely on the reconsideration request to give it public interest standing to challenge the public health orders. It argues that the Society cannot seek a *PHA s.* 43 reconsideration of the impugned Orders or the Variance Order in the first place, as it has no right under the statute to request a reconsideration.

[65] The Society is not a person affected by the orders it challenged. The respondent says that an improper request cannot serve as a door to standing.

[66] Given that Mr. Warner has a private interest standing, the inclusion of the Society as a public interest litigant is not reasonable or effective. The reconsideration request, other than with respect to Mr. Curtis' reconsideration application is thus before the Court, to the extent that it is germane. As I will explain below, Mr. Curtis' reconsideration request is not properly before the Court.

Mootness

[67] The Vaccine Passport Regime was discontinued by the respondent on April 8, 2022. The respondent asserts that I should decline to hear the petition concerning the impugned Orders because it raises no live controversy, merely a hypothetical or abstract question, and that even if the impugned Orders remained extant, there are no adjudicative facts concerning these petitioners before the Court.

[68] Even if the petition is moot, a court may exercise its discretion to hear a matter if there is still an adversarial context: *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at 358-359.

[69] The difficulty with the respondent's submission is that they could offer no assurance that the impugned aspects of the impugned Orders would not be

reintroduced if the communication and incidence of COVID-19 increased due to the anticipated fall cold and flu season or for any other reason.

[70] Given the ongoing risk of COVID-19 outbreaks and the possibility that the impugned Orders will be reinstated, I find that there is still an adversarial context. As a result, I am exercising my discretion to hear the petition, regardless of mootness.

Preliminary Objection

[71] The petitioners assert that their reconsideration request criticized the impugned Orders and the Variance Order for failing to comply with generally accepted principles of public health governance and legislation, including the *Charter,* on the basis that they did not provide sufficient information, nor a comprehensive analysis of the benefits and risks associated with the Vaccine Passport Regime, the data used to inform the orders, justification for the settings selected, nor the goals and objectives of the impugned Orders.

[72] The petitioners contend that where a party has taken advantage of a tribunal's reconsideration power, it is the reconsideration decision that represents the final decision of the tribunal, and only that reconsideration decision may be judicially reviewed; but that here judicial review is also available in respect of the respondent's decision to not reconsider the reconsideration request, through the exercise of the PHO's statutory discretion under s. 54(1)(h) of the *PHA*, informed by the original decision, i.e., the issuance of the impugned Orders.

[73] The respondent disagrees and contends that the reconsideration request is admissible on the issues of the petitioners' standing and adequate alternative remedy only, and contends that the petitioners did not raise their argument that the PHO's January 17, 2022 response to the reconsideration request is subject to judicial review until so stating in their written submissions. They argue that although the response is admissible for the purpose of showing that the petitioners pursued their alternate remedies prior to bringing the petition, the response is not a reviewable decision and is not properly before the Court for three reasons.

[74] First, on November 12, 2021 the PHO exercised the *PHA s.* 54 authority to suspend requests for reconsideration, except on the basis of a medical exemption. The respondent contends that the January 17, 2022 decision is not a "decision" that can underpin a judicial review.

[75] In *Yellow Cab Company Ltd. v. Passenger Transportation Board* 2014 BCCA 329 [*Yellow Cab*], the Court of Appeal held that generally, parties must exhaust adequate alternative remedies before bringing a judicial review. Where the party has done so, the reconsideration decision represents the final decision for judicial review. However, where "denial of leave does not constitute a determination that the request for reconsideration lacks merit [...] the initial administrative decision, and not the denial of leave, will be the appropriate target for judicial review."

[76] The respondent contends that the January 17, 2022 response self-evidently was not an assessment of the merits of the request for reconsideration, and Dr. Emerson's letter states that the denial of the request is not based on medical exemptions, the only available basis under the Variance Order, and so dismisses the request without considering its merits.

[77] Second, a review of the January 17, 2022 response was not identified as a basis for the petition. Thus, the respondent argues that the petition on its face does not seek the relief the petitioners sought in their written submissions.

[78] Third, the respondent asserts that the necessary record is not before me to undertake the requested review, because the petitioners failed to provide adequate notice of the relief sought during oral submissions. The petitioners did not amend their petition to seek the relief and filed an affidavit attaching Dr. Emerson's response on April 26, 2022. The respondent says that the petitioners only provided notice of their request for this relief through written their submissions dated May 6, 2022, and contends that if Dr. Emerson's response is a reviewable "decision", the evidentiary record that was before Dr. Emerson when the petitioners request was specifically considered is not before me.

[79] I agree with the respondent that for the reasons set out in the preceding five paragraphs, it is not open to me to review the PHO's January 17, 2022 response to the reconsideration requests.

Discussion

[80] Legislation and the impugned Orders must conform with the *Charter* and the *PHA*, and there must be a practical and effective means to challenge the legality and constitutionality of the impugned Orders in the courts.

[81] The petitioners assert that the pandemic has led governments across Canada, and around the world, to assert wide-ranging powers under public health statutes to take measures that, in normal circumstances, would be achieved through legislation. Law-making occurs through the legislative process, which is transparent, public, and fosters democratic debate.

[82] The petitioners contrast the issuance of public health orders to this process, asserting that such orders are not subject to the same public process and scrutiny as legislation, thrusting the courts into the role of providing the sole check on executive overreach.

[83] Section 2 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*] provides:

> 2(1) An application for judicial review must be brought by way of a petition proceeding.
>
> (2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:
>
> (a) relief in the nature of mandamus, prohibition or *certiorari;*
>
> (b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

[84] The *JRPA* defines statutory power in s. 1 as:

> a power or right conferred by an enactment:

(a) to make a regulation, rule, bylaw or order,

(b) to exercise a statutory power of decision,

(c) to require a person to do or to refrain from doing an act or thing that, but for that requirement, the person would not be required by law to do or to refrain from doing,

(d) to do an act or thing that would, but for that power or right, be a breach of a legal right of any person, or

(e) to make an investigation or inquiry into a person's legal right, power, privilege, immunity, duty or liability [...]

[85] In *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v. Wall*, 2018 SCC 26 [*Highwood*], Justice Rowe outlined the purpose of judicial review as follows:

> The purpose of judicial review is to ensure the legality of state decision making: see *Canada (Attorney General) v. TeleZone Inc.*, 2010 sec 62, [2010) 3 S.C.R. 585, at paras. 24 and 26; *Crevier v. Attorney General of Quebec*, 1981 Canlii 30 (SCC), [1981] 2 S.C.R. 220, at pp. 237-38; *Knox v. Conservative Party of Canada*, 2007 ABCA 295, 422 A.R. 29, at paras. 14-15. Judicial review is a public law concept that allows s. 96 courts to "engage in surveillance of lower tribunals" in order to ensure that these tribunals respect the rule of law: *Knox*, at para. 14; *Constitution Act*, 1867, s. 96 [...]

[86] In her dissenting reasons in *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725, Justice McLachlin, as she then was, commented:

> Indeed, it might be argued that the primal position of the superior courts during this period has been enhanced by the fact that they have jealously guarded their rights of review of the decisions of inferior tribunals. Where an aspect of their historical power has been transferred to the inferior tribunal, the courts have reserved the right to review the decision for conformity to the law and the rules of natural justice. Attempts by Parliament or the legislatures to insulate tribunal decisions from supervision by superior courts through the use of clauses purporting to oust judicial review, while offering protection against review of decisions on fact and exercise of discretion, have not deterred the courts from insisting that the decisions of tribunals meet the basic requirements of legality and fairness: see *Crevier v. Attorney General of Quebec*, 1981 CanLLI 30 (SCC), [1981] 2 S.C.R. 220. Viewed thus, transfers of s. 96 jurisdiction to inferior tribunals have not ousted the power of the superior courts, but merely elevated it one remove. Administrative tribunals deal with the factual minutiae of multitudinous disputes; the superior courts ensure that the law is followed and fair process maintained.

[87] The petitioners assert that the impugned Orders create a Vaccine Passport Regime whereby individuals who have received two COVID-19 vaccines have a right

to a vaccine passport, and only they may access the locations and activities set out in para. 12 above, whereas those without a vaccine passport cannot access these spaces and/or participate in these activities.

[88] The petitioners contend that their petition for judicial review challenges the legality of the impugned Orders under the *PHA*, and the constitutionality of the impugned Orders under the *Charter*: because the impugned Orders and the Variance Order are unreasonable and unresponsive to the petitioners' requests for reconsideration; because they do not comply with the accepted principles of public health governance; and because they violate *Charter* rights under ss. 2(a), 2(b), 7, and 15(1) in a manner that cannot be justified under s. 1.

[89] Dr. Emerson deposed that SARS-CoV-2 is a highly infectious virus that causes COVID-19 and can be spread by people who do not have symptoms. He deposed that without public health interventions, SARS-CoV-2 has a high degree of transmissibility and infectivity.

[90] Dr. Emerson also deposed that over the course of the pandemic, the scientific community and public health officials have learned that the likelihood of the transmission of SARS-CoV-2 is greater:

(a) when people are in close proximity to each other, including in crowded settings;

(b) in indoor settings, especially with poor ventilation;

(c) when people speak, and especially when they sneeze, cough, sing, chant or engage in excited expression;

(d) when people are living in communal settings; and

(e) when people are unvaccinated or partially vaccinated.

[91] Dr. Emerson also deposed that the risk of the transmission of SARS-CoV-2 increases when there is social mingling coupled with the consumption of alcohol,

leading to risky behaviour, when the presence of loud music causes people to move closer in order to converse, and when food or utensils are shared.

[92] Dr. Emerson also deposed that the likelihood of transmission of SARS-CoV-2 increases exponentially in a susceptible population when a number of people are simultaneously infected in a group setting, and subsequently infect their contacts, who infect their contacts, and so on. This can quickly result in a scenario where local public health resources are overwhelmed such that they are no longer able to trace all the contacts of such an exposure and require them to self-isolate. When this occurs, community spread can quickly become rampant, leading to increased case counts and, in time, the potential to overwhelm our public health and healthcare systems as hospitalizations increase.

[93] Dr. Emerson deposed that the requirements of the impugned orders were intended to be time-limited public health measures.

The Record of the Proceedings

[94] Constitutional cases will frequently be concerned with concepts and principles that are of fundamental importance to Canadian society. In light of the importance and the impact that these decisions may have in the future, the courts expect careful preparation and presentation of a factual basis, as constitutional questions should not be determined in a factual vacuum.

[95] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*], at para. 15, the Court determined that judicial review of a decision by an administrative decision-maker is a review of "the decision actually made, including the justification offered for it." It is not a determination of whether a decision is correct, all things considered, and thus excludes reasons that might be adduced in support of a decision after the fact. Judicial review is thus based on the record before the decision-maker. New evidence that was not before the decision-maker is generally not admissible in a judicial review proceeding.

[96] In *Mackay v. Manitoba,* [1989] 2 S.C.R. 357, the appellants challenged the constitutionality of certain provisions of the *Elections Finances Act,* S.M. 1982-83-84, c. 45, which provided for payment out of Manitoba's Consolidated Fund. The appellants argued that the provision of funding for political parties with taxpayers' dollars constituted a violation of their right to freedom of expression, as guaranteed by s. 2(b) of the *Charter*, and expressed two particular concerns: first, that splinter groups such as the Neo-Nazis might qualify for public funding, even though they espoused values inimical to a democratic society; and second, that the system of funding favoured the three established political parties to the detriment of all others.

[97] Justice Cory, for the Court, observed that "not one particle" of evidence was put before the Court in support of the appellants' submissions, just unsubstantiated submissions without a factual foundation. With regard to *Charter* decisions generally, Cory J. stated:

> *Charter* decisions should not and must not be made in a factual vacuum. To attempt to do so would trivialize the *Charter* and inevitably result in ill-considered opinions. The presentation of facts is not, as stated by the respondent, a mere technicality; rather, it is essential to a proper consideration of *Charter* issues. A respondent cannot, by simply consenting to dispense with the factual background, require or expect a court to deal with an issue such as this in a factual void. *Charter* decisions cannot be based upon the unsupported hypotheses of enthusiastic counsel.

[98] In *Danson v. Ontario*, [1990] 2 S.C.R. 1086, the Supreme Court of Canada revisited the question of "the appropriateness of seeking constitutional declarations by way of application without alleging facts in support of the relief claimed." Justice Sopinka observed that the Court "has been vigilant to ensure that a proper factual foundation exists before measuring legislation against the provision of the *Charter*, particularly where the effects of the impugned legislation are the subject of the attack". Sopinka J. concluded that it would be impossible for a motions judge to assess the merits of the application without evidence of those effects, by way of adjudicative facts (i.e. actual instances of the use or threatened use of the impugned rules).

[99] The petitioners contend that the respondent is attempting to block their ability to seek judicial review of the PHO's decisions through the Court by manipulating the record, and that the "procedural machinations" are nothing less than an attempt to immunize the PHO's decisions from judicial review.

[100] On May 6, 2022, the petitioners provided Mr. Warner's Affidavit #3. Much of that affidavit consists of extra-record evidence that was not before the decision-maker that post-dated the orders in question and is hearsay.

[101] Mr. Curtis' reconsideration request is not part of the record that was before the PHO, and thus reconsideration of it under s. 43(1)(a) of the *PHA* is unavailable as the "additional relevant information that was not reasonably available" to the PHO.

[102] Indeed, Mr. Curtis acknowledged that the PHO was "undoubtedly aware" of the studies he enclosed, and it is clear on the recitals to the impugned Orders that the PHO engaged the question of natural immunity as a consideration. In the result, Mr. Curtis argues his letter was not information "not reasonably available" to the PHO.

[103] The petitioners' own reconsideration request was not actually before the PHO when she issued the impugned Orders. The respondent submits, and I agree that there is thus no basis upon which the petitioners can assert that the reconsideration request and its enclosures are admissible as part of the "record of proceeding" for the purposes of the judicial review of the impugned Orders.

[104] The petitioners' reconsideration request was delivered to the OPHO prior to the issuance of the Variance Order. The petitioners argue that the evidence contained in the reconsideration request was therefore evidence that was before the PHO when she issued the Variance Order.

[105] The respondent contends that the circumstances of the Variance Order reasonably lead to the conclusion that the reconsideration request was not "evidence that was before the PHO" when she issued the Variance Order, because

she was overburdened and unable to deal with the hundreds of reconsideration requests that it received.

[106] I am unable to accept this submission. The material was contained with the request, and if the PHO did not or could not deal with it, that is no basis to treat it as something that was not before the PHO with respect to the Variance Order, but not with respect to the other impugned Orders.

Admissibility of the Kettner Report

[107] The petitioners principally rely on a document titled "Report: Citadel Law Corporation: October 19, 2021: Joel Kettner" ("the Kettner Report") that was filed with their reconsideration request. The respondent asserts that this reliance is problematic for three related reasons: the petitioners treat it as an expert report; the petitioners rely on it for the truth of its contents, despite it being inadmissible hearsay; and it is not, in fact, an expert report.

[108] To prepare his report, Dr. Kettner was asked to provide his "opinion" on a number of questions. He opined *inter alia* on whether the PHO "included adequate information or rationale to determine if the orders are proportionate and necessary", the efficacy of vaccines, the risks associated with COVID-19, and the impact of vaccination exemptions.

[109] The respondent contends that at best, the reconsideration request was part of the "record of proceeding" for the consideration of the reasonableness of the Variance Order, and that even if the reconsideration request and its enclosures are part of the "record of proceeding" for any of the orders, that does not elevate the attachments to expert evidence.

[110] The fact that the Kettner Report is not attached to an affidavit from Dr. Kettner, but instead attached to an affidavit from Mr. Warner does not persuade me that it is inadmissible on that ground.

[111] The respondent contends that the Kettner Report remains hearsay and cannot be relied upon for the truth of its contents.

[112] I find that some of the hearsay evidence in the Kettner Report is admissible, as given Dr. Kettner's expertise, he is entitled to rely upon medical journal articles to support his opinions, if he confirms their reliability.

[113] In *R. v. Marquard*, [1993] 4 S.C.R. 223, Justice McLachlin, as she then was, writing for the majority stated:

> The proper procedure to be followed in examining an expert witness on other expert opinions found in papers or books is to ask the witness if she knows the work. If the answer is "no", or if the witness denies the work's authority, that is the end of the matter. Counsel cannot read from the work, since that would be to introduce it as evidence. If the answer is "yes", and the witness acknowledges the work's authority, then the witness has confirmed it by the witness's own testimony. Parts of it may be read to the witness, and to the extent they are confirmed, they become evidence in the case. This procedure was laid out in *R. v. Anderson* (1914), 1914 CanLII 361 (AB CA), 22 C.C.C. 455 (Alta. S.C.) and has been followed by Canadian courts. (See *Holland v. Prince Edward Island School Board Regional Administrative Unit #4* (1986), 1986 CanLII 178 (PE SCTD), 59 Nfld. & P.E.I.R. 6 (P.E.I.S.C.), at pp. 21-22; *Cansulex Ltd. v. Reed Stenhouse Ltd.* (1986), 70 B.C.L.R. 189 (B.C.S.C.), at p. 193).

[114] I accept by inference, that Dr. Kettner affirmed the authority of the medical journal articles to which he referred.

[115] Regardless of whether the Kettner Report is inadmissible hearsay, the fact remains that the Kettner Report postdated the impugned Orders, and thus cannot be the basis for a challenge to those orders.

[116] I therefore find that the Kettner Report is not relevant in these proceedings.

Alleged *Charter* Breaches

Standard of Review

[117] The petition before me challenges the constitutionality of the impugned Orders and the Variance Orders themselves, not the enabling provisions of the *PHA*. The parties agree that the standard of review is reasonableness.

[118] The three orders are administrative law decisions made through the delegation of discretionary decision-making authority under the *PHA*. The petitioners bear the burden of establishing that the orders are unreasonable. They must establish a failure of rationality internal to the reasoning process, or that the impugned Orders cannot be justified in light of a factual or legal constraint: *Vavilov* at para. 101.

[119] The petitioners allege that the impugned Orders violate their rights under the *Charter* to freedom of religion (s. 2(a)), freedom of expression (s. 2(b)), freedom of assembly (2(c)), freedom of association (2(d)), life, liberty, and security of the person (s. 7), and equality (s. 15).

[120] The respondent asserts that the petitioners have not pleaded or particularized any *Charter* breaches, nor have they provided any evidence in support of an alleged *Charter* breaches. The respondent argues that this is fatal to judicial review on *Charter* grounds because the Court will not determine constitutional questions absent properly particularized pleadings and in an evidentiary vacuum. Moreover, the petitioners' *Charter* rights were not engaged or breached by the impugned Orders: see *AAA Action Movers (2008) Inc. v. Walker*, 2021 BCCA 400 at paras. 32-33.

Section 2(a) of the Charter

[121] Section 2(a) of the *Charter* provides:

> 2 Everyone has the following fundamental freedoms:
>
> (a) freedom of conscience and religion

[122] The petitioners argue that the impugned Orders violate this section of the *Charter*. In *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, the Court held that freedom of religion encompasses the rights "to entertain such religious beliefs as a person chooses", "to declare religious beliefs openly without fear of hindrance or reprisal", and "to manifest religious belief by worship and practice or by teaching and dissemination".

[123] To establish a limitation on s. 2(a) of the *Charter*, the petitioners must show that they sincerely believe in a practice or belief that has a nexus with religion and that the impugned state conduct interferes with their ability to act in accordance with that practice or belief in a manner that is more than trivial or insubstantial: *Syndicat Northcrest v. Amselem*, 2004 SCC 47 at para. 46.

[124] The petition alleges a failure to provide reasonable exemption and accommodation for persons with "[r]eligious objections to vaccinations", but fails to particularize or provide a factual basis for that allegation.

[125] The petition does not plead, and the evidence does not establish, what practice or belief any petitioner or other affiant holds, the nexus of that belief with any particular religion, or that the impugned Orders interfere with this practice or belief in a manner that is more than trivial or insubstantial.

[126] None of the affiants supporting their petition have provided any evidence about religious beliefs.

[127] The petitioners assert that the impugned Orders violate the third aspect of freedom of religion – the right "to manifest religious belief by worship and practice or by teaching and dissemination", of persons whose religious beliefs prohibit them from receiving vaccines, including those for COVID-19.

[128] The difficulty with this assertion is that the petitioners have offered no evidence of any such infringement. They simply assert that a grant of public interest standing, which I have not made, would somehow operate to make the petitioners representatives of an unknown class of "third parties" and to find an infringement without any facts. I am not prepared to make a finding of a breach of s. 2(a) of the *Charter* in the absence of an adequate evidentiary record, and dismiss this aspect of the petition.

Section 2(b) of the Charter

[129] Section 2(b) of the *Charter* states:

> 2 Everyone has the following fundamental freedoms:
>
> [...]
>
> (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication

[130] The petitioners contend that the effect of the impugned Orders is to control attempts to convey meaning through expressive conduct to comply with religious beliefs, by affirmatively choosing to refuse to take a COVID-19 vaccine.

[131] In *Irwin Toy v. Quebec (Attorney General),* [1989] 1 S.C.R. 927 [*Irwin Toy*] the Court held that there is a two-part test for determining whether government action that regulates an activity violates s. 2(b). First, is the activity expressive, i.e., does it attempt to convey meaning? Second, if the activity is expressive, is the purpose or effect of the government action to control attempts to convey meaning through that activity? Moreover, *Irwin Toy* affirmed that expressive conduct falls within the scope of s. 2(b).

[132] To establish that the impugned Orders infringe the right to freedom of expression under s. 2(b) of the *Charter,* the petitioners must demonstrate that: the activity in question has expressive content, thereby bringing it, *prima facie*, within the scope of s. 2(b) protection; and that if the activity is protected, an infringement of the protected right results from either the purpose or the effect of the government action: *Irwin Toy*.

[133] The amended petition does not plead, nor does the evidence establish, what activity is purported to have expressive content, what its expressive content might be, such that the activity in question warrants protection, or how government action is alleged to have infringed, in purpose or effect, the right to expression.

[134] Although the petitioners assert that the effect of the impugned Orders and the Variance Order is to control attempts to convey meaning through expressive conduct to comply with religious beliefs by affirmatively choosing to refuse to take a COVID-19 vaccine, they have provided no evidence of any such infringement. The simple

assertion that there is a s. 2(b) infringement is insufficient to permit a meaningful examination of the claim.

[135] In the result, I am not prepared to make a finding of a breach s. 2(b) of the *Charter* in the absence of an adequate evidentiary record, and dismiss this aspect of the petition.

Section 7 of the Charter

[136] Section 7 of the *Charter* provides:

> 7 Everyone has 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.

[137] The analysis under s. 7 has two stages. First, the applicant must establish that the impugned governmental action imposes limits on a life, liberty or security of the person interest such that s. 7 is engaged. Second, the applicant must establish that the deprivation is contrary to the principles of fundamental justice, meaning that the law that impinges on life, liberty, or security of the person must not be arbitrary, overbroad, or have consequences that are grossly disproportionate to their object: *Canada (Attorney General) v. Bedford*, 2013 SCC 72 at paras. 93-94, 96.

[138] In other words, Section 7 of the *Charter* does not promise that the state cannot interfere with a person's life, liberty, and security of the person, but rather, that the state will not do so in a way that violates the principles of fundamental justice.

[139] The petitioners' written submissions allege that the impugned Orders mandate vaccination in a way that engages the liberty and security of the person interests. The petitioners also assert that the impugned Orders and Variance Order restrict their freedom of movement, preventing them from having the same access to property enjoyed by other members of the public.

[140] Considering the petitioners' arguments on liberty and security of the person, s. 7 protects personal autonomy over bodily integrity, free from state interference

and also includes the right to fundamentally important and personal medical decision-making.

[141] Pursuant to s. 7 of the *Charter* and the common law, the petitioners are clearly entitled to accept or decline even life-saving medical treatment: *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315; *Malette v. Shulman* (1990), 72 OR (2d) 417; *Fleming v. Reid* (1991) 4 OR (2d) 74 and *Carter v. Canada (Attorney General)*, 2015 SCC 5 [*Carter*]. It includes the decision of whether to take a COVID-19 vaccine.

[142] In *Carter,* at para. 64, the Court discussed liberty and security of the person rights under s. 7:

> [64] Underlying both of these rights is a concern for the protection of individual autonomy and dignity. Liberty protects "the right to make fundamental personal choices free from state interference": *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, at para. 54. Security of the person encompasses "a notion of personal autonomy involving . . . control over one's bodily integrity free from state interference" (*Rodriguez*, at pp. 587-88, per Sopinka J., referring to *R. v. Morgentaler*, 1988 CanLII 90 (SCC), [1988] 1 S.C.R. 30) and it is engaged by state interference with an individual's physical or psychological integrity, including any state action that causes physical or serious psychological suffering (New Brunswick (*Minister of Health and Community Services) v. G. (J.),* 1999 CanLII 653 (SCC), [1999] 3 S.C.R. 46, at para. 58; *Blencoe*, at paras. 55-57; *Chaoulli,* at para. 43, per Deschamps J.; para. 119, per McLachlin C.J. and Major J.; and paras. 191 and 200, per Binnie and LeBel JJ.

[143] However, this line of cases does not assist the petitioners. The petitioners claim that the impugned Orders mandated vaccination and engaged the s. 7 liberty and security interests. This argument ignores the fact that vaccination was never mandatory. Rather, there was a period during which discretionary activities were restricted to those who had become vaccinated against COVID-19.

[144] The petitioners have also not provided any evidence of serious state-imposed psychological stress such that there would be an interference with the right to security of the person: *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at paras. 55-59.

[145] Considering the petitioners' arguments regarding the liberty interest, it was Mr. Warner's evidence that he could not enjoy Vivaldi's Four Seasons candlelight performance, nor go to restaurants, movie theatres, yoga classes or cultural events for a period of time. Mr. Warner claims that this amounts to violation of his *Charter* rights.

[146] Mr. Curtis is a British Columbia resident who received an EU Certificate covering a limited time period from September 2, 2021 to February 15, 2022, and who made a request for reconsideration on the basis of natural immunity. There is also no evidence on the record to prove that reliance on natural immunity was effective in the EU. The PHO considered both the relative effectiveness of vaccination as a protective measure and natural immunity.

[147] The jurisprudence does not support a s. 7 right to publicly-assessible private establishments. In *R. v. Heywood*, [1994] 3 S.C.R. 761 [*Heywood*], Cory J. considered s. 179(1)(b) of the *Criminal Code* (now repealed). Section s. 179(1)(b) imposed lifetime bans from school grounds, playgrounds, public parks and bathing areas on individuals convicted of sexual assault. Violating the restriction would result in imprisonment. Cory J. held that s. 179(1)(b) indeed restricted the liberty of those it applied to and ultimately found the provision to be unjustifiably overbroad.

[148] However, the impugned Orders only restricted access to private establishments, to which there is no right to unfettered access, whereas *Heywood* considered access to public property. In the result, the case law does not assist the petitioners.

[149] On the evidence before me, I do not find that the impugned Orders breached s.7 of the *Charter* and I dismiss this aspect of the petition.

Section 15 of the Charter

[150] Section 15(1) of the *Charter* provides:

> 15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and,

> in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[151] To establish a *prima facie* violation of s. 15(1) of the *Charter*, the petitioners must demonstrate that the impugned Orders and the Variance Order, on their face or in their impact, creates a distinction based on enumerated or analogous grounds, and imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage: *Fraser v. Canada (Attorney General)*, 2020 SCC 28, at para. 27.

[152] The petitioners argue that the impugned Orders and the Variance Order discriminate on the basis of religion for the same reason they violate freedom of religion, as their impact is to draw a distinction on the basis of religion between persons whose religious beliefs require them to not take vaccines, including the COVID-19 vaccine, and those persons whose religious beliefs or absence of any religious beliefs do not include such an objection.

[153] The petitioners contend that the impugned Orders and the Variance Order reinforce, exacerbate, or perpetuate an existing disadvantage as religious minorities and those with medical conditions adverse to vaccination are principally harmed by the impugned Orders.

[154] They argue that it is clear that it is possible to safely exempt persons from the impugned Orders, as some exemptions have been granted on specific medical grounds. They say that the PHO has provided no explanation as to why similar exemptions are not granted to a minority of British Columbians on religious grounds.

[155] The respondent asserts that the evidence in support of the petition does not establish which analogous or enumerated ground the petitioners rely upon, nor does it demonstrate any actual breach of s. 15. Further, there is no evidence from non-parties showing discrimination or denial of a benefit or the imposition of a burden that reinforces, perpetuates, or exacerbates existing disadvantage experienced by the petitioners.

[156] The respondent argues that the impugned Orders require that individuals be vaccinated for COVID-19 to access certain discretionary activities, pointing out that there is a Medical Exemption Deferral process available to those people who have medical conditions that preclude them from becoming vaccinated.

[157] I concur with the respondent that the petitioners' argument with respect to this alleged *Charter* breach relies on the impact of the impugned Orders on those with religious beliefs, but without any evidence of such impact. As with their ss. 2(a) and (b) allegations, I am not prepared to make a finding of a breach of s. 15 of the *Charter* in the absence of an adequate evidentiary record, and dismiss this aspect of the petition.

Reasonableness of the Impugned Orders & the Variance Order

[158] The parties have agreed that the standard of review for the administrative decision to issue the impugned Orders and the Variance Order is reasonableness.

[159] As discussed, to find that an administrative decision was unreasonable, the party requesting judicial review must prove that the decision was either not internally consistent, or it was untenable given the relevant factual and legal constraints: *Vavilov*, at paras. 100-107 and 237.

[160] The impugned Orders require individuals to be vaccinated to attend at non-essential settings or events where there is a high risk of transmission of SARS-CoV-2, or in settings where there is potential for contact with and transmission to vulnerable populations. That determination was made with careful consideration of the difficulties and risks in accommodating unvaccinated persons, and the associated threats to the health of the broader public.

[161] The preambles to the impugned Orders state that they were issued with the objectives of protecting public health and preventing the spread of COVID-19. The dangers that the impugned Orders were attempting to address were the risk of accelerated transmission of SARS-CoV-2, protecting the vulnerable, and maintaining the integrity of the health care system. The respondent's decision to make the

impugned Orders, and subsequently the Variance Order, was made in the face of significant uncertainty and required highly specialized medical and scientific expertise.

[162] The impugned Orders set out the PHO's reasoning and provide specific justification for the vaccine mandate in the settings covered by those Orders anchored in the epidemiological data and generally accepted scientific knowledge regarding SARS-CoV-2 and COVID-19.

[163] Dr. Emerson deposed that the PHO necessarily relies on the generally accepted scientific and epidemiological evidence available to her at the relevant time, as well as the precautionary principle i.e., reasonable measures to avoid threats that are serious and plausible, when making public health orders under the *PHA*.

[164] Dr. Emerson deposed that the PHO regularly receives and reviews the latest scientific evidence, as well as available global, national, and provincial level epidemiological data regarding SARS-CoV-2 and COVID-19, and information with respect to modelling and outbreaks, to determine what measures are necessary to respond to and mitigate the effects of the pandemic at any given point in time. He said that in a public health emergency, the need to act to protect the public in the face of changing circumstances does not permit all decisions to be made with scientific certainty.

[165] Dr. Emerson deposed that the OPHO received hundreds of requests for exemption from vaccination during the pandemic, including 404 requests relating to the Vaccine Passport Regime. He said that due to the amount of the OPHO and PHO's time and resources occupied by this process, the PHO determined in the interests of public health that it was necessary to decline to consider requests other than on the basis of medical deferral to vaccination, until the levels of transmission, incidence of serious disease, and strain on the public health and health care systems were significantly reduced.

[166] The PHO's factual findings and rationale for issuing the impugned Orders and the Variance Order were supported by the information available to her at the time, including, without limitation: the currently available scientific evidence regarding SARS-CoV-2; the then-current epidemiology in British Columbia; scientific literature; her background in epidemiology; risks associated with social settings and particular behaviours; the risks associated with vulnerable populations contracting COVID-19; and the impact on the public health and health care systems due to the burden of preventing COVID-19 and treating COVID-19 patients.

[167] In making the impugned Orders and the Variance Order, I am satisfied that the PHO assessed available scientific evidence to determine COVID-19 risk for gatherings in British Columbia, including epidemiological data regarding transmission of SARS-CoV-2 globally, nationally, and in British Columbia, factors leading to elevated transmission risk in religious settings, and COVID-19 epidemiology in British Columbia.

[168] I also find that in making the impugned Orders and the Variance Order, the PHO was guided by the principles applicable to public health decision making, and in particular, the paradigm that public health interventions be proportionate to the threat faced and that measures should not exceed those necessary to address the actual risk. The PHO's orders are limited in duration and constantly revised and reassessed to respond to current scientific evidence and epidemiological conditions in British Columbia.

[169] The petitioners argue that these objectives do not comply with what Dr. Kettner considers the appropriate criteria for public health interventions, because they are not specific, measurable, achievable, relevant, and time-defined.

[170] Dr. Kettner's Report also sets out what he describes as the principles of transparency and evidence-based decision-making:

(a) "Interventions in public health should be explained and justified transparently, including admissions of uncertainty. Options should be

described. Reasons for their acceptance or rejection should be explained";

(b) "Decisions and judgment should be made using available data and evidence", "[t]he expected approach of decision-makers [...] when data is incomplete is to make the best estimates possible of the most relevant and consequential parameters", and "it is incumbent on decision-makers to explain why they have chosen such parameters, what are their best estimates of each parameter, what evidence has been used for making these estimates, and how they have used these estimates in their decision-making;

(c) "For quantitative estimates, such as the effectiveness of certain interventions, it is not enough to say that 'something works' or that something 'may happen'" and "[a]ssertions such as masks 'work' without an estimate of the infection transmission reduction and other benefits and harms should be considered just as unacceptable as asserting that a vaccine 'works' without providing a numerical estimation of its efficacy or effectiveness such as reduction of infections, hospitalizations, and deaths as well as the rate and severity of side effects"; and

(d) "For public health strategies such as mandatory vaccination or restriction of activities for people without full vaccination, the beneficial effects and harms of such an intervention should be estimated, measured, and monitored".

[171] Based on the views of Dr. Kettner, the petitioners also assert that the response to their reconsideration request fails to address the principle of proportionality, and does not consider the proposals set out in the request, which draw upon policies in other jurisdictions.

[172] In his affidavit, Dr. Emerson deposed that the impugned Orders and other decision reached by the PHO were based upon current scientific literature. The petitioners complain that this was not set out, chapter and verse.

[173] Dr. Emerson also deposed that unvaccinated and previously infected are at a higher risk than vaccinated people with two doses, without providing a complete explanation for this view. I no not find that it was necessary for Dr. Emerson to fully explain his view.

[174] I reject as unreasonable, the petitioners' assertion that Dr. Emerson's affidavit is deficient because he did not provide any evidence that the public health care system was overtaxed. I find that his statement to that effect is sufficient.

[175] Similarly, I find that Dr. Emerson's statement that a "not insignificant" proportion of eligible population remained unvaccinated, without data to support that view, his failure to explain how hospitalizations were recorded, the lack of an explanation as to how the respondent adjusted for age differences, required no further elaboration

[176] The petitioners place considerable reliance on the comments of Dr. Patty Daly, Chief Medical Health Officer for Vancouver Coastal Health, who stated publicly that transmission in restaurant settings is not a high risk:

> The vaccine passport requires people to be vaccinated to do certain discretionary activities such as go to restaurants, movies, gyms, not because these places are high risk. We are not actually seeing Covid transmission in these settings. It really is to create an incentive to improve our vaccination coverage [...] The vaccine passport is for non-essential opportunities, and its really to create an incentive to get higher vaccination rates.

[177] Accepting that this was Dr. Daly's view, there is no indication of the basis upon which she may have reached that view, nor a bases for preferring that view to what I have accepted to be the informed views of the respondent.

[178] On February 16, 2022 Coastal Health sent a letter to UBC's president and vice-chancellor, Dr. Ono, stating in part as follows:

> Current scientific evidence, including BC data, indicates that COVID-19 vaccination (2-doses), while effective at preventing severe illness, is not effective at preventing infection or transmission of the Omicron variant of SARS-CoV-2, which now accounts for almost 100% of cases in the province. Therefore, there is now no material difference in likelihood that a UBC student or staff member who is vaccinated or unvaccinated may be infected and potentially infectious to others. We also know that Omicron causes less serious illness than other variants of COVID-19, which is particularly true for young people.

[179] Like the view attributed to Dr. Daly, there is no indication of the bases for this view, nor a basis for preferring that view to what I have accepted to be the informed views of the respondent.

[180] I find that the PHO's decision to issue the impugned Orders and the Variance Order was internally consistent and was based on her expert evaluation of the facts available at the time. In result, I find that the PHO's decision was not unreasonable and it fell within a range of reasonable options.

Authority for the Impugned Orders & the Variance Order

[181] The impugned Orders and the Variance Order were properly made pursuant to the PHO's powers under ss. 30, 31, 32, 39(3), 52, 54, 56, and 67(2) of the *PHA*.

Conclusions

[182] To summarize, first I decline to hear arguments regarding the reconsideration of Mr. Curtis's exemption application or the petitioners' reconsideration request. Second, I find that the impugned Orders did not impinge on the petitioners' *Charter* rights, hence it is unnecessary for me to consider the reasonableness of the balancing of the *Charter* rights. Third, I find that the PHO's decision to issue the impugned Orders and the Variance Order was reasonable. Last, the impugned Orders and the Variance Order were not *ultra vires* the PHO's authority.

[183] The petition is dismissed.

"The Honourable Chief Justice Hinkson"

This is Exhibit "LL" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Canadian Society for the Advancement of Science in Public Policy v. British Columbia,* 2023 BCSC 284

Date: 20230228
Docket: S2110229
Registry: Vancouver

In the Matter Concerning the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241; and the *Public Health Act*, S.B.C. 2008, c. 28

Between:

Canadian Society for the Advancement of Science in Public Policy and Kipling Warner

Petitioners

And

Dr. Bonnie Henry in her capacity as Provincial Health Officer for the Province of British Columbia

Respondent

- and -

Docket: S224652
Registry: Vancouver

Between:

Peternella Hoogerbrug

Petitioner

And

Provincial Health Officer of British Columbia

Respondent

- and -

Docket: S224731
Registry: Vancouver

Between:

York Hsiang, David William Morgan and Hilary Vandergugten

Petitioners

And

Provincial Health Officer of British Columbia

Respondent

- and -

Docket: S222427
Registry: Vancouver

Between:

Phyllis Janet Tatlock, Laura Koop, Monika Bielecki, Scott Macdonald, Ana Lucia Mateus, Darold Sturgeon, Lori Jane Nelson, Ingeborg Keyser, Lynda June Hamley, Melinda Joy Parenteau and Dr. Joshua Nordine

Petitioners

And

Attorney General for the Province of British Columbia and Dr. Bonnie Henry in her capacity as Provincial Health Officer for the Province of British Columbia

Respondents

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

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Place and Dates of Hearing:	Vancouver, B.C. December 5-9, 2022 and January 23, 2023
Place and Date of Judgment:	Vancouver, B.C. February 28, 2023

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Introduction

[1] In these interlocutory applications, the petitioners seek orders requiring the respondent, the Provincial Health Officer of British Columbia ("PHO"), to significantly augment the documentary record it has filed in evidence in these four judicial review petitions, scheduled to be heard together in May 2023.

[2] The PHO cross-applies to strike two affidavits filed by certain of the petitioners.

[3] All four petitions challenge the PHO's September 12, 2022 order ("Order"), extending the requirement that health-care workers in hospitals and designated community settings be vaccinated for SARS-CoV-2 in order to provide health services to patients in those settings.

[4] The petitioners argue that, while this vaccine mandate may have been justified at the height of the SARS-CoV-2 virus, it can no longer be reasonably supported given the reduced severity of the virus and changing government responses to it. Many of the petitioners are unvaccinated health-care workers claiming to have lost their employment due to the Order.

[5] The PHO submits that ensuring safe hospital and community care for patients, and protecting the health care system's capacity, are critical public health goals served by requiring a vaccinated healthcare workforce.

[6] For the reasons that follow, the petitioners' application to augment the current record is dismissed, and the PHO's application to strike two affidavits is granted.

The Parties

[7] The petitioners in the Hsiang proceedings are doctors and nurses in British Columbia who allege that the Order prevented them from working in hospitals and community settings due to their unvaccinated status. They refused vaccinations due to their assessment of the risks and benefits in their particular medical and personal circumstances.

[8] The petitioner Ms. Hoogerbrug is a member of the Dutch Reformed Church. She is unvaccinated because of the tenets of her religion. She alleges being terminated from her role as a family nurse practitioner due to her unvaccinated status.

[9] The petitioners in the Tatlock proceedings are health care workers, mainly in management and administrative roles. Their evidence is they refused vaccination for reasons of conscience or assessment of the risks and benefits in their personal circumstances. They claim to have lost their employment due to their unvaccinated status despite lack of contact with vulnerable populations in the hospitals or care facilities where they were employed.

[10] The petitioner Canadian Society for the Advancement of Science in Public ("CSASPP") is a not-for-profit society incorporated under the *Societies Act,* S.B.C. 2015, c. 18. With a head office in Vancouver, it describes itself as a non-partisan, secular organization, advocating for the development and advancement of science in the formation of public policy in British Columbia. It was granted public interest standing to bring its petition in my decision at 2022 BCSC 724.

[11] As PHO, Dr. Henry is the Province's senior public health official, responsible for providing independent advice on public health issues to government ministers and public officials. A medical doctor with a master's degree in public health, Dr. Henry is the former Executive Medical Director for the BC Centre for Disease Control ("BCCDC"), the scientific and operational arm of the Public Health Officer. She has held positions in the Faculties of Medicine at the University of British Columbia and University of Toronto. As Associate Medical Officer of Health for the City of Toronto, she was the operational lead for the SARS outbreak in 2003.

The Order

[12] The Order was made, September 12, 2022, pursuant to ss. 30-32, 39(6), 56-57, 67(2) and 69 of the *Public Health Act*, S.B.C. 2008, c. 28 [*PHA*]. It was an extension of a series of similar orders that have been in place since October 14, 2021.

[13] The Order is entitled "Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventive Measures – September 12, 2022".

[14] Its Recitals include:

> C. People over 70 years of age, and people with chronic health conditions or compromised immune systems, are particularly vulnerable to severe illness, hospitalization, ICU admission, and death from COVID-19, even if they are vaccinated;
>
> ...
>
> F. Unvaccinated people in close contact with other people promotes the transmission of SARS-CoV-2 to a greater extent than vaccinated people in the same situations, which in turn increases the number of people who develop COVID-19 and become seriously ill;
>
> ...
>
> I. The emergence of the Omicron variants has introduced further uncertainty into the course of the pandemic. The suddenness of the arrival of the first Omicron variant and its swift and significant impact on the level of infection, hospitalization and ICU admission rates in British Columbia, and the greater level of transmissibly of subsequent Omicron variants, reflect the unpredictability of SARS-CoV-2, and this uncertainty, coupled with uncertainty about the impact which the seasonal rise in respiratory viruses in the autumn and winter may have on the course of the virus, has led me to conclude that I must exercise caution when determining what measures continue to be necessary to mitigate the extent of the virus's transmission, and to reduce the severity of disease which it causes;
>
> J. Chief among these measures is vaccination, and I am of the opinion that any slippage in the level of vaccination in the health-care workforce would undermine the capacity of the health-care system to respond to a significant resurgence of disease;
>
> K. Based on the latest modelling information available to me, there is a continuing risk of a significant resurgence of disease in the province;

[15] Paragraph UU describes the information and evidence available to the PHO in reaching her decision to extend the Order despite its effect on unvaccinated hospital and community care workers:

> UU. I recognize the effect which the measures I am putting in place to protect the health of patients, residents, clients and workers in hospital and community care settings may have on people who are unvaccinated and, with this in mind, continually engage in the reconsideration of these measures, based upon the information and

> evidence available to me, including case rates, sources of transmission, the presence of clusters and outbreaks, the number of people in hospital and in intensive care, deaths, the emergence of and risks posed by virus variants of concern, vaccine availability, immunization rates, the vulnerability of particular populations and reports from the rest of Canada and other jurisdictions, scientific journal articles reflecting divergent opinions, and opinions expressing contrary views to my own submitted in support of challenges to my orders, with a view to balancing the interests of the people working or providing services in the hospital and community care sectors, including constitutionally protected interests, against the risk of harm posed by unvaccinated people working or providing services in the hospital or community care sectors.
>
> [Emphasis added.]

What the Petitions Seek

[16] The petitioners challenge the Order under the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [*JRPA*]. Some of the petitioners also challenge it as an unjustified infringement of their *Charter* rights and freedoms.

[17] Under ss. 2(2) and 7 of the *JRPA*, the petitioners seek (among other things):

(a) quashing and setting aside of the Order, to the extent that it requires individuals to have received the SARS-CoV-2 vaccination in order to work in hospital and designated community settings; and

(b) a declaration that continuing the Order is unreasonable, as there is no reasonable basis for the exercise of emergency powers under the *PHA*, and the vaccination mandate is not a reasonable or effective way to address the spread of SARS-CoV-2.

[18] The petitioners submit that, based on the best available evidence, SARS-CoV-2 no longer poses either an immediate or significant threat to public health. They point to the Province and other governments across Canada easing or eliminating vaccination mandates and other restrictions, due to reduction of transmission and severity of the SARS-CoV-2 virus across the country.

[19] They argue the Order was an unreasonable and ineffective measure because:

i. unvaccinated health professionals do not pose any greater risk of spreading the SARS-CoV-2 virus to their patients than vaccinated health professionals;

ii. natural immunity from previous infection of the SARS-CoV-2 virus affords equal, or better, protection from infection, serious illness, hospitalization and death from the virus than vaccination; and

iii. the risk of either vaccinated or unvaccinated health professionals transmitting the SARS-CoV-2 virus to patients is very low, as a result of the preventative measures already being followed by health professionals.

Standard of Review

[20] The parties agree that the Order is to be judicially reviewed on the reasonableness standard.

[21] In *Beaudoin v. British Columbia (Attorney General)*, 2022 BCCA 427, the Court of Appeal dismissed an appeal by various churches and their spiritual leaders of PHO orders prohibiting or restricting different types of in-person gatherings for religious worship during the second wave of the pandemic.

[22] Justice Fitch summarized the legislative authority for the PHO to make orders responding to this public health crisis (paras. 29-39), and explained the rationale for the standard of review of such orders being whether the PHO exercised her authority in a reasonable way (paras. 142-153).

[23] He described the reviewing court's task this way:

> [144] A reviewing court must strive to understand the decision maker's reasoning process and ask whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision: *Vavilov* at para. 99.

[24] The reasonableness standard of review respects the specialized knowledge and experience of public health officials, and deference to the complexity of the problems and solutions that they face, which in this case of course was an unprecedented pandemic and associated public health emergency (*Beaudoin*, paras. 151-152).

[25] At the same time, when their decisions significantly impact people's lives, administrative decision-makers have a "heightened responsibility to ensure that their reasons demonstrate consideration of the consequences of their decision and satisfaction that those consequences are justified in light of the facts and law" (*Beaudoin*, para. 148).

Relief Sought in These Applications

[26] Much of the relief sought in these applications fell away during the hearing, as positions were abandoned or the parties resolved issues in dispute.

[27] What remained were applications by the Hsiang, Hoogerbrug and CSASPP petitioners for the PHO to add broad categories of documents to the current record, and the PHO's application to strike from the record two affidavits submitted by the Tatlock petitioners.

[28] The petitioners abandoned their applications to: strike the PHO's affidavits containing the current record; require the PHO to file a new record identifying and attaching all information directly or indirectly before the PHO in making the Order; cross-examine Dr. Emerson on the contents of the record; and, permit them to file further affidavit evidence in response to the factual assertions in the Order.

[29] The PHO agreed to certain redactions from Dr. Brian Emerson's affidavits and to provide pinpoint cites from the record for certain statements therein. The PHO also confirmed the prior agreement that the record should include the expert medical evidence submitted by the petitioners to the PHO before the Order was made. The parties agreed the expert opinions expressed therein were not admitted for the truth of their contents. The petitioners agreed to the admission of the PHO's expert opinion affidavit from Dr. Dove on the same basis.

[30] The Tatlock petitioners consented to the dismissal of their broad applications to augment the record, in exchange for the PHO agreeing to add a narrow group of specified documents.

[31] The Hsiang, Hoogerbrug and CSASPP petitioners withdrew some of their own sweeping demands to augment the record, and focussed on the specific categories of documents addressed below.

[32] The PHO withdrew her application to strike the three affidavits of the petitioner Kipling Warner, the two affidavits of Ada Skowronska, and the affidavit of Lilly Leppky. All were all sworn, and provided to counsel for the PHO, before the Order and therefore, in that sense, were part of the record. The PHO reserved the position, however, that these affiants were not persons affected by the Order and so their evidence should be of no weight.

[33] During the hearing, the Hsiang petitioners agreed that the affidavit of Dr. Richard Schabas was struck because it was evidence and information created after the Order.

The Current Record

[34] The "record of proceeding" is defined in s. 1 of the *JRPA* to include documents produced in evidence before the tribunal and the tribunal's decision and reasons given by it.

[35] The current record is included in two affidavits from Dr. Emerson, the Acting Deputy Provincial Health Officer ("Deputy PHO"), plus two additional affidavits appending press conference information.

[36] Throughout the COVID-19 pandemic, Dr. Emerson has been the Deputy PHO with the Ministry of Health. Working closely with the PHO on many aspects of the COVID-19 response, he was the lead public health official involved in drafting and amending PHO orders under the *PHA*, including the orders under consideration in these proceedings.

[37] His affidavits provide background information about the COVID-19 pandemic and describe the response of the PHO. They attach more than 4,000 pages of the material documents said to have been before the PHO when she made the Order.

[38] The general background provided by Dr. Emerson is admissible in judicial review cases such as this, involving procedural and factual complexity and where the record is voluminous and constantly evolving. Its purpose is to review "in a neutral and uncontroversial way", the steps taken and evidence considered by the administrative decision-maker (*Beaudoin*, para. 51).

[39] The parties agreed that, as a matter of law in British Columbia, apart from such general background, the evidence on an application for judicial review is generally confined to the record before the decision-maker. This is because of the limitations on the court's supervisory role described above.

[40] They also agreed that, in a non-adjudicative situation such as this, the record has to be constructed. They agreed that, with the vast amount of information available to the PHO by the time of the Order, it would be impractical, and likely impossible, to identify every relevant document available to the PHO at the material time.

[41] The petitioners emphasized that the record must nevertheless allow for a robust, meaningful form of review, to ensure that courts intervene when necessary to safeguard the legality, rationality, and fairness of the administrative process and to ensure that the exercise of public power can be justified to the citizenry (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, paras. 13-14; *Canada Mink Breeders Association v. British Columbia*, 2022 BCSC 1731, paras. 34-35).

[42] They also referred to *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2017 FCA 128, paras. 67-71, for the principle that the evidentiary record lies at the heart of meaningful judicial review. It is indispensable to the reviewing court's fulfilment of its responsibility to engage in meaningful review, as unreasonableness is assessed by comparing the reasons with the result reached in light of the legislative scheme and the evidentiary record before the administrative decision-maker.

[43] The petitioners also relied on s. 17 of the *JRPA*, which the PHO argued did not apply. In my view, whether s. 17 applies is immaterial to the petitioners' application to augment the record, and I believe this was also counsel's ultimate perspective in the hearing. This is because s. 17 does not require an exhaustive record to be filed in circumstances such as this, but rather gives the court the discretion to direct that the record, or any part of it, be filed. I will therefore not decide the issue of whether s. 17 applies in these circumstances.

Should the Record Be Augmented?

Documents sought by the petitioners

[44] During the hearing, the Hsiang and Hoogerbrug petitioners limited the scope of their demands to the time period of January 1 to September 12, 2022, because their arguments focus on the PHO's response to the Omicron variant rather than to the prior variants. The documents they sought to be added to the record are as follows:

Termination of other COVID orders

[45] The petitioners seek:

> Any and all documents explaining the basis of, justification and/or rationale for the discontinuation or removal of other COVID regulations and restrictions, including those tied to vaccination, as well as the discontinuation or removal of any emergency designation tied to COVID, in BC and other jurisdictions.

COVID incidence

[46] The petitioners seek:

> Any and all documents relating to the incidence of COVID infections, transmission and serious illness, as well as hospitalization and death attributable to COVID, broken down by vaccination status and number of doses and age, since the emergence of the Omicron variants.

Other respiratory illnesses

[47] The petitioners seek:

Any and all documents that support the comments made by the PHO in a media conference on January 21, 2022, during which the PHO stated that the provincial government's approach to the COVID virus has shifted to be "much like how we manage other respiratory illnesses – influenza, or RSV (respiratory syncytial virus), or enteroviruses that cause the common cold", including documents from January 2022 to September 12, 2022 that support this statement.

Previous measures 2009-2019

[48] The petitioners seek:

Any and all documents relating to the measures put in place to prevent infection and transmission of influenza and other respiratory illnesses, other than COVID, at hospitals and community health care facilities from 2009-2019.

Vaccine effectiveness

[49] The petitioners seek:

Any and all documents relating to the relative effectiveness of the primary course of vaccination:

> In preventing people from contracting and transmitting COVID, since emergence of the Omicron variants; and
>
> Compared to infection acquired immunity without vaccination with respect to preventing infection, transmission and serious illness, BC and other jurisdictions about vaccine mandates.

Prevalence of infection

[50] The petitioners seek:

Any and all documents relating to the prevalence or estimated prevalence of infection and/or infection-acquired immunity in the provincial population.

UBC correspondence

[51] The petitioners seek:

All documents related to the consideration given to the two publicly available letters to UBC President & Vice-President Chancellor, Dr. Santa Ono, from the Vancouver Coastal Health Chief Medical Officer, Dr. Patricia Daly et al, dated February 16, 2022, and the and the UBC Faculty professors Dr. David

Patrick, Dr. Sarah (Sally) Otto, and Dr. Daniel Coombs, dated February 20, 2022

Medical exemptions but not religious exemptions

[52] The petitioners seek:

All documents relating to the decision to permit unvaccinated individuals with a medical exemption to continue working at hospitals and community health care facilities, but not extending the same opportunity to unvaccinated persons with valid religious reasons for not being vaccinated.

Medical exemption measures

[53] The petitioners seek:

All documents relating to the measures put in place for those working at hospitals and community health care facilities with a medical exemption.

Effectiveness of other measures

[54] The petitioners seek:

Any and all documents relating to the effectiveness of measures other than vaccination in preventing the transmission of COVID at hospitals and community health care facilities, including, but not limited to, measures such as the use of personal protective equipment, hygiene policies, and daily or less frequent testing.

Transmission by registered health professionals

[55] The petitioners seek:

All documents relating to the transmission of COVID by registered health professionals at hospitals and community health care facilities to patients and vice versa, including by vaccination status.

Transmission by others

[56] The petitioners seek:

All documents relating to the transmission of COVID at hospitals and community health care facilities by persons who are not subject to the vaccination mandate.

[57] CSASPP sought its own categories of documents to be added to the record, from January 1, 2022 to September 12, 2022, as follows:

a. the medical and scientific studies and/or papers considered, or reviewed by the PHO prior to September 12, 2022 that do not support or contradict Dr. Henry's statements in the Hospital and Community (Health Care and other Services) COVID-19 Vaccination Status Information and Preventative Measures September 12, 2022 (the "Hospital Order");

b. the medical and scientific studies and/or papers considered, reviewed or relied on by the PHO that relate to her conclusions in any of the orders being challenged that:

    i. Unvaccinated people in close contact with other people promote the transmission of SARSCoV-2 ("Covid-19") to a greater extent than vaccinated people in the same situations, which in turn increases the number of people who develop COVID-19 and become seriously ill;

    ii. Immunity acquired from previous Covid-19 infections is less strong than immunity acquired from vaccinations against Covid-19;

    iii. It is unnecessary for the definition of "vaccinated" in the Orders, especially the September 12, 2022 Hospital Order, to include the requirement of booster vaccinations against Covid-19;

    iv. Infection and/or symptomatic disease with two Covid-19 vaccine doses is similar to infection and/or symptomatic disease with mRNA booster dose;

    v. The immunity of a healthcare workers who meet the definition of "vaccinated" in the September 12, 2022 Order, and who were last vaccinated in 2021 is the same or similar to healthcare workers vaccinated more recently in 2022 or those who have obtained booster shots against Covid-19 in 2022;

    vi. Expanding the grounds upon which a worker may request an exemption to the requirement to be vaccinated beyond those based upon a risk to the health of the worker would undermine the high level of vaccination which is currently in place among the hospital and community care workforce, introduce an unacceptable level of risk to the health of patients, residents, clients and workers, weaken the preparedness and resiliency of the health-care system, and undermine the confidence of the health-care workforce in the safety of their working environment and the confidence of the public in the safety of the health-care system.

Positions of the parties

[58] As indicated by their requests above, the Hsiang, Hoogerbrug and CSASPP petitioners, while recognizing the impossibility of a "complete record" in these circumstances, seek exhaustive production of all documents before the PHO relating to many aspects of the arguments they wish to raise.

[59] They argue that the complete record is required on these issues to determine whether the factual conclusions reached are reasonable in light of all of the evidence. They submit that reviewing only a fraction of the evidence, as selected by the PHO in seeking to have her decision upheld, precludes a reviewing court's independent assessment of whether the conclusions reached are reasonable. They say this leads, not to meaningful review, but something closer to "rubber stamping".

[60] The PHO submits that the current, extensive record contains the most relevant documents available to the PHO in the categories sought by the petitioners. They say it is a balanced record, permitting of fair, meaningful judicial review, because it includes the key records and information available to the PHO on the issues that matter to the petitioners, plus all of the reports and evidence submitted by the petitioners themselves to the PHO before the Order was made.

[61] The PHO says that compiling the exhaustive material sought by the petitioners is not only unnecessary for this judicial review, but prohibitively time-consuming, expensive, and likely even impossible. Even if such a record could be compiled, it would present the court with an unworkable volume of material that would be contrary to the summary nature of judicial review.

Analysis

[62] Based on the case law described above, in my view the guiding principle for determination of the record in this case, where a vast amount of information has been generated throughout this lengthy pandemic, is to ensure that the record contains a balanced representation of the important information available to the PHO

on the issues in dispute, so that a meaningful and fair judicial review can be conducted.

[63] On the evidence and argument heard in this application, I am satisfied that the PHO has produced such a record. That is not to say that, as the case proceeds, additional documents, or categories of documents, might not be identified for inclusion in the record. In this application, however, the petitioners have not persuaded me that such documents are missing, for the following reasons.

[64] First, the current record contains extensive documentation from what appears to be the key sources, being not just the PHO herself, but also BCCDC, the Public Health Agency of Canada ("PHAC"), the National Advisory Committee on Immunization ("NACI")[1], and the World Health Organization ("WHO").

[65] The documents in the record provide regular updates, data and reports, from across Canada and other jurisdictions, about case rates, outbreaks, transmissibility, hospitalizations, deaths, variants of concern, vaccine status and effectiveness, masking, and vulnerability of particular populations. They also summarize, or reference, an enormous number of additional reports and information from other sources on these topics.

[66] By way of example of what is in the record:

a) PHO news releases, media briefing transcripts and modelling presentations April 2020 – September 17, 2022.

   These include the epidemiological data for BC and internationally. For BC, they include information such as: COVID-19 hospitalizations, critical care, and deaths, including by age and vaccine status; key epidemiological and trajectory findings; new cases; wastewater viral loads; critical care demand and supply; case rates and vaccinations rates by location; vaccination progress; hospitalizations by age and vaccination status; antibody screening studies; recent trends and modelling of potential cases or transmission scenarios including by vaccination status; mask and vaccine card mandate terminations; and current and next steps.

[1] NACI is a national advisory committee of experts in multiple fields that provides guidance on the use of vaccines to the Government of Canada.

b) BCCDC COVID Situation Reports, weekly up to September 24, 2022.

These include in-depth information about COVID-19, underscoring data and key trends in the province, including case counts, epidemic curves, test rates, positivity percentages, hospitalization rates, care facility outbreaks, deaths and likely sources of infection.

c) BCCDC Weekly COVID-19 Reports, up to September 29, 2022.

The modelling work in these documents shows the epidemiologic circumstances in British Columbia, along with potential consequences of not taking action to limit transmission. It also identifies hospitalizations, critical care admissions and deaths.

d) BCCDC Adverse Events reports, up to September 24, 2022.

These summarize vaccine adverse events following immunization including number of reports of serious incidents.

e) September 8, 2022 evidence review "Impacts of COVID-19 Vaccination on Health Care Workers, SARS-CoV-2 Transmission".

f) NACI publications, up to October 7, 2022.

These include: updated guidance on vaccine boosters; recommendations on the use of bivalent Omicron vaccines; recommendations on the vaccine booster campaign and the use of Omicron containing vaccines; risks that increase the risk of poor outcomes from COVID-19, including many conditions that would require hospitalization.

g) A large volume of PHAC documents from the federal government's health portfolio, including:

i. Omicron Monitoring Report 5 – January 11, 2022

These include data regarding Omicron hospitalizations and key literature reviews regarding vaccine effectiveness against Omicron infection and symptoms, including after one, two or three boosters, risk of hospitalizations/severe disease, asymptomatic infection, household transmission, incubation period, risk in children, testing sensitivity and period of communicability.

They also include: summaries of key epidemiology information, including for Canada and British Columbia; summaries of recent key articles on Omicron breakthrough/vaccine effectiveness and epidemiologic characteristics; articles on Omicron transmission, hospitalization and vaccine and booster effectiveness.

ii. Weekly COVID Evidence Reviews

These include evidence, reviews and findings on: COVID and indoor air; masking; transmissibility among vaccinated individual; strategies to mitigate risk of outbreaks and mortality in long-term care facilities; and prioritization of residents in long-term care homes;

h) September 2022 draft study of the production of antibodies from vaccines and infections, co-authored by Dr. Bonnie Henry.

[67] Second, the petitioners' evidence and submissions made little, if any, effort to take into account what was already included in the record. They did not identify specific gaps in the record so much as make sweeping demands for "any and all documents" on broad issues. These demands did not address the organization of Dr. Emerson's affidavits or the documentary record attached thereto.

[68] By contrast, counsel for the PHO referred to documents and information in the current record addressing all categories sought by the petitioners. The petitioners provided little if any response to the PHO's submissions regarding the key types of documents and information already included, or why they were insufficient for fair, meaningful review of the issues they wished to raise.

[69] In sum, the petitioners have not shown why the current record – with the enormous amount of medical and scientific information it contains, summarizes or refers to – is insufficient for fair, meaningful judicial review of the arguments they wish to make regarding the Order.

[70] Third, the petitioners' requests are vast and vague. They seek exhaustive production of "any and all documents" in extremely broadly defined categories. In my view, it is impractical and unreasonable to order the PHO to try to identify all such information and documents before her, all in the context of a lengthy global pandemic that produced untold information and documents. Such an approach is also at odds with the summary nature of a petition proceeding and threatens an unworkably large evidentiary record.

[71] Fourth, when the petitioners specified particular documents they wished added to the record, the Crown generally complied. This occurred throughout the hearing, and was the basis for the Tatlock petitioners withdrawing their document application altogether. Counsel for the PHO also provided extensive pinpoint cites connecting statements in Dr. Emerson's affidavit to the specific supporting materials in the record.

[72] Fifth, although some of the petitioners suggested the PHO may have "cherry-picked" the record for materials helpful to her position, they provided no evidence or argument to demonstrate this might be so. The documents themselves do not suggest it, as they appear to be regular updates of the key publications from the most relevant sources.

[73] Sixth, the record includes eight expert medical reports and affidavits obtained by the petitioners in support of their position, each containing numerous studies. All of these were submitted to the PHO before September 1, 2022. Just listing the numerous studies in these materials consumes some 19 pages. In my view, the petitioners did not demonstrate why their own extensive materials combined with the rest of the PHO's record was insufficient for meaningful review of their challenges.

[74] As the matter proceeds, if the petitioners identify specific documents as important to meaningful judicial review, they can seek their inclusion in the record, either by agreement or application. The petitioners are well-placed to do so given the experts assisting them in their case.

Should the Two Petitioner Affidavits Be Struck?

[75] The respondent applied to strike the affidavits of Dr. Joshua Nordine and Dr. Steven Pelech, primarily on the grounds that they contained evidence and information created after the Order and were therefore not part of the record.

[76] Dr. Nordine is a petitioner in the Tatlock petition. He swore an affidavit on November 17, 2022 (with a follow-up on January 18, 2023 correcting a defective exhibit in the first affidavit).

[77] The PHO does not oppose admissibility of the personal information in his affidavit, being the first eight paragraphs and the first sentence of the ninth paragraph. In those paragraphs, Dr. Nordine explains that, as an Evangelical Protestant Christian, he opposed the vaccine because it was developed through the use of historical fetal tissue cell lines and that, as a result of the Order, he lost his job at The Bridge Detox Centre in Kelowna, where he worked with drug-addicted clients.

[78] The balance of his affidavit is a criticism of the Order. His says that "because of Dr. Henry's orders, the Province of British Columbia has lost my valuable and much-needed professional medical services to its citizens… [However] becoming infected with COVID-19 is not considered very serious; it is treated like a 'common cold'".

[79] The affidavit focusses on:

a) the damage to the healthcare system from removing him from working with drug-addicted clients, in circumstances where deaths resulting from toxic drug overdoses in British Columbia have exceeded COVID-19 deaths since March 2020; and

b) the fact that, with two shots of an approved COVID-19 vaccine, hospital staff may still become sick with COVID-19, but then are merely required to stay home for five days after symptom onsets, pursuant to the directives of the Chief Medical Health Officer for Vancouver Coastal Health, September 29, 2022.

[80] Counsel for the Tatlock petitioners says she relies on the Nordine affidavit, not as expert opinion, but for the factual evidence explaining the effect of the Order on Dr. Nordine himself and his patients. Alternatively, she says it is admissible as a "Brandeis Brief" or as social context evidence.

[81] The PHO argues the impugned parts of the affidavit, and all of its exhibits, are inadmissible because they: were created after the Order, and so not part of the record before the PHO; are argument better addressed through counsel's submissions; and, are unnecessary because there is already evidence in the record regarding these issues.

Analysis

[82] I agree with counsel for the PHO that the impugned parts of the affidavit are neither a description of the effect of the Order on Dr. Nordine and his patients, nor social context evidence or Brandeis Brief. They are medical evidence and argument in support of Dr. Nordine's opinion that the Order is unreasonable, all created after the Order.

[83] In *Beaudoin* (paras. 154-157), the Court of Appeal upheld Chief Justice Hinkson's decision below that affidavits created after the orders in question, and therefore not available to the PHO when she made them, were not part of the record. To include them would be inconsistent with the supervisory jurisdiction of the court and place it in the "untenable position of assessing matters afresh on an expanded record."

[84] This approach applies to the impugned parts of Dr. Nordine's affidavit and the exhibits he attaches. The affidavit and its exhibits were all created after the Order and were therefore not part of the record before the PHO when the Order was made.[2] The petitioners provided no authority for admissibility in judicial review in such circumstances.

[85] Regarding the affidavit being social context evidence, such evidence can assist to create a frame of reference, or background context, for deciding factual issues where *Charter* issues are raised. Dr. Nordine is not, however, an expert who has been qualified to give such evidence, and his affidavit does not provide such evidence but rather provides argument on the ultimate issue of the reasonableness of the Order.

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[2]The exhibits are: a) BC Coroners Service posting, September 28, 2022, regarding illicit drug toxicity deaths in British Columbia, January 1, 2012 to August 31, 2022; b) BCCDC Covid-19 situation report, October 27, 2022; c) BCCDC table of top 15 causes of death in British Columbia, March 2020 to February 2022, undated and with no explanation of how it was generated; d) Vancouver Coastal Health Covid-19 update, September 29, 2022; e) British Columbia Select Standing Committee on Health, November 2022 report "Closing Gaps, Reducing Barriers: Expanding the Response to the Toxic Drug and Overdose Crisis".

[86] Even if part of Dr. Nordine's affidavit could be characterized as social context evidence regarding the seriousness of the toxic drug crisis, such evidence is already in the record. Counsel for the PHO referred to the media briefing, March 11, 2021, from the PHO stating that, in addition to the COVID-19 pandemic, the Province is facing the overdose crisis wherein deaths from illicit drug toxicity is the fifth highest cause of death, with overdose deaths particularly affecting younger people in our communities.

[87] Brandeis Briefs may be admitted in constitutional litigation to establish the purpose and background of legislation, including its social, economic and cultural context (*Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2017 BCSC 860, paras. 23-28). In my view, Dr. Nordine's affidavit is not a Brandeis Brief but, as I have said, advocacy and expert opinion arguing against the reasonableness of the Order.

[88] Turning to Dr. Pelech's affidavit, he is a professor in the Department of Medicine at the University of British Columbia. His affidavit, sworn November 16, 2022, says that he was asked to provide his expert opinion on the "validity of the arguments put forth in the public health orders issued on June 10, 2022 and September 12, 2022".

[89] He says the issues he was asked to address were:

> a. The benefits and/or risks of getting the first, second and third doses of COVID-19 vaccines.
>
> b. The effectiveness of the COVID-19 vaccines approved for use in Canada, including the most recently approved bivalent vaccine, particularly in respect of their effectiveness against the Omicron variants, in terms of:
>
> > i. Infection, including an explanation of absolute versus relative risk reduction, and a comparison between the vaccinated and the unvaccinated;
> >
> > ii. Transmission, including the duration that a person is contagious, and a comparison between the vaccinated and the unvaccinated persons;
> >
> > iii. Reduction of recovery time, severe illness, hospitalization and death, including what outcomes the

vaccines were tested for, and a comparison between the vaccinated and the unvaccinated; and

iv. The rate at which the effect of the vaccines wane, especially for those with two shots and three shots.

c. The differences and/or similarities between natural immunity versus vaccine immunity.

d. The methodology by which reduction in infection and transmission has been or might be measured in any given long-term care, assisted care and/or hospital setting.

e. The risks and side effects of the vaccines, including the more serious side effects, specific risks for working age people, and the concept of cost-benefit for different age groups.

f. The rationale, assertions of fact, and evidence stated in the Orders of the BC Public Health Officer, particularly the Orders of June 10, and September 12, 2022).

g. The rationale, assertions of fact, and evidence stated in the affidavits of Dr. Emerson in the present litigation.

[90] The PHO acknowledges that two of his exhibits are admissible as part of the record available to her when making the Order. These are Schedules 4 and 5 to his affidavit, being his "point-by-point critique" of the PHO's June 10, 2022 order, that he co-authored in August 2022, and his email of August 9, 2022 transmitting this to the PHO.

[91] The PHO submits that the balance of his affidavit is inadmissible, post-record expert opinion and should be struck.

[92] Counsel for the Tatlock petitioners argues that Dr. Pelech's affidavit permissibly supplemented the record because it was evidence necessary to:

(i) provide general background (as opposed to addressing the merits) in circumstances where that information might assist in understanding the issues for review;

(ii) bring to the attention of the court procedural defects that cannot be found on the evidentiary record;

(iii) highlight the complete absence of evidence before the tribunal when making a particular finding; or

(iv) elucidate the record upon which the administrative body's reasons were based.

Saskatchewan (Workers' Compensation Board) v Gjerde, 2016 SKCA 30 at para. 44.

[93] During submissions, counsel for the petitioners did not demonstrate how Dr. Pelech's affidavit fell within any of these categories.

[94] The point of the affidavit is to identify what Dr. Pelech refers to as "the key flaws in the BC Public Health Office arguments" – which he describes in detail in paragraphs 24-25 – and to support his opinion that, if the Order continues, "this will lead to further reductions in this critical workforce and endanger the long-term health of those that choose to remain, and in doing so also the general public".

[95] The affidavit is therefore advocacy and expert opinion. It was created after the Order and so is not part of the record and should not be admitted on judicial review.

[96] These affidavits are therefore struck for containing advocacy, expert opinion and information created after the Order under review.

Conclusion

[97] The petitioners' applications to augment the current record are dismissed, though they have leave to seek to add further specific documents or information to the record as the case proceeds.

[98] The affidavits of Drs. Nordine and Pelech are struck.

[99] During the hearing the parties advised of their agreement that no costs should be awarded for the applications.

"Coval J."

This is Exhibit "mm" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

CITATION: J.W.T. v. S.E.T., 2023 ONSC 977
COURT FILE NO.: FC-20-1352-00
DATE: 20230208

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: J.W.T., Applicant

AND:

S.E.T., Respondent

BEFORE: The Honourable Justice R.T. Bennett

COUNSEL: Rachel Zweig, for the Applicant

Abba Katz, for the Respondent

HEARD: November 21, 2022

ENDORSEMENT

1. The respondent mother S.E.G. (formerly S.E.T.) ("mother" or "respondent mother") brings a motion seeking an order that she may have the three children of the marriage, H.W.T. born in 2012, ("H.W.T."), C.R.T. born in 2017 ("C.R.T.") and Z.B.T. born in 2018 ("Z.B.T.") collectively known as "the children", vaccinated against COVID- 19 without the consent of the applicant father J.W.T. ("father" or "applicant father").

2. The children are ten, five and four years of age.

3. The children primarily reside with the mother during the school year.

4. This matter was put over for a long motion pursuant to the final order of Justice Jarvis dated May 13, 2022. At that time, it was contemplated that the long motion would be heard during the May 2022 trial sittings. However, due to the unavailability of counsel, when the motion was called, the motion was moved to the November 2022 trial sittings and was heard by the court November 21, 2022.

5. The parties to their credit entered into minutes of settlement dated April 18, 2021 (sic) 2022 which resolved virtually all parenting and support issues on a final basis.

6. The court will summarize those minutes of settlement so far as they relate to this motion as follows:

   - The parties agreed on the following major decisions with respect to the children and in particular: the schools that the children would attend.

- That the children's doctor shall be Dr. Sriskanda.
- That the mother would schedule and attend annual medical and dental appointments for the children providing the date of those appointments to the father and that she will provide him with a brief written summary of those appointments if the father is unable to attend.
- The parent caring for the children at the time will deal with any medical emergency.
- The father will arrange for communion and baptism for the children.
- Each party is at liberty to observe and follow their respective religious traditions while the children are in their care.
- **The children shall not be vaccinated against COVID-19 without a court order, as per Justice Himel's endorsement and order dated December 13, 2021. The mother will be at liberty to bring a motion in the May 2022 trial settings for an order that she obtain COVID-19 vaccinations for the children of the marriage (emphasis added).**
- In the event a parent proposes to change any of the already agreed upon items for the children listed above, or a parenting issue not listed above arises, that party shall communicate their proposal in writing to the other party along with the reasons for their position. The other party shall then have 14 days to respond. If the parties cannot resolve the issue, the mother will make the final decision and communicate the decision to the father (except as set out in paragraph 1(k) in the minutes of settlement with respect to the COVID-19 vaccine).
- H.W.T. will commence therapy immediately with Karen Guthrie-Douse and follow her usual practices. C.R.T. will attend therapy with Ms. Guthrie-Douse as needed. Counsel for the parties may arrange a joint telephone call with Ms. Guthrie-Douse to discuss the process. The father will pay for the therapy costs for him and the children. The mother will pay for the therapy costs for any session that she attends with Ms. Guthrie-Douse.
- Neither party will make disparaging comments related to the other to the children and will not discuss any aspect of this court proceeding where there is conflict between the parties with the children under any circumstances. Neither party will denigrate or disparage the other parent or members of their extended families with the children in their presence, nor shall they permit the children to be present if any other person is disparaging the other parent.
- The parties will ensure that the children are not exposed to any adult conflict, whether it is during their respective parenting time, exchanges or anytime they have contact.

- During the school year, the children shall live primarily with the mother and the father shall have parenting time every Wednesday overnight and alternate weekends from pick up after school on Friday until drop off Monday morning.

- The minutes of settlement go on to essentially provide that the parties will have equal parenting time during holidays, summers and Christmas and March break vacations.

- The father is to pay child support in the amount of $1,999 per month based on his estimated annual income of $105,000 per year.

7. Those minutes of settlement were signed by the parties on April 19, 2022 and formed the basis of a final order.

Evidence tendered on the motion

8. The court confirmed with the parties and their counsel that it had received and reviewed the following prior to hearing submissions on the motion, namely:

   - The mother's notice of motion dated May 1, 2022.

   - The mother's affidavits dated May 1, 2022, May 25, 2022, November 14, 2022 and November 18, 2022.

   - The father's affidavits dated May 20, 2022, November 7, 2022 and November 16, 2022.

   - OCL report dated November 22, 2021.

   - Minutes of settlement erroneously dated April 18, 2021 but actually signed April 19, 2022.

   - The court also received and reviewed the mother's factum dated May 30, 2022 and her supplementary factum dated November 14, 2022 and the father's factum November 21, 2022.

9. As a preliminary matter, the father's counsel objected to certain aspects of the mother's materials namely, references to reunification therapy and ADHD diagnosis. Essentially, the objection to this was that the father did not have an opportunity to respond to allegations that were made and that the references were irrelevant to the issues before the court.

10. The father also objected to the court accepting as evidence, letters from doctors that had been tendered on behalf of the mother.

11. Further, the father objected to reference being made to the OCL report. In particular, the father objected to the court making findings on a temporary motion based on recommendations made by an OCL investigator in their report.

12. The court rendered orally its rulings on each of these issues.

13. The court emphasized that the issue to be decided by it was a very narrow one.

14. The mother wished to tender two different letters from two different doctors.

15. The first letter was from a pediatrician who indicated in the letter that it was the mother who had brought the oldest child to all of the pediatric appointments.

16. The court found that this letter was not properly admissible for two reasons. Firstly, it was not in the form of an affidavit but secondly, and more importantly in the court's view, the issue of who had taken the child to pediatric appointments several years ago was in the court's finding totally irrelevant to the issue at hand being the vaccination issue.

17. The mother also wished to tender a letter from the children's current doctor (Dr. Sriskanda) indicating the doctor's recommendation with respect to vaccination. The court found this letter inadmissible in that it was not in the form of an affidavit. Secondly, even if the court had allowed the letter to form part of the evidence, the doctor was in the letter not expressing an opinion specifically with respect to these children but was in the court's view merely reciting and following the public health guidance and recommendations. As of that time, only the eldest child was eligible for vaccination. The doctor indicated that there were no medical exemptions or contraindications with respect to that child and therefore the doctor was recommending in accordance with public health guidelines that the child be vaccinated. The doctor further recommended that the younger children be vaccinated when the government deemed them eligible. Therefore, the letter was not of probative value in that it did not assist the court with the issue of these children specifically.

18. The mother wished to reference the OCL report and to utilize portions of that in her argument with respect to the vaccination issue. The court found that the OCL report, although very thorough, had little if any relevance to the issue before the court. The sole issue before the court was the issue of vaccination of the children. The OCL report did not address that matter specifically.

19. The court was not tasked with the decision as to who is the better parent or issues of parenting time with each parent or even general decision-making issues. The issue before the court was very specific; that being the issue of decision-making so far as it relates to the children receiving or not receiving the COVID-19 vaccination. Therefore, the OCL report was of minimal assistance to the court and minimal relevance to the issue before the court. In addition, the report and the investigator's findings had not been tested under cross examination.

20. The remaining evidentiary issue was with respect to the statements in the mother's reply affidavit relating to the parties' involvement with Ms. Guthrie Douse. The father's objection to this evidence being before the court was that the father had no opportunity to respond to the allegations that he had not participated in that therapy and that the evidence was not proper reply evidence Once again, the court found that the issue of the therapy was not directly related to the issue before the court.

21. The court therefore ruled that the only evidence that was relevant for this motion was evidence that related to the vaccination issue.

22. The mother's position was that the court should rule in her favor and find that it was in the children's best interests that an order be made which would effectively give her decision-making over the issue of the children's vaccination and allow her to proceed to have the children vaccinated against COVID-19 without the consent of the father.

23. On a somewhat technical point, the court notes that the mother's motion is characterized as seeking a court order that the children be vaccinated. Technically, this is not appropriate, and the court has no authority to order children to be vaccinated. What the mother is really seeking, and the issue to be decided by the court, is whether or not that decision should be left with the mother without the necessity of consent from the father.

24. In response to a question from the court based on an item set out in the mother's factum, the court clarified that the mother was not asking the court to make a final decision on vaccination unless that decision was favourable to her. In other words, the court clarified that the mother was not asking the court to make an order regarding whether or not the children should be vaccinated but that she was asking the court to make an order to dispense with the father's consent to vaccination for the children.

25. The father's argument on the other hand and was that the court should not make any determination of the issue on a temporary basis and the court should require that issue to be determined at trial. The father's argument was that the court should not take judicial notice of government publications as requested by the mother but that the court should defer the matter to trial where expert evidence could be tendered.

Parenting decisions to be determined based on the best interests of the children

26. It is trite law but needs to be emphasized, that any decision involving the parenting of a child, is to be determined by the court based on the best interests of the specific child in question.

27. The court accepts that pursuant to section 16 of the *Divorce Act*, R.S.C. 1985, c 3 (2nd Supp) and pursuant to section 24 of the *Children's Law Reform Act*, R.S.O. 1990, c C.12 the court is to determine this issue based on the best interests of these specific three children.

28. The court will return to that issue and base its decision on the criteria set out in the *Divorce Act*, the *Children's Law Reform Act*, case law and this court's interpretation of the same.

29. However, there is a much broader issue, and the court feels it appropriate to address that broader issue prior to dealing with the specificity of this case.

COVID-19 and vaccine cases

30. This court notes that there have been few issues if any within the last 50 years or more that have caused a greater polarization within society and more entrenched views than those that have been expressed relating to COVID-19 and to some extent the issue of vaccination.

31. This family unfortunately is no different to a plethora of families that find themselves in the same situation. These parents take different views as to what is in the best interests of the children and whether or not they should be concerned about any risk of the COVID-19 vaccines. A sub-category of that analysis is whether or not the risk of getting COVID-19 and the possible ramifications to the children are greater than the potential risks, both short and long term, of side effects from the vaccines.

32. The mother's position in its simplest form is that governments have approved vaccines and governments are recommending that children of the respective ages of these children have the vaccine administered to them. The mother's family doctor is recommending that public health protocol be followed. The conclusion that she comes to is that the public health recommendations should be followed and that the children should be vaccinated.

33. The mother accepts and reiterates, as does the children's doctor, the public health messaging that the vaccines are "safe and effective".

34. The father's position is that the vaccine is different than other vaccines. He argues that the COVID-19 vaccine has been "rushed" and has not been the subject of typical clinical trials that other vaccines have been required to be put through prior to being approved for use by the general population. He cites that he believes that there are experts who would proffer an opinion as to the dangerous side effects of these vaccines and that this case should not be decided until a court has had the opportunity of hearing both sides of the argument and receiving evidence from experts on both sides of that argument.

35. The father relies on the fact that there are any number of ongoing studies that have not been completed and submits that the court simply does not have enough evidence before it at this time to be able to make a determination as to whether or not these vaccines are "safe and effective".

Interpretation of Judicial notice in previously decided COVID-19 vaccination cases

36. Whether this court should make a determination on a temporary motion or defer the matter to trial for expert evidence largely will be based on how this court interprets judicial notice and of what "facts" this court finds it should appropriately take judicial notice.

37. The Supreme Court of Canada in *R. v. Find*, 2001 SCC 32, [2001] 1 SCR 863, addressed the issue of judicial notice.

38. In that decision the court noted at para 48 that "Judicial notice dispenses with the need for proof of **facts that are clearly uncontroversial or beyond reasonable dispute**. Facts judicially noticed are not proved by evidence under oath. Nor are they tested by cross-examination. Therefore, the threshold for judicial notice is strict: a court may properly take judicial notice of facts that are either: (1) so notorious or generally accepted as to not be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy." This was referenced from an earlier case of *R v. Potts* (1982), 1982 CanLII 1751 in the Ontario Court of Appeal; and J. Sopinka, S.N. Lederman and A.W. Bryant on *The Law of Evidence in Canada*, (2nd ed. 1999), at p. 1055. (emphasis added)

39. As with many cases, courts interpret legal principles and precedent cases quite differently.

40. There have been a number of cases that have interpreted judicial notice so far as it relates to the issue of whether or not a parent's consent to their child's vaccination should be dispensed with.

41. In some of these cases, the issue of the child's views and preferences becomes more relevant when the child is somewhat older.

42. In some of these cases, on the issue of whether or not there has been a material change in circumstances is relevant since there is in place an existing order either final or temporary which provides one of the parents with decision-making authority.

43. The cases vary, in that in some cases, the parent with the decision-making authority is opposed to vaccination of the children and the other parent is seeking a court order "forcing" the child to be vaccinated. The issue then becomes whether or not the decision-making authority (at least for the vaccination issue) should changed to the other parent.

44. In other cases, it is the parent with the decision-making authority who is wishing to exercise that authority by having the child vaccinated and the court is asked to

determine if the decision-making authority should be reversed so that the parent opposing the vaccination is in a position of "control".

45. This court has read what it believes to be all of the cases that have been decided to-date certainly in Ontario, relating to the issue of vaccination and dispensing with a parents consent to a child being vaccinated.

46. Since this issue is of such importance, and is so divisive, the court finds it appropriate to review cases which have been decided on this issue.

47. The court will in detail reference the cases referred to by each counsel but, as noted subsequently, has read what the court believes to be all of the cases decided on the issue to this point in time.

48. Before so doing, the court wishes to emphasize that the court respects that each justice decides the case as he or she finds appropriate based on the evidence before him or her and the court has no doubt that in each of these decisions, the case was decided based on the judge's interpretation of what is in the best interests of the particular child in front of them and based on the evidence put forward by each side.

49. Having reviewed all of the cases, however, the court finds it striking in terms of the variation in interpretation of what is judicial notice and of what "facts" are appropriate to be the subject of judicial notice.

50. The Ontario Court of Appeal has released a decision just as this court was about to release this decision. Reference to the Ontario Court of Appeal decision is made at the end of this decision.

A.M and C.D.

51. Justice Hackland rendered his judgment in *A.M. and C.D.* on March 9, 2022 [*A.M. v. C.D.*, 2022 CarswellOnt 3741, 2022 ONSC 1516, 2022 A.C.W.S. 412].

52. The basic facts of that case were that the court was faced with an urgent motion brought by the mother of a 7-year-old child seeking an order to have the child vaccinated against COVID-19 including any further booster shots approved by Health Canada. The child resided primarily with the mother. The father had final decision-making authority on the child's health.

53. The mother led evidence that the father had issues with the child being masked. The mother's evidence was that both she and the child had tested positive for COVID-19 about a month earlier and that the child's symptoms had improved rapidly and she returned to school after the quarantine period had passed.

54. The father had a scientific background and had been a representative for a pharmaceutical company. He was opposed to COVID-19 vaccinations at that point in

time and wanted to take a "wait and see approach" until further vaccine study data had been available.

55. The father expressed views about the mRNA technology and he, although not an expert, expressed views on the potentially DNA altering vaccinations to a child which could be life altering.

56. The court in that case found that it was impressed with the father's balanced observations of his struggles in concluding whether or not it was a greater risk to have the child vaccinated or to remain unvaccinated.

57. Justice Hackland took judicial notice of the Health Canada advisories and commented on a then recent decision of this court by Justice Pazaratz.

58. Justice Hackland found that he disagreed that Health Canada advisories on the efficacy of vaccines "are a species of 'expert opinion' which cannot or ought not to be the subject of judicial notice."

59. In his decision, he quoted extensively Justice Jarvis's decision in *Dyquiangco Jr. v. Tipay*, 2022 ONSC 1441 (CanLII), upon which this court will comment subsequently.

60. Justice Hackland determined that a government health advisory could be judicially noted. It did not mean that it was determinative of the issue, but he agreed with Justice Jarvis that it may amount to a legal presumption, placing the onus on the objecting parent to rebut the presumption.

61. Justice Hackland commented on Justice Pazaratz's finding in *J.N. v. C.G.*, 2022 ONSC 1198, with respect to one of the mother's downloads in that case being that of Dr. Robert W. Malone.

62. Justice Hackland, in *A.M.* noted that "A Google search will, however, disclose that "Dr. Malone was barred by Twitter for violating the platforms coronavirus misinformation policy and that a recent Washington Post article stating that Dr. Malone's "claims and suggestions have been discredited and denounced by medical professionals as not only wrong, but also dangerous"."

63. He pointed out that Internet downloads are simply not reliable in many instances particularly when contrasted with public health advisories.

64. In conclusion, Justice Hackland took judicial notice of the efficacy of the vaccine.

65. He did, however, find that there were countervailing considerations in the case before him in that the objecting father was the ultimate decision-maker with respect to the child's health based on the existing court order. He also found that the father's interest in the well-being of his daughter appeared to be sincere and supported by "reasonably held factual assertions". He noted that "we are currently in a rapidly changing environment as the COVID-19 pandemic subsides and vaccine and masking mandates

are being withdrawn. There appears to be particular scrutiny directed at the efficacy of the Pfizer vaccine for children in the 5 to 11 age group." [see *A.M.*, at para 29.]

66. Ultimately, Justice Hackland found that based on the interim motion he could not find that there had been a material change in circumstances sufficient to justify the change in the existing order that allowed the father to have the responsibility over the child's health care decisions.

67. He declined to make that determination on an interim basis and found that the vaccination issue could be examined in more depth and on a better record. On that basis he dismissed the applicant mother's motion without prejudice to further consideration.

A.C. and L.L.

68. This was one of the earliest decisions decided on the issue of COVID-19 vaccination of children. It was rendered October 1, 2021, by Justice Charney and has been cited in many decisions subsequently. [see *A.C. v. L.L.*, 2021 ONSC 6530]

69. In that case there were 14 year-old triplets. The father had taken the position that the children should not attend school in person until they had received their COVID-19 vaccine. His evidence was that two of the children wanted to attend to school in-person and wanted to be vaccinated, a position supported by the father but opposed by the mother.

70. Justice Charney in his decision at para 23 noted that "The safety and efficacy of the COVID-19 vaccine has been endorsed by all governments and public health agencies". He points to a Toronto Public Health directive to parents of school age children that as he highlights indicates "**Get vaccinated**".

71. Justice Charney also references an Ontario Ministry of Health website that states "the Pfizer-BioNTech vaccine has been proven to be safe in clinical trials and provided excellent efficacy in adolescents". [*A.C.* at para 25]

72. He found that those public pronouncements were admissible under the public documents exception to the hearsay rule: *A.P. v. L.K.*, 2021 ONSC 150, at paras 147-173.

73. Justice Charney notes that, "the responsible government authorities have concluded that the COVID-19 vaccination is safe and effective for children ages 12 to 17 to prevent severe illness from COVID-19 and have encouraged eligible children to get vaccinated. These government and public health authorities are in a better position than the courts to consider the health benefits and risks to children of receiving the Covid 19 vaccination. Absent compelling evidence to the contrary, it is in the best interest of an eligible child to be vaccinated." [*A.C.* at para 28]

74. Justice Charney goes on to find "the question is whether it is in the best interests of the child. Given the government statements above, there can be no dispute that, as a general presumption, it is in the best interest of eligible children to get vaccinated before they attend school in person." [*A.C.* at para 30]

75. Justice Charney then goes on to an analysis of whether or not under the *Health Care Consent Act, 1996*, S.O. 1996, c. 2, Sch A, the mother's consent is even necessary for a 14-year-old child.

Saint-Phard and Saint-Phard

76. At about the same time, being October 5, 2021, Justice Mackinnon of this court was rendering a decision whereby the father in that case was seeking sole decision-making for a 14-year-old child. The parents had been sharing joint decision-making to that point in time. [*Saint-Phard v. Saint-Phard*, 2021 ONSC 6910]

77. The father was relying on governmental and public health recommendations and the recommendation of the child's physician. The child had until shortly before the motion, expressed consent to the vaccination. The mother opposed the vaccination and the child currently was stating that he did not wish to be vaccinated.

78. Justice Mackinnon found that notwithstanding the child's then expressed views that it was in the child's best interests to be vaccinated against COVID-19.

79. She concluded that the child's then expressed views were not independent and had been influenced not only by his mother but by a doctor that the mother had recently retained.

80. The father in that case relied on Dr. Tam, Chief Officer of Health for Canada, who had stated that for children between the ages of 12 and 17 "thorough testing has determined the vaccines to be safe and effective at preventing severe illness".

81. Justice Mackinnon also relied on Dr. Kieran Moore, Chief Medical Officer for Ontario whose recommendation was that all youth between ages 12 and 17 be vaccinated against COVID-19.

82. Justice Mackinnon concluded that based on the evidence before her and other cases including Justice Charney's case (*A.C. v. L.L.*) that "I find that the applicable government authorities have concluded that the COVID-19 vaccination is safe and effective for children ages 12 to 17".

83. The court in that case had received a letter from the child's family doctor, Dr. Tchen, who recommended that the child be vaccinated with two doses of the Pfizer vaccine.

84. A letter from another doctor, being Dr O'Connor, had been submitted on behalf of the respondent mother. That doctor opined that the child "should not be given the COVID-19 vaccine on account of having asthma." The doctor also wrote that "the vaccine is

experimental, testing will continue to 2022/2023 thus we have no evidence yet of any benefits to children"." Dr. O'Connor had cited many adverse effects of the vaccine including "a huge incidence of myocarditis in young men". The same doctor noted that she had seen the child and discussed with him the present COVID-19 situation and the multiple adverse effects and that the child "does not want it".

85. Justice Mackinnon decided to accept the opinion of the father's doctor in preference to the mother's doctor. Justice Mackinnon found that the mother's doctor's (Dr. O'Connor) objections were "directly countered by the judicial notice taken that the vaccine is safe and effective and provides beneficial protection against the virus to those in this age group." [see para 12]

86. Justice Mackinnon found that the child had changed his mind based on the influence from the mother and the doctor to whom she had taken him. She also found, at para 17, that "The explanations he gave his lawyer and his father are based on wrong information and inadmissible anecdote. His current stated view to not have the vaccine is not based on an understanding of accurate medical information as to the benefits and risks of the vaccine. As such it is not a properly informed decision."

87. At para 18, Justice Mackinnon distinguished a 2001 Alberta Queens Bench case involving the issue of a child's capability of consenting. Justice Mackinnon concluded that the child in her case "did not have the requisite medical information on which to make an informed decision."

88. Justice Mackinnon further found that "the father should arrange for the child to be properly informed of the medical and scientific facts of the virus and the vaccine personally by Dr. Tchen prior to being taken for a vaccination."

89. Justice Mackinnon, at para 22, ordered that the child was "entitled to receive the COVID-19 vaccine and that the mother shall not tell or suggest to [the child] that the COVID-19 vaccines are untested, unsafe, ineffective or that he is particularly at risk from them. Nor may she permit any other person to have any such discussion or make any suggestion to the child, directly or indirectly. My order includes that she is prohibited from showing [the child] social media sites, websites, other online information, literature or any other material that calls into question the safety or efficacy of COVID-19 vaccines or permitting any other person to do so."

TRB and KWPB

90. In December 2021, Justice Kubik of the Alberta Court of Queens Bench issued a decision relating to children aged 12 and 10 [*TRB v. KWPG*, 2021 ABQB 997 (CanLII)]. The mother wished the children to be vaccinated; the father opposed. The parties until that time shared joint decision-making for the children.

91. The father had presented numerous Internet sites. The court found that his materials "illustrate the father's engagement with vaccine misinformation." [*TRB* at para 9.]

92. The court found that, "By virtue of its approval by the regulatory authority responsible for testing and approval of drugs in Canada, the vaccine is not experimental. It is deemed safe and effective for use in children aged 5-11 and 12-17. While not mandatory in Alberta, vaccination of children aged 5-11 and 12-17 is recommended by the Chief Medical Officer of Health for Alberta." [*TRB* at para 12.]

93. The court went on to note and to find, "Vaccination is prophylactic medical treatment. Its primary purpose is to prevent the vaccine recipient from contracting illness. Vaccination also serves the purpose of limiting the spread of illness by limiting its transmissibility." [*TRB* at para 14.]

94. The court further found at para 14 that, "Vaccination like all medical treatment comes with risk" and that "illness from COVID-19 also comes with risk, including transitory flu-like symptoms, more serious pneumonia-like symptoms, and the need for hospitalization including mechanical ventilation, and in some cases long-term health consequences. Children in Canada have died from COVID-19." (This court does not see any notation in the reported decision of verification of these statements).

95. In *TRB*, the court noted that the doctor made no recommendation as to whether or not the children should be vaccinated.

96. At para 30 the court found that the mother was "authorized to have the children vaccinated against COVID-19 without the consent of the father."; and, at para 33, that "Vaccination will limit the risk of transmission and will allow the children to fully participate in school, extra curricular activities, social activities, and travel opportunities."

97. The court found that the 10-year-old child's vaccine anxiety was "directly related to the misinformation she received from her father as well as from her friends."

98. That court directed that the father will not discuss or permit any third party to discuss the issue of COVID-19 vaccination or COVID-19 generally with the children or supply social media or other information about the vaccine or the disease to the children."

Dyquiangco Jr. and Tipay

99. This is a March 2, 2022 decision of Justice Jarvis of this court [*Dyquiangco Jr. v. Tipay*, 2022 ONSC 1441 (CanLII)].

100. The decision was based on a motion by the father to have a 12-year-old daughter who primarily resided with him vaccinated over the objections of the mother to have the child vaccinated "at this time".

101. The existing situation was that the parties shared joint decision-making.

102. The mother's evidence was that she declined to consent to the vaccination because the child had recently recovered from the virus without hospitalization and that she had acquired natural immunity. As part of her evidence, the mother included Internet excerpts from Dr. Robert Malone who the court noted described as the reason(s) why parents should vaccinate their children as "a lie". [*Dyquiangco Jr.* at para 4]

103. The court noted that the mother objected to the child being vaccinated "at this time".

104. The court noted from the father's materials the excerpt from Health Canada which included, "People who have already had COVID-19 should be vaccinated for future protection. They may be offered 2 doses and a booster dose when eligible. COVID-19 vaccines help to prevent infection as well as complications. By helping prevent infection, vaccination can also prevent post COVID-19 condition. This condition refers to symptoms some individuals experience for weeks or month after being infected with COVID-19. Symptoms can be very different from those during the initial infection." [*Dyquiangco Jr.* at para 19]

105. In referencing the decision to which this court will subsequently refer being *R.S.P. v. H.L.C.*, 2021 ONSC 8362, Justice Jarvis made findings of what the court was prepared to take judicial notice. Among his findings Justice Jarvis, in his decision at para 22, took judicial notice of the following:

- There is no verifiable evidence of natural immunity to contracting the virus or any mutation a second or more times;
- Vaccines work; Vaccines are generally safe and have a low risk of harmful effects, especially in children;
- Vaccines do not prevent infection, reinfection or transmission, but they reduce the severity of symptoms and the risk of bad outcomes.

106. Justice Jarvis went on to comment, "This is not "fake science". It is not "fake medicine". Whether there is a drug company conspiracy callously or negligently promoting unsafe medicine (the "lie") in collusion with federal and provincial authorities this Court leaves to another day and to those who think Elvis is alive. He isn't. He left the building decades ago." [*Dyquiangco Jr.* at para 23]

107. Justice Jarvis then effectively found that an onus was placed on an objecting parent to demonstrate to the court that it is not in the child's best interest to be vaccinated given the government guidance.

Rashid and Avanesov

108. In April 2022, Justice Somji of this court issued a decision relating to a seven-year-old child. The decision related to not only the COVID-19 vaccines but also vaccination for

measles, mumps and rubella ("MMR") wherein the mother wished to have the child vaccinated and the father opposed.

109. Her Honour in this court's view quite properly found that the court did not have authority to mandate a child to be vaccinated and that the issue to be decided was who should have that decision-making authority.

110. The father's argument was that the decision should not be made on and "interim" motion but should be left to trial. Similar to the argument before this court, his argument was that once vaccinated, the vaccination could not be "undone".

111. Justice Somji found that there was no need to defer the matter to trial and that she was prepared to make a decision based on the evidence before her.

112. In addition, in that case there was an issue of the father having given consent at least on a conditional basis and then having revoked that consent. That particular issue being the consent or revocation thereof, is not before this court.

113. The court will only reference this case so far as it relates to the COVID-19 vaccine.

114. Among other cases, Justice Somji cited the case of *McDonald v. Oates*, ONSC 2022 394 being a decision of Justice Van Melle wherein Her Honour decided that it was safe to vaccinate the parties' 10-year-old child.

115. Justice Somji did a thorough analysis of all of the cases that had been decided to that point in time.

116. Justice Somji also reviewed the evidence put forward by the father. Among that evidence was a recorded interview with Dr. Robert Malone who the court found was the "founder of the mRNA vaccine." In that interview, as noted in the case, Dr. Malone opined that the vaccine had not been adequately tested for children and that it would require at least five years of testing and research to fully understand the risks associated with this new technology.

117. Dr. Malone therefore concluded that given the low risk of harm to young children from COVID-19 the risk of short and long-term side effects for children far outweigh any benefit from obtaining the vaccine. He cited as risks including damage to vital organs and, as noted in that case found that by vaccinating a child:

> A viral gene will be injected into your parent cells. This gene will force your child's body to make toxic spike protein. These proteins often cause permanent damage in a child's critical vital organs. These organs include their brain and nervous system, their heart and blood vessels, including blood clots, their reproductive system, and most importantly this vaccine can trigger fundamental changes to their immune system. The most alarming point about this, is that once those damages have occurred, they are irreparable. They cannot be reversed. You can't fix

> the lesion within their brains. You cannot repair heart tissue scarring. You cannot repair a genetically reset immune system. And this vaccine can cause reproductive damage that can affect future generations of your family
>
> … this novel technology has not been adequately tested. We need at least five years of testing and research before we can fully understand the risks associated with this new technology. The harms and risks of new medicine often become revealed many years later
>
> … there is no benefit for your children or your family… against the small risk from the virus, given the known health risks from the vaccine it is apparent you and your children may have to live with for the rest of their lives. The risk/benefit analysis is not even close with this vaccine for children.
>
> [*Rashid*, at para 79]

118. Justice Samji went on to quote *A.M. v. C.D.* being the decision earlier referenced of Justice Hackland and in which in that case Justice Hackland had noted that Dr. Malone had been barred from Twitter.

119. Justice Samji, went on to find that she, as others before her, had found that there was a presumption in favour of courts finding in favour of Canadian Health authorities. She found that the evidence from Dr. Malone as well as the remaining evidence from the father did not "displace the presumption".

120. While Justice Samji did find that there would be a temporary order allowing the mother to have decision-making authority over the child's health including vaccinations, she did require the mother to alert the child's health care provider to the concerns raised by the father. Justice Samji therefore did not simply categorically dismiss the concerns raised by the father. Similar to other cases, Her Honour did however issue a prohibition from the father discussing the issue of vaccines with the child.

D.E. and W.E.

121. On November 7, 2022, Justice Delaquis of the Court of King's Bench of New Brunswick released this decision [*D.E. v. W.E.*, 2022 NBKB 211]. The parties shared joint decision-making. The mother wished to have the children who were 10 and 12 years of age vaccinated, and the father opposed.

122. Among the cases cited by that court were many of the cases to which this court has referred but in addition was the Saskatchewan Court of Appeal case in *Inglis v. Inglis*, 2022 SKCA 82 (CanLII). The Saskatchewan Court of Appeal took note of the fact that there were many cases in which courts had taken judicial notice of the vaccines

being safe and effective and only one case that had taken judicial notice of the risks of the COVID-19 vaccine.

123. The court concluded by taking judicial notice of, vaccines reducing the risk of contracting COVID-19, children being less likely to become really sick, and the endorsement by provincial and federal health authorities approving the vaccine. [*D.E.* at para 44]

124. The court also found that the "evidence" led by the father was not relevant and was unreliable hearsay, including someone's interpretation of the case successfully argued by Robert F Kennedy Jr. in the US Supreme Court relating to the Nuremberg Code and specifically Article 7 thereof.

125. The court varied the final divorce order to change sole decision-making to the mother including decisions with respect to allowing the children to be vaccinated.

K.D.B. and K.B.

126. In March 2022, Justice d'Entremont of the Queen's Bench of New Brunswick (as it then was) issued a decision on a motion to change by the mother changing decision-making to allow her to have a 10-year-old child vaccinated over the objection of the father. [*K.D.B. v. K.B.*, 2022 NBQB 74 (CanLII)]

127. The father's argument was that the child had already contracted COVID-19 and consequently the vaccines would not be beneficial to him. His argument was that there was reliable information that the risk of the vaccine to a child was greater than the benefit.

128. The mother had tendered a letter from the family doctor indicating that the child had no contraindications to receiving the vaccine and recommended that the child received a two-dose series of vaccines. Another argument was put forward by the mother that the child could not participate in hockey without being vaccinated and that because of federal mandates at the time, unvaccinated individuals could not board an airplane or a train.

129. As well, in that particular case, the child's great-grandmother (presumably maternal) was being transferred from a hospital to a nursing home and the New Brunswick restrictions at the time would have precluded the child from entering that nursing home and visiting the grandmother.

130. The father argued that the vaccines were experimental and that they had been authorized for emergency use only. He further argued that the evidence was that the vaccines did not prevent someone from contracting or transmitting COVID-19.

131. The father introduced a letter from a retired family doctor who had not met the child but who opined that nothing is known about the long-term effects of the vaccines and

that there are reported adverse effects of vaccination such as myocarditis. The court gave "very little weight" to the opinion of that retired family doctor.

132. The father also provided as evidence, information relating to the warnings found on the Pfizer website itself.

133. The court took judicial notice of Health Canada's authorization of the Pfizer vaccine for children ages 5 to 11 in which Health Canada stated "after a thorough and independent scientific review of the evidence, the Department concluded that the benefits of the vaccine for children between 5 and 11 years of age outweighed the risks." [*K.D.B.* at para 35]

134. The court considered the case of *J.N. v. C.G.*, 2022 ONSC 1198 being the case decided by Justice Pazaratz of this Court (which this court will subsequently refer).

135. Justice d'Etremont found that, "With respect, I cannot follow the reasoning outlined in *J.N v. C.G.* While I appreciate that intelligent people may have different points of view regarding the COVID-19 vaccinations, the concept of judicial notice is still a recognized principle of law which may be challenged by compelling and reliable evidence to the contrary". [*K.D.B.* at para 56]

136. The court essentially found that there was a presumption in favour of the court accepting the recommendations of public health and that the father had not "provided compelling and reliable evidence to the contrary to challenge that which I have judicially noticed."

137. The court further noted that the State of Florida had recommended against vaccines for healthy children but found that to be at odds with the US Centre for Disease Control and Prevention (which the court presumably found to be more credible).

138. The court also considered, as have other cases, the interview done by Dr. Robert Malone the inventor of mRNA technology but found that it would be improper for the court to take judicial notice of the same.

139. The court then took judicial notice of Health Canada recommendations and made in order granting the mother sole decision-making with respect to the child's health and medical decisions including vaccinations.

140. As had other courts, that court also precluded the parent (this could have read the father alone presumably) from exposing the child to any social media or other online information that would call into question the safety or efficacy of COVID-19 vaccines.

Holden and Holden

141. This is a decision of the Alberta Court of Appeal [*Holden v. Holden*, 2022 ABCA 341] which relates to an application for the restoration of a fast-track appeal. The decision

being appealed was against an order pronounced April 28, 2022 that gave the mother sole decision-making with respect to COVID-19 vaccines for the parties' children.

142. The decision obviously relates mainly to the restoration of that appeal. However, the court goes on to address the issue of judicial notice and COVID-19 vaccines.

143. The court noted at para 98 that, "An appeal court does not set aside original court orders in the absence of an error of law or a factual or mixed fact and law determination that is clearly wrong."

144. The court noted at para 108 that, "Common sense dictates the chambers judges, when considering which parent should have COVID-19 decision-making authority, should focus on the well-known positions adopted by Health Canada, Alberta Health Services, Canada's National Advisory Committee on Immunization, and the United States Advisory Committee on Immunization Practices…"

B.C.J.B. and E-R.R.R.

145. In June 2022, Justice O'Connell of the Ontario Court of Justice heard this case and released reasons for judgment October 31, 2022 [*B.C.J.B. v. E.-R.R.R.*, 2022 ONCJ 500].

146. The only issue before Her Honour in that case was which parent should have the responsibility for making vaccination related decisions including the COVID-19 vaccine for the parties than 11-year-old child

147. In that particular case, on September 28, 2020, Justice Finlayson of that court (as he then was) decided that the father should have temporary decision-making authority about the child's health but only as it related to administering the publicly funded vaccinations for children.

148. Justice Finlayson took judicial notice of, "1. Ontario's publicly funded vaccines are safe and effective at preventing vaccine preventable diseases. 2. Their widespread use has led to severe reductions or eradication of incidents of these diseases in our society. 3. The harm to a child, flowing from contracting a vaccine preventable disease, may even include death."

149. Justice Finlayson's order was made at a time prior to the existence of the COVID-19 vaccine.

150. The child had contracted COVID-19 in February 2022 but was now eligible to receive the COVID-19 vaccine.

151. In that case, the parties entered into final minutes of settlement which included the mother having sole decision-making authority for the child with the exception of decision-making regarding vaccinations which will be determined by the court.

152. This case was decided at trial, not at a motion.

153. The father took the position that the child should be vaccinated, the mother took the position that in light of her own personal and family medical history and her research the child should not be vaccinated.

154. The mother took the position that a court should not remove decision-making about vaccines, particularly the COVD vaccine, from a parent who has always made responsible decisions about a child's health simply because the father has attempted to paint the mother as "disturbed", or "out of the mainstream" and unreasonable. [*B.C.J.B.* at para 24]

155. Somewhat ironically, this court notes that the child had contracted COVID-19 following a family day weekend with the father and members of his family.

156. The mother gave evidence as to other decisions that the father had made which appeared to be contrary to the child's best interest from a medical standpoint.

157. There was a Voice of the Child Report in this particular case. The child indicated to the clinical investigator (which report related to other childhood vaccinations and not the COVID-19 vaccine) when talking about vaccinations, "Dad says they're good. Mom says they can be good for some people but not for others".

158. The father sought to have Dr. Sharkawy, a medical doctor who is qualified as a specialist in infectious diseases and internal medicine in Ontario, qualified as an expert. That doctor's opinion was that an otherwise healthy 11-year-old should receive the COVID vaccine even if they had contracted COVID because it would give the child "optimal protection". The doctor found that they were two ways to acquire immunity from COVID-19: one being to survive the infection and the other being to receive the vaccine. [*B.C.J.B.* at paras 135 and 138]

159. Dr. Sharkawy's opinion was that children should receive the vaccine and that the risk of myocarditis from the vaccination was "usually short-lived". The doctor also rendered an opinion with respect to the possibility of 'Long Covid'.

160. The mother sought to have Dr. Bridle qualified as an expert. Dr. Bridle is an Associate Professor of Viral Immunology in the Department of Pathobiology associated with the Ontario Veterinary College at the University of Guelph.

161. That doctor was trained in the disciplines of immunology and virology. He had received a number of awards in recognition of his work as a teacher, a researcher, and a peer reviewer. He had published widely in that area according to his voluminous CV.

162. His evidence was that the risks associated to children of receiving the vaccines far outweigh the benefits of the vaccines.

163. He testified that "a vaccine by definition is designed to confer immunity, such that a person who is vaccinated is protected from infection by the disease and cannot transmit that infection to other people. He explained that immunization equals vaccination, they are interchangeable terms" [*B.C.J.B.* at para 159]

164. The doctor then testified that "unlike traditional or routine childhood vaccines, which do confer immunity with a lifetime duration, the Covid-19 vaccines do not confer immunity or prevent transmission."

165. He then went on to testify as to the difference between the technology of traditional vaccines such as for mom'smumps, measles, polio, etc. and the technology in COVID-19 vaccines being on mRNA which is a "spike protein."

166. Dr. Bridle opined that "the Covid vaccine and the mRNA technology used has potentially far greater long-term risks for children and adolescents" and which in his view "are largely unknown because there has not been sufficient testing or clinical trials." [*B.C.J.B.* at para 163]

167. The doctor also testified that typically, vaccine development takes a process of four to 10 years while the COVID-19 vaccines were developed in less than one year.

168. Dr. Bridle also testified that the duration of immunity from the Pfizer and the Moderna inoculations were "ridiculously short" and waning after only two months and gone by five months. This is why in less than one year, already many Canadians have received four doses and are starting on fifth doses. He compared this to traditional childhood immunizations which generally only need one and sometimes two shots to confer a lifetime immunity, with no booster shots necessary. [*B.C.J.B.*at para 169]

169. The doctor did not agree that the vaccines prevented severe illness leading to hospitalization or death. In fact, he stated that vaccinated people are at greater risk than unvaccinated people of contracting COVID.

170. He also opined that he did not believe the government data and that he felt that it was "highly manipulated data and the way that that it has been manipulated has not been disclosed". This was in reference to the number of unvaccinated people who had purportedly died from COVID-19. According to his evidence, there were many people reported to have died from COVID-19 who had died from non-COVID-19 related reasons.

171. He described the number one risk of vaccines is myocarditis and that young males were at the greatest risk of developing myocarditis (heart inflammation). [*B.C.J.B.* at para 174]

172. Dr. Bridle noted that even the data provided by Pfizer showed that while they initially claimed that only one in 28,000 young males developed myocarditis, they now after further study found that number to be one in 10,000.

173. When challenged that his views were not widely accepted and that there had been many members of his own university faculty who would sign a petition against him, Dr. Bridle testified that he had been one of the first scientists in Canada to sound the alarm bell with respect to AstraZeneca vaccines and that subsequently the Ontario government withdrew the AstraZeneca vaccine for general distribution when it was shown that there was a one in 55,000 chance of death from the vaccine. [*B.C.J.B.* at para 179]

174. Dr. Bridle further testified that the gold standard of immunity was the natural immunity one receives from the body's response to a pathogen. The child in that particular case had already had COVID-19.

175. He also noted that those vaccinated against the first form of the COVID-19 virus being the "Wuhan" variant fared quite poorly against the Delta and Omicron variants.

176. He testified that he had "'no problem'" with routine immunizations of children where the vaccinations did not use the mRNA technology.

177. Justice O'Connell then reviewed the law with respect to expert evidence and judicial notice.

178. Her Honour noted that neither party's expert had signed the Acknowledgement of Expert's Duty Form under the *Family Law Rules*, O. Reg. 114/99. She was satisfied, however that in response to questions, each expert seemed to understand their duties as an expert and she was satisfied that both experts took their duties seriously.

179. Justice O'Connell completely accepted Dr. Sharkawy's (the father's expert) evidence.

180. Justice O'Connell accepted that Dr. Bridle is an immunologist and vaccinologist and that he has expert knowledge in those fields.

181. Justice O'Connell however concluded that because Dr. Bridle's opinions were "so far removed from the mainstream and widely accepted views of the Canadian and international medical and scientific community that the court cannot accept Dr. Bridle's evidence on the Covid vaccine as reliable." [*B.C.J.B.* at para 250]

182. Justice O'Connell then concluded that she, having accepted the father's expert and not accepting the mother's expert, found that COVID-19 vaccines are safe and effective for children and that they reduce the risks of serious illness or death from COVID-19 infection.

183. She found that the mother's decision not to vaccinate her child was not responsible and therefore found that the father was to have sole authority to make decisions about all vaccinations including the COVID-19 vaccine.

M.P.D.S. and J.M.S.

184. In March 2022, Justice Tobin of this court issued a decision relating to the vaccination of a five-year-old child. The parties at the time remained living within the matrimonial home. [*M.P.D.S. v. J.M.S.*, 2022 ONSC 1212 (CanLII)]

185. The facts in that case were that the father had apparently told the mother before they got married that he "did not believe in vaccines." The mother indicated that if he did not agree to vaccinate their children their relationship would be at an end. The father eventually agreed that any children they had would be vaccinated.

186. The father then, following the birth of the child did not want her to be vaccinated.

187. The court accepted the line of cases pursuant to which courts took judicial notice of public health declarations.

188. The court found that the government pronouncements with respect to vaccinations were public documents and therefore an exception to the hearsay rule [see *A.C. v. L.L., supra,* at para 26 relying upon *A.P. v. L.K.*, 2021 ONSC 150 at paras 147-173].

189. The court further found that by the father choosing not to be vaccinated against COVID-19 he was putting the children at risk of harm should they contract COVID-19.

190. The court therefore found that:

- the father's parenting time should be exercised at the matrimonial home or out-of-doors
- the father should be required to take a COVID-19 rapid test every Tuesday and to send the results by text message to the mother
- the father should not knowingly expose the children to any individual that he knows or believes is not vaccinated against COVID-19, and
- if he breached any of those conditions the mother could bring a motion on an urgent basis to suspend his in person parenting time. [*M.P.D.S.* at para 64]

C.M. and S.L.S.

191. In April 2022, Justice Sirivar of the Ontario Court of Justice released a decision with respect to a trial that had been heard in November and December 2021. [*C.M. v. S.L.S.*, 2022 ONCJ 206 (CanLII)]

192. The sole decision of that trial was who should be responsible for making decisions regarding the vaccination of the parties' only child who was then five years old.

193. There were issues of allegations by the mother of abuse by the father. The child primarily resided with the mother.

194. The father relied on public health recommendations and assertions that vaccines were safe and effective. He also called to litigation experts.

195. The mother served a report of a doctor that she sought to qualify as an expert regarding the risk of vaccination of the child. In addition, the mother who is a Doctor of Chiropractic gave evidence about her research into the risks and benefits of vaccinations and opinions that she had received including that from a naturpathic doctor.

196. In that case, the child had a genetic variation which the mother positioned created a greater risk for this child being vaccinated.

197. She proffered Dr. Moskowitz, a retired physician who practiced homeopathic medicine for 53 years, and Dr. Shaw, a professor at the University of British Columbia in the areas of Ophthalmology and Visual Sciences, Neuroscience and Experimental Medicine and Pathology.

198. The mother also proffered a doctor who practiced integrative medicine as an expert. This doctor conducted risk assessments and treated children and adults who have experienced adverse reactions to vaccinations.

199. Dr. Sondheimer who holds a PhD in molecular genetics and cell biology was proffered as an expert by the father. The doctor's evidence was that the child did not have the MTHFR mutations but a variation. The mother did not object to this doctor being qualified as an expert.

200. Dr. Robinson who is the Director of Pediatric Infectious Diseases at the University of Alberta was also proffered by the father as an expert.

201. Her evidence was that routine childhood vaccinations that are recommended in Canada prevent infection and that common side effects of vaccines are low-grade fever and generally disappear within one to three days. Serious side effects such as anaphylaxis can be reversed with one dose of epinephrine. The doctor testified that she was not aware of any child dying from vaccine-induced anaphylaxis that the benefits of routine childhood vaccines far outweigh any serious harm and, that some vaccines do contain aluminum but the amount is very small and there is no evidence that it causes harm. [*C.M.* at para 46]

202. The mother did not object to Dr. Robinson being qualified as an expert but did raise some issue with her advising governments.

203. As mentioned, the mother proposed Dr. Richard Moskowitz who was a retired physician who had practiced for 53 years in homeopathic family medicine as an expert in the areas of family medicine risk assessment for vaccinations and the study of vaccination.

204. His evidence was that the child was at minimal risk of contracting COVID-19, that vaccines can lead to chronic issues such as allergies, asthma and ADHD, that vaccine injury is the rule rather than the exception, that metal adjuvants in certain vaccines cause autism and, that the drug industry controls government agencies like the Centre for Disease Control. [*C.M.* at para 50]

205. The mother also proffered Dr. Christopher Shaw, who holds a PhD in Neurobiology and is a Professor at the University of British Columbia in the Department of Ophthalmology and Visual Sciences and who was cross appointed to the programs of Neuroscience and Experimental Medicine and the Department of Pathology, as an expert on the effects of aluminum adjuvanted vaccines. His evidence included opinions relating to his research on the analysis of the impact of aluminum on mice and that subjecting a child to a range of pediatric vaccines can have a significant adverse effect on neural development. [*C.M.* at para 59]

206. The mother also proffered Dr. James Neuenschwander as an expert in emergency medicine, integrative medicine, risk assessments for vaccination, including the pediatric COVID-19 vaccine, and the treatment of adverse reactions to vaccination. In addition to his medical degree, Dr. Neuenschwander holds a Bachelor of Arts in cellular and molecular biology and has 30 years of experience providing risk assessments for vaccination in treating patients who have experienced adverse reactions to vaccines. He had been called as an expert into other cases but the United States courts in Des Moines and Colorado had not accepted his opinion.

207. His evidence was that his methodology involved calculating the odds and specific risks of the child contracting the disease and comparing it to the risks of experiencing problems or adverse effects if the child did not receive the vaccine.

208. Dr. Neuenschwander considered the risks set out by the manufacturer of the vaccine and considered the child's genetics family history, neural development delay, and any allergy. His evidence was that the Pfizer COVID-19 vaccine for children was totally experimental and that for a healthy child the risks of contracting COVID-19 and suffering adverse effects are almost zero.

209. The court found that the mother did not have an issue with Dr. Sondheimer being involved in clinical trials for pharmaceutical companies including Moderna to develop novel therapies. Nor did she have an issue with the fact that the company paid the Hospital for Sick Children to fund the research.

210. The court did not have an issue either with Dr. Robinson having advised governments. The court did not find that this affected her impartiality.

211. The court then considered the issue of whether or not the mother's experts should be qualified as such. The court was not willing to qualify any of the mother's three experts as experts.

212. The court concluded that the court was not making a finding as to whether or not the COVID-19 vaccine for children between the ages of five and 11 was safe or not safe.

213. The court found in favour of the father. Justice Sirivar found that his approach and following the recommendations of the child's treating physicians was child focused.

214. The court found that the mother overestimates her own abilities stemming from her being a Chiropractor and dismisses the mother's criticism of the father for not being willing to consider her research.

215. As a result, the court found that the father should have sole decision-making responsibility for the child relating to COVID-19 vaccination.

Soucy and Chan

216. In June 2022, Justice MacEachern of this court issued a decision relating to the vaccination of children aged six and nine [*Soucy v. Chan*, 2022 ONSC 3911]. The father wished the children to be vaccinated, the mother opposed.

217. The parties had in 2018 signed a separation agreement requiring them to jointly make decisions for the children including decisions involving vaccinations. Her Honour declined on a motion, to change that decision-making authority.

218. Justice MacEachern found that what she was being asked to do on an interim motion was to make a final decision without having the benefit of the OCL position or cross-examination on the affidavits.

219. The father relied on previous case law to ask the court to take judicial notice of the fact that the children should be vaccinated. The mother who had been vaccinated herself against COVID-19 had experienced side effects from the vaccine and was concerned about the risk of side effects to the children, balanced against what she perceived as a low risk to them having adverse outcomes if they remained unvaccinated. [*Soucy* at para 17]

220. The father had provided nine cases in support of judicial notice. The mother had provided several cases and in addition had provided articles downloaded from the Internet.

221. Justice MacEachern found that the "Covid-19 situation is rapidly changing and developing. This includes changing public health directives such as masking protocols and vaccine mandates, new variants with changing transmissibility and virulence to the vaccinated and unvaccinated. These changes mean that a situation that may have been generally accepted and time sensitive and September 2021 is not as generally accepted and time-sensitive in September of 2021 is not generally accepted and time-sensitive in May or June of 2022." [*Soucy* at para 22]

222. Justice MacEachern also found that the mother's concerns about vaccinating the children were reasonably held and that she had weighed the risks and benefits of the children being vaccinated versus not being vaccinated. The father in that case was seeking to change a joint temporary decision-making order to allow him to have decision-making and thereafter to proceed with the vaccination of the children. Justice MacEachern declined to make that order.

J.N. and C.G.

223. (The father appealed this decision. The Court of Appeal as referenced in the section at the end of this decision allowed the father's appeal. This court has left the motion's judge's decision in the body of its decision but has addressed the Ontario Court of Appeal subsequently.)

224. In February 2022, four days after hearing a motion, Justice Pazaratz issued a 23 page, 94 paragraph decision relating to the vaccination of three children aged 14,12 and 10. [*J.N. v. C.G.*, 2022 ONSC 1198 (CanLII)]

225. There was a final order in place based on minutes of settlement signed only months before on October 5, 2021, that the father was to have sole decision-making with respect to the oldest child and the mother was to have sole decision-making with respect to the younger two children who were the subject of that motion.

226. When the parties signed the minutes of settlement, they already knew that they disagreed about the issue of vaccinations and the minutes are reflected that this was a "live issue and shall be determined at a later date".

227. They also agreed that the eldest child could make his own decision with respect to vaccination.

228. Earlier in the pandemic, the father went to court seeking an order that the children should be compelled to attend school in person for the 2020/2021 school year while the mother argued that the exposure to COVID-19 was too high and that they should have remote learning. That position was accepted by the court on an earlier motion.

229. The father was now bringing a motion claiming that the mother was not protective enough and that the younger two children should receive the COVID-19 vaccine and recommended booster vaccines.

230. The eldest child had been vaccinated, a decision supported by both parents, and had not exhibited any adverse effects.

231. The mother took the position that she was not an "anti-vaxxer" but that she had concerns about the current vaccines and worried that "once children are vaxxed, they can't be unvaxxed."

232. Both children had already had COVID-19 with minimal symptoms.

233. In his materials, the father attacked the mother's political affiliations.

234. The court found that the children did not wish to be vaccinated. The court found those views to be independent. The court agreed with the father that the children were not old enough to decide on their own but disagreed that their opinions should be completely ignored.

235. In this case the court had received as part of the materials dozens of pages of Internet downloads.

236. The court found that information obtained from the Internet can be admissible if it is accompanied by indicia of reliability, including whether or not the information comes from an official website from a well-known organization; whether the information is capable being verified; and, whether the source is disclosed so that the objectivity of the person or organization posting the material can be assessed. Once the threshold of admissibility is met, it is then up to the trier of fact to weigh and assess the information. [*J.N.*, at paras 48 and 49]

237. The court noted that with respect to this type of evidence there is no opportunity for cross examination or testing.

238. The mother was asking the court to equally consider both sides of the story.

239. The court noted that in almost all of the other cases decided where COVID-19 vaccinations had been ordered, the court has found that the Internet materials presented by the objecting parent have been grossly deficient, unreliable and, at times, dubious.

240. The court then asks the somewhat rhetorical question, what if the objecting parent presents evidence which potentially raises some serious questions or doubts about the necessity, benefits or potential harm of COVID vaccines for children? [*J.N.*, at para 54]

241. The court notes that "there are obvious public policy reasons to avoid recklessly undermining confidence in public health measures".

242. The court then quotes from the mother's materials which include the side effects set out in the Pfizer fact sheet. The court notes that this is not some fringe website, this is what the manufacturer of the vaccine is indicating.

243. The court also quotes from an article submitted by the mother from Dr. Robert Malone the inventor of the mRNA vaccine. The court quotes from Dr. Malone's article as follows: "The suppression of information, discussion, and outright censorship concerning these current COVID vaccines which are based on gene therapy technologies cast a bad light on the entire vaccine enterprise. It is my opinion that the adult public can handle information and open discussion. Furthermore, we must fully

disclose any and all risks associated with these experimental research products." [*J.N.*, at para 60]

244. The court at para 66 then went on to review the case law with respect to judicial notice and what courts had been willing to accept they would judicial notice and also noted the case of *R.S.P. v. H.L.C.*, 2021 ONSC 8362 (CanLII) being a decision to which this court will subsequently refer.

245. Justice Pazaratz then goes on to cite examples of where the courts in his opinion have been incorrect in taking judicial notice of certain "facts" that has resulted in significant harm to a significant number of individuals.

246. Justice Pazartaz goes on to quote the mother's statement that she believes "in personal choice, knowledge, understanding and informed consent". His Honour found that the mother went to extraordinary lengths to inform herself and to maintain an open mind and a balanced enlightened and dispassionate manner.

247. He commented that she was not a bad parent and that no one is a bad citizen simply by virtue of asking questions of the government.

248. The court found that the mother should have sole decision-making authority with respect to the administration of COVID vaccines for the two younger children.

M.M. and W.A.K.

249. In August 2022, Justice Corkery of this court released a decision with respect to motion that he heard February 25, 2022, relating to the vaccination of a 12-year-old daughter. [*M.M. v. W.A.K.*, 2022 ONSC 4580 (CanLII)]

250. The parties had separated in 2016 and since August 2021 the child had refused to see her father. A section 30 assessment had been completed in 2019 which recommended joint custody and shared 50-50 parenting time.

251. There was also a May 2021 Voice of the Child Report wherein the child said that she wanted to reside primarily with the mother. That report also opined that the child's views were not the result of parental influence.

252. The father's position was that it was presumptively in the child's best interest to be vaccinated against COVID-19 and that the decision should not be left up to the child.

253. The father submitted "Let the judge be the bad guy. Let the court be the bad guy." According to his logic, the parents can then step back and say the judge has ordered that the child be vaccinated.

254. The mother does not wish to force the child to be vaccinated against her will.

255. The child has through an email three months before the motion was heard, told the mother's lawyer that she does not want to be vaccinated and that nothing will change her mind. She also sent an email to her father December 22, 2021 saying that she does not want anything to do with him and will note be showing up for Christmas, and that she does not want the COVID-19 vaccine and asks him not to contact her again.

256. The child further wrote a two-page note January 5, 2022 stating that she did not want the COVID-19 vaccine as that it has negative effects on children and that she believes she is mature enough to make her own decision and that she has read many articles based on the effects of vaccine on children she asserts that it is she and not her mother talking.

257. The child then writes another two-page note January 11, 2022 expressing her dislike for her father and her opposition to attempts to contact her and control her. She repeats that she wants her opinion on the COVID-19 vaccine respected and cites examples of her father's behaviour or signs of psychopathy. She indicates that she thinks she needs her own children's lawyer.

258. The father submitted a note from the child's doctor addressed "To whom it may concern" which confirms that "… it is highly suggested that the child be vaccinated with the Covid-19 vaccination. She has no known contraindications for the vaccine."

259. Justice Corkery then engages in a review of the case law with respect to vaccinations and judicial notice.

260. Justice Corkery concludes that he is not prepared to take judicial notice of any government information with respect to COVID-19 or the COVID-19 vaccines.

261. He states that even if he did take such judicial notice of the safety and efficacy of a vaccine he still had no basis for assessing what that means for this particular child.

262. Justice Corkery also takes into consideration the child's views and preferences and although being unable to determine the extent to which they may be influenced by a parent he is satisfied that the notes were written by the child and that she is able to reasonably form her own opinion. He therefore dismisses the father's motion.

R.S.P. and H.L.C.P.

263. In December 2021, Justice Breithaupt-Smith issued a decision (*R.S.P. v. H.L.C.*,2021 ONSC 8362 (CanLII)) relating to, among other things, reconciliation counselling between a mother and daughter.

264. Although this decision is not related to COVID-19 vaccinations, it is a recent decision with respect to the issue of judicial notice and a child's ability to provide informed consent to treatment.

265. The facts of the case do not directly relate to the issue before this court but the court finds that the decision is relevant to the issues before this court.

266. Justice Breithaupt-Smith considers the conflict between the *Health Care Consent Act* and ordering a child to participate in reconciliation therapy despite the child's reluctance to do so.

267. The court then notes based on the decision of the Supreme Court of Canada in *R. v. Find,* "Expert evidence is by definition neither notorious nor capable of immediate and accurate demonstration. This is why it must be proved through an expert whose qualifications are accepted by the court and who is available for cross-examination" [*R.S.P.* at para 58]

268. Her Honour then goes on to conduct an analysis of judicial notice Being an analysis of which this court adopts.

Other cases considered by this court

269. The court has reviewed and considered the following cases in addition to those cases to which counsel referred this court.

270. Those decided by the Superior Court of Justice of Ontario being:

- *A.P. v. L.K.*, 2021 ONSC 150 (CanLII)
- *C. v. H.*, 2021 ONSC 5870 (also cited as *Campbell v. Heffern*) (CanLII)
- *A.G. v. M.A.* 2021 ONCJ 531 (CanLII)
- *McDonald v. Oates*, 2022 ONSC 394 (also cited as *L.M. v. C.O.*) (CanLII)
- *Warren v. Charlton* 2022 ONSC 1088 (CanLII)
- *Moore v. Moore*, 2022 ONSC 2378 (CanLII)

271. Those decided by the Ontario Court of Justice being:

- *Rouse v. Howard*, 2022 ONCJ 23 (CanLII)
- *Davies v. Todd*, 2022 ONCJ 178 (CanLII)

272. Those decided by courts in New Brunswick being *D.O. v. C.J.*, 2022 NBQB 19, *V.L.M. v. B.S.F.*, 2022 NBQB 23, *D.E. v. W.E.* 2022 NBKB 211, including the New Brunswick Court of Appeal decision *K.B v. K.D.B.* 2022, CanLII 49176 (N.B.C.A.) wherein judicial notice taken by a lower court was not overturned.

273. Cases decided by the Provincial Court of British Columbia being:

- *R.S.L. v. A.C.L.*, 2022 BCPC 9 (CanLII)
- *T.K. v. J.W.*, 2022 BCPC 16 (CanLII)
- *G.W. v. C.M.*, 2022 BCPC 29 (CanLII)
- *J.F.P v. J.A.G.*, 2022 BCPC 44 (CanLII)
- *G.F. v. M.A..M*, 2022 BCPC 46 (CanLII)
- *A.T. v. C.H.*, 2022 BCPC 121 (CanLII)

274. A case decided by the Saskatchewan Court of Queens Bench being *K.M.S. v. K.B.S.* 2022 SKQB 57 (CanLII).

275. A case decided by the Supreme Court of British Columbia being *Steiner v. Mazzotta*, 2022 BCSC 827 (CanLII).

276. The court also considered the case of *Inglis v. Inglis*, 2022 SKCA 82 which is a case decided by the Saskatchewan Court of Appeal. The court notes however that that case specifically did not decide the issue of judicial notice as the appeal was decided for other reasons.

277. Most of the above referenced cases, have taken judicial notice of the public health messaging that COVID-19 vaccines are "safe and effective".

The evidence before the court

278. The mother's evidence is that the paternal grandmother had "tried to interfere with the children's health care since birth." The mother references the grandmother as allegedly berating her for the children receiving routine vaccinations.

279. The mother's evidence is that the separation occurred July 27, 2020 and that the separation was precipitated by "the applicant and his family stormed the house during intake visit with York Children's Aid Society whose involvement had been requested by me due to the applicant's mother's accosting me in front of the children due to my insistence on adhering to COVID-19 protocols."

280. Therefore, according to the mother, the issue of COVID-19 had been front and centre of the parties' dispute from the date of separation.

281. In the OCL report, there appears to be corroboration of issues between the paternal grandmother and the mother.

282. The mother's evidence is that the father had never objected to the children receiving any vaccines until the parties separated.

283. The parties signed comprehensive minutes of settlement on April 19, 2022 in which they settled all issues on a final basis save and except the issue of the children's COVID-19 vaccination. Those minutes of settlement provided that the mother would have final decision-making on all other issues.

284. Part of the evidence from the mother was a letter from the child's family doctor. At the time the letter was written, the younger two children were not eligible to receive the vaccine as they were under the age of five. The family doctor recommended that the eldest child (and the others when they were eligible) receive their COVID-19 vaccine in accordance with the Public Health Ontario Guidelines and the Canadian Pediatric Society recommendations. Since the children had at that time just recently recovered from COVID-19, the recommendation pursuant to the Public Health Guidelines was that they wait three months to have their vaccination.

285. The family doctor then indicated that if in future Public Health Ontario and the Canadian Pediatric Society recommended COVID-19 vaccination for children of the younger children's age she would "fully support this".

286. In May 2022, when the mother's first affidavit was sworn (at that time it was anticipated that the motion would be heard in the May trial sittings) she was expecting her fourth child and her doctor had opined that she was at increased risk of a poor outcome from COVID-19 infection given that she was then pregnant.

287. At the time that the court heard this motion, she had already given birth to the fourth child.

288. In the mother's affidavit, she does not accept the father's belief that his sister-in-law's miscarriage was as a result of the COVID-19 vaccination. The mother indicates in her affidavit that CBC News has reported that a significant increase in stillbirths at Lion's Gate Hospital in British Columbia where the sister-in-law was living, did not occur.

289. The mother points out that the father is a heavy equipment operator with a grade 12 education and that she is currently enrolled in a social work program at the University of Waterloo.

290. She asserts, and the court accepts that neither of them have an education in medicine.

291. The father's position is that he wishes to wait until the COVID-19 vaccines have completed their medical trials prior to the parties making a decision with respect to whether or not their children should be vaccinated. He points out the obvious, that vaccination is an irreversible decision (one cannot be "unvaccinated").

292. He asserts that the oldest child, H.W.T., is a happy and healthy 10-year-old boy and that when he had COVID-19 in March 2022, along with his siblings and his mother, he

experienced cold and flu like symptoms and recovered without any issue. He asserts that this results in H.W.T. having natural immunity to the virus.

293. His evidence is that H.W.T. is thriving, attending school, playing with his friends and playing basketball.

294. The father's belief is that the vaccine does not prevent the spread or transmission of the virus and that this has been confirmed, even by the pharmaceutical companies, who manufacture and distribute the vaccine.

295. He points out that initially, the government narrative was that the vaccine would prevent either contracting COVID-19 or transmitting COVID-19.

296. He asserts that now even the pharmaceutical companies have accepted this as not being true.

297. With respect to the younger two children, his evidence is that they, as well, are healthy and happy children and that they too experienced cold and flu like symptoms from COVID-19 and both of them recovered without any issue. They both attend ballet classes.

298. His evidence is that the maternal grandmother works at a men's shelter wherein she is exposed to COVID-19 on a daily basis and yet she still attended at the mother's home even while the mother was pregnant.

299. The father submits that while the mother objects to him taking the children to Mexico over March break 2023, the mother allowed the maternal grandfather to take the children to a Hallowe'en event that had 8,000 people in attendance.

300. He also submits that it is a double-standard in that the mother would not permit him to take the children to a friend's cottage but a week later allowed the maternal grandfather to take the eldest child to Grand Bend where they stayed in a hotel.

301. He points out that while the mother was fully vaccinated, it was she who got COVID-19 as did the children.

302. The father claims that he entered into the minutes of settlement in April 2022 as he could not afford to go to trial.

303. He points to studies that found that the infection fatality rate for children under the age of 19 was 3 in 10,000. He asserts that his research shows that the fatality rate for children from the vaccine is far higher.

304. In his material, he points to a statement from the College of Physicians and Surgeons of Ontario as follows "physicians must not make comments or provide advice that encourages the public to act contrary to public health orders and recommendations.

Physicians who put the public at risk may face an investigation by the CPSO and disciplinary action when warranted."

305. The father references 12 of 294 current research studies pertaining to the COVID-19 vaccine and children, many of which are estimated not to be completed until mid-2023, 2024 or in one case 2025.

306. In his material, he references that there has been a Vaccine Adverse Event Reporting System (VAERS) established since 1990. This is co-managed by the Centre for Disease Control and Prevention (CDC) and the US Food and Drug Administration (FDA).

307. He points out that according to VAERS reporting system there have been the following reported as effects of vaccination regarding children between the ages of six months and 17 years:

- 163 deaths,
- 530 permanent disabilities,
- 1965 myocarditis,
- 270 Encephalitis,
- 231 Bell's Palsy,
- 1,657 severe allergic reactions and
- 103 Guillain Barre/Paralysis.

308. He submits that all of this is offered in support of his argument that it is better to wait for better evidence and to have the issue decided at trial rather than ordering vaccination at this point and time.

309. He suggests that changes have occurred in the recommendations of governments with respect to COVID-19 protocols.

- His "evidence" from Internet sites (Exhibit "E" of father's Affidavit dated November 7, 2022) is that some other countries are no longer recommending or have paused COVID-19 vaccination for children.

310. He cites the following list of countries being:

- Denmark… as of September 2022 children under the age of 18 will not the vaccinated

- Sweden, vaccinations no longer recommended for children between the ages of five and 11 as the health agency indicates the risks outweigh the benefits
- United States, no differentiation between people who are vaccinated and not vaccinated based on general immunity due to either vaccination or previous COVID-19 infection
- Taiwan, suspension of administering second doses of Pfizer vaccine for children in the 12 to 17 age group based on concerns of increase of myocarditis
- United Kingdom public health warning with respect to possible myocarditis following vaccinations particularly after the second vaccination
- Florida health department indicates the benefit of vaccination is likely outweighed by the abnormally high risk of cardiac related death among men 18 to 39 years of age following mRNA a vaccination
- Finland paused the use of Moderna's COVID-19 vaccine for younger males due to reports of rare cardiovascular side effect.

311. As well, based on the same exhibit and Internet sites the father points out that cases of myocarditis have been reported in Ontario following immunization with the COVID-19 vaccine. Based on the referenced site. These cases have occurred more frequently in males under the age of 30 years and more commonly following their second dose. The Internet article indicates that there have been as of that date 21,717 adverse effects following immunization based on approximately 35 million doses administered as of that date.

312. The father in the same exhibit points to an Internet site being the Canadian Covid Care Alliance which claims that being exposed to the virus provides natural immunity which has been found to be "robust, appropriate, long lasting and complete".

313. He also alleges in the same exhibit that some information is being withheld from the public and points to articles that he claims substantiate that position.

314. The mother challenges the sources of the father's information, claiming that they are "biased and anti-vaccine/anti-mandate organization websites such as the Children's Defense Fund sic (Children's Health Defense) or Canadian Covid Care Alliance.

315. The mother accepts that the children are happy and healthy and that they recovered from COVID-19.

316. She challenges the father's belief that the children have natural immunity from COVID-19 as a result of having had COVID-19.

317. Her evidence is that the children did not attend an event where 8,000 people were present all at once. She claims that there were 8,000 attendees over the course of a weekend event.

318. So far as her mother is concerned, she claims that her mother works at a homeless shelter in the kitchen taking two PCR tests per week and additional PCR tests if the shelter is in outbreak.

319. The mother recites travel advisories from the Canadian government with respect to unvaccinated travellers.

320. She points out that the OCL section 30 assessment (which did not specifically deal with the vaccination issue) recommended sole decision-making for the mother.

321. The mother claims, apparently based on government information, that the vaccine does not prevent infection or transmission but mitigates the risk to individuals in the community by reducing infection and transmission events and reduces the incidence of severe disease and hospitalization.

322. The mother challenges the father's evidence with respect to the COVID-19 vaccine. According to the report referenced by her, as of October 14, 2022 of the 91 million doses of COVID-19 vaccines administered nationwide there have been 10,501 serious adverse events reported or .011% which would represent 1.1 persons per ten thousand people administered.

323. The OCL report is a piece of evidence. The court notes that it has not been subjected to the scrutiny of cross-examination.

324. The court further notes, not unexpectedly, that the report did not address specifically the issue before this court, that being the issue of whether or not the children should be vaccinated against COVID-19.

325. The other issues that the parents appear to have, regarding the continued therapy before Ms. Guthrie Douse and the issue of the father seeking travel consent for March break vacation to Mexico, are not before this court and therefore the court will not address those issues. They need to be addressed at the next settlement conference that the parties have before the case management judge or a motion.

326. For those reasons, the OCL report is of very limited use to this court for purposes of the determination of the issue before this court.

327. What the OCL report does point out is that there is conflict between the parents and there is clearly conflict between the extended family on each side and the other parent.

Analysis and finding

328. A fundamental tenet in law is that courts do not decide a case until we have given both sides the opportunity to present their argument.

329. In this case, the court has minimal evidence from either side with respect to the position that they are advancing.

330. The issue before the court is a very finite one. The issue to be decided is: At this motion should the court make an order allowing the mother to have sole decision-making with respect to the issue of COVID-19 vaccines for the children and thereby allowing her to have the children vaccinated? This would require the court to dispense with the necessity of the father's consent to those vaccinations.

331. Although it is a temporary motion, as the father quite rightly points out, vaccinations cannot be "undone" and therefore if the court were to grant the relief sought by the mother effectively it would be a final order

332. In essence, the position advanced on behalf of the mother is that she accepts the public health recommendations. She accepts that, as stated by the public health authorities the COVID-19 vaccines for children are "safe and effective".

333. In addition to the public health recommendations, she relies on the letter from the family doctor in which the family doctor supports those public health recommendations.

334. The father, on the other hand, takes the position that this decision should not be made based on the evidence that the court has before it. He points out that the court has no expert evidence before it. He asks that the issue be decided at trial where expert evidence can be called.

335. He further submits that the court should not take judicial notice of the vaccines being safe and effective based on statements made by various public health authorities.

336. The court has conducted a thorough review of all of the cases referred to by either side and has reviewed all the Canadian cases of which the court is aware that deal with this issue.

337. The court finds that the primary issue to be decided by the court is the issue of judicial notice. The court has referenced that in the review of the case law.

Judicial Notice and this Issue

338. As referenced previously, the law in Canada with respect to judicial notice is as set out by the Supreme Court of Canada in *R. v. Find.*

339. If there are facts which are **clearly uncontroversial or beyond reasonable dispute**, then a court may take judicial notice of those facts and does not require evidence before it to have those facts proven.

340. If the facts are **not clearly uncontroversial or are capable of being disputed by reasonable people, then a court should and must require expert evidence of the same**. Expert evidence is an exception to the hearsay rule.

341. The mother in this case, who is asking that she be given decision-making authority so that she can have the children vaccinated, asks the court to find that it should take judicial notice of vaccines being "safe and effective"

342. As the court has noted, there have been in excess of 40 decisions wherein judges have been prepared to make that finding and to effectively order children to be vaccinated based on taking judicial notice of the vaccines being "safe and effective"

343. The court has gone through a detailed analysis of more than half of those decisions

344. Essentially, what those courts have found is that because public health authorities and governments who have given them mandates, have said that vaccines are safe and effective, the court is prepared to take judicial notice of that as a "fact".

345. Based on the Supreme Court of Canada's decision in *R. v. Find*, those courts have decided that this "fact" is clearly uncontroversial and not being capable of being disputed by reasonable people.

346. That is the only way that one gets to the conclusion that a court should take judicial notice of this "fact"

347. As this court has noted in those decisions, the "dissenting parent" has asked the court not to take judicial notice of the public health narrative.

348. The dissenting parents have brought forth "evidence" sometimes from the Internet, and sometimes by bringing forward doctors and scientists whom they have asked the court to find as an expert who proffers an opinion that is contrary to that of the public health messaging.

349. This court analyzes the mandate of judicial notice as set out in *R. v. Find* somewhat differently to the courts that have been willing to take judicial notice of the public health messaging.

350. The court comes back to the question which this court asks itself: Is the proposition that vaccines are "safe and effective" an uncontroversial proposition?

351. If the answer to that question is yes, then the court is entitled to take judicial notice of that "fact"

352. Stated differently, is it a proposition that is capable of being disputed by reasonable people?

353. If the answer to this question is yes, then the "fact" is not uncontroversial and therefore the court should not take judicial notice but should require expert evidence to be tendered in order to make the determination

354. That leads this court to determine the issue of whether or not this proposition is controversial and whether or not the court has any evidence that "reasonable people" would dispute this "fact".

355. What evidence does this court have before it in order to assist it in making that determination?

356. On the one hand, the court accepts, as have other courts, that the court can take as evidence what public health authorities have been saying.

357. This court does not dispute that public health authorities in Ontario, Canada and elsewhere and the governments who have appointed those public health authorities have clearly communicated to the public that the public health authorities and the governments are of the view that vaccines are "safe and effective"

358. What public health authorities have been saying is evidence simply of the fact that the public health authorities have been saying the vaccines are "safe and effective"

359. Based on *R. v. Find*, however, in order for the court to take judicial notice of the **fact** that the vaccines are "safe and effective" the court needs to go a major step beyond simply acknowledging that public health authorities are saying this.

360. The court must go the additional step and determine that what the public health authorities are saying is uncontroversial and that this proposition is not capable of being disputed by reasonable people

361. From the court's analysis of other cases, and the "evidence" produced by the father in this case, it can be seen, however, that there are those who do not accept that as a "fact" and who do not accept that as being uncontroversial.

362. In the case before the court, the father has cited Internet articles wherein the authors thereof do not accept the public health message as being uncontroversial.

363. The question then becomes, are these "dissenting" individuals reasonable people?

364. Prior to reviewing the issue with respect to vaccines, the court finds it appropriate to take a broader look at the issue of judicial notice and the issue of what constitutes a reasonable person.

365. The court starts with the fundamental tenet that courts are expected to be impartial and base decisions on the evidence before us.

366. Judicial notice is an exception to the court requiring evidence before it and, as set out in *R. v. Find*, if the court finds that a "fact" is not uncontroversial to reasonable people then the court does not need evidence before it to prove that fact.

367. In order to make that determination, this court posits that it is reasonable for a court to not only take into account that which is put before it by the parties in a particular case but to take into account life experience.

368. The court finds something of which the court could take judicial notice is that the earth is not flat but is a sphere rotating on its own axis and revolving around the sun.

369. Daily life experience corroborates for this court that it has no difficulty taking judicial notice of the earth being spherical

370. Each day one can observe that the sun rises in the east and sets in the West.

371. Each 28 days, the moon can be seen to go through phases from a new moon to a full moon and back to a new moon. These phases and the observation of the shape of the Crescent moon are consistent with the earth being a sphere an inconsistent with it being flat.

372. From the prairies or from an airplane one can observe the curvature of the horizon. This is also consistent with the earth being spherical and not being flat.

373. In Canada, each year one experiences four seasons. This is consistent with the earth being tilted on its axis and rotating around the sun and inconsistent with the earth being flat.

374. If one travels closer to the equator one notices the difference in climate to that of Canada. This is also consistent with the earth being spherical and not flat.

375. It can be observed that a toilet flushes in a counter-clockwise direction, or in clockwise direction depending on whether or not one is in the northern or southern hemisphere.

376. All of these "life observations" are consistent with the proposition that the earth is a spinning sphere orbiting around the sun and inconsistent with the proposition that the earth is flat.

377. This court has not encountered any media outlets nor physicists nor any renowned scientists claiming that the earth is flat.

378. As indicated, the court has no doubt that of the eight billion people in the world there may be someone who still believes that the earth is flat. That however does not make that individual fit into the category of a "reasonable person".

379. How is all of this relevant to this case?

380. This court is being asked to take judicial notice that COVID-19 vaccines are safe and effective for children and in particular for the three children in this case.

381. Is that proposition consistent with life experiences such that it should be accepted without the need for expert evidence?

382. Are there reasonable people who would disagree with that proposition?

383. What does it mean to be "uncontroversial to reasonable people"?

384. To phrase that question differently, if reasonable people have different opinions and have come to different conclusions with respect to an issue, this court would find that the "fact" is not "uncontroversial", or stated another way the "fact" is controversial.

385. Once the court has made that determination, the court should not take judicial notice of this as an "fact". The court would then require expert evidence to determine if this hypothesis should be accepted as a "fact".

386. To extrapolate further, the court would suggest that if reasonable people receive different information from different news sources, that would be an indicia of the fact not being uncontroversial.

387. If the "fact" is uncontroversial then one would assume that if one were to read different newspapers for example the Toronto Star versus a Post media newspaper such as the National Post, one would receive the same information. Similarly, if one were to listen to different television news outlets, presumably one would not be receiving different information. Therefore, if one listens to CNN or Fox News the information received if it were in fact "uncontroversial" should be the same.

388. .This would apply to Internet search engines as well so that if one were to search a "fact" on Google, DuckDuckGo or Brave or a different search engine, one should receive the same result for that "uncontroversial fact".

389. On the other hand, if the information that one is receiving is different based on the news source outlet and if reasonable and educated people come to different conclusions, then this court would find that the "fact" is not "uncontroversial" and is not one of which the court should take judicial notice.

390. The court has before it, the materials put forward by the father. These materials while not "expert evidence", certainly express an opinion different to that proffered by public health authorities.

391. As well, as the court has noted with respect to its analysis of the other cases, there are many others who would appear to have some expertise on the subject of vaccines who have an opinion different from that of the public health authorities.

392. This then raises the question as to whether or not these "dissenting individuals" are reasonable people?

393. The court will embark on a detailed analysis in the following paragraphs.

394. The analysis that this court has conducted, leads this court to a conclusion that it cannot take judicial notice of vaccines being "safe and effective"

395. The vast majority of other courts that have considered this issue have come to a different conclusion.

396. It is not for this court to question the decisions made by other judges. However, when it comes to judicial notice, each court has to come to their own conclusion as to whether or not a proposition is "uncontroversial".

397. In the following paragraphs, this court cites many hypotheses.

398. This court recognizes that these are this court's personal hypotheses and may not be necessarily shared or accepted by others.

399. To be clear, this court is not suggesting that it has evidence before it to make findings based on these hypotheses.

400. However, the reason that this court is putting forward these hypotheses is to corroborate the rationale for this court as to why this court is not prepared to accept as "uncontroversial" and not capable of dispute by reasonable people the proposition that COVID-19 vaccines are safe and effective for the three children before this court.

401. Based on the Supreme Court of Canada, **being clearly uncontroversial** is the only basis on which a court should be accepting judicial notice without expert evidence to prove a "fact".

402. This court will now delve into its analysis of whether or not this court should accept judicial notice of the vaccines being "safe and effective".

Should the Court take judicial notice and accept that these vaccines are "effective" without expert evidence

403. This court will first examine the issue of whether or not these vaccines are "effective".

404. As other courts have previously indicated, the court can, as an exception to the hearsay rule, take note of recommendations made by public health authorities.

405. An examination of public health records discloses that the "messaging" of public health has changed over the three years that COVID-19 has been with us.

406. Initially, for example, the heads of public health including those of the United States, Canada and Ontario were telling the public that masking was not effective because the size of the particles of the pathogen virus were so small that they would pass through any standard mask and therefore the mask offered little if any protection against the transmission or contracting of the virus.

407. That message changed over time and not only were masks encouraged but, based on the government giving public health the authority, masks were in fact mandated to be worn in various regions including Ontario, for a period of time in indoor public settings. People not wearing masks were banned from most indoor public settings.

408. That has now changed given that the mandates have been lifted.

409. One could question as to whether or not that change was based on a change in the public health analysis of the issue or was simply a political decision. This court has no evidence before it with respect to that issue and therefore will not engage in that analysis.

410. With respect to vaccines, the messaging has been changing as well.

411. The consistent messaging virtually from the outset of the COVID-19 outbreak was that vaccines were a panacea and they were essentially the answer to all of the problems related to this disease.

412. What has changed, is that prior to the vaccines being approved and "rolled out" for public use, the "refrain messaging" from public health was that the vaccines would prevent one from contracting COVID-19.

413. Up until the development of the COVID-19 "vaccines", as this court referenced from a previous case, the technology on which vaccines were based, in layman's terms, was essentially that a small amount of the pathogen was introduced into the human body through the vaccine. That triggered within the body the natural immune system and resulted in the individual developing an immunity to the disease for which they were vaccinated.

414. In virtually all cases, one dose of a vaccine was administered and the result was that the vaccinated individual had life-long immunity from that disease.

415. The COVID-19 vaccine however had different technology being the mRNA technology.

416. As referenced in other cases and in public health records, shortly after the COVID-19 vaccines had been approved and rolled out by various governments and people began taking the first dose of vaccine, it became evident that the claim that the vaccine would prevent individuals from getting COVID-19 was not correct.

417. People who had been vaccinated were routinely getting COVID-19 despite the vaccination, contrary to what had been represented by public health would be the case before the vaccine rollout.

418. The public health and government messaging then changed again to claim that while you could get COVID-19 if you were vaccinated, you were at less risk of transmitting COVID-19 to others if you were vaccinated.

419. As time went on, and even after people were encouraged, and in some cases mandated as a requirement of their employment, or to go to a restaurant, or to travel, to get a second dose of the vaccine, it became evident that this representation by public health, that being that vaccinated people were less likely to transmit COVID-19, was also false.

420. All of these various iterations from public health authorities can be accessed by checking archival records of public health pronouncements at the time over the last three years.

421. The problem for this court in being asked to take judicial notice that the vaccines are "effective" is that what the court is being asked to take judicial notice of, is in fact a moving target.

422. What public health authorities say today, is totally different to what public health authorities were saying some months or a year ago.

423. One may argue that public health was faced with a crisis and new vaccines and they have been learning as they go along and they now have the "messaging" correct and that we as courts should take judicial notice of the current narrative messaging.

424. One of the individuals who has been cited in other cases and to whom other courts have decided of whom we should take judicial notice is Dr. Kieran Moore, the Chief Medical Officer for Ontario.

425. The court notes that at about the time that this court heard this motion, on a Monday, Dr. Moore held a press conference That was widely disseminated by the mainstream media in which he indicated that while masks were not being mandated, it was the strong recommendation of the Chief Medical Officer of Ontario ("Dr. Moore") that masks be worn at all times indoors in public settings when social distancing was not possible.

426. Once again, that was a public health pronouncement and is documented in public records.

427. The court notes however that it was widely reported by the media based on reports from eyewitnesses who were present, and by individuals who took pictures at the event, that a mere three days (72 hours) later, on a Thursday evening, the same Dr. Moore who had that very week made the pronouncement and recommendation with

respect to masks was seen at a public event indoors over a significant period of time not wearing a mask when he clearly was not social distancing.

428. So far as this court is aware, Dr. Moore has never publicly denied that the pictures of him at that event displayed in the media are in fact accurate pictures.

429. That leaves this court with the question of which Dr. Moore this court should be expected to take judicial notice? The "Monday Dr. Moore" who strongly encourages the use of masks while indoors or the "Thursday Dr. Moore" who apparently either does not believe his own recommendation or does not see fit to follow his own recommendation.?

430. As the cited cases have pointed out, and as the literature to which the applicant in this action has directed the court, there are others who would appear to have significant credentials and expertise in the area who would proffer an opinion that the vaccines are not "effective." Those individuals totally disagree with the public health and government messaging that the vaccines are "effective".

431. This court does not have expert evidence on the subject of the effectiveness or ineffectiveness of vaccines and is therefore not concluding that the vaccines are not effective.

432. However, this court does not put all of those who question the effectiveness of the COVID-19 vaccines in the same category as individuals who would continue to claim that the earth is flat.

433. The court finds that there are "reasonable people" who have appear to have some considerable degree of expertise who have an opinion different to that of the public health authorities as to the effectiveness of the vaccines.

434. In fact, this court finds that the effectiveness of vaccines can be called into question by public health pronouncements alone.

435. Initially, public health was recommending a single dose of a vaccine. Public health then began to recommend a second dose of the vaccine.

436. Public health recommendations have now further evolved such that booster shots are being recommended to be taken every three to six months. For many individuals, public health has now recommended up to five doses of the vaccine. Once again, all of this is the subject of public record.

437. This court is not prepared to take judicial notice based on public health pronouncements, and based on that which is set out above, that simply because public health is continuing with the messaging that the vaccines are "effective" that judicial notice should be taken of this and that this "fact" should be accepted as clearly uncontroversial or beyond reasonable dispute.

438. The Supreme Court of Canada in *R. v. Find* made it clear that in order to take judicial notice of a "fact" the court must find that **facts are clearly uncontroversial or beyond reasonable dispute.**

439. This court has pointed out that "the facts" as represented by public health authorities have changed and have been a moving target over the past three years.

440. As well, this court has pointed out that at least some of the public health authorities upon whom this court is being asked to take judicial notice have not even acted in accordance with their own recommendations 72 hours after making those recommendations.

441. Dr. Moore. is certainly not alone based on public health representatives and government representatives who have, based on media reports, not followed their own recommendations.

442. Further as referenced through the analysis of other cases, this court has pointed out that people who appear to have expertise including an individual who is recognized as being the "inventor" or the "founder" of the very vaccine that this court is being asked to take judicial notice is "effective" have now been quoted as saying that they do not agree that it is effective.

443. This court finds that it would be illogical to ignore that the inventor of the vaccine is taking a position contrary to the public health messaging and to take judicial notice of the public health messaging.

444. One would have to conclude that it is not controversial to have the inventor of the vaccine take a position contrary to that of public health authorities.

445. Further, the court would have to conclude that Dr. Robert Malone, who has been recognized by other courts as the inventor or founder of the mRNA vaccine is not a "reasonable person" when it comes to the issue of him taking a position that is different to the public health messaging of which this court is being asked to take judicial notice.

446. To be clear, this court is not finding that Dr. Malone is the inventor of the mRNA vaccine nor is the court finding that the statements attributed to him are "facts". The court does find that these are issues that court be determined based on expert evidence at a trial. The court does find that when individuals who appear to be "*prima facie* experts" in a field are questioning the very premise of which a court being asked to take judicial notice that the court should at least consider this in the analysis of judicial notice.

447. This court finds to ignore this would be totally illogical and not remotely in accordance with the Supreme Court of Canada's definition of what is required in order for courts to take judicial notice.

448. Therefore, this court is not prepared to take judicial notice of the vaccines as being "effective".

Should the court take judicial notice that these vaccines are "safe" without expert evidence

449. Having determined that this court is not prepared to take judicial notice of the vaccines being "effective", it could be argued that this court need not move on to the issue of whether or not judicial notice should be taken as to whether or not they are "safe".

450. However, for this court, that issue is even more deeply concerning and something which the court believes needs to be analysed.

451. It is trite law that the court, in making decisions relating to the parenting of children, is governed by the best interests of the child or children. The *Divorce Act*, R.S.C. 1985, c 3 (2nd Supp), and the *Children's Law Reform Act*, R.S.O. 1990, c C. 12, require the court to do so.

452. This court therefore should not be issuing any order that requires a child to be vaccinated or an order that gives decision-making authority to a parent knowing that by doing so, that parent is going to have the child vaccinated, where, there is a concern which could be held by reasonable people, that the vaccine is either not safe in the short term or that the vaccine either does or could possibly or likely have long term negative side effects.

453. As with the issue of whether or not the vaccines are "effective" there have been as cited, multiple courts that were prepared to take judicial notice of the fact that the vaccines are "safe" because that is what public health is telling us.

454. Those courts were prepared to take judicial notice of the "safety" of the vaccine as a "fact" without the requirement of expert evidence.

455. This court finds that in making any decision, we need to know what we know but equally importantly, we need to know what we don't know.

456. These vaccines, at the time that the court heard this motion, with children in particular, had only been administered for a relatively short period of time, and to younger children, for only a few months and to older children for approximately one year.

457. It is therefore impossible to know what the long-term side effects are of these vaccines as there are no children to whom the vaccine has been administered for more than approximately one year.

458. The pharmaceutical companies, the public health authorities, the government, and the mainstream media are all telling us that these vaccines are "safe".

459. Many courts have been willing to accept and take judicial notice that because public health is telling us they are "safe" that should be found as a "fact" as to the truth of that statement. Courts have thereby effectively mandated the vaccination of children over the objection of a dissenting parent.

460. Continuing on with what we don't know, because of the passage of time or lack thereof, no one can say with certainty what the long-term effects are of these vaccines on children as no child has been vaccinated with the COVID-19 vaccine for long enough to have any ability to tell for certain based on a sample size of individuals who could be studied.

461. Public health is asking us to rely on their opinion and predictions that these vaccines are "safe".

462. This court asks the question that is "clearly uncontroversial or beyond reasonable dispute." [*R. v. Find,* at para 48]

463. The court has no evidence before it as to the basis on which public health authorities have concluded that COVID-19 vaccines for children are "safe".

464. We know that anyone who claims (including public health authorities) that the vaccines are safe, is clearly speculating certainly based on any possible long-term negative side effects.

465. The question then becomes, is it reasonable to take judicial notice of such speculation where public health authorities are claiming that the vaccines are "safe"?

466. This court could find simply that it is not prepared to take judicial notice of a "fact" based on what is clearly speculation.

467. However, the court finds that there are additional reasons why this court should not take judicial notice of the public health authorities' pronouncements that the vaccine is "safe".

468. As this court pointed out earlier, simply because there is someone who still believes that the earth is flat, does not mean that is a "reasonable dispute".

469. As has been pointed out in other cases, governments have been wrong before in a number of areas and when it comes to public health recommendations.

470. For example, the government belief and "messaging" at the time, with respect to the drug Thalidomide, was clearly wrong.

471. This was later proven to have been wrong and unfortunately because many pregnant women relied on the advice that they were receiving at the time from public health authorities, it resulted in a number of children being born with deformities.

472. We cannot lose sight, however, of the fact that public health at the time and the government of the day was promoting a drug which ultimately was proven to have had very serious and detrimental side effects.

473. As has been noted in other cases, there are many individuals who are "sounding the alarm bells" with respect to both the short-term and long-term possible side effects of COVID-19 vaccines, particularly the administration of those vaccines to children.

474. The court has cited other cases where the dissenting parent has called experts to testify that they find the vaccines are not safe. Even though those courts have not accepted the evidence, nor even accepted them as experts this court finds they are still relevant for the determination of judicial notice.

475. If the proposition is controversial or challenged by reasonable people, the court should not take judicial notice of that as a "fact".

476. The court find that these "experts" cannot be dismissed into the same category as those who still believe the earth is flat.

477. Other cases have referenced the VAERS system, which is a system set up for compensation for victims of vaccine related injuries. The system was established at the same time that legislation was passed which precluded civil claims against pharmaceutical companies for vaccine related injuries.

478. An examination of public records will disclose that there is legislation in place in most countries pursuant to which the pharmaceutical companies have such an immunity when it comes to vaccines.

479. Unlike other drugs that they sell where they have the risk of lawsuits, the best that someone can receive as a "vaccine victim" is compensation from a fund established to provide some compensation for such injuries or death.

480. There are laws in place that preclude an individual from claiming damages against a pharmaceutical company even where they are able to prove that they were injured as a result of taking the vaccine manufactured by that pharmaceutical company.

481. The court finds this as another concern as to why the court should exercise extreme caution in being asked to take judicial notice of vaccines as being "safe" when it appears that the uncontradicted evidence is that the mRNA vaccine is different to "conventional vaccines" and that the timeline in their "invention" and testing was far shorter than with other vaccines.

482. For all of the above reasons, the court is not prepared to take judicial notice of any pronouncements from pharmaceutical companies claiming that the vaccine is "safe".

483. This court acknowledges that most of the decisions cited by this court have come to a different conclusion, and they were prepared to simply accept the "government messaging" on this issue.

484. Clearly, courts are independent of the government and courts routinely render decisions that are contrary to the positions taken by various governments. For example, criminal legislation is often set aside by the court for a variety of reasons.

485. However, when it comes to the issue of government messaging and COVID-19 vaccines, it would appear that most courts have not questioned the messaging of governments.

486. History has taught us that governments and the media does not always act in a manner that promotes public health.

487. It was not that long ago that the media depended on tobacco companies and companies selling wine, spirits and beer for advertising revenue.

488. At a time when there were a number of experts opining that tobacco caused lung cancer and other experts opining that alcoholic products could cause cirrhosis of the liver, among other diseases, the media and governments continued to allow those companies to advertise and continue to rely on those companies for advertising revenue.

489. Once those advertising revenues were no longer available to mainstream media, were those advertisers to a large extent replaced with advertisements paid by large pharmaceutical companies?

490. For those reasons among others, this court is not prepared to take judicial notice of any "messaging" from mainstream media.

491. So far as governments are concerned, as is referenced in the material filed on behalf of the father, there was a time when there were virtually no governments in the world that challenged the messaging of the vaccines being "safe and effective".

492. However, the articles referenced by the father in this case indicate that there are now some countries, including Finland and Denmark that have banned or are no longer recommending the distribution and administration of vaccines to children. This would appear to be based on a conclusion by those governments that they are no longer certain that the vaccines are "safe and effective".

493. What about family doctors? Should their opinions be accepted as being totally independent?

494. The letter that the court received from a family doctor in this case, is similar to the letters that were tendered apparently in other cases cited by this court. Essentially, the letter before this court and the letters before other courts, are written in very similar

language. The doctor is simply parroting the narrative and messaging that has been passed down from public health authorities.

495. There is no evidence before this court, that the doctor in this case, or for that matter in the other cases, has done any independent research in order to form their own opinion as to what are the risks of the COVID-19 vaccination.

496. In fact, what they merely stated is that public health recommends vaccination of children against COVID-19, except in cases where there is evidence that a particular child is at higher risk.

497. Dissenting parents in other cases and the father in this case before this court, have questioned whether or not doctors in Ontario are free to give opinions that are contrary to public health edicts without having any professional consequences.

498. There have been cases cited in the media whereby doctors have been disciplined by their governing bodies where the doctor has issued letters of exemption to patients from the vaccines or where the doctors have prescribed medications which the public health authorities have not been recommending for the use with respect to COVID-19.

499. Can the courts therefore take judicial notice of the fact that family doctors issuing a letter, are doing so totally independent of any concerns from sanctions from their governing bodies?

500. This court finds that one cannot and should not take judicial notice of that fact.

501. Courts in other cases have discounted Dr. Malone, for among other reasons, because he was banned from Twitter (when Twitter was under previous ownership) for spreading "misinformation".

502. By determining that a position taken by someone is "misinformation" simply because Twitter, Facebook, Google, or some other social media platform bans someone for declaring what they are saying as "misinformation" is by extension taking judicial notice of the "fact" that the owners or "regulators" of these platforms are independent and have made a determination has to what are "facts" and what is "misinformation". Further it presumes that this determination is uncontroversial.

503. The court does not find that we should be taking judicial notice of a determination by an owner of one of these platforms as to what is "misinformation".

504. This court does not find that simply because a social media platform bans someone from it or declares their statements to be "misinformation", as a valid reason to reject an opinion rendered by the individual, particularly when that individual is the one who invented the mRNA technology.

505. The court does raise the question however why is it that Twitter (at least while under previous ownership) Facebook and other social media platforms and the search engine

Google finds it appropriate and necessary to ban anyone who dares to challenge the public health messaging on the issue of vaccines?

506. The argument presumably is that these platforms are doing so to "protect the public".

507. This court has difficulty accepting that argument, however, when there are all kinds of things on the Google search engine or social media platforms that would appear to clearly be something from which the public or at least a portion of the public needs to be protected.

508. Simple examples of this are that of gratuitous violence, or a "recipe" on how to make a homemade bomb appear not to be of concern to the individuals censoring "vaccine misinformation".

509. These organisations do not see any need to protect the public from such information being distributed through their social media or internet vehicle.

510. If the opinions of individuals who dared challenge public health are not credible, what is the danger of allowing them to be put out on the Internet?

511. Surely, intelligent people will be able to decide for themselves and determine that these opinions should not be accepted over those of the public health authorities.

512. It is not only the censorship by social media and Internet search engines, that cause this court concern but also the mainstream media.

513. Is the proposition that there is censorship within mainstream and social media platforms simply mere fantasy of "conspiracy theorists"?

514. The dissenting parent in this case, cites as a reason for concern about the safety of the vaccines, a personal story in which his sister had a miscarriage and the family believes that this may be connected to her having been vaccinated. He notes that in the BC hospital where she was being treated, there were an alarming number of stillbirths or miscarriages among pregnant women who had been vaccinated.

515. The mother, who is asking the court to take judicial notice of public health and to give her decision-making authority so that she can have the children vaccinated, points out that Canada's publicly funded broadcaster, the CBC, reported that the concern raised by the respondent father in this case with respect to this BC hospital, simply did not happen.

516. This leads the court to another concern that the court has with respect to the mainstream media.

517. Does the mainstream media have a "narrative" that they promote?

518. One wonders why some stories in the news are, "front-page headlines" for each news cycle for a number of days and for some cases weeks and months, while on the other hand, other stories, which arguably are also very newsworthy, are either not reported at all or are buried in the middle of one newscast and not repeated thereafter.

519. This court is not prepared to take judicial notice that simply because the CBC or any other mainstream media outlet reports something as being "untrue" that the court accepts that as being something of which the court will take judicial notice.

520. For all of the above reasons, this court is not prepared to take judicial notice of the public health claim of that these vaccines are "safe".

521. To be clear, the court is not taking judicial notice of any of the representation set out in the father's materials are in fact accurate or are "facts".

522. The court is merely stating that since it finds that it cannot take judicial notice, by extension expert evidence is required for the court to make a finding of fact.

Informed consent

523. Another issue that these vaccine cases and the case before this court raises is the issue of informed consent.

524. The *Health Care Consent Act* requires that an individual be given an opportunity to give an informed consent prior to undergoing any medical procedure and that a healthcare provider ensure that the consent and by the patient to that procedure is informed prior to administering that procedure.

525. The dissenting father in this case, and the dissenting parents in the other cases cited, all state that they have done sufficient research to satisfy themselves that they have valid reasons for not consenting to the vaccination of their child.

526. Courts have, as cited in this decision, not been willing to consider the objections of the parent who has done their research and has come to a conclusion for their child, that is contrary to the public health narrative and has determined that the child should not be vaccinated against COVID-19.

527. In fact, some courts, as cited herein, have even taken away decision-making authority from a parent who they find is the better parent generally to have that authority. The decision-making authority has been taken away from them simply because they dared to question the public health messaging.

528. Doing so, raises huge concerns for this court based on the "slippery slope argument".

529. If courts are prepared to take away decision-making authority from an otherwise capable parent simply because, based on their research, they have concerns about public health narrative and subjecting their child to a vaccination, this causes concern

for this court not only in those cases but also in what this court considers the next logical steps in that determination.

530. Next, are courts going to, through child protection legislation, take away either decision-making authority or take away children altogether from parents in intact families who collectively determine to challenge public health narrative or as in this case to come to a conclusion that is not in their child or children's best interest to be vaccinated?

531. Following this logic further, the media has reported other cases where individuals who would otherwise be eligible for organ transplants, for example, have been denied those transplants simply because they made the decision based on what they believe to be informed consent that they are not prepared to be vaccinated.

532. Does this logic continue to a case where courts will be mandating vaccinations for those who object and disagree with public health recommendations?

533. No doubt some will argue this is a far-fetched possibility, but is it?

534. For all of the above reasons, this court is not prepared to take judicial notice of the "fact" that COVID-19 vaccines for children are "safe".

Censorship of Dissenters

535. In this case, this court has made reference to censorship of those who dare challenge the public health messaging with respect to vaccines in the mainstream media and in search engines such as Google and apps such as Twitter.

536. However, as can be seen from some of the cases cited here in, courts have also been prepared to make orders censoring parents who have a dissenting opinion.

537. Orders have been made precluding those parents from sharing any such opinions with their children or allowing their children to view any such dissenting opinions either on the Internet or otherwise.

538. The court well understands, as is ordered typically in family law cases that the courts discourage, as does this court, parents from involving their children in adult disputes.

539. However, issuing an order which precludes a parent from allowing their teenage child to view something that is contrary to the public health narrative is deeply concerning to this court. Hasn't the education system particularly since the 1960s, encouraged and promoted children to be critical thinkers?

540. Yet it would appear that any time anyone challenges the mainstream "narrative" they are immediately tarnished with a brush as putting forward "misinformation".

541. There are countries where the courts follow the government narrative and do not permit the dissemination of opinions that vary from that government narrative. This court would expect that one could take judicial notice of the "fact" that Canada should not be such a country.

542. The hallmark of justice is that courts must be viewed to be independent and impartial triers of fact.

543. We are expected to be gatekeepers and to protect the rights of individuals and groups.

The Court as a Gate Keeper

544. Courts are expected to be "gatekeepers" and to protect the interests of those who need the protection of the courts such as children.

545. In performing this role, it is important to look at as was earlier referenced, what we know and what we don't know.

546. We know that the COVID-19 vaccine is based on new technology and that it has been "invented" approximately two years ago.

547. This court is therefore prepared to take judicial notice of the fact that it is impossible to know the long-term effects of the vaccines simply because of the newness of the vaccines.

548. We further know that governments were promoting, but are no longer promoting, vaccines that have been manufactured by Astra Zeneca.

549. Public health authorities are promoting vaccines and are telling the public that vaccines are "safe and effective".

550. Based on the review of other cases, we know that there are others, whom this court would deem to be reasonable people, who disagree with the public health, big pharma, and government "messaging" that the vaccines are in fact "safe and effective".

551. Courts, as gatekeepers, have over the years in utilizing that role, promoted the rights of individuals and groups who, at that point in time did not have any such rights and whose rights were not being protected at the time by governments or by mainstream media.

552. It was the court, that for example, based on rulings, gave women many rights that they had not had up until that point in time. Similarly, it was courts that gave rights to non-heterosexual groups who previously had not had those rights. A prime example that comes to mind is the right to same sex marriage.

553. This court views its obligation to protect the rights of children who are before the court.

554. Within those rights, this court has referenced, the right to be protected from the administration of a procedure (in this case a vaccine) without the court having assurances that the administration of such a vaccine is, at least on a minimum of a cost benefit analysis, more beneficial to the child than the risk that the child faces in not being vaccinated.

555. This court finds that it has an obligation to protect the rights of an individual under the *Health Care Consent Act* to be able to make an informed consent and, where the individual or the parent of a child who was not of sufficient age to make that decision for themselves, has concluded that they do not want to take the risk of having a vaccine administered to them, that the court has an obligation to protect their rights to make an informed consent by not taking the vaccine certainly without being satisfied that the concern of the individual is not that of a "reasonable person".

Finding in this case

556. Having determined, that the court is not prepared to take judicial notice of the fact that the COVID-19 vaccines for children are safe, and effective, this court is left with little if any probative evidence on which it could order that the respondent mother have decision-making authority on the issue of COVID-19 vaccinations and make the order that she is requesting.

557. The evidence before the court is that each of the three children had COVID-19, appeared to have had mild symptoms, and recovered from it. The uncontradicted evidence is that all three children are currently healthy and happy.

558. The applicant father's position has been that the decision as to whether or not the children should be vaccinated is one that should be deferred, and that if the parties are unable to come to a consensus based on further research and empirical data that becomes available, then the issue would have to be decided at a trial where each party could call expert evidence.

559. The court concurs with that submission.

560. This court has raised many questions which this court believes need to be addressed by expert evidence before certainly this court would be willing to mandate a child to be vaccinated contrary to their, or their parents' belief based on informed consent that such vaccination may pose a greater risk than benefit to the individual.

561. While this court is not taking judicial notice of the fact that vaccines are "safe and effective", the court wishes to be very clear that it is not taking judicial notice either of the other propositions and questions posed by this court. The court simply raised those questions and propositions as the rationale for this court not taking judicial notice of the proposition that vaccines are "safe and effective". This court has raised many questions based on media reports and on findings from other cases where doctors and

scientists have an opinion different from that of public health and government on the issue of whether or not vaccines are safe and effective.

562. This court does not have any evidence before it on which it can make any findings with respect to these "dissenting opinions".

563. The *Family Law Rules*, and specifically Rules 20.1, 20.2 and 20.3 set out criteria for the tendering of expert evidence. The court does not have that type of expert evidence before it and the father is asking for an opportunity to proffer that evidence at trial.

564. To be very clear, this court is not taking judicial notice of these dissenting opinions as being "fact".

565. This court finds that these dissenting opinions do create a situation pursuant to which the court finds that the messaging of public health, government, the pharmaceutical companies who manufacture and distribute and profit from these vaccines, the mainstream media and social media platforms all of which have the messaging that the vaccines are "safe and effective" for children is a proposition that to this court is far from uncontroversial and is something that this court finds is being challenged by reasonable people.

566. Courts are required to be impartial adjudicators of the facts before them.

567. Save and except for the issue of whether or not to take judicial notice, courts should not be making determinations except based on the evidence before them.

568. Judicial notice is an exception to that rule. We as courts, may take judicial notice of something that is uncontroversial and not subject to dispute by reasonable people.

569. This court posits that a court, in determining whether or not to take judicial notice cannot nor should it be oblivious to the court's experiences generally in life and the information that the court receives in day-to-day life from sources such as the media.

570. The court has used the analogy of a flat versus a spherical earth and has noted that all of this court's life observations are consistent with the earth being a sphere rotating on its axis and revolving around the sun.

571. Therefore, as noted the court would have no difficulty taking judicial notice of that "fact".

572. In addition to the material put forward by the father in this case and in addition to the information ascertained from its review of other cases, this court finds that it cannot ignore events of which it is aware that are possibly inconsistent with the proposition that these vaccines are "safe and effective".

573. Millions of viewers have seen television broadcasts of live sporting events where athletes who appeared to be in top physical condition and in the prime of their life

have collapsed, and in some cases died of myocardial incidents. Based on other widespread media reports, the court notes that most professional sports leagues required players to be vaccinated.

574. Is it possible that there may be a correlation between these players being vaccinated and these incidents?

575. Of course, the court has no evidence before it on which to make this finding.

576. However, the observation of these incidents certainly is not evidence that is supportive of finding that the court should take judicial notice of proposition that vaccines are safe and effective.

577. That is just another rationale for this court to find that it requires expert evidence before making any determination that would require or result in these children being vaccinated.

578. The court well appreciates that it is extremely expensive to have expert evidence put forward at a trial.

579. Having said that, should courts be prepared to take a risk with a child's life based on simply following public health messaging because that is an efficient way of operating?

580. To this court the answer is clearly no. While it may be expensive and inconvenient, this court finds that it is a necessary exercise in order for courts to be assured that we are not requiring something that is potentially harmful to a child.

581. History has taught us, as set out in some of the examples herein, that mistakes have been made in the past which have been extremely detrimental to individuals upon whom the results have been imposed.

582. Governments and public health authorities have been wrong before. The court has cited the example of Thalidomide.

583. The media is promoting a message that is based on representations by public health, the government and pharmaceutical companies who manufacture these vaccines. Therefore, if any of them are wrong, then the media message is by nature also wrong.

584. Courts as well have been wrong before. The Mother Risk inquiry taught us that simply because many courts have been willing to accept a certain "fact" does not mean that well-meaning courts cannot be wrong in their assumptions.

585. This court finds that we should learn from history and to the greatest extent possible not replicate mistakes that have been made in the past.

586. The court has posed many hypotheses in this decision which this court well realizes are extremely controversial. The court wishes to emphasize that the court is not suggesting that it has evidence to support that any of these hypotheses are true. This court's decision is not based on the assumption that any are in fact true.

587. The whole purpose of this court raising these hypotheses is to demonstrate that the proposition of public health authorities that the vaccines are "safe and effective" is to this court extremely controversial and one of which according to the criteria set out by the Supreme Court of Canada can be challenged by reasonable people and therefore this court should not be taking judicial notice of that proposition as being true.

588. If there is a presumption that public health directives are presumed to be true, and therefore courts should take judicial notice of the same unless the court is satisfied that the presumption has been rebutted this court finds that the applicant father should be entitled to have that addressed at trial wherein he could call expert evidence.

589. The respondent mother's motion is therefore dismissed and this case will be referred to the trial coordinator to schedule a further settlement conference before the trial management judge.

590. The applicant father has raised an issue in his materials about consent to a vacation in Mexico for March break 2023. That is only a few weeks away. Should the parties not be able to resolve that issue, leave is given to the applicant father to bring a motion with respect to the same prior to the scheduling of any settlement conference.

591. In this particular case, the court had not heard or received evidence of the views and preferences of the children. The eldest child is now 10 years of age. The court has no evidence as to his level of maturity and whether or not the parents would agree that he is or is not mature enough to form an informed decision on the topic.

592. The concern that the court has, is that it does not wish to create a situation pursuant to which either or both parents feel that it is appropriate to attempt to influence the child one way or the other.

593. The court has seen many cases in which parents attempt to do so, and one of the cases that was cited by the court heard evidence that the child felt that she was on a pizza which was being pulled in opposite directions by each parent. That is clearly not in the child's best interest.

594. The court would implore the parents to not "pressure" the child to come to a decision in accordance with the parent's belief.

595. In many disputes, and in particular in many family law situations, parents are not willing to open mindedly consider the position taken by the other parent.

596. As with any family law case, often the most damaging impact to the children is the conflict between the parents.

597. The court would encourage the parents to open mindedly consider all of the research available to each of them.

598. Knowledge is a powerful tool.

599. Perhaps it is naive of this court to believe that it is possible, but the court would encourage each side to share with the other all of the information that they have researched and would encourage the other parent to open mindedly read and listen to that information and to open mindedly do their own research.

600. Better than having a trial on the issue, would be a situation whereby the parents could come to a consensus thereafter.

601. The court has absolutely no doubt each of the parents loves the children and wants to do what they believe to be in the children's best interest. Simply because parents disagree on what is in the children's best interest, does not make the dissenting parent a "bad parent", even if that parent's opinion is contrary to public health recommendations.

Ontario Court of Appeal Decision: *J.N. v. C.G.*, 2023 ONCA 77

602. This court had completed its final draft of this decision and was literally about to release it when the court learned of the release by the Court of Appeal of Ontario of a decision in *J.N. v. C.G.*

603. This court obviously respects the authority of the Court of Appeal and understands that it is bound by rulings of that court.

604. On first review, it may appear that the situations faced by this court and by the Superior Court in that case were very similar in that they both involve a decision in which a parent is seeking decision-making authority to allow them to have children vaccinated over the objections of a dissenting parent.

605. It may therefore appear that this court would be bound to change its entire decision as a result of the Court of Appeal decision.

606. However, this court finds that there are three reasons why, through the distinguishing of the case before the Court of Appeal and based on the date of the decision that was appealed, that this court is not bound to do so.

607. This court finds that there is a major difference between the issue before this court and the issue before the Superior Court in *J.N v. C.G.*

608. The difference is in what the dissenting parent in this case is asking the court to do, that being to allow him to present expert evidence at trial.

609. In the case of *J.N. v. C.G.*, the father, who was wishing to have the two younger children vaccinated brought a motion seeking a change in decision-making authority to allow him to do so. The mother had to that point in time, decision-making authority for those two children which, would have included decision-making authority over vaccinations.

610. In the case before this court, it was the mother, who brought a motion seeking decision-making authority specifically with respect to the issue of vaccinations.

611. In *J.N. v. C.G.*, pursuant to the parties' minutes of settlement, they agreed to have that issue decided by the court.

612. The father however in the case before this court was not asking that decision-making be given to him as a result of the motion (which decision presumably would have been not to vaccinate the children).

613. The father in the case before this court was asking that the matter be deferred to a trial to allow him the opportunity to present expert evidence in order to support the position that he was taking that being that the COVID-19 vaccines were not "safe and effective" as had been messaged by public health authorities.

614. The second major difference between the decision in *J.N. v. C.G.*, at the Superior Court level and the decision reached by this court relates to the conclusions that each of us has found.

615. In *J.N. v. C.G.*, the motions judge found that the Internet articles proffered by the mother who was objecting to the child being vaccinated, should be accepted as evidence.

616. The motions judge therefore found that based on the evidence that was before him, that the father's motion seeking to change decision-making authority was dismissed.

617. The Court of Appeal has upheld the father's appeal of that decision finding that the "evidence" before that court was not "proper evidence".

618. However, this court finds that the Court of Appeal decision can be distinguished from the findings of this court.

619. This court has not utilized any of the evidence produced by the dissenting father defined as a fact with respect to the truth of the contents of those representations.

620. What this court has found is that the issues raised by the father are sufficient to cause this court to find that it should not take judicial notice of the proclamations of public health authorities that the vaccines are "safe and effective".

621. The court notes that the Ontario Court of Appeal found that it allowed the appeal based on the first ground of appeal that being, "Did the motion judge err by accepting

and relying on the respondent's online resources as expert evidence and by finding that they raised legitimate concerns about the safety, efficacy and need for the COVID-19 vaccine?"

622. The court found that the motions judge had in fact erred by accepting the respondent's resources as expert evidence and making a finding based thereon.

623. The second ground of appeal was, "Did the motion judge err by finding that the appellant's evidence (from public health authorities and other well-known sources) was credibly disputed?"

624. The Court of Appeal noted that, "While taking judicial notice of a fact is highly discretionary, I note that several courts have already taken notice of the safety, efficacy and importance of the pediatric COVID-19 vaccines." The Court of Appeal then quotes many of the same decisions that this court has quoted.

625. However, this court notes that it is not bound by any of those other decisions either referenced by this court or referenced by the Court of Appeal. They are for the most part decisions of a court of coordinate jurisdiction.

626. The Court of Appeal further stated, "I need not decide whether judicial notice should be taken of the public health and government information adduced by the appellant, as the motions judge fell into error in other respects including by treating government approval of the vaccine as irrelevant."

627. This court would hope it is clear from its decision, that this court has not treated the public health and government information as "irrelevant".

628. The Court of Appeal went on to review section 25 of the *Ontario Evidence Act*, R.S.O. 1990, c. E.23.

629. As noted earlier, this court has accepted pursuant to s. 25 of the *Evidence Act* that evidence is not required to prove the proclamations of government have been made.

630. So that there can be no doubt of this court's finding, this court accepts that public health authorities are saying what the respondent mother claims that they are saying in that these vaccines are "safe and effective".

631. In paragraph 26 of their decision, the Court of Appeal in speaking of the public health document exception to the hearsay rule states, "While this speaks only to admissibility, and not to what weight a judge must ultimately assign to it, it is important to understand why s. 25 exists..."

632. In paragraph 28, the Court of Appeal continues by saying, "Again, this does not compel a judge to give the evidence any weight, but given the purposes behind s. 25 and the public document exception, there is at least an obligation to explain why materials like those filed by the appellant are not trustworthy, which the motion

judge's reference to some of Canada's historical misdeeds - all false equivalencies - fails to achieve."

633. Once again, in this decision, the applicant father was not asking this court to decide, nor is this court deciding, that the public health documents are not trustworthy; he simply ask that he be given an opportunity to call expert evidence to challenge that.

634. This court's decision is that the applicant father on behalf of the children should be afforded an opportunity at trial to produce expert evidence to challenge the trustworthiness of the proclamations made by public health authorities.

635. Again, this court finds that that is a major distinction between the case that this court faces and the decision that it has rendered, and the decision of the motions judge in *J.N. v. C.G.*

636. In the third question -posed by the court relating to the children's views and preferences, the court finds that this ground for appeal, is not relevant in the case before this court as there is no evidence before this court as to the children's views and preferences with respect to the issue of vaccination. The court therefore finds it need not address that issue.

637. The fourth ground for appeal was, "Did the motion judge err by placing the onus on the appellant to show that the children should be vaccinated?"

638. The Court of Appeal allowed the appeal on this ground as well.

639. The Court of Appeal at para 38 notes, as has this court, that "most family court decisions related to the pandemic, at least to this point, have deferred to the government recommendation that people, including children, get vaccinated against COVID-19."

640. This court has clearly noted that by a ratio of 20:1, courts in fact made that finding.

641. The Court of Appeal noted at para 41 that while the motions judge was "not obliged to adopt the reasoning in a court of coordinate jurisdiction, it was important for the motion judge to cogently explain why he was departing from decisions that had already addressed health- related parenting decisions in this same context."

642. This court believes that it has thoroughly explained the rationale why this court is rendering a decision that runs contrary to those other decisions of courts of coordinate jurisdiction.

643. The Court of Appeal in paragraph 44 then recalls the two primary rationales for public documents exception to the hearsay rule. The first is the impracticality of traditional modes of proof.

644. In the event that this court has left any ambiguity, this court is not suggesting and not finding, that the applicant mother would be required to call expert evidence by *viva voce* evidence to prove what the public health authorities are saying.

645. This court has found, that it is prepared to accept as a fact that public health authorities are issuing proclamations that the COVID-19 vaccines are "safe and effective".

646. The Court of Appeal at para 45 finds that "judicial notice should be taken of regulatory approval, and regulatory approval is a strong indicator of safety and effectiveness. That being the case, where one party seeks to have a child treated by Health Canada-approved medication, the onus is on the objecting party to show why the child should not receive that medication. The motion judge erred by reversing that onus."

647. That is a finding made by the Court of Appeal.

648. That finding however does not preclude the dissenting parent from having an opportunity to have their day in court and having an opportunity at a trial to call expert evidence that may rebut that presumption.

649. This court indicated that there are three reasons why it finds that the Court of Appeal decision does not result in a requirement that this court change its decision.

650. In this decision, this court has referenced "we need to know what we know and equally importantly we need to know what we do not know."

651. The decision rendered by the motions judge in *J.N. v. C.G.* was rendered in February 2022, one year ago.

652. The Court of Appeal makes no reference to any "fresh evidence" being called before it and therefore this court assumes that none was called. That results in an assumption that the Court of Appeal based its decision solely on the evidence that was before the motions judge one year ago.

653. As referenced earlier in this decision, this court finds that no one can say with certainty what the long-term effects are of these vaccines given that these vaccines have not been administered to any child for a sufficient length of time in order to have empirical evidence on which to base that finding.

654. The Court of Appeal has found that public health proclamations create an onus on the dissenting party to rebut a presumption.

655. This court has noted that public health proclamations have been a moving target over the last three years.

656. Public health records will show that they continue to be a moving target.

657. Public health proclamations have changed over the last three years and, if history is a predictor of the future, they will continue to change over the next months and years.

658. The court addressing a trial in this issue will be faced with the public health proclamations that exist at the time of trial which may be different to those that exist today.

659. This court has made reference to the fact that in taking judicial notice, any court cannot be oblivious to what has transpired in the world and what has been broadly reported in the media.

660. The father before this court, is asking that the court not decide the issue of the vaccination of his children based on the public health proclamations on the one side and the "Internet evidence" that he has put forward on the other side. He is asking the court to defer the matter to a trial so that he would be given an opportunity to put forward expert evidence which he believes would demonstrate to a court that the vaccines are not "safe and effective".

661. This court is well aware of its obligations pursuant to Rule 2(3) of the *Family Law Rules* which require the court to among other things consider when making a decision the resources available to the court and the pressures on the court of other cases.

662. This court would posit that judges in the GTA and in particular, those in the burgeoning population of Central East and Central West Regions know better than anyone the pressures that are on the courts. Statistics will show that the family court in which this justice sits, is probably one of the busiest in the province if not the country.

663. This court does not routinely put matters over for trial where the matter can be addressed in a more expeditious manner such as a motion, a summary judgment motion or a judicial dispute resolution process.

664. However, when it comes to the protection of children, the court finds that court efficiencies should not result in courts rendering decisions which by their nature involve the very lives of the children who were before them.

665. The dissenting father in this case has expressed concerns that he questions the safety of the vaccine and is concerned that the parties' children's health could be put at risk if the vaccine was administered to them. He seeks to be permitted to have a trial and to call expert evidence so that a court has the best possible evidence before it prior to deciding the issue.

666. The *Charter of Rights* ensures that accused persons have the right to a fair trial. This court finds that innocent children should and do have that same right.

667. For all of the above reasons, the court finds that the respondent mother's motion is dismissed and as stated earlier, this matter should be scheduled for trial to afford the parties to put forward expert evidence.

Costs

668. So far as the issue of costs are concerned, this court wishes to state the following.

669. Based on the affidavits and submissions made on behalf of the parties, the court has no doubt that each parent loves their children and that each parent was motivated in this motion by a genuine belief that what they were seeking is in the best interests of their children.

670. The court has made a determination which is obviously favorable to the applicant father.

671. However, particularly given the decisions that had been rendered prior to this motion being heard the court does not find that the respondent mother was being unreasonable in bringing this motion.

672. Therefore, while the court is not precluding the applicant father from seeking costs, the court wishes to communicate that unless counsels' submissions convince the court otherwise, this court does not anticipate that costs would be awarded.

673. So far as the issue of costs is concerned, if the parties cannot agree on that issue, then the respondent mother shall submit cost submissions, not exceeding three pages in length and not including offers to settle and bills of costs. Those submissions shall be served and filed no later than February 28, 2023. The applicant father's responding submissions of the same length shall be served and filed no later than March 15, 2023, and the reply submissions if any by March 22, 2023. If no cost submissions are filed by February 28, 2023, then there will be no order as to costs.

Justice R.T. Bennett

Date: February 8, 2023

This is Exhibit "NN" to the Affidavit of

Rocco Galati, sworn before me

this 14th day of March 2023

A Commissioner for Taking Affidavits

Amina Sherazee, Barrister and Solicitor

Toronto Superior Court of Justice / Cour supérieure de justice

Court File No.:

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROCCO GALATI

Plaintiff

- and -

SHARON GREENE, THE DIRECTOR OF INTAKE AND RESOLUTION, THE LAW SOCIETY OF ONTARIO ("LSO")

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside of Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, A JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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IF YOU PAY THE PLAINTIFF CLAIMs, and $10,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: , Issued by:

Address of Local Office: 393 University Ave.
10th Floor
Toronto, Ontario
M5G 1E6

TO: Sharon Greene
Intake and Resolution Counsel
Law Society of Ontario
393 University A venue, Suite 1100
Toronto, Ontario
M5G 1E6
Email: SGreene@lso.ca

AND TO: Intake and Resolution Director
Complaints & Compliance
Law Society of Ontario
Osgoode Hall, 130 Queen Street West
Toronto, Ontario M5H 2N6
General line: 416-947-3315
Toll-free: 1-800-668-7380
Fax: 416-947-5263
Email: comail@lso.ca

AND TO: Law Society of Ontario
393 University A venue, Suite 1100
Toronto, Ontario
M5G 1E6
Email: lawsociety@lso.ca

CLAIM

1. The Plaintiff claims:

(a) General damages as against the Defendants, as follows:

(i) $500,000.00, as against the Defendants, in negligent investigation, abuse of authority and process, breach of fiduciary duty, breach of statutory duty, interference with economic interests, intimidation, and violation of the Plaintiff's s.7 and s.15 ***Charter*** rights;

(ii) Pre-judgment and post judgment interest pursuant to s. 128 of the ***Courts of Justice Act R.S.O. 1990 c. C43***; and

(iii) costs of this action on a full indemnity basis and such further or other relief as this Court deems just.

(b) A declaration that s. 49.3 of the ***Law Society Act***, in the absence of a client complaint to the Law Society of Ontario, violates s.7 and 8 of the ***Charter***, is not saved by s.1 of the ***Charter*** and should be accordingly "read down" pursuant to ss.24(1) and s.52 of ***the Constitution Act, 1982.***

THE PARTIES

(a) The Plaintiff

2. The Plaintiff, Rocco Galati, is a senior lawyer, practicing in Toronto, Ontario, who has been practicing law since he was called to the bar in Ontario in 1989. The Plaintiff practices law through his law firm, Rocco Galati Law Firm Professional Corporation, duly incorporated under the laws of Ontario and the requirements of the ***Law Society Act.***

3. Rocco Galati is a highly regarded and prominent lawyer. He has been a Member of Canadian Who's Who (since 2011). In 2014 and 2015 he was named one of the Top 25 Influential Lawyers by Canadian Lawyer Magazine. In 2015 he was awarded the OBA (Ontario Bar Association) President's Award. He was in fact the first lawyer to receive the award, with previous Presidents' Awards having been bestowed on judges and two (2) advocacy groups.

4. Between May 2015 and May 2019, he served as an elected bencher for the Law Society of Ontario (LSO). Between May 2015 to February 2021, he also served as a Hearing Panel Member (Adjudicator) of the Ontario Law Society Tribunal (LST).

5. Rocco Galati has litigated, regularly, at all level Courts, including Tax Court, Federal Court, Federal Court of Appeal, all levels of Ontario Courts, other Provincial Superior Courts, as well as the Supreme Court of Canada. He has litigated in several provinces including Ontario, British Columbia, Alberta, Manitoba, and Quebec. He has, as counsel, over 500 reported cases in the jurisprudence. Some of his major cases include: ***Baker v. Canada (Minister of Citizenship and Immigration), 1999 CanLII 699 (SCC), [1999] 2 SCR 817, Reference re Supreme Court Act, R.S.C. 1985 (Canada),*** **Reference re Section 98 of the *Constitution Act, 1867, R. v. Ahmad,* [2011] S.C.J. No. 6 (Toronto 18 Terrorism Case); *Felipa v. Canada,* [2011] F.C.J. No. 135, *Wang v. Canada, 2018 ONCA 798.***

6. Rocco Galati has been asked to speak and has spoken, regularly, at various Law and other Conferences, as well as Law Schools, Universities and High Schools, across Canada from 1999 to present.

7. Rocco Galati is the founder and Executive Director of Constitutional Rights Centre Inc. since its inception in November, 2004.

8. Rocco Galati has co-authored books, namely: "*Criminal Lawyer's Guide to Immigration and Citizenship Law" (1996)*, "*The Power of the Wheel: The Falun Gong Revolution" (2001)*. He has also produced three Films, *"Two Letters & Counting..." 2008-2011,* written, directed and performed by multi-Genie Award winning Tony Nardi, on the state of art and culture in Canada, and the treatment of "Aboriginal" and "Other" "Canadians" by the Two Solitudes Tribes of Canada, and on the Funding of "Canadian" Art and "Culture".

(b) The Defendants

9. The Defendant, Sharon Greene, is an Intake and Resolution Counsel with the Law Society of Ontario.

10. The Defendant, the Director of Intake and Resolution, is an employee with the Law Society of Ontario, and the Defendant, the Law Society of Ontario, is a statutory and corporate body, and both are responsible for the oversight of the various Intake and Resolution counsels at the Law Society of Ontario, including their training to ensure competence and further to ensure that those counsel act in good faith. absence of bad faith, and are fair and reasonable in their role as Intake and Resolution counsel.

11. The Defendant, the Law Society of Ontario, is a successor to the Law Society of Upper Canada, established in 1797 and is, at common law, and under the ***Law Society Act*** statutorily, charged with the regulation of Barristers, and Solicitors, and "Licensees" as

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defined post 1992, and, as a statutory body and corporation, is liable, for the actions of the Co-Defendants, Sharon Greene and the Director of Intake and Resolution.

FACTS

- **The Nature of the Plaintiff's Legal Practice.**

12. Throughout the Plaintiff's legal career, especially to and including March 11th, 2020, the declared COVID-pandemic, the Plaintiff has been the subject of racially-based, abusive and frivolous complaints from government departments against whom he litigates, as well as self-generated LSO complaints based on newspaper and other media posts, and the racist/anti-Semite prone members of the public of large with nothing better to do than grind their racist axe. **None** of any of these numerous complaints, over the 33 plus years of the Plaintiff's practice, were ever referred to any disciplinary hearing, or any other disciplinary action.

13. The Plaintiff started his career (1987-1990) with the Department of Justice and since then, to the present, has been engaged in private practice mostly restricting his practice to proceedings against the Crown.

14. During the course of his career, in defending constitutional rights, the Plaintiff has had to withstand the relentless personal attacks, and several viable death threats, from racists, anti-Semitics, and extremists who took issue with his Calabrian, Jewish heritage and/or his clients, labelling his clients, and the Plaintiff, as "mobsters", "terrorists" or "anti-vaxxers".

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15. The COVID-19 era is no exception. On May 19th, 2022, the Plaintiff received, from the Defendants, the 9th (!) complaint against the Plaintiff and one of his junior lawyers brought to his attention since the commencement of COVID-19 legal proceedings by his law firm on behalf of clients, which complaints have been brought against the Plaintiff and his junior lawyers just for doing their job(s) as lawyers, to the letter and spirit of Rule 5 .1- of the Law Society of Ontario's ***Rules of Professional Conduct.*** In two of those complaints, the complainants were Defendants in cases the Plaintiff and his firm were conducting.

- **Plaintiff's history with the Law Society Pre-Covid-19**

16. Throughout the Plaintiff's legal career, especially to and including March 11th, 2020, the declared start of the COVID-pandemic, he has been the subject of racially-based, abusive and frivolous complaints from government departments against whom he litigates, self-generated LSO complaints based on newspaper and other media posts, as well as the racist/anti-Semite prone members of the public of large with nothing better to do than grind their racist axe. **None** of any of these numerous complaints, over the 33 plus years of the Plaintiff's practice, were ever referred to any disciplinary hearing.

17. The Plaintiff states that, as a Calabrian with Jewish ancestry, he is a member of historically discriminated group in Canada, including the interment of Italo-Canadians in World War II as well as the long-standing and pervasive depiction of Italians as criminals and "mobsters". The Plaintiff has also been, personally, the victim, throughout his years, including his teenage years, of racially-based violence on the part of racist

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Canadians at large, including police officers. He has also faced pervasive discrimination within the legal profession from both lawyers and judges alike.

18. The Plaintiff has never been charged nor convicted of any criminal offence nor been found to have ever committed any breach of the ***Rules of Professional Conduct*** of the Law Society.

- **Plaintiff's history with the Law Society Post-Covid-19**

19. Since the declaration of the COVID-19 pandemic, on March 11th, 2020, the Plaintiff and his junior lawyer have been the subject of no less than nine (9) baseless and abusive LSO complaints, some of them with racist over-tones and undertones, with respect to their roles as counsel on cases litigating COVID-19 measures imposed by Provincial and Federal governments.

20. Of those nine complaints, eight were dismissed. However, the LSO required the Plaintiff to respond to three (3), Alexandra Moore, "Lindsay H", and Donna Toews, of these complaints.

21. The complaints made were chronologically made as follows:

(i) December 2020, complaint from "Lindsay H.", through Intake and Resolution Counsel, Samantha Nassar;

(ii) February 18, 2021, complaint from Terry Polevoy, (a Defendant in a defamation case), through Intake and Resolution counsel, Samantha Nassar;

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(iii) February 18th, 2021, complaint from Alexandra Moore (a defendant in a defamation case) against my junior lawyer, Samantha Coomara, through Intake and Resolution Counsel, Samantha Nassar;

(iv) February 22, 2021, complaint from Elana Goldfried, through Intake and Resolution counsel, Samantha Nassar;

(v) August 3, 2021, complaint from Alexandra Moore (a defendant in a defamation Case) through Intake and Resolution Counsel, Miko Dubiansky;

(vi) November 25th, 2021, a further complaint of Alexandra Moore, through Intake and Resolutions Counsel, Miko Dubiansky;

(vii) February 4, 2022 complaint of Terry Polevoy (another Defendant in a defamation case) through Intake and Resolution counsel, Sharon Greene;

(viii) February 4, 2022, two complaints from Franca Lombardi, through Intake and Resolution counsel, Miko Dubiansky;

(ix) May 19th, 2022 complaint by Donna Toews through Intake and Resolutions counsel, Sharon Greene.

22. After the second complaint, from Alexandra Moore, the Plaintiff wrote to the Law Society on September 21, 2021, and stated as follows:

> The other thing I cannot fathom is the Law Society of Ontario's approach and conduct in forwarding this to me for response at all. Ms. Nassar was on the previous Moore complaints. There seems to have been absolutely no minimal review of them, nor Ms. Moore's website, to glean what Canuck Law and Ms. Moore are about with respect to me and my clients.

> In my last correspondence, on a similarly outrageous complaint, by an outrageous individual, with respect to an attempt to censor my speech, I indicated that the next time I received one of these, I would commence action against the LSO, in the absence of an apology.
>
> If I do not receive an apology from the LSO on this "Complaint" which should not even have reached me, if the minimum of research was done on Ms. Moore and her website, I will commence action against the LSO for negligent investigation and the newly-created tort of (online) harassment because, it seems to me, that the LSO is more than content and willing to be dupe and conduit for Ms. Moore's and Canuck Law's filth, anti-Semitic, racists, and derogatory harassment of me and my clients.

23. On May 19th, 2022, the Plaintiff received yet another ridiculous, baseless, and unfounded complaint by a non-client, whom the Plaintiff has never met, does not know, nor ever communicated with, namely a Ms. Donna Toews.

24. The Plaintiff, under threat of the powers in s. 49.3 of the ***Law Society Act***, was required to respond to this complaint, without any particulars whatsoever, but simply the misplaced assumption of the Defendant, Sharon Greene. Attached as "Schedule A" is a copy of the Plaintiff's response dated June 29th, 2022, to the complaint, which the Plaintiff forwarded to the LSO. The Plaintiff pleads that "Schedule A" and the documents referred to and forwarded to the LSO with "Schedule A" are documents pleaded in the within Claim.

25. Following receipt of this complaint, the Plaintiff filed action against the complainant and her Co-conspirators, attached as "Scheduled B". The Plaintiff adopts, relies upon, and incorporates the facts in the statement of claim in "Schedule B" as part and parcel of the within Statement of Claim.

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26. Following the Plaintiff's response to the complaint, dated June 29th, 2022, to the Law Society of Ontario, the Defendant(s), Sharon Greene, and the Law Society of Ontario, continued to pursue the abusive and baseless complaint with the Plaintiff.

- **Action4Canada**

27. Action4 Canada has been a client of the Plaintiff's law firm since October 2020.

28. The Plaintiff acts on Action4Canada's behalf giving legal advice, consultations, issuing legal opinions, and conducting litigation for them under the instructions of their Board of Directors, through their president.

29. The Plaintiff has absolutely NO role in their organization whatsoever, except to provide legal services, as described in the ***Law Society Act,*** as requested, directed, and instructed by their Board of Directors, through their president.

30. Neither Ms. Toews, Mr. Warner, nor Mr. Gandhi, are on the Board of Directors Action4Canada.

- **Vaccine Choice Canada**

31. Vaccine Choice Canada (hereinafter "VCC") has been a client of the Plaintiff's law firm since 2015.

32. The Plaintiff acts on VCC's behalf giving legal advice, consultations, issuing legal opinions, and conducting litigation for VCC, under the instructions of VCC's Board of Directors, through their president.

33. Neither Ms. Toews, Mr. Warner, nor Mr. Gandhi, are on the Board of Directors of VCC.

- **Pertinent Chronology leading to Donna Toews' Complaint to the Law Society of Ontario**

34. On or about October, 2020, the Plaintiff was approached by Action4Canada, and other co-Plaintiffs, in British Columbia, for a lawsuit, however the retainer was not yet crystalized.

35. On December 5, 2020, the Defendant Kipling Warner, first contacted Tanya Gaw, the head of the Board of Directors for Action4Canada, indicating that he had organized a "similar" campaign to hers and directed her to view his lawsuit's GoFundMe page.

36. On or about December 14, 2020, the Plaintiff, in the within action, Rocco Galati, received a telephone call from a lawyer from British Columbia, Ms. Polina H. Furtula. This lawyer indicated that she was contemplating legal action against the British Columbia government over the COVID-19 measures imposed there. She requested that the Plaintiff collaborate with her, owing to his expertise in Constitutional Law and proceedings against the Crown. Ms. Furtula's client(s) were Kipling Warner and his organization, "The Canadian Society for The Advancement of Science and Public Policy".

37. The Plaintiff, Rocco Galati, respectfully declined, and advised Ms. Furtula that he had been approached by a British Columbia group (Action4Canada) and other plaintiffs, and had, in principle, agreed to act for them in a challenge to the COVID-19 measures, once a retainer crystalized.

38. In January 2021, the Plaintiff began working on the Notice of Claim (Statement of Claim) for Action4Canada and **other co-Plaintiffs**, in British Columbia.

39. On January 27, 2021, the Defendant, Dee Gandhi, Kipling Warner's colleague, and treasurer of Canadian Society for the Advancement of Science in Public Policy, sent an independent journalist, Dan Dicks from "Press for Truth", a defamatory email about the Plaintiff, Rocco Galati. This journalist forwarded that email to the Plaintiff's client, Action4Canada. The email indicated that the Canadian Society for the Advancement of Science in Public Policy had filed their statement of claim, but then made defamatory remarks against the Plaintiff, Rocco Galati, and the case brought by the Plaintiff, and asserted that Kip Warner and the Canadian Society for the Advancement of Sciences in Public Policy had brought their case first and therefore would have "carriage of the matter", and then finally asked Action4Canada to assist them in soliciting donations on their behalf for their legal proceeding.

40. On January 29, 2021, the Plaintiff, Rocco Galati, received a letter from Ms. Furtula indicating that she represented the Canadian Society for the Advancement of Science in Public Policy, that she had filed on behalf of her client(s) and therefore, according to her, the Plaintiff could not file any proceedings on behalf of his clients.

41. On February 3rd, 2021, the Plaintiff, Rocco Galati, responded to Ms. Furtula's letter indicating her client did not have exclusive monopoly to litigation against the Crown. The Plaintiff, Rocco Galati, also, in the same response, issued a warning through Ms. Furtula about Mr. Warner's defamatory conduct against the Plaintiff, Rocco Galati.

42. From January 2021 and onward, the Defendants in the action attached in "Schedule B" hereto, Kipling Warner, his organization Canadian Society for the Advancement of Science in Public Policy, and his associates from the Canadian Society for the

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Advancement of Science in Public Policy, including Dee Gandhi, continued defaming the Plaintiff to the Plaintiff's clients, and others.

43. In or around June, 2021, the Defendants posted defamatory content about the Plaintiff on the Canadian Society for the Advancement of Science in Public Policy's webpage, which content disparaged the Plaintiff, and made further defamatory comments about the Plaintiff and the legal action(s) for which he had been retained. As a result, the Plaintiff's clients, Action4Canada and VCC, began receiving messages from their members concerned about the Defendants' statements. Kip Warner's defamatory comments continue in e-mail correspondence with third parties stating that, with respect to the Plaintiff, "we've been receiving reports weekly, sometimes daily, alleging bad faith, fraud, or other improprieties in Rocco's fundraising arms".

44. On August, 2021, the Plaintiff finalized and issued the Action4Canada, et al, Notice of Claim (Statement of Claim) in the British Columbia Supreme Court. This claim was on behalf of various Plaintiffs, Action4Canada being one, in British Columbia Court File No.: VLC-S-S-217586, in British Columbia.

45. From August to Christmas, 2021, the Defendants to this British Columbian Statement of Claim Court file No.: VLC-S-S-217586, on behalf of Action4Canada and others, dragged their heels over whether they would accept service for various Ministries and officials and requested an indulgence past the normal 30-day deadline, to respond, which the Plaintiff granted. They also indicated that they wished to bring an application (motion) to strike. The Plaintiff asked that they do so as soon as possible, under the instructions of his clients.

46. By Christmas Day, 2021, the Defendants had **not** brought their motions to strike. Over Christmas, the Plaintiff became very ill. On December 25th, 2021, the Plaintiff was bed-ridden. On January 2nd, 2022, the Plaintiff was admitted for a critical illness to the ICU in hospital.

47. After being admitted to hospital in January 2, 2022, the Plaintiff entered a very serious and life-threatening 11-day coma during which coma the Plaintiff came, three (3) times, under a minute from being declared dead. Through the grace of God, he survived. On or about January 13th, 2022, the Defendants, in British Columbia Supreme Court file no.: VLC-S-S-217586, bought their motions to strike returnable February 22, 2022. Meanwhile, while the Plaintiff was in a coma and incapacitated under s.37 of the ***Law Society Act***, he remained in a public hospital until his discharge on January 22, 2022. When he was no longer critical, but still acute, he was immobile and still required one-on-one nursing and acute medical care. He was discharged as a patient from a public hospital, on January 22, 2022, and he transferred himself to recover in a private medical setting with 24/7 care.

48. The Plaintiff did not return home until March 2, 2022, to continue recovering. He still has not regained full recovery at present.

49. The motion to strike, in British Columbia Action no.: VLC-S-S-217586, which had been set for February 22, 2022, in British Columbia, was adjourned by the Plaintiff's office to May 31st, 2022, in the hopes that he would be sufficiently and competently capable of arguing the motion to strike via zoom-link. The Plaintiff was granted permission to

appear by zoom-link and argued the various motions on May 31st, 2022. The various motion(s) to strike were heard on May 31st, 2022 and the Court has reserved its decision.

50. Through the complaint, provided to the Plaintiff by the Law Society Defendants in the within claim, the Plaintiff learned that, while the Plaintiff lay in a coma, on January 15th, 2022, Kipling Warner was conspiring and encouraging Donna Toews (aka "Dawna Toews") to file a complaint against the Plaintiff with the Law Society of Ontario.

51. On January 15th, 2022, Ms. Toews filed her complaint with the Law Society of Ontario, which was forwarded to the Plaintiff on May 19th, 2022. The complaint alleged that the Plaintiff "misled" and "failed to act with integrity" because Ms. Toews, who had allegedly made a $1,000 donation, "in her husband's name", to the Plaintiff's **clients, VCC and Action4Canada**, to support their litigation, had not been personally apprised and updated by the Plaintiff, as well as not been invited to those organizations' members-only meetings, and complained about the pace of the litigation, notwithstanding that:

(a) Donna Toews (aka "Dawna Toews"), has never been a client of the Plaintiff;

(b) The Plaintiff has never met with, been contacted by, nor ever had any communications with Donna Toews (aka "Dawna Toews");

(c) The Plaintiff has had absolutely no role in his clients' organizations and is not privy to their fundraising efforts nor how they spend their money apart for his legal services;

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(d) The Plaintiff has no role in organizing any of his clients' members-only meetings.

52. The Plaintiff states that the substance of the complaint by Donna Toews (aka "Dawna Toews"), directed and encouraged by Kipling Warner, simply parrots the defamatory remarks made by the other three co-Defendants in the action attached hereto as "Schedule B".

- **Donna Toews (aka "Dawna Toews") and Kipling Warner**

53. While in hospital and in a coma, which was widely publicized (in fact false obituaries claiming the Plaintiff was dead emerged and some of which are still online), Kipling Warner was in communication with Donna Toews, via email, on how to make a complaint to the Law Society about the Plaintiff.

54. Kipling Warner has also, and recently, orally communicated to a person, who does not want to be identified due to fear of Mr. Warner's military past and self-professed prowess as a computer hacker, that, "I want to see to it that Rocco Galati is disbarred and charged with Fraud". Kipling Warner, in discussions with the President of VCC, Ted Kuntz, insisted that because he (Kipling Warner) "filed first", that the Action4Canada British Columbia claim, which VCC supported, had to be withdrawn, and all donations to Action4Canada be returned, with the implication that the donations be forwarded to him, Kipling Warner, to support his litigation instead. Kip Warner's defamatory comments continue in e-mail correspondence with third parties stating that, with respect to the Plaintiff, "We've been receiving reports weekly, sometimes daily, alleging bad faith, fraud, or other improprieties in Rocco's fundraising arms."

55. Mr. Warner is under the delusion that he can claim, along with his "Canadian Society for the Advancement of Sciences in Public Policy" ("CSASPP") exclusive proprietary rights to litigate the COVID measures in British Columbia. In pursuit of this goal, he goes to all ends.

56. Mr. Warner, furthermore continued to make defamatory statements against the Plaintiff on CSASPP's website, https://www.covidconstitutionalchallengebc.ca. The irony is that the British Columbia Supreme Court struck Mr. Warner as a Plaintiff in one of his cases, for lack of standing, in British Columbia Supreme Court file No.: S-2110229.

57. The Plaintiff states that the Defendants, Mr. Warner and Mr. Gandhi, personally, in their email to the Plaintiff's client, and through their CSASPP website, https://www.covidconstitutionalchallengebc.ca, uttered and published defamatory statements against the Plaintiff, namely:

(a) In his email to an independent journalist, dated February 1, 2021, Mr. Gandhi wrote, as follows:

> Hope you are doing well. I just wanted to update you on the fact that the Canadian Society for the Advancement of Science in Public Policy (CSASPP) has filed their pleadings against the Crown and Bonnie Henry (Provincial Health Minister) as of Jan 26th, 2021. Please see link: https://www.scribd.com/document/492237670/Notice-of-Civil-Claim You are welcome to share this with anyone and everyone.
>
> This is our certificate of Incorporation :
>
> > https://www.scribd.com/document/492256545/CSACPP-Certificate-of-Incorporation
>
> Now that we have started the litigation process, we are still in need of Funding. Action 4 Canada has still not filed with Rocco. **Legally at this point Rocco can't really file in BC anymore. The case law is that**

for class actions, it's the first to the court house that generally has carriage of the file. If you would be so kind to share with everyone so to help the cause.

https://www.gofundme.com/f/bc-supreme-court-covid19-constitutional-challenge

this might interest you further.

Here are some talking about regarding Action 4 Canada and Rocco

(1) Rocco isn't licensed to practice here in BC. He can always be retained in Ontario and in turn retain counsel in BC. But then you are paying for two law firms. You can verify that he is not licensed to practice here in BC at this page:
https://www.lawsociety.bc.ca/lsbc/apps/lkup/mbr-search.cfm

(2) The lawyer Rocco wishes to retain here in BC is named Lawrence Wong. He specializes in immigration law. He was sanctioned in 2010 for his conduct by a Federal Court judge and fined. See for yourself:
http://canlii.ca/t/2bz73

(3) A Federal Court judge wrote in his judgment a few years ago that Rocco was found to have excessively billed for his time:
<http://canlii.ca/t/gfl0p#par7>

(4) **The same judgment questioned Rocco's competency in constitutional law:**
<http://canlii.ca/t/gfl0p#par9>

(5) **Rocco is not a "constitutional law" lawyer. There is no such professional designation in Canada, nor in particular in BC.** That's not to say, however, that a lawyer cannot have an area of expertise like personal injury, strata, mergers and acquisitions, class actions, and the like**. But in Rocco's case his area of expertise is tax law**.

<https://tgam.ca/3n8Zuyo>

(6) Every lawyer I know that has reviewed **Rocco's Ontario pleadings said it was very poorly drafted. It will most likely get struck and never make it to trial to be heard on its merits.** The reason being is he brings in all kinds of other topics that aren't necessary (Gates, 5G, vaccines, etc.) to obtain the order that he wants. This is how it likely would be struck:

http://canlii.ca/t/8lld#sec9_5

(6) **Rocco wants far too much money to get started. This seems in line with (2);**

(7) Nothing has been accomplished in Ontario since Rocco filed around six months ago. The defendants haven't even filed replies, despite the option to apply for a default judgment being available for the majority of that time;

(8) Even if he won in Ontario, it wouldn't have any direct bearing on us here in BC because health care is under a provincial mandate under s 92(13) of the constitution. In other words, the Ontario Superior Court of Justice has no jurisdiction over what cabinet ministers do in BC. See:

<https://bit.ly/2Li6Baw>

(9) We are (CSASPP) a non-profit, non-partisan, and secular society. We are legally required to have a certain level of accounting controls and transparency

Thank you Dan, and I look forward to your response and your help.

(b) In or around June 2021, the CSASPP, Mr. Kipling, and the other directors of the CSASPP, have posted the following, about the Plaintiff:

Are you affiliated with Rocco Galati? If not, why?
We receive communications regularly from Mr. Galati's past donors with concerns. We are asked what became of the substantial funds that the community raised for him or his third-party fundraising arms. We do not have any information, were not involved in raising funds for either, nor did we ever seek to retain Mr. Galati. **If you have concerns about his conduct, any member of the general public can submit an electronic complaint to the Ontario Law Society to initiate a formal investigation**.

We are not affiliated with Mr. Galati. There are many reasons.

Mr. Galati is not licensed to practise law in British Columbia for any extended period of time. He can always be retained in Ontario, and in turn retain counsel in British Columbia. This is not unusual.

However, then you are paying for two law firms. Anyone can verify whether a lawyer is licensed to practise law in British Columbia here.

We were advised directly by Mr. Galati himself that the lawyer he wished to retain in British Columbia is Lawrence Wong. Mr. Wong was personally sanctioned in 2010 for his conduct by a Federal Court judge with a fine.

A Federal Court judge noted in his reasons for judgment that some of Mr. Galati's billings were "excessive and unwarranted" in a separate proceeding. The same judge declined to award the full amount sought by Mr. Galati for his legal fees in that constitutional proceeding. The outcome has been discussed by other lawyers.

Mr. Galati is sometimes described by his followers as our nation's "top constitutional law" lawyer, yet there is no such professional designation in Canada, nor in particular in British Columbia. That is not to say that a lawyer cannot have an area of expertise like personal injury, strata, mergers and acquisitions, class actions, and the like. According to Mr. Galati, he studied tax litigation at Osgoode Hall. The Globe and Mail reported Mr. Galati "makes his money from doing tax law, not constitutional cases."

Mr. Galati filed a COVID-19 related civil proceeding in the Superior Court of Justice in Ontario on 6 July, 2020. To the best of our knowledge, as of 30 October, 2021, none of the twenty-one named defendants have filed replies, despite the plaintiff being at liberty to apply for a default judgment for the majority of that time. In an interview published 2 September, 2020, Mr. Galati claimed he intended to do his best to have an interlocutory mask injunction application heard before the Christmas holidays of 2020. As of 11 June, 2021, we are not aware of any scheduled hearings and no orders appear to have been made.

58. Following the receipt of the Plaintiff's response to the Defendant, Sharon Greene, Sharon Greene continued to follow up and pursue the complaint, against the Plaintiff, made by Donna Toews with the assistance and instigation of Kipling Warner.

- **Conspiracy**

59. The Plaintiff states and fact is, that the Defendants in the action attached as "Schedule B", Donna Toews (aka "Dawna Toews"), Kipling Warner, Dee Gandhi, the Canadian Society for the Advancement of Science in Public Policy, as well as other "duped co-conspirators", engaged in the actionable tort of conspiracy to undermine the Plaintiff's solicitor-client relationship with his clients, which relationships are statutorily, at common law, and s.7 of the ***Charter*** protected, as well as conspired to interfere with the Plaintiff's economic interests with his clients, pursuant to civil conspiracy as set out by the Supreme Court of Canada, in, inter alia, ***Hunt v. Carey Canada Inc., 1990 CanLII 90 (SCC), [1990] 2 SCR 959,*** which set out that the tort of the conspiracy comprised of the following features:

(a) In the first place there will be an actionable conspiracy if two or more persons agree and combine to act unlawfully with the predominating purpose of injuring the plaintiff.

(b) Second, there will be an actionable conspiracy if the defendants combine to act lawfully with the predominating purpose of injuring the plaintiff.

(c) Third, an actionable conspiracy will exist if defendants combine to act unlawfully, their conduct is directed towards the plaintiff (or the plaintiff and others), and the likelihood of injury to the plaintiff is known to the defendants or should have been known to them in the circumstances.

60. The Plaintiff further states that the Defendants in the action attached as "Schedule B" further conspired to engage in actionable abuse of process through the Law Society complaint, as well as intimidation (through a third party).

61. The Plaintiff states that the Defendant, Sharon Greene, in the within statement of claim jumped on a co-conspirator bandwagon with Donna Toews, Kipling Warner, and CSASPP, which conspiracy should have been evident to the Defendant, Sharon

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Greene, if she had carefully read Donna Toews' complaint form and attached documents, and if Shannon Greene conducted embryonic research and/or investigation of the complaint in a fair and reasonable manner.

62. The Plaintiff states that the LSO Defendants joined the actionable conspiracy against the Plaintiff when they adopted the complaint by forwarding the complaint and threatening the use of search and seizure powers under s.49(3) of the ***Law Society Act***.

- **The Law Society Complaint as a Tort of Abuse of Process**

63. The Plaintiff further states that Donna Toews' Law Society complaint constitutes an actionable abuse of process in law, brought in bad faith, and absence of good faith, as set out by the facts pleaded above and the jurisprudence in that, under the jurisprudence, abuse of process, as a tort, is made out where:

(a) the Plaintiff is a party to a legal process initiated by the Defendants, in this case a complaint to the Law Society of Ontario;

(b) the legal process (law society complaint) has been initiated for the predominant purpose of furthering some indirect, collateral and improper objective;

(c) the Defendants took or made a definite act or threat in furtherance of the improper purpose; and

(d) some measure of special damage has resulted.

64. The Plaintiff states that Ms. Toews, Mr. Warner, and Mr. Gandhi, and CSASPP, took and made acts, as well as pre and post-facto statements in furtherance of their improper purpose of trying to shut down the Action4Canada et al, lawsuit in British Columbia, and improperly attempting to redirect funds raised by Action4Canada to the

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Defendants, Kipling Warner, Dee Gandhi, and the CSASPP, as well as through the vehicle of a baseless, abusive, and bad faith complaint to the Law Society of Ontario. All this damaged and continue to damage the Plaintiff by way of reputation and his solicitor-client relationships.

65. The Plaintiff further states that the Law Society of Ontario Defendants in the within action magnified and augmented that actionable abuse of process and, that putting the Plaintiff through the process of a response, constitutes not only adding to the actionable abuse of process, but further is a separately actionable tort of abuse of process.

66. The Plaintiff further states that the Defendants in "Schedule B", in their actions, knowingly intended, and in fact inflicted, mental anguish and distress through their actions against the Plaintiff, all of which go to punitive damages. The Plaintiff further states that the Law Society Defendants in the within action are further augmenting and inflicting mental anguish and distress.

- **Interference with Economic Interest**

67. The Plaintiff states that, through their conduct and actions, the Defendants in the action attached hereto in "Schedule B" have engaged in interference with the Plaintiff's economic interests as set out by the facts, pleaded above, and set out by the jurisprudence in that:

(a) the Defendants intended to injure the plaintiff's economic interests;

(b) the interference was by illegal or unlawful means; and

(c) the Plaintiff suffered economic harm or loss as a result.

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68. The Plaintiff states that the actions of the Defendants in the action attached hereto as **"Schedule B",** were intended to injure the Plaintiff's economic interests in his clientele, through defamatory and other tortious and unlawful interference and means as set out above, which resulted in economic harm and loss to the Plaintiff, through his reputation, and client base. The Plaintiff further states that the Law Society Defendants in the within action further augmented this interference with the Plaintiff's economic interest through their actions executed in bad faith and in the absence of good faith.

- **Breach of Fiduciary Duty**

69. The Plaintiff further states that the Law Society Defendants, in the within action, in addition to the duties of fairness and reasonableness, at common law and Administrative Law, and under statute, further owe a fiduciary duty to the Plaintiff, as a Barrister and Solicitor, called to the Bar, by the Chief Justice of the Ontario Court of Appeal in March, 1989, in that the Defendant Law Society of Ontario assumed a fiduciary relationship, and owed a corresponding fiduciary duty of care to the Plaintiff, for the following reasons:

(a) The Defendants were, and are, in a position of power over the Plaintiff, and were able to use this power so as to control and affect the Plaintiff's interests;

(b) The Plaintiff was, and is, in a corresponding position of vulnerability toward the Defendants. The Plaintiff was, and is, therefore in a class of persons vulnerable to the control of the Defendants;

(c) There was, and is, a special position of trust between the Defendants and the Plaintiff, governed by statute, the ***Charter***, and the common law;

(d) The Defendants undertook to act in the best interests of the Plaintiff, in that:

(i) it is a statutory, Administrative Law, and constitutional requirement that the Defendants review, assess, and process complaints in a fair and reasonable fashion;

(ii) the Plaintiff, and other members of the bar, pay for the administration of the Law Society of Ontario, through their annual fees, including the disciplinary process; and

(iii) it is in the "public interest" that baseless, abusive, and/or racist-based complaints not be entertained and processed against lawyers; and

(e) The Defendants breached this fiduciary duty;

And, as a direct result of this breach, the Plaintiff has suffered loss and damages, which include, ***inter alia:***

(a) Damage to reputation and interference with the economic and other dimensions of the Plaintiff's solicitor-client relationships with past, current, and prospective future clients;

(b) Loss of dignity; and

(c) Violation of his psychological integrity guaranteed and protected by s.7 of the ***Charter***, as well as violation of his dignity of equal treatment under s.15 of the ***Charter.***