S-224731

No. _____

Vancouver Registry

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

JUN 10 2022

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

YORK HSIANG, DAVID WILLIAM MORGAN, and HILARY VANDERGUGTEN

Petitioners

and:

PROVINCIAL HEALTH OFFICER OF BRITISH COLUMBIA

Respondent

PETITION TO THE COURT

ON NOTICE TO: The Respondent, the Provincial Health Officer of British Columbia

AND TO: The Attorney General of British Columbia

This proceeding is brought by the petitioners for the relief set out in Part 1 below.

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

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioners

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or
(d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:

Supreme Court of British Columbia
Vancouver Registry
800 Smithe Street
Vancouver, BC V6Z 2E1

(2) The ADDRESS FOR SERVICE of the petitioners is:

Gall Legge Grant Zwack LLP
1000 – 1199 West Hastings Street
Vancouver, BC V6E 3T5
Attention: Peter A. Gall, Q.C.

E-mail address for service of the petitioners: pgall@glgzlaw.com

(3) The name and office address of the petitioners' lawyer is:

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Gall Legge Grant Zwack LLP
1000 – 1199 West Hastings Street
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CLAIM OF THE PETITIONERS

INTRODUCTION

1. The Provincial Health Officer of British Columbia ("**PHO**") has issued an order requiring health care workers in hospitals and designated community settings to be vaccinated for SARS-CoV-2 in order to provide health services to patients in those settings (the "**Order**").

2. As a result of the Order, health care workers who have chosen not to receive a vaccination have been prevented from continuing to provide services to their patients in these settings and, in many cases, have faced the termination of their employment.

3. It is self evident that such an Order, which requires individuals to submit to medical treatment against their will or face a loss of their employment, has significant negative consequences on the interests of the affected health care workers who, for a variety of legitimate reasons, may be unwilling to be vaccinated.

4. Given the intrusive nature of such a measure, it can only be reasonably justified in the most compelling circumstances and based on the best available evidence, and those circumstances and that evidence should be constantly re-evaluated in light of the most recent developments and best scientific information.

5. That the imposition of a vaccination mandate for certain settings was an extraordinary measure imposed in response to specific conditions is clear from the Order itself, which is predicated on statutory powers available only in an "emergency".

6. An emergency is defined in the *Public Health Act* as a "localized event" or "regional event" that meets specific criteria. The Order is premised on the PHO's assertion that BC is experiencing a "regional event", which is defined as "an *immediate* and *significant* risk to public health throughout a region or the province".

7. While this conclusion may have been supported during the height of the SARS-CoV-2 virus, it cannot be reasonably supported at this time, given the reduced severity of the virus and changing government responses to it.

8. Put simply, it can no longer be said that SARS-CoV-2 poses either an *immediate* or a *significant* threat to public health throughout a region or the province, and as such there cannot currently be said to be an emergency as required by the *Public Health Act*.

9. Nor can it be reasonably concluded that it presents a serious, unusual, or unexpected threat to public health, now over two years after SARS-CoV-2 first appeared.

10. It no longer represents a significant, ominous, and nebulous threat to public health, where extreme measures may have been justified. It is now the "new normal", and British Columbia has learned how to address SARS-CoV-2 through less intrusive measures – just like the common cold or flu.

11. Indeed, in the six months since the imposition of the Order, the province of BC, and governments across Canada, have significantly eased or altogether eliminated vaccination mandates and other extreme restrictions, given the reduction of the transmission and severity of the SARS-CoV-2 virus across Canada.

12. As the PHO stated in a January press conference, "we have to change our way of thinking" about managing SARS-CoV-2 virus, noting that the government has begun to adopt measures similar to "how we manage other respiratory illnesses – influenza, or RSV (respiratory syncytial virus), or enteroviruses that cause the common cold".

13. As such, this current state of affairs does not represent an immediate, significant, unusual, or unexpected threat to public health and therefore cannot reasonably support the extraordinary and ongoing use of the emergency powers in the *Public Health Act*.

14. Emergency powers under the *Public Health Act* cannot be continued to be exercised once the circumstances representing an emergency have passed.

15. Given the present circumstances and evidence, there is no longer a reasonable basis for the conclusion that the province faces an emergency sufficient for the ongoing use of these exceptional powers.

16. Finally, even if it can be reasonably concluded that present circumstances continue to justify the ongoing use of emergency powers generally, which is not the case, the PHO may only impose orders that are reasonable and necessary in order to deal with those circumstances, as they presently exist.

17. But the Order is not a reasonable or effective measure to deal with the alleged emergency in the present circumstances based on the current and best available scientific information, which demonstrates that:

    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.

18. In fact, according to the Office of the Chief Medical Health Officer of Vancouver Coastal Health Authority and other leading experts, current scientific evidence shows that vaccination is not effective at preventing infection or transmission of the Omicron variant of the virus, which now accounts for almost 100% of cases in the province.

19. As such, there is no material difference in likelihood that a health professional who is unvaccinated may be infected and potentially infectious to others as compared to vaccinated health professionals.

20. In addition, despite repeated requests for this information from counsel to the Petitioner, the Government has not produced any evidence regarding transmission of SARS-CoV-2 by health care professionals to patients at hospitals or other health care settings in the province, either before or after the Order came into effect.

21. As such, there is no reasonable basis to believe that other less intrusive preventive measures have proven ineffective at reducing or eliminating transmission in the hospital setting.

22. Since there is no evidence that unvaccinated professionals pose a more serious risk than vaccinated professionals, nor any basis for believing that there is a legitimate concern about transmission by health care professionals (vaccinated or unvaccinated) in any event,

there is not a sufficient or rational connection between any existing health care emergency and the Order.

23. To justify such an extreme measure, which forces health care professionals to either submit to health care treatment against their will or be denied the ability to practice their chosen professions in hospitals and designated community settings, there must be a clear and demonstrated connection between the Order and the transmission of the SARS-CoV-2 virus. But in this case, there is none.

24. As such, even if there were an ongoing public health care emergency sufficient to justify the continued use of emergency powers in the present circumstances, which there is not, the application of the Order in the present circumstances is unreasonable.

25. The petitioners are therefore entitled to orders setting aside the Order of the Provincial Health Officer and declaring that there is not currently a reasonable basis for the Order to remain in force.

PART I: ORDERS SOUGHT

26. The Petitioners seek the following orders under sections 2(2) and 7 of the *Judicial Review Procedure Act*, RSBC 1996, c 241:

a. An order in the nature of *certiorari* quashing and setting aside the order of the Provincial Health Officer, dated November 18, 2021, entitled "Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventive Measures – November 18, 2021" ("**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;

b. A declaration that the decision to continue in effect, or the failure or refusal to rescind, the November 18 Order, at any time after November 18, 2021, in response to the Petitioner's requests or otherwise, is unreasonable and *ultra vires*, as there is not presently a reasonable basis for the exercise of emergency powers under the *Public Health Act*, SBC 2008, c 28, and the vaccination mandate is not a reasonable or effective way to address the spread of SARS-CoV-2;

c. In addition or in the alternative, a declaration that there is no reasonable basis to refuse or decline or neglect to issue notice under section 59 of the *Public Health Act* "that the emergency has passed", and to follow the specified steps required under section 60 of the *Public Health Act*, including rescission of the November 18 Order;

d. Such other relief as the Court deems warranted and just; and

e. Costs of the Petition.

PART II: FACTUAL BASIS

A. The Provincial Health Officer's Orders

27. On March 17, 2020, the Provincial Health Officer ("**PHO**") appointed under the *Public Health Act*, SBC 2008, c 28 ("***Public Health Act***"), Dr. Bonnie Henry, declared a "public emergency" under that Act.

28. On March 18, 2020, the Government of British Columbia declared a "state of emergency" under the *Emergency Program Act*, RSBC 1996, c 111.

29. The Government then ended this provincial state of emergency on June 30, 2021, and has not renewed it since.

30. Between August and October 2021, the PHO began issuing various vaccination mandate orders requiring providers of health care or personal care to residents of long term care facilities, private hospitals, stand-alone extended care hospitals, and assisted living residences to be vaccinated in order to enter such facilities.

31. On October 14, 2021, the PHO issued the order entitled, "Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventive Measures – October 14, 2021" (the "**October 14 Order**").

32. The October 14 Order required staff members and other health care providers in public hospitals and designated community settings, like the Petitioners, to have undergone a full course of the vaccine (i.e. two doses) by October 26, 2021, or to have received one dose with the intention of receiving the second dose within 35 days of the first.

33. The October 14 Order was subsequently repealed and replaced with updated orders entitled, "Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventive Measures – November 9, 2021" (the "**November 9 Order**") and "Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventive Measures – November 18, 2021" (the "**November 18 Order**").

34. The effect of the two November orders was to extend the deadlines for becoming vaccinated set out in the original October 14 Order, and also to designate additional community settings to which the vaccination requirement would apply.

35. Other than in relation to the deadlines for vaccination and the designated settings impacted by the order, the October 14 Order, the November 9 Order, and the November 18 Order, contain substantially similar requirements in terms of requiring vaccination for anyone working in these capacities.

36. Specifically, like the previous orders, the November 18 Order requires health care professionals to be fully vaccinated by specified timelines in order to continue to work in the specified health care settings, subject to various exemptions from this requirement.

37. For individuals who were not fully vaccinated by October 26, 2021, but intended to get their full course of the vaccine, the November 18 Order provided the opportunity for such individuals to continue to work prior to receiving the full course of the vaccine, subject to compliance with certain preventative measures [November 18 Order, Part E, Division I, s. 2].

38. For instance, in relation to individuals did not receive one dose of vaccine before October 26, 2021, but who received one dose of vaccine before November 15, 2021, the November 18 Order provides that they may continue to work prior to receiving their full course of the vaccine. Specifically, those individuals:

> (i) may work 7 days after receiving the first dose of vaccine, if the staff member complies with the preventive measures in Division V, and
>
> (ii) may continue to work, if the staff member receives a second dose of vaccine between 28 to 35 days after receiving the first dose of vaccine, and complies with the preventive measures in Division V, until 7 days have passed after receiving the second dose of vaccine. [November 18 Order, Part E, Division I, s. 2(d).]

39. Beyond these specified terms for individuals who have received at least one dose of the vaccine, the November 18 Order stipulates that unvaccinated staff members must not be permitted to work in specified settings after October 26, 2021 unless they have an exemption and are in compliance with its terms, or have submitted an exemption request to which the Provincial Health Officer or a medical health officer have not yet replied.

40. Specifically, the November 18 Order states as follows:

> 3. An unvaccinated staff member to whom this Division applies who has an exemption must not work after October 25, 2021, unless the staff member is in compliance with the conditions of the exemption. [November 18 Order, Part E, Division I, s. 2(d).]

41. "Exemption" is defined within the November 18 Order to include only the following:

> **"exemption"** means a variance issued to a person under the *Public Health Act* on the basis of a medical deferral to vaccination, which permits a person to work, despite not being vaccinated; [November 18 Order, Definitions.]

42. The November 18 Order stipulates further that:

> A request for reconsideration with respect to vaccination, or providing proof of vaccination, must be made on the basis that the health of the person would be seriously jeopardized if the person were to be vaccinated, and must follow the guidelines posted on the Provincial Health Officer's website… [November 18 Order, Part K.]

43. Pursuant to the November 18 Order, individuals with approved medical exemptions may continue to work so long as they are "in compliance with the conditions of the exemption" [see November 18 Order, Part E, Division I, s 3; Part E, Division II, ss 2, 4; Part F, Division I, ss 4, 6, 7; Part F, Division II, s 4; Part F, Division III, s 4; Part F, Division IV, s 5; Part F, Division VI, s 4].

44. Individuals may also continue to work while their request for a medical exemption is pending consideration by the PHO or a medical health officer, as long as they comply with the specified preventive measures, as set out at Part V of the November 18 Order:

> 1. An unvaccinated staff member must wear a medical mask which covers the person's nose and mouth when at work, except when consuming food or a beverage.
>
> 2. An employer must require an unvaccinated staff member to wear a medical mask which covers the person's nose and mouth when at work.
>
> 3. Despite Divisions I to IV, an unvaccinated staff member who has provided proof of an exemption request may work until their request is responded to by me or the medical health officer, if the staff member complies with the preventive measures in section 1.
>
> 4. An operator or employer must not permit an unvaccinated staff member to whom section 3 applies to work, if the staff member is not in compliance with section 1. [November 18 Order, Part E, Division V; emphasis added]

45. There is no timeline specified in the November 18 Order within which an exemption decision must be made, and therefore such unvaccinated individuals may continue to work indefinitely until they receive a response from the PHO or a medical health officer, and may continue to work thereafter if the exemption is granted.

46. By permitting unvaccinated persons to continue to work under any of the above circumstances, the November 18 Order recognizes that unvaccinated health care workers can safely provide services to patients by following other less intrusive preventive measures that are already in place in hospital and designated settings.

47. The November 18 Order currently remains in effect as of the date of this petition, and does not include an expiry date.

48. The PHO has not indicated any intention to repeal the November 18 Order moving forward. As stated by the PHO in its press conference of April 5, 2022:

> The changes in use of the BC vaccine card and this order [the March 7, 2022 order regarding Health Professionals COVID-19 Vaccination Status Information and Preventative Measure] have no bearing on the requirements that we continue to have for all healthcare professionals in our public healthcare system to be vaccinated. That requirement has been incredibly important in protecting our healthcare system through this wave, and is important for helping us make sure we're ready for what comes in the future.

B. The Impact of the November 18 Order on the Petitioners and Other Health Care Professionals

49. The Petitioners are fully trained, licenced, and experienced health care professionals in the province that have been prevented from working in hospitals and designated community settings due to the November 18 Order.

50. The petitioner Dr. York Hsiang is a vascular surgeon/specialist, who has devoted his 34 year career to serving patients in the province's public health system. He treats patients with a range of conditions affecting their blood vessels and circulatory system, including life-threatening conditions such as ruptured aneurysms, stroke, or gangrene of feet.

51. He also dedicated over 20 years to teaching, mentoring, and supervising medical students as a full professor of vascular surgery at the University of British Columbia ("**UBC**"). There are no other full professors of vascular surgery in the province.

52. Dr. Hsiang's employer, the Vancouver Coastal Health Authority, informed him that, as a result of his vaccination status and the November 18 Order, he would no longer be permitted to continue in his position. UBC also informed Dr. Hsiang that he would be placed on unpaid leave from UBC, as the November 18 Order prohibited him from performing the clinical teaching work that formed part of his position. As such, he decided to retire from both positions, despite being both able and willing to continue to work.

53. The petitioner Dr. David William Morgan has worked for the past 11 years as a forensic psychiatrist for at-risk and vulnerable adult and youth patients, including Indigenous youth, in custody or under community supervision across the province through the Provincial Health Services Authority and the Ministry of Child and Family Development.

54. Dr. Morgan's role involves providing assessment and treatment services to at-risk patients, who often face stigmatization by virtue of their mental disorders and their history in the criminal justice system, and also providing assessments and expert services to government bodies in relation to individuals suffering a variety of psychiatric conditions.

55. Much of Dr. Morgan's work has been performed virtually as tele-psychiatry, in order to reach patients in remote communities and over a wide-geographic area in the province. Although Dr. Morgan could continue to provide all or nearly all of his services remotely, without any in-person contact with his patients, he has been terminated from his position with the Ministry of Child and Family Development as a result of the November 18 Order.

56. The petitioner Ms. Hilary Vandergugten has been a registered nurse in the public health care system for 27 years, most recently as a Clinical Coordinator and Planner for Langley Memorial Hospital.

57. Among her other work, Ms. Vandergugten was instrumental in the creation of the newly-established Emergency Department of the Hospital, as well as in ensuring that patients at the Hospital received safe and effective care during the SARS-CoV-2 virus.

58. Ms. Vandergugten is proud of the hard work and dedication that she has put into her career in health care to ensure that patients in her community receive the best care possible. However, she was terminated from her employment at the Langley Memorial Hospital by her employer, the Fraser Health Authority, as a result of the November 18 Order.

59. All three Petitioners carefully considered the potential risks and benefits of receiving the vaccine the SARS-CoV-2 virus, and each made a fully informed decision not to receive the SARS-CoV-2 vaccines. All three Petitioners genuinely and strongly believe that they have made the right medical decision not to receive the vaccines in light of their own unique personal and medical circumstances.

60. All three Petitioners have had their employment ended as a result of the November 18 Order, with Dr. Morgan and Ms. Vandergugten being terminated from their employment, and Dr. Hsiang choosing to retire rather than be terminated or placed on indefinite unpaid leave..

61. All three Petitioners were able to provide safe and effective services to their patients over the two years since the onset of the SARS-CoV-2 virus prior to the November 18 Order being put into effect. During this time, Dr. Hsiang and Ms. Vandergugten followed the less intrusive measures required of all health professionals in these health care settings, and Dr. Morgan was able to provide his psychiatric services virtually to patients, without the necessity of any in-person contact.

62. As a result of the November 18 Order, all three Petitioners have been prohibited from continuing to work in their chosen profession at hospital and designated community settings, despite the many years they have invested to becoming fully trained and licenced health care professionals, and their strong desire to continue serving patients in the public health care system.

63. Along with the impact on the Petitioners, the Order has resulted in the termination of many other health care professionals who are healthy, able, and willing to continue to provide medically necessary health care services to the public in a safe and effective manner.

64. Those professionals whose positions require access to hospitals or designated community settings (e.g. physicians who require hospital privileges) are effectively barred from continuing in their chosen profession as a result of the November 18 Order, while others will face significant barriers to continuing in their chosen profession in British Columbia.

65. The PHO is aware that the result of the November 18 Order will be to effectively bar many health care professionals from working in their chosen profession in the province, notwithstanding the time, effort, and resources they have devoted to their careers, and their desire to continue to provide services to the public.

66. Indeed, in a November 1, 2021 press conference, the PHO stated that: "If people are in our health-care system and not recognizing the importance of vaccination, then this is probably not the right profession for them, to be frank".

C. The Order is Contingent on the PHO's Exercise of Emergency Powers

67. The powers on which the PHO has expressly relied in making the Order are all contingent on the existence of an "emergency" under the *Public Health Act*.

68. Specifically, these include explicit emergency powers (ss. 53, 54, 56), as well as powers of medical health officers respecting "health hazards" that the PHO can only exercise in the case of an emergency (ss. 30, 31, 32, 39, 67(2)).

69. An "emergency" is defined under the *Public Health Act* as either a localized event or regional event that meet the conditions specified in section 52. The Order sets out the PHO's belief that "the transmission of the infectious agent SARS-CoV-2" constitutes a regional event [November 18 Order, Preamble, A].

70. A "regional event" is defined in the *Public Health Act* as "an immediate and significant risk to public health throughout a region or the province" (s. 51).

71. In order to exercise the emergency powers under the *Public Health Act* with respect to a regional event, section 52 of the *Public Health Act* requires that the PHO must provide notice that the PHO "reasonably believes that at least 2 of the following criteria exist":

> (a) the regional event could have a serious impact on public health;
>
> (b) the regional event is unusual or unexpected;
>
> (c) there is a significant risk of the spread of an infectious agent or a hazardous agent;
>
> (d) there is a significant risk of travel or trade restrictions as a result of the regional event.

72. Therefore, in order to trigger the PHO's emergency powers on the basis of a regional event, the PHO must have reasonably concluded that there is an "immediate and significant risk to public health throughout a region or the province" (i.e. a regional event) that additionally meets at least two of the above criteria listed in section 52 of the *Public Health Act*.

D. There is No Reasonable Basis for Ongoing Use of Emergency Powers

73. There is not at this time a sufficient emergency to justify the exercise of emergency powers, particularly in light of the serious impact of the Order on the Petitioners and other health care professionals.

74. Even prior to the implementation of the November 18 Order, the Province had begun to transition away from the use of emergency powers or other extraordinary measures.

75. As of June 30, 2021, the Province lifted the state of emergency that it had declared on March 18, 2020, pursuant to the *Emergency Program Act*.

76. The state of emergency pursuant to the *Emergency Programs Act* had been imposed to address the "emergency" present between March 2020 to June 2021, which the Act defines as follows:

> "emergency" means a present or imminent event or circumstance that
>
> > (a) is caused by accident, fire, explosion, technical failure or the forces of nature, and
> >
> > (b) requires prompt coordination of action or special regulation of persons or property to protect the health, safety or welfare of a person or to limit damage to property;

77. When the Government lifted the state of emergency on June 30, 2021, it did so, as is set out on the Province's webpage on Covid-19 guidance, as part of the gradual ending of Covid-19 orders and regulations.

78. Furthermore, as discussed below, in the approximately six months since the November 18 Order was issued, the circumstances and evidence relating to the SARS-CoV-2 virus have changed in a number of significant ways that further undermine the original justification for the November 18 Order and the emergency powers on which it is based.

i. The Dominant Variant of SARS-CoV-2 Is Now the Less Severe Omicron Variant

79. At the time the November 18 Order was introduced, the dominant variant of SARS-CoV-2 circulating in British Columbia was the "highly transmissible Delta variant" which caused "significantly more rapid transmission and increased severity of illness, particularly in young unvaccinated people" [November 18 Order, Preamble, H].

80. As stated in the Preamble to the November 18 Order:

> H. (…) Absent vaccination, British Columbia would be in a far more challenging situation than the fragile balance our current immunization rates have provided, but the transmissibility of the Delta variant means that higher vaccination rates than previously expected are now required to maintain this balance, control transmission, reduce case

> numbers and serious outcomes, and reduce the burden on the healthcare system, particularly hospital and intensive care admissions.

81. However, the dominant SARS-CoV-2 variant is no longer the Delta variant, as it was at the time of the November 18 Order, but rather the much less severe Omicron variant.

82. The reduced risk posed by the Omicron variant was explained by the Chief Medical Health Officer of Vancouver Coastal Health Authority in a recent letter dated February 16, 2022, in which she stated that, based on current scientific evidence, "[w]e also know that Omicron causes less serious illness than other variants of COVID-19, which is particularly true for young people".

83. This has been confirmed by other experts as well, including:

i. Dr. Richard Schabas, a former public health officer in Ontario, in his expert report dated March 18, 2022, in which he refers to the "widely documented reduced severity of Omicron, compared to Delta and all previous versions of the virus"; and

ii. Dr. Shirin Kalyan, an immunologist specializing in immune dysfunction and an Adjunct Professor at the University of British Columbia, Department of Medicine, who in her recent report dated May 27, 2022, referred to evidence demonstrating that "that Omicron generally causes milder disease than previous variants, in particular among younger individuals".

84. Therefore, the best available scientific evidence shows that the currently prevalent strain of the virus is significantly less severe than the variant prevalent the time the November 18 Order was issued, and upon which the order was based.

ii. <u>Widespread Vaccination and Natural Immunity</u>

85. Since the time of the November 18 Order, far more individuals have had an opportunity to receive their full course of vaccination, which the PHO states in the November 18 Order provides "highly effective and durable protection", and describes as the "single most important" preventive measure individuals can take to protect themselves. Many have now received their booster shots as well.

86. Specifically, the vaccination rates as of September 2021, prior to the issuance of the November 18 Order, were set out in the government's "B.C. COVID-19 pandemic update" as follows:

> As of Wednesday, Sept. 8, 2021, **85.2%** (3,949,169) of eligible people 12 and older in B.C. have received their first dose of COVID-19 vaccine and **77.7%** (3,601,169) received their second dose.
>
> In addition, **85.8% (**3,711,066) of all eligible adults in B.C. have received their first dose and **78.6%** (3,400,194) received their second dose.

87. By contrast, the vaccination rates as of April 2022 are significantly higher across the same categories, with a majority of the population now having received their third dose as well. As set out in a recent "COVID-19 daily update" on the provincial government's website:

> As of Tuesday, April 5, 2022… **93.5%** (4,333,166) of eligible people 12 and older in B.C. have received their first dose of COVID-19 vaccine, **91.1%** (4,222,894) received their second dose and 57.8% (2,677,473) have received a third dose.
>
> Also, **93.8%** (4,058,015) of all eligible adults in B.C. have received their first dose, **91.5%** (3,957,889) received their second dose **and 59.5% (2,573,327) have received a third dose**.

88. While the BC Government no longer provides daily reports of this nature, it is expected that vaccination rates have only increased since this April 2022 update. At this point, it is clear that effectively all persons in the province who choose to be vaccinated have been vaccinated.

89. Therefore, to the extent that the PHO is correct that a full course of vaccination provides "highly effective", "strong", and "durable" protection from infection and especially from severe illness, and is "the single most important preventive measure a person can take to protect themselves", as stated in the November 18 Order, all persons have now had sufficient opportunity to obtain that protection.

90. In addition, the evidence shows 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. As such, many British Columbians now have this equivalent or greater protection, as well.

iii. Health Care System Capacity

91. The November 18 Order is premised, at least in small part, on concerns tied to the capacity of the public health care system to address the health care needs of the population in light of the spread of SARS-CoV-2.

92. For instance, the Preamble to the November 18 Order states:

> I. Preserving the ability of the public health and health care systems to protect and care for the health needs of the population, including providing care for health needs other than COVID-19, is critical. High incidence of transmission and illness in one or more regions have spill-over effects on health care delivery across the Province, including in critical care and surgical services. Our public health and health care systems are currently experiencing severe stress, and are stretched beyond capacity in their efforts to prevent and respond to illness resulting from the transmission of COVID-19 in the population, primarily among unvaccinated people;
>
> J. Both the public health and the health care systems are using disproportionate amounts of their resources in their efforts to prevent and respond to the transmission of SARS-CoV2, and to provide care for those who become ill with COVID-19, primarily

> unvaccinated people who comprise the majority of hospitalizations and ICU admissions; the health authorities have allowed health care providers to continue working with minimal or mild symptoms, in the face of worsening staff shortages in the public system;

93. However, even if this was the case before or around the time the November 2018 Order was issued, it is no longer the case.

94. In particular, since early 2022, hospitalization rates due to the virus have significantly decreased, and hospitalization rates have stabilized.

95. This was confirmed by Premier John Horgan, who stated in a CBC interview dated April 17, 2022 that:

> "[H]ospitalizations are stable. ICU beds are at the lowest they've been in 18 months [in terms of] utilization here in British Columbia. We've seen lighter symptoms. I know I had very mild symptoms for my COVID experience."
>
> [CBC News, "Provinces disappointed budget skipped increase to health-care funding: B.C. premier" (April 17, 2022), YouTube (https://www.youtube.com/watch?v=Jr1w6NzpCb0, starting at 6:55 minutes)]

96. And, since this time, hospitalization rates due to the virus have continued to decline.

97. As such, even if there were any basis for believing, at one time, that the order would be effective in alleviating pressure on the public health care system, the need for concern based on hospitalization rates has significantly dissipated in recent months, further undermining this supposed basis for the order.

iv. <u>The Elimination of SARS-CoV-2 Restrictions in BC and Other Provinces, Including Those Tied to Vaccination Status</u>

98. In light of the reduced risk to individuals posed by the virus and its spread, the greater protections for the public due to increased rates of vaccination and natural immunity, and the decrease in hospitalization rates tied to SARS-CoV-2, governments across the country have concluded that coercive and emergency measures are no longer necessary in order to effectively manage SARS-CoV-2.

99. In particular, BC's management of SARS-CoV-2 has shifted to less restrictive measures more akin to those used to manage the common cold or flu.

100. As explained by the Provincial Health Officer in a media conference on January 21, 2022, the government has begun using measures that are "much like how we manage other respiratory illnesses – influenza, or RSV (respiratory syncytial virus), or enteroviruses that cause the common cold".

101. In a subsequent press conference on February 15, 2022, the Provincial Health Officer stated, further, that she "want[s] to get out of orders in terms of how we manage this (COVID-19)".

102. Indeed, the PHO's most recent advice to the public is to continue on with normal life, without the need to remain confined inside without interactions with others, notwithstanding the risk of contracting SARS-CoV-2:

> "As long as we are feeling well, in this new context we can and must continue going to work, going to school and socializing safely in our small groups,"

103. Consistent with this approach, British Columbia, and the other provinces in Canada, have taken steps over the past six months to remove any emergency designation pertaining to the SARS-CoV-2 virus, and to significantly reduce or eliminate restrictions on the population, particularly pertaining to vaccination status.

104. Every other province and territory in Canada has ended the designation of a public health emergency in their provinces/territories with the removal of the majority, if not all, of their COVID-related restrictions.

105. All provinces have also taken steps to repeal emergency restrictions relating to SARS-CoV-2, including eliminating mask mandates and capacity limits, vaccination passport regimes, contact-tracing, and vaccination mandates for acute care workers.

106. In line with this approach:

a. BC has significantly reduced its testing of symptomatic individuals of SARS-CoV-2, particularly through rapid polymerase chain reaction ("**PCR**") testing;

b. BC no longer conducts tracking or contact-tracing of active cases;

c. BC's mask mandate was repealed on March 11, 2022;

d. BC's vaccination passport system expired on April 8, 2022; and

e. BC has eliminated previous capacity limits, and table size restrictions, at restaurants, bars, nightclubs, sporting events, exercise and fitness centres, and public swimming pools.

107. And recently, the BC Government has issued a press release indicating that it will no longer be providing daily COVID-19 updates to the population.

108. Instead, as stated in the press release, it will be providing weekly reports that "will focus on key measures of severity and trends over time, similar to how other communicable diseases are reported", and "similar to how government monitors for other serious respiratory illnesses through FluWatch".

109. The fact that the BC Government has shifted to reporting measures similar to how other communicable illnesses, like the common flu, are reported, is further evidence of the fact that present circumstances are no longer being treated as an emergency, and do not justify the ongoing use of emergency powers under the *Public Health Act*.

110. In short, the evidence demonstrates that there is now a broad consensus among governments across Canada that it is no longer necessary to take extraordinary steps or to impose emergency measures, particularly those measures tied to vaccination status, in order to effectively address the impacts of SARS-CoV-2.

v. Summary

111. In summary, there is no reasonable basis for the conclusion that there is presently a public health "emergency" sufficient to justify the ongoing use of the emergency powers under the *Public Health Act*, particularly in light of the following:

a. the reduced severity of, and reduced risk posed by, the currently dominant variant of the virus, as compared with the dominant variant at the time the November 18 Order was made;

b. the increased vaccination rates for those who choose to be vaccinated, and the increased rates of natural immunity for those who have previously been infected;

c. the fact that hospitals have not been overwhelmed and that hospitalization rates have decreased significantly in recent months; and

d. the consensus among all Canadian governments, including BC, that extraordinary and emergency measures are no longer necessary to effectively address the virus.

112. Therefore, even if there were at one time circumstances justifying the use of the emergency powers under the *Public Health Act*, that is no longer the case.

E. The Order is Not Reasonable or Proportionate Response to the Spread of the Virus

113. Even if there were a reasonable basis to support the conclusion that there is an ongoing "emergency" sufficient to justify the ongoing use of the emergency powers under the *Public Health Act*, which there is not for the reasons just stated, there is no reasonable or rational basis for concluding that the November 18 Order will meaningfully address that alleged emergency.

i. Vaccination Does not Effectively Prevent Infection or Reduce the Risk of Transmission of the SARS-CoV-2 Virus

114. The central premise behind requiring doctors, nurses, and midwives working in hospitals and designated facilities to be vaccinated was the assumption that vaccination is not only

beneficial in reducing the severity and impact of the virus on the individual vaccinated, but is necessary to reduce the transmission of the virus to others.

115. This was stated as follows in the Preamble to the November 18 Order:

> F. Unvaccinated people are at a significantly greater risk than vaccinated people of being infected with SARS-CoV-2, and those who are infected, experience significantly higher rates of hospitalization, ICU-level care and invasive mechanical ventilation, complications and death when compared with vaccinated people. Unvaccinated people are also at higher risk of transmitting SARS-CoV-2 to other people, including vaccinated people;
>
> (…)
>
> L. Unvaccinated people in close contact with other people can promote the transmission of SARS-CoV2 and increase the number of people who develop COVID-19 and become seriously ill…
>
> (…)
>
> N. Vaccination is the single most important preventive measure health professionals, visitors to hospitals, providers of care or services in hospital or community settings, and the staff or contractors of an organization which provides care or services in hospital or community settings can take to protect patients, residents and clients, and the health care and personal care workforce, from infection, severe illness and possible death from COVID-19; [emphasis added]

116. However, the current scientific evidence shows that there is little if any difference between persons who are vaccinated and those who are not in terms of the risk of either contracting or spreading the SARS-CoV-2 virus, and thus there is no materially greater risk of transmission of the virus by unvaccinated individuals.

117. As made clear in the expert reports of Dr. Schabas, the current and best medical evidence demonstrates that the SARS-CoV-2 vaccines are not effective in preventing individuals from being infected with the virus:

> SARS CoV-2 vaccines have proven to be disappointing at preventing a vaccinated person from becoming infected with SARS CoV-2. Vaccine effectiveness at preventing infection declined substantially with the more infectious Delta Variant[11] and declined further with the Omicron Variant.[12],[13] In addition, there is substantial evidence that the effectiveness of the vaccines at preventing infection wanes over the time since immunization.[14] The initial hope that vaccines would stop the spread of SARS CoV-2 has proven unfounded.
>
> A recent Ontario study showed "receipt of 2 doses of SARS CoV-2 vaccines was not protective against Omicron infection at any point in time". The observed risk of infection was actually substantially greater (about 40% greater) in people who had been immunized with two doses of vaccine than for the unvaccinated, although the authors caution that this may be affected by confounders.[15]

> The observations of this study about the diminished and uncertain effectiveness of vaccines in reducing SARS Covid-19 infections are consistent with studies in other jurisdictions worldwide, cited in this paper. As the SARS CoV-2 virus has evolved and new variants have arisen the effectiveness of vaccines has declined to the point where the two-dose regimen required by the Order now provides essentially no protection against infection.
>
> Expert Report of Dr. Schabas dated March 3, 2022.

118. Dr. Kalyan supports this conclusion in her expert report, where she notes that vaccination is not effective at preventing either infection or transmission of the virus:

> With the data we have from BC and around the world, the consensus by the medical community at this time is that being fully vaccinated (2 doses) with the COVID-19 vaccines we have in Canada is not reliably effective in preventing infection or transmission of the Omicron variant (an immune escape variant) of the virus,[1] which now constitutes 100% of cases in the province. This sentiment was expressed in February of this year by Dr. Patricia Daly (Chief Medical Officer, Vancouver Coastal Health) and colleagues in a letter written to Santa Ono (President, University of British Columbia).[2]
>
> Expert Report of Dr. Kalyan, May 27, 2022.

119. The same view was expressed in the letter sent by professors and researchers of UBC on February 20, 2022, the signatories of which include:

i. David Patrick, MD, FRCPC, MHSc, Director of Research and Medical Epidemiology Lead for Antimicrobial Resistance, BC Centre for Disease Control, and Professor, UBC School of Population and Public Health;

ii. Sarah (Sally) Otto, PRSC, University Killam Professor, Department of Zoology, and Member of the BC COVID-19 Modelling group and co-lead of Pillar 6 Coronavirus Variants Rapid Response Network; and

iii. Daniel Coombs, Professor, Department of Mathematics, Member of the Canadian Chief Science Advisor's expert panel on COVID-19 and of the BC COVID-19 Modelling group.

120. This letter recommends that UBC not pursue sanctions against unvaccinated students, given that vaccination is not effective at preventing infection or transmission of the currently prevalent (and less serious) variant of the virus, the availability of less intrusive measures that are more effective in reducing transmission, the harms of mandatory vaccination policies, and the overall disproportionality of mandatory vaccination policies at this phase of the pandemic.

121. Drs. Patrick, Otto, and Coombs also confirmed that "the scientific evidence, with respect to Omicron, no longer supports using proof of vaccination (regardless of timing) as evidence that a person is a low risk of transmitting COVID-19 to others".

122. As these expects have explained, what really matters in terms of the risk of transmission of the SARS-CoV-2 virus is not vaccination status, but whether an individual has the virus and is able to infect others, which itself does not differ between vaccinated and unvaccinated persons, at least in relation to the current variant of the virus.

123. In short, as the Vancouver Coastal Chief Medical Officer put it: "there is now no material difference in likelihood that [a person] who is vaccinated or unvaccinated may be infected and potentially infectious to others".

124. Despite repeated requests for the information upon which the PHO based the order, including the assumption that unvaccinated individuals are more able or more likely to transmit SARS-CoV-2 to others, none has been provided.

125. However, even if there was previously any scientific or evidentiary basis for a reasonable belief that vaccination would reduce the risk of transmission by the vaccinated individual, this conclusion is not consistent with the best and most current scientific evidence.

126. As such, there is no reasonable basis for concluding that requiring health care professionals to be vaccinated will reduce the risk of health care professionals either contracting SARS-CoV-2 or transmitting it to colleagues or members of the public.

ii. Other Effective Measures to Reduce Transmission

127. While the current scientific evidence shows that vaccination does not materially reduce or affect a person's ability to contract or transmit the virus, there are other measures currently in place which can be effective in reducing the risk of transmission.

128. In particular, it is important that all health care professionals (both vaccinated and unvaccinated) follow the robust set of less intrusive infection prevention and control measures that the health colleges and health authorities have implemented.

129. These measures include those that pre-dated the SARS-CoV-2 virus, along with enhanced protocols that were implemented during the pandemic with respect to the SARS-CoV-2 virus.

130. For example, registrants of the BC College of Nurses and Midwives are bound at all times by the College's practice standards with regard to "Communicable Diseases: Preventing Nurse-to-Client Transmission". These standards include managing symptoms so as to reduce the risk of transmission, hand washing protocols, and working with the employer to establish and implement infection control programs.

131. In addition, since the onset of the SARS-CoV-2 virus, the health professional colleges and regional health authorities have supplemented their guidelines with the additional guidance regarding personal protective equipment and other methods of infection prevention and control prepared by WorkSafe BC, the BC Centre for Disease Control, and the BC Ministry of Health.

132. Therefore, the evidence supports the conclusion that while vaccination mandates for health care professionals are not effective in reducing transmission, there are other measures currently in place that are effective in reducing the risk of transmission in the hospital and community care setting.

133. The effectiveness and sufficiency of these preventative measures in reducing any risk of transmission to acceptable levels in health care settings is also supported by exemptions in the November 18 Order itself, along with the changing approaches more recently adopted by the government and health authorities in the context of health care provision.

134. In particular:

i. The Order exempts from the vaccination requirement individuals who have requested and have been granted a medical exemption, and these unvaccinated individuals are permitted to continue to provide services to the public;

ii. the BC public health department has stopped recording and alerting the health authorities regarding health care workers who have tested positive for the SARS-CoV-2 virus, despite the risk that they may be providing services while they continue to be infectious; and

iii. the health authorities have allowed health care providers who contracted the SARS-CoV-2 virus to continue working after five days even if they continue to experience minimal or mild symptoms, despite the fact that such individuals may still be able to transmit the virus.

135. These facts demonstrate that the PHO and health authorities have concluded that the existing preventative measures, such as those described above, are sufficient to protect the public from the risk of transmission in health care settings, and that any remaining risk of transmission is acceptable in the current circumstances.

136. This further supports the conclusion that more extreme and coercive measures, such as requiring vaccination as a condition of employment for health care professionals, are no longer necessary or appropriate, given the absence of a reasonable basis for concluding such measures are necessary or effective in reducing transmission, and the other effective and less-intrusive measures available.

iii. <u>The Absence of Evidence of Transmission by Health Care Professionals</u>

137. The PHO has not cited, or referenced, any evidence or concerns regarding the transmission of SARS-CoV-2 by either unvaccinated or vaccinated health care providers to patients in health settings in the province, despite counsel for the Petitioner having requested this information from the Government and PHO numerous times.

138. And there is no evidence that doctors, nurses and midwives who are unvaccinated have experienced a higher rate of being infected by the virus, or higher rates of transmitting the virus to others, as compared with vaccinated individuals.

139. As such, there is no basis for believing that the other preventative measures in place have been ineffective at reducing if not eliminating transmission in the hospital and designated care settings, much less such a significant problem that it must be addressed through extreme measures forcing healthy and willing health care practitioners out of their jobs and possibly out of the profession entirely.

iv. <u>The Absence of Evidence that the Order Will Alleviate Pressure on the Health Care System</u>

140. While the primary basis of the November 18 Order is the assumption that vaccination will reduce the risk of transmission by health care professionals subject to the order, the order also appears to rely on the assumption that these measures will somehow mitigate or alleviate pressure on the health care system.

141. For instance, as noted above, the November 18 Order states that the "public health and health care systems are currently experiencing severe stress, and are stretched beyond capacity in their efforts to prevent and respond to illness resulting from the transmission of COVID-19 in the population" [see November 18 Order, Preamble, H-J].

142. However, as noted above, the stress on the health care system resulting from the spread of SARS-CoV-2 has decreased recently, and hospitalization rates have stabilized. As Premier Horgan stated at the Western Canada's provincial and territorial leaders meeting on May 27, 2022, "[w]ell we're here today, the pandemic is waning, it's becoming endemic (…)".

143. Moreover, as there is no material connection between vaccination and transmission, and no evidence of transmission by health care professionals to patients at hospitals or other health care settings in the province, there is no basis to believe that the mandatory vaccination of health care professionals will have any broader impact on hospitalization or pressure on the health care system.

144. Therefore, the only theoretical basis upon which an absence of vaccination could have an impact on hospitalization rates (and hence pressure on the public system) in the context of the November 18 Order is if it would reduce the number of unvaccinated health care professionals who were hospitalized or in need of care.

145. However, any such impact would be very marginal to non-existent, given that health professionals make up a small proportion of the overall population, and the vast majority of health professionals affected by the order are fully vaccinated.

146. Specifically, based on the data released on May 10, 2022, by the Government of British Columbia, registrants of the College of Physicians and Surgeons have the highest rate of

vaccination amongst the regulated medical professionals in the Province, with 98.0% vaccinated. (As of the date of this Petition, the British Columbia College of Nurses and Midwives has not yet completed its reporting of the vaccination status of its registrants.)

147. As Dr. Schabas explains in his report:

> It is hard to estimate precisely the impact of the Order on hospitalization without knowing how many health professionals are unimmunized and how many would subsequently decide to be immunized because of the Order. Suffice it to say that overall this impact would almost certainly be very, very small and would make no material difference to health care capacity in British Columbia.

148. Moreover, forcing health care professionals out of their employment and professions as a result of their vaccination status does not decrease their risk of hospitalization or any negligible impact they would have on hospitalization rates.

149. To the contrary, such measures would simply exacerbate any existing pressure on the health care system, as it ensures that those professionals forced out of the public health care system due to their vaccination status cannot help to alleviate any pressure that the system is currently facing, despite the fact that they pose no materially greater risk of transmission.

v. <u>Summary</u>

150. In summary, even if there were a reasonable basis to support the conclusion that there is currently an "emergency" sufficient to justify the ongoing use of the emergency powers under the *Public Health Act*, which there is not, there is no reasonable or rational basis for concluding that the November 18 Order will meaningfully address that alleged emergency.

151. Rather, the evidence shows that:

i. there is no material difference in infection or transmission rates between vaccinated and unvaccinated individuals;

ii. there are extensive protocols in place for health care workers that are both less intrusive and more effective in reducing the risk of transmission of the virus;

iii. there is no evidence suggesting that unvaccinated care providers have caused any health related problems for the population, or have proven to pose any greater risk than vaccinated health professionals in the province; and

iv. there is no basis for concluding that the vaccination mandate will impact hospital rates or reduce pressure on the health care system – if anything, there is reason to believe that it will only increase pressure on the public system.

152. The stated purpose of the vaccination mandate contained in the November 18 Order was protection against transmission of the SARS-CoV-2 virus by unvaccinated doctors, nurses, and midwives.

153. Given the lack of any reasonable basis to conclude that vaccination decreases the risk of transmission, the mandate has now become prescriptive in the sense of imposing unnecessary harm to both the individual doctors, nurses and midwives involved, but also to the public that has been deprived of their services.

154. Indeed, any ongoing shortage of health care workers in the public system can only be exacerbated by the continued imposition of the November 18 Order, which prevents trained and licenced doctors, nurses, and midwives from continuing to serve the public.

155. The continuation of the vaccination mandate for doctors, nurses and midwives is also inconsistent with the BC Government's and PHO's general approach that at this time, which accepts that less intrusive measures are necessary and appropriate in dealing with the virus.

156. That coercive measures are no longer necessary is particularly evident given that the BC Government is no longer engaging in more effective preventative measures, such as contact tracing, regular testing for individuals with symptoms, or other measures designed to track who does and does not have the virus, and who may have transmitted it to others.

157. In these circumstances, there are clearly more effective (and less intrusive) measures that are available to reduce the risk of infection of the virus, such as the infection control and prevention and COVID protocols that are already in place at hospitals and designated community settings across the province, as well as measures that are designed to track and report active SARS-CoV-2 cases.

F. Failure or Refusal to Reconsider the November 18 Order

158. The November 18 Order states that the PHO will not consider applications to reconsider or vary the order under s. 43 of the *Public Health Act*:

> AA. I am also mindful that the volume of requests for reconsideration of my Orders, and the time and expertise which considering them entails, has become beyond my capacity and that of my office and team of medical health officers to manage, and is using resources which are better directed at assessing and responding to the protection of the public as a whole;
>
> (…)
>
> Accordingly, pursuant to the authority vested in me by sections 39 (6), 54 (1) (h) and 56 of the *Public Health Act*, I have decided

> (a) not to consider requests for reconsideration by way of variance under section 43 of the *Public Health Act* with respect to the requirement to be vaccinated or to provide proof of vaccination in this Order, other than on the basis of a medical deferral to a vaccination, (…)

159. Between November 2021 and May 2022, the PHO has been provided by counsel to the Petitioners with additional information and evidence which, along with the information already available to the PHO, supports the conclusion that the November 18 Order can no longer be justified in light of present circumstances and the best available evidence.

160. In particular, on April 14, 2022, counsel to the Petitioners sent a letter to counsel to the PHO requesting that the Order be rescinded on the basis of the current scientific evidence. Counsel to the Petitioners also provided the PHO with the expert reports of Dr. Schabas dated March 3 and 18, 2022, and the letter from the Medical Chief Health Officer of Vancouver Coastal Health dated February 16, 2022.

161. In response to their request to have the November 18 Order rescinded, counsel to the PHO sent the following letter to the Petitioners on April 21, 2022:

> "I write in response to your letter dated April 14, 2022.
>
> The Provincial Health Officer ("PHO"), Dr. Bonnie Henry, and public health officials are constantly reviewing and revising orders made under the Public Health Act, S.B.C. 2008, c. 28 including this Order. The PHO will continue to take into account the best available scientific and epidemiological data, and will consider reports, such as that of Dr. Schabas, provided through your office, in her future decision-making."

162. Following this, the Petitioners sent the following letters to the PHO, in which they provided further scientific information and evidence for the PHO to consider, with respect to its request to have the November 18 Order rescinded. This included:

a. A letter dated April 25, 2022 enclosing the recent publication of Lancet Regional Health – Europe, which says that the current evidence shows that immunization does not prevent individuals from spreading SARS-CoV-2, and requesting that the PHO provide any evidence to the contrary on which it relies as a premise for the Order;

b. A letter dated April 28, 2022 providing a further expert report from Dr. Schabas, dated April 27, 2022, and a recent National Post article, both of which challenged the sole recent study that could be taken to support the PHO's position;

c. A further letter dated April 28, 2022 enclosing two responses to Freedom of Information requests submitted to the Provincial Health Services Authority ("PHSA"), which make clear that the Government tracks neither transmission by vaccination status, nor instances of transmission by physicians in hospital settings as part of its provincial surveillance data; and

d. A letter dated May 29, 2022 enclosing the expert report of Dr. Kalyan dated May 27, 2022, which provided updated information regarding the scientific consensus that vaccination is not effective in reducing infection and transmission, and other information relevant to the continued imposition of the November 18 Order.

163. Following receipt this new information and evidence, the Legal Services Branch did not rescind (or vary) the November 18 Order, as requested by the Petitioners, nor did it indicate that the PHO had any intention of reconsidering the continued imposition of the November 18 Order.

164. Indeed, neither the PHO or the PHO's counsel has responded to the more recent correspondence from counsel to the Petitioner set out above, including the provision of additional information and documentation, such as Dr. Kaylan's report, relevant to the continued imposition of the November 18 Order.

165. This refusal to reconsider, vary or rescind the November 18 Order is consistent with the statement in the November 18 Order that the PHO would "not to consider requests for reconsideration" in relation to the order.

166. However, the November 18 Order also recognizes that the Provincial Health Officer should continue to reassess the necessity of and justification for the measures in light of changing circumstances and evidence, on an ongoing basis.

167. As stated in the Preamble:

> X. I recognize the effect which the measures I am putting in place to protect the health of patients, residents and clients and other staff in hospital and community settings may have on people who are unvaccinated and, with this in mind, have engaged and will continue to engage in a process of reconsideration of these measures, based upon the information and evidence available to me, including infection rates, sources of transmission, the presence of clusters and outbreaks, particularly in facilities, 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, with a view to balancing the interests of the people affected by the Order, including constitutionally protected interests, against the risk of harm created by unvaccinated persons providing health or personal care or other support or services in hospital or community settings;

168. Therefore, the PHO recognizes that there is an obligation on the PHO to be constantly revaluating the efficacy and necessity of the measures in light of present circumstances and the best available evidence, and to determine whether the circumstances originally giving rise to the use of the extraordinary emergency powers in the *Public Health Act* continue to exist so as to justify their ongoing use.

169. Notwithstanding this recognition, the PHO has provided no indication that it has considered these new circumstances and evidence, despite repeated requests from the Petitioners and other affected health professionals.

170. As such, the PHO has failed or refused to vary, amend, or reconsider the November 18 Order, in response to the new evidence and present circumstances, and the Petitioners request to reconsider or rescind the Order.

PART III: LEGAL BASIS

171. The Petitioner pleads and will rely on the *Judicial Review Procedure Act*, RSBC 1996, c 241, the *Public Health Act*, SBC 2008, c 28, the *Supreme Court Civil Rules*, BC Reg 168/2009, and to the extent necessary, the Court's inherent jurisdiction.

172. The Petitioner seeks relief in relation to the November 18 Order, which states that it was issued pursuant to sections 30, 31, 32, 39, 53, 54, 56, 57, 67 (2) and 69 of the *Public Health Act*, SBC 2008, c 28.

173. The decisions to issue the November 18 Order, and to refuse or fail to exercise the discretion to reconsider, vary, or rescind the November 18 Order in response to the requests of the Petitioners or otherwise, involve the exercise of a statutory power and a statutory power of decision subject to the *Judicial Review Procedure Act*, RSBC 1996, c 241.

A. Standing

174. The Petitioners are directly affected by the November 18 Order, which has led to the end of their employment and has significantly limited if not eliminated their ability to continue to practice in their chosen professions in British Columbia, as a result of their decision not to receive the vaccination mandated by the PHO.

175. The Petitioners therefore bring this petition on the basis of her standing as a persons directly affected by the November 18 Order, which is sufficient to obtain the relief sought in this Petition.

176. However, to the extent it is considered necessary in order to pursue any of the relief sought in this petition, the Petitioners also bring this claim on a public interest standing basis to represent the interests of other similarly affected health care professionals, as this case raises serious justiciable issues, the Petitioner has a real stake in the proceedings, and the petition is a reasonable and effective means to bring the case to court.

Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society, 2012 SCC 45.

B. The Interests Affected by the Order

177. The issuance and enforcement of the November 18 Order has a significant and profound impact on persons who make the personal medical decision to not be vaccinated.

178. The ability to choose whether or not to be vaccinated is, like other personal medical decisions, of profound importance to each individual.

179. The common law has long recognized "[t]he right to determine what shall, or shall not, be done with one's own body, and to be free from non-consensual medical treatment".

Fleming v. Reid (1991), 4 O.R. (3d) 74 (C.A.), p. 85.

180. In discussing this principle, the Supreme Court of Canada stated as follows:

> It should not be forgotten that every patient has a right to bodily integrity. This encompasses the right to determine what medical procedures will be accepted and the extent to which they will be accepted. Everyone has the right to decide what is to be done to one's own body. This includes the right to be free from medical treatment to which the individual does not consent. This concept of individual autonomy is fundamental to the common law and is the basis for the requirement that disclosure be made to a patient. If, during the course of a medical procedure a patient withdraws the consent to that procedure, then the doctors must halt the process. This duty to stop does no more than recognize every individual's basic right to make decisions concerning his or her own body.

Ciarlariello v. Schacter, [1993] 2 SCR 119, at 135. See also *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30, para 101.

181. The same principle is encompassed by the guarantee of life, liberty, and security of the person in section 7 of the *Canadian Charter of Rights and Freedoms*. As the Supreme Court of Canada explained in *Carter*:

> [67] The law has long protected patient autonomy in medical decision-making. In *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30, [2009] 2 S.C.R. 181, a majority of this Court, per Abella J. (the dissent not disagreeing on this point), endorsed the "tenacious relevance in our legal system of the principle that competent individuals are — and should be — free to make decisions about their bodily integrity" (para. 39). This right to "decide one's own fate" entitles adults to direct the course of their own medical care (para. 40): it is this principle that underlies the concept of "informed consent" and is protected by s. 7's guarantee of liberty and security of the person (para. 100; see also *R. v. Parker* (2000), 49 O.R. (3d) 481 (C.A.)). [emphasis added]

Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 SCR 331, para 67.

182. The November 18 Order undermines the importance of personal autonomy in medical decision making, because it forces health care professionals to either make a personal medical decision dictated by the government, involving an invasion of their bodily

integrity against their will, or they are forced out of their current employment and may be effectively prohibited from continuing in their chosen profession in British Columbia.

183. Threatening the professional standing, employment, and careers of individuals on the basis of how they exercise their autonomy over their personal medical decisions is an extreme step that can only be reasonably justified in the most compelling circumstances.

184. However, as discussed below, there is no reasonable basis to support the measures set out in the Order in light of the current evidence and circumstances.

C. The Ineffectiveness of the Order

185. The basic rationale underlying the Order – i.e. the assumption that it is important to require health care workers in certain settings to be vaccinated for SARS-CoV-2 in order to control transmission of the virus – is fundamentally misguided, and not based on a reasonable assessment of the available medical evidence.

186. First, as noted above, the best and most current available medical evidence shows that while vaccination is effective in reducing the severity of an illness for the person vaccinated, it is not effective in limiting the transmission of the virus.

187. As the Office of the Chief Medical Health Officer of the Vancouver Coastal Health Authority explained, "there is now no material difference in likelihood that [a person] who is vaccinated or unvaccinated may be infected and potentially infectious to others".

188. Second, even if there were some reasonable basis for believing that vaccinated health professionals are slightly less likely to transmit the virus than unvaccinated health professionals, this marginal benefit would not create a reasonable justification for such a severe impact on the interests of the affected health professionals.

189. As stated above, what really matters in terms of the risk of transmission is not vaccination status, but whether an individual has the virus and is able to infect others.

190. Yet, the PHO no longer deems it necessary to engage in measures which are designed to test and track those who are suspected of having the virus and being in a position to transmit the virus to others.

191. And, with respect to the health care context in particular, the BC public health department no longer records or alerts the health authorities regarding health care workers who have tested positive for the virus. Indeed, the health authorities have permitted health care workers with mild symptoms, and who therefore may still be able to transmit the virus, to continue providing services to patients.

192. Unlike vaccination, these types of measures would be effective in identifying individuals who have the virus and are able to transmit the virus, and yet the PHO and other government bodies no longer deems those measures necessary.

193. Third, even if there were some reasonable basis for believing that vaccinated health professionals are slightly less likely to transmit the virus than unvaccinated health professionals, the Order would not meaningfully reduce the risk faced by individuals.

194. Individuals seeking health care treatment will be exposed to countless individuals in the course of receiving their treatment, which individuals may or may not be vaccinated, and may or may not be infectious.

195. This can include individuals in transit to and from the facility, as well as others in and around the facility, which may include those who are not subject to the order, most notably other patients.

196. They also will likely have interacted with countless other people over the course of the day – at the grocery store, on public transit, at the gym, at social or religious gatherings, at work, or walking down the street – who may or may not be infected and able to transmit the virus.

197. Nevertheless, the PHO's most recent advice is to individuals is to not remain cloistered inside without any interaction with others, but rather to continue on with their day to day lives:

> "As long as we are feeling well, in this new context we can and must continue going to work, going to school and socializing safely in our small groups,"

198. This has been the PHO's advice notwithstanding the fact that, in so doing, individuals will be constantly exposed to individuals who may or may not be infected by and able to transmit the virus, and notwithstanding the fact that other preventative measures – such as mask mandates, capacity limits, and vaccine passports – designed to reduce this risk are no longer deemed necessary.

199. These facts demonstrate not only the negligible efficacy of the Order in reducing any risk posed by SARS-CoV-2, but the fact that extreme or extraordinary measures impacting the liberty or medical decision-making autonomy of individuals are no longer considered reasonably justified in order to address any risk posed by SARS-CoV-2.

200. Moreover, as described above, the health colleges and health authorities have implemented a robust set of less intrusive infection prevention and control measures, both prior to and in direct response to the SARS-CoV-2 virus, that have proven effective in reducing the risk of transmission by both vaccinated and unvaccinated health professionals.

201. Finally, not only is the November 18 Order ineffective in preventing the spread of the virus, it also has a harmful effect on the provision of health care, as it has taken a number of doctors and nurses our of the hospitals and designated community settings. This can

only exacerbate any problems our health care system is experiencing in providing timely health care services to the residents of the province.

202. Indeed, the November 18 Order has led to a situation in which unvaccinated professionals who are not infected with SARS-CoV-2 virus are nevertheless prohibited from working, despite being unable to transmit the virus, while vaccinated personnel who may have SARS-CoV-2 virus and are experiencing symptoms are permitted to continue to provide services, despite being able to transmit the virus.

203. In summary, these facts demonstrate that not only is the November 18 Order ineffective in reducing the risk of transmission or alleviating stress on the public system, but it may be counter productive, in taking health care professionals out of system the while forcing those who may be infectious to continue to provide services.

D. No Reasonable or Sufficient Basis to Justify the Continued Use of Emergency Powers under the *Public Health Act*

204. In order to be upheld, the decisions to continue to impose, and to refuse to vary or rescind, the November 18 Order, must be "reasonable", in the sense that the reasons underlying the decision are both rational and logical, and that the decision itself must be justifiable in light of the relevant facts and the law.

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, paras 101-106.

205. In addition, reasonableness requires that a "decision must ultimately comply 'with the rationale and purview of the statutory scheme under which it is adopted'", and "any exercise of discretion must accord with the purposes for which it was given".

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, para 108.

206. The reasonableness of the PHO's decision must therefore be considered in light of the fact that the November 18 Order was issued under the "emergency" powers in the *Public Health Act*, which are by their nature only intended to be used while the circumstances representing a true emergency are ongoing.

207. As explained in the context of measures adopted under other emergency legislation, the Court in *Shaughnessy Heights* said as follows:

> Order 200, a product of the emergency statute, must also be considered, not as permanently changing the law, but as dealing with a situation created by the emergency, by a measure only intended to remain in effect during the emergency. [emphasis added]

Shaughnessy Heights Property Owners' Association v. Campbell, 1951 CanLII 274, (BC SC), [1951] 2 D.L.R. 62, p. 71.

208. And in *Reference re Wartime Leasehold Regulations*, Justice Taschereau expressed a similar sentiment, as follows:

> The war has created an emergency that justified the Governor General in Council to bring the *War Measures Act in* operation and pass regulations to meet such an emergency. Parliament then enacted *The National Emergency Transitional Powers Act, 1945*, and The *Continuation of Transitional Measures Act, 1947*, because in its opinion the emergency that arose out of the war was still existing, and for the express purpose of decontrolling, and to complete the orderly transition from abnormal to normal conditions. The regulations that were passed to reach that aim are essentially of a temporary character, and the laws from which they derive their validity are in no way permanent. They will come to an end with the emergency. [emphasis added]
>
> *Reference re Wartime Leasehold Regulations*, [1950] SCR 124, at 143.

209. Although these cases were decided in other legal contexts, they support the conclusion that "emergency" powers are, by their very nature, only intended to be used for the duration of the emergency, and not indefinitely into the future after those emergency conditions have ceased to exist.

210. Similarly, in the context of the "emergency" powers under the *Public Health Act*, the legislature could not have intended that they could be continued to be used once the circumstances representing an emergency had ceased to exist, or had ceased to reasonably justify the measures imposed.

211. Section 59 of the *Public Health Act* provides that "the authority to act under this Part ends":

> (a) in the case of a localized event, as soon as reasonably practical after the emergency has passed, or
>
> (b) in the case of a regional event, when the provincial health officer provides notice that the emergency has passed.

212. This cannot be reasonably interpreted as meaning that the emergency powers under the Act can continue indefinitely into the future, as long as the PHO unreasonably refuses to provide notice that the emergency has passed.

213. Such an interpretation would give the PHO the type of "absolute and untrammelled 'discretion'" that cannot exist as a matter of law, and which would be particularly dangerous in the context of emergency powers which, by their very nature, permit an extraordinary and significant interference with the rights and interests of the public that can only be justified in the most extreme and compelling circumstances.

> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para 108.

214. Rather, and particularly in light of the extraordinary measures authorized by the "emergency" powers, the only reasonable interpretation of this language is that the PHO must provide notice contemplated in section 59(b) when it becomes aware of circumstances and evidence making it reasonable to conclude that the emergency has passed.

215. Section 60(1)(c) of the *Public Health Act* further provides that upon the end of an emergency, the PHO must either "rescind an order that was made under this Part" or seek to continue the order under its non-emergency powers, if it is deemed "necessary to protect public health".

216. The decisions resulting in the continued imposition of the November 18 Order are unreasonable on two grounds:

i. First, there is not at the present time a reasonable basis for concluding that there is an emergency sufficient to justify the ongoing use of the emergency powers under the *Public Health Act*, and

ii. Second, even if there were a reasonable basis for concluding that a public health emergency is still in existence, which is not the case, there is not a sufficient connection between the PHO's stated goals of preventing or reducing the risk of the transmission of infection with SARS-CoV-2 and the requirements set out in the November 18 Order.

217. Either of these grounds, alone or together, are sufficient to render the decisions unreasonable, and to grant the orders sought in this petition.

i. <u>There is No Reasonable Basis to Conclude that there is a Continuing Emergency</u>

218. As noted above, an "emergency" is defined under the *Public Health Act* as a localized or regional event that meet the conditions specified in s. 52, and a "regional event" is defined as "an immediate and significant risk to public health throughout a region or the province".

219. In order to exercise the powers in question, there must be a significant and immediate risk to public health in question that the PHO must "reasonably believe" poses a serious risk to public health, and that the measures adopted are reasonably necessary to respond to that significant and immediate risk.

220. As noted above, it is necessarily implicit in the nature of the emergency powers under the *Public Health Act* that these powers cannot be used indefinitely into the future, regardless of whether the circumstances originally supporting the use of these powers have ceased to exist.

221. In this context, in order to be upheld as reasonable, the impugned decision must be "justified in light of the facts", and a "decision maker must take the evidentiary record

and the general factual matrix that bears on its decision into account, and its decision must be reasonable in light of them".

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, para 126.

222. This is all the more important when an administrative decision maker is exercising extraordinary powers that, in the case of a valid and ongoing emergency, authorize highly intrusive and extreme measures that can have a significant and harmful impact on the rights, liberties, and interests of members of the population.

223. As the Court explained in *Vavilov*, the more severe or harsh the impact on affected persons, the stronger the justification for the measures must be in order to be upheld as reasonable:

> [133] It is well established that individuals are entitled to greater procedural protection when the decision in question involves the potential for significant personal impact or harm: *Baker*, at para. 25. However, this principle also has implications for how a court conducts reasonableness review. Central to the necessity of adequate justification is the perspective of the individual or party over whom authority is being exercised. Where the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes. The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention. This includes decisions with consequences that threaten an individual's life, liberty, dignity or livelihood.
>
> [134] Moreover, concerns regarding arbitrariness will generally be more acute in cases where the consequences of the decision for the affected party are particularly severe or harsh, and a failure to grapple with such consequences may well be unreasonable. (…)
>
> [135] Many administrative decision makers are entrusted with an extraordinary degree of power over the lives of ordinary people, including the most vulnerable among us. The corollary to that power is a heightened responsibility on the part of administrative decision makers to ensure that their reasons demonstrate that they have considered the consequences of a decision and that those consequences are justified in light of the facts and law. [emphasis added]
>
> *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, paras 133-135.

224. In a related context involving a challenge to emergency measures enacted in response to the spread of SARS-CoV-2 (which measures have since been repealed), the Ontario Superior Court upheld the regulations in question on the basis that they were "carefully calibrated and recalibrated on a regular basis to reflect the effects of variants of concern, vaccination rates, and the demand on hospitals and ICUs".

Ontario v. Trinity Bible Chapel et al, 2022 ONSC 1344, para 102.

225. No less is required in this context, given the severe and harsh consequences imposed on those impacted by the November 18 Order, which requires them to either forgo their autonomy over their bodily integrity and submit to government mandated health care treatment against their will, or to lose their employment and risk being effectively barred from continuing to practice in their chosen profession in BC.

226. In light of present circumstances and the evidence available to the PHO, there is no longer any basis for a reasonable belief that there is an ongoing, immediate, and significant risk to public health posed by the spread of SARS-CoV-2, so as to support the continued use of the emergency powers under the *Public Health Act*.

227. As stated above, the best scientific evidence and present circumstances demonstrates that:

i. the currently dominant variant of the virus is less severe as compared with previous variants;

ii. all British Columbians who choose to do so have had an opportunity to receive the full course of vaccination against SARS-CoV-2, and many others have acquired natural immunity; and

iii. hospital rates tied to SARS-CoV-2 have stabilized and decreased over recent months, and there is no evidence that hospitals are currently at risk of being 'overwhelmed' as a result of SARS-CoV-2.

228. In light of these circumstances and evidence, there is a consensus across Canadian governments that emergency measures are no longer necessary to effectively address the virus, as evidenced by the widespread repeal or expiry of extraordinary preventive measures, and the evidence that governments have shifted to measures similar to how they manage other infectious diseases like the common cold or flu.

229. Therefore, there is no reasonable basis in the evidence to support the conclusion that there is a sufficient emergency to justify the ongoing use of the emergency powers under the *Public Health Act*.

230. In addition, there is no reasonable basis for the conclusion that two of the following four factors listed in s. 52, which is required for the ongoing use of the emergency powers in the *Public Health Act,* continue to be met in light of present circumstances and evidence:

> (a) the regional event could have a serious impact on public health;
>
> (b) the regional event is unusual or unexpected;
>
> (c) there is a significant risk of the spread of an infectious agent or a hazardous agent;

(d) there is a significant risk of travel or trade restrictions as a result of the regional event.

231. At this stage, the impact on public health caused by the spread of SARS-CoV-2 can no longer be reasonably considered to be serious, unusual, or unexpected.

232. British Columbians have been living with SARS-CoV-2 for over two years now, since at least March 2020.

233. Since that time, the evidence relating to the spread and impact of the virus is far more developed and sophisticated, and the risks posed are better understood and more manageable.

234. The vast majority of British Columbians have now received their full course of the vaccine, which the PHO has claimed is the "single most important" preventive measure individuals can take to protect themselves.

235. In addition, many others have acquired natural immunity as a result of contracting the virus previously, which provides equivalent protection against any serious impact or symptoms.

236. In light of these and other factors, governments across Canada have determined that it is no longer necessary to engage in tracking or contact tracing, vaccination passports systems, or other extraordinary measures to deal with SARS-CoV-2.

237. In effect, SARS-CoV-2 is no longer considered to be materially more serious, unusual, or unexpected than the common cold, influenza, or other communicable diseases, which clearly cannot not justify the use of extraordinary emergency powers and have not led to the imposition of mandatory vaccination measures for health care professionals.

238. In short, there is no longer any reasonable basis to conclude that the present circumstances relating to SARS-CoV-2 represent a significant and immediate risk to public health, or the type of serious, unusual, or unexpected circumstances, that would justify the ongoing use of the emergency powers under the *Emergency Act*.

ii. <u>The November 18 Order is Not a Reasonable or Effective Response to the Spread of the Virus</u>

239. Even if there were a reasonable basis for the continued use of emergency powers under the *Emergency Act*, which is denied, there is no reasonable basis to support the conclusion that preventing the health care workers who remain unvaccinated from working in the specified health care settings would address this risk.

240. Rather, the current scientific evidence demonstrates that unvaccinated individuals do not pose a materially greater risk of transmitting the SARS-CoV-2 virus than vaccinated individuals.

241. In addition, there is no evidence suggesting that unvaccinated care providers have caused any health related problems for the population, or have proven to pose any greater risk than vaccinated health professionals in the province.

242. Moreover, protective and preventive measures exist in the hospital and community care setting, including measures specifically designed to limit the risk of spreading SARS-CoV-2, that are effective in limiting any risk posed to patients, which is already very low.

243. For these and other reasons stated above, there is no reasonable basis for believing that the measures in the November 18 Order, which threaten the professional standing, employment, and careers of health care workers on the basis of their personal medical decision making, are either effective or reasonable necessary in light of present circumstances and current evidence.

244. Nor is there any reasonable or rational basis for assuming that mandatory vaccination policies will be necessary or effective in alleviating stress faced by the public health care system.

245. Indeed, if anything, the ongoing shortage of health care workers in the public system has been exacerbated by the continued imposition of the Order, which prevents trained and licenced doctors, nurses and midwives from continuing to serve the public, despite their not posing any greater risk of transmission than vaccinated health professionals.

246. As such, the decision to continue the extraordinary measures in question cannot be reasonably justified under the *Public Health Act*, particularly in light of the significant, harmful impact these measures will have on the interests of health professionals.

iii. Conclusion

247. In summary, there is no reasonable basis to conclude that there is presently an emergency sufficient to justify the ongoing use of the emergency powers underlying the November 18 Order; and, in any event, there is no reasonable basis to support the conclusion that the mandatory vaccination of health professionals is effective or necessary to reduce transmission of the virus in affected health care settings, in light of the best available evidence and present circumstances.

248. As such, the November 18 Order is unreasonable and unlawful, and must be quashed.

PART IV: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Dr. York Hsiang, sworn on June 6, 2022;
2. Affidavit #1 of Dr. David William Morgan, sworn on June 6, 2022;
3. Affidavit #1 of Hilary Vandergugten, sworn on June 8, 2022;
4. Affidavit #1 of Dr. Sahriar Kabir, sworn on June 8, 2022;

5. Affidavit #1 of Sophie Harney, sworn on June 10, 2022; and
6. Such other affidavits and authorities as counsel may advise.

The petitioners estimate that the hearing of the petition will take 5 days.

Date: June 10, 2022

Signature of counsel for the Petitioners
Peter A. Gall, Q.C.

To be completed by the court only:	
Order made [ ] in the terms requested in paragraphs ..... of Part 1 of this petition [ ] with the following variations and additional terms:	
Date: .....[*dd/mmm/yyyy*].....	..... Signature of [ ] Judge [ ] Master