Court File No.: COA-25-CV-0051

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

Amynah Hirani, Oana-Andreea Istoc, Shelly Moore, Carol-Anne Parsons, Anne-Marie Sherk, **(Bayshore Healthcare Workers)**

-and-

Alexandra Newbold, **(Brant Community Healthcare System)**

-and-

Melissa Betts, Catherine Frustaglio,**(Cambridge Memorial Hospital Workers)**

-and-

Cristina Amorim, Lisa Avarino, **(Centre for Addiction and Mental Health Workers (CAMH))**

-and-

Danielle Cogghe, Sonia Couto, Amber DePass, Lauren Ives, Roxanne Jones, Desirea Lamoureux, Karen Metcalfe, Mary Margaret Raaymakers, Michelle Raaymakers, Erin Robitaille, Karen Roche, Rebecca Verscheure, Tina Waring, **(Chatham Kent Health Alliance Workers)**

-and-

Mike Belawetz, Jonathon Croley, Mona Hansen, Ryan Kreeft, **(The Corporation of the County of Essex)**

-and-

Maria Danho, Jennifer Jarrett, Erika Marrie, Danuta Nogal, Beata Spadafora, Moustafa Yahfoufi, **(Community Living Windsor Workers)**

-and-

Karen Botham, Melissa Del Greco, Katie Friesen, Connie Grossett, Nicole Ward, **(Erie Shores HealthCare Workers (Leamington hospital))**

-and-

Chantal Demera, Crystal Richardson, **(Georgian Bay General Hospital Workers)**

-and-

Hafiza Ally, Csilla Ankucza, Amy Campbell, Bojan Gagic, Janet Izumi, Danielle Little, Alaa Maloudi, Martin Mueller, Jody Myers, Diane Radisic, Tatjana Suserski, Erika Toth, **(Grand River Hospital Workers)**

-and-

Tammy Algera, Melissa Leitch, Jennifer Miske, Vinod Nair, Nicholas Rourke, Hetty Van Halteren, Jenna Widdes, **(Grey Bruce Health Services Workers)**

-and-

Marija Belas, Kathy Cherneske, Ruth Hanusch Leclerc, Laura-Beth Hewer, Laura Holmquist, Janet Nagy, **(Halton Healthcare Services Workers)**

-and-

Svitlana Alyonkina, Lisa Augustino, Gary Blake, Laura Bosch, Ryan Cino, Susan Davis, Erica Demers, Colleen Gair, Katharine Gamble, Loredana Gheorghe, Mario Gheorghe, Sonja Jankovic, Cheryl Jordan, Catherine King, Ashley Loeffen, Denis Madjar, Merima Mahmutovic, Shirley Morin, Kristine Osenenko, Naomi Quiring, Brent Scarisbrick, Jocelyn Scholtens, Rob Shortill, Liza Sibbald, Paola Sivazlian, Bethany Stroh-Gingrich, Lori Swan, Rachel Thibault, Susan Torenvliet, Tiffany-Anne Toulouse-Sauve, Brooke Vandewater, Benjamin Wencel, Monika Zawol-Zaprzala **(Hamilton Health Sciences Workers)**

-and-

Melissa Conley (Erie St.Clair), Janice Fisher (South West), Danielle Nowierski (Mississauga Halton), Daria Poronik (Toronto Central), Chantelle Seguin (Erie St.Clair), Veronica Sloan (Hamilton, Niagara, Haldimand, Brant), Patricia Weaver (Mississauga Halton), **(Home and Community Care Support Services Workers)**

-and-

Tony Best, Susan Iori, Antonietta Mongillo, Kristine Sandoval, Felicia Ing-Tyng Tseng, Nicole Welsh, **(Hospital for Sick Children Workers)**

-and-

Shauna Carriere, Jessica Clark-Carroll, Helena Feloniuk-Coaton, Bill Gerassimou, Jane Doe #1, Biljana Ignjatic-Ovuka, Biljana Josipovic, Tara Lauzon, Aleah Marton, Mihaela Opris, Salvatore Panzica, Jennifer Pedro, Danielle Qawwas, Jonathan Sandor, Michelynne Tremblay, Kattie Westfall, **(Hotel Dieu Grace Healthcare Workers)**

-and-

Albrecht Schall, **(Humber River Hospital Worker)**

-and-

Glenda Mendoza, **(The Corporation of the City of Windsor)**

-and-

Jeanette Bellamy, Odelia DaSilva, Zsuzsanna Kerestely, Wanda MacGrandles, Georgette Marshall, Kristin Matfin, Stevan Price, Kathleen Stringer, Martina Vulgan, Bailey Webster, **(Joseph Brant Hospital Workers)**

-and-

Deborah Hogg, Cathy Houthuys, Jacqueline Vande Pol, **(Lakeridge Health Workers)**

-and-

Andrej Bosnjak, Laurie Bowman, Tonia Coyle, Mary Eastman, Chiara Marie Elliott, Cathy Lindsay, Jessica Lindsay, Heather MacNally, Maria Dorothy Moore, Georgia Murphy, Anita Murray, Mark Read, Katherine Robichaud, Nancy Sawlor, Lisa Starogianie, **(London Health Sciences Centre Workers)**

-and-

Sharon Addison, Maxim Avtonomov, Cassandra Craig, Tasha Crump, Alex D'Souza, Christine L. Ehgoetz, Alyssia Elias, Chuck Evans, Vanessa Gallant, Rachel Lambkin, Christine Pritty, Kaitlyn Raso, Zorica Savanovic, Magen Scholtens, Catherine Seguin, Ada Talbot, Lianne Tessier, Megan Tiersma, Victoria Wright **(Niagara Health System Workers)**

-and-

Alison Margaret Bourre, Jenny Brown, Kathleen Burns, Lynne M.S. Cheff, Krista Leckie, Susan Mary Marcotte, Kristy Palmer, Charlene Splichen, Sarah Walter, **(North Bay Regional Health Centre Workers)**

-and-

Sherri Bond, Ronnie Esau, Arlene Kalmbach-Pashka, Kelvin Kean, Peter Mason, Kerry Scully, Kevin Snow, Bobbi-Jo Snow, Sheivonn Thompson, Kelly Lynn Woodrow, Goran Zdravkovski, **(Ontario Shores Centre for Mental Health Sciences Workers)**

-and-

Wendy Baerg, Norma Smith, Andrew Wilgress,**(Orillia Soldiers Memorial Hospital Workers)**

-and-

Nataliya Burlakov, Gabriele Caporale, Sirpa Joyce, Amy McNutt, Slaven Savic, Lori Wells, **(The Ottawa Hospital Workers)**

-and-

Jennifer Dixon, Kim Driver, Alexander Faulkner, Holly McDonald, Mandy Parkes, Katie Jeanette Pattison, Karly Marie Stothart, Breanne Townsend, **(Peterborough Regional Health Centre)**

-and-

Caseymae (Casey) Brant, Cynthia June Jordan, Matthew Langdon, Amanda Osbourne, Sarah Rogerson, Rachel Runions, Stephanie VanderSpruit, **(Quinte Healthcare Corporation)**

-and-

Gabriela Borovicanin, Madison Kristensen-Piens, Michelle Piens, **(The Corporation of the Municipality of Chatam-Kent)**

-and-

Caroline Goulet, Amir Hamed Farahkhiz, **(Royal Ottawa Health Care Group)**

-and-

Gabriela Lassak, Justyna Lassak, Paulina Lassak, Sasha McArthur, Nadia Mousseau, **(Royal Victoria Regional Health Centre Workers)**

-and-

Cecile Butt, Darlene Crang, Jocelyn Ford, Melissa Idenouye, Judith Schoutsen, Holly Tucker, **(Saint Elizabeth Health Care)**

-and-

Sheila Daniel, Petrina Mattison, Eric Thibodeau, Lucy Thibodeau, **(Scarborough Health Network Workers)**

-and-

Sean Filbey, Musette Hoeppner, Glenda Mendoza, Janet Neuts, **(Schlegal Villages Workers)**

-and-

Marina Anisimov, Oleg Anisimov, Cari Bradley, James Langille, Tammy Parker, Kelly Richards, Amanda Slik, Sheila Stiles, Mary Todd, Nataliya Veremenko, Anna Zamriga, **(Southlake Regional Health Centre Workers)**

-and-

Lisa Autuchiewicz, Alicia Badger, Carly Bennett, Robin de Groot, Charmaine Dupuis, Nikki Greenhow, Cheri Mitchell, Angela Stacey, Wendy Thornton, Alison Wilson, **(St. Joseph's Health Care London Workers)**

-and-

Byron Bolton, Michelle Cruz, Barb Fisher, Cheryl Jeffrey, Gail Magarrey, Graham Nishikawa, Jennifer Pluck, Christine Vitez, Stanislaw Wroblewski **(St. Joseph's Health Care Hamilton Workers)**

-and-

Leigh Carroll, Vincent Cromie, Tammy Foster-Grieco, Donna Glenn, Galina Karataeva, Lorrie Poulin, Jelena Sorgic, **(St. Mary's General Hospital Workers)**

-and-

Joan Elizabeth Rosen **(Extendicare)**

-and-

Kyla Balke, Danny Budd, Susan Buob-Corbett, Judith Deschenes, Linda Fieldhouse, Darlene Freeman, Nicholas Kowalczyk, Lorena Legary, Cheri Mantel, Theresa Lynn Noyes, Denise Roy, Rhonda Michelle Rentz, Bryden C. See, Catherine H. See, Cindy Stolz, **(Thunder Bay Regional Health Sciences Centre Workers)**

-and-

Angele Bouchard, Tanya Bouvier, Carol Charters, Julie Joanisse-Gillis, Angele Samson, **(Timmins and District Hospital Workers)**

-and-

Joanna Carabetta, ~~Andrea R. DeVries~~, Juanita Diorio, ~~Rosa Grobanopoulos~~, Katarzyna Kobylinski, ~~Vanessa MacLeish~~, Veronica Pereira, Karen Rotham, Tianilla Weigert Corredoura, **(Trillium Health Partners Workers)**

-and-

Imelda Agustin, Esther Carter, Diana de Medeiros, Bridget Doukas, LesleyAnn Faltine, Raymond Hogue, Tania Ilkiw, Nathan Le, Vincent Le, Julia Ordonez, Jenny Poon, Ian Samuda, Fawn Schroeder, Sandra Silva, John Doe #2, Ageliki Tzakis, Yuriy Wankiewicz, **(Unity Health Toronto Workers)**

-and-

Romana Freitas, Nadiya Kaminska, Magdalena Kulikowski, Anna Piri, Afrodite Vorvis, Danijela Vukovic, Elaine Walker-Esson, **(University Health Network Workers (UHN)**

-and-

Sarah Boyington, Sara Hampton, **(Waypoint Centre for Mental Health Care Workers)**

--and-

Margaret Caminero, Jennifer Correia, Jennifer Jitta, Joan Knight-Grant, Wetshi Mbotembe, Dolores Peckham, Jolanta Pietrzykowski, Crystal Simm, Malgorzata Skrzypek-Aviles, Crestina Tolfo, Irene Veenstra, Sharon Yandt, **(William Osler Health System Workers)**

-and-

Sarah Adams, Michelle Bourgoin, Esther Grace Bradt, Ada Chiarot, Dayna Crowder, Tommy Dang, Wendy Douglas, Nicole Faucher, Anna Maria Gelinas, Christopher Gignac, Breanne Gillen, Nidia Ingoldsby, Edua Keresztes, Renata Kreeft, Rhonda Lamont, Kelly Loch, Jennifer Macri, Natalie Morrone, Kristina Neufeld, Alexandra Pepin, Lisa Trif, Elizabeth (Liz) Vaughan, Deborah Wiebe, **(Windsor Regional Hospital Workers)**

-and-

Samantha King, Leah Kittmer, **(Woodstock General Hospital Workers)**

APPELLANTS

-and-

HIS MAJESTY THE KING IN RIGHT OF ONTARIO, Ontario Premier Doug Ford, Former Minister of Health Christine Elliot, Current Minister of Health Sylvia Jones, Minister of Long Term Care Paul Calandra, Bayshore Healthcare, Belleville General Hospital, Brant Community Health Care System, Cambridge Memorial Hospital, Centre for Addiction and Mental Health, Chatham Kent Health Alliance, The Corporation of the County of Essex, Community Living Windsor, Erie Shores HealthCare, Extendicare, Georgian Bay General Hospital, Grand River Hospital, Grey Bruce Health Services, Halton Healthcare Services Corporation, Hamilton Health Sciences, (Toronto Central Local Health Integration Network, Mississauga Halton Local Health Integration Network, Erie St. Clair Local Health Integration Network, Hamilton Niagara Haldimand Brant Local Health Integration Network, South West Local Health Integration Network), Hospital for Sick Children, Hotel Dieu Grace Healthcare, Humber River Hospital, The Corporation of the City of Windsor, Joseph Brant Hospital, Lakeridge Health, London Health Services, Niagara Health System, North Bay Regional Health Centre, Ontario Shores Centre for Mental Health Sciences, Orillia Soldiers Memorial Hospital, The Ottawa Hospital, Peterborough Regional Health Centre, Quinte Healthcare Corporation, The Corporation of the Municipality of Chatham-Kent, Royal Ottawa Health Care Group, Royal Victoria Regional Heath Care, Saint Elizabeth Health Care, Scarborough Health Network, Schlegel Village, Southlake Regional Health Centre, St. Joseph's Care Group, St. Joseph's Health Care London, St. Joseph's Health System, St. Mary's General Hospital, Thunder Bay Regional Health Sciences Centre, Timmins and District Hospital, Trillium Health Partners, Unity Health Toronto, University Health Network, Waypoint Centre for Mental Health Care, William Osler Health System, Windsor Regional Hospital, Woodstock Hospital

RESPONDENTS

FACTUM OF THE APPELLANTS

PART I - STATEMENT OF THE CASE

1. This is an appeal from the decision of the Superior Court, Koehnen, J., dated December 18th, 2024, striking the claim of the Plaintiffs, with prejudice, and awarding costs in the amounts of $175,000.00, and $15,000.00. The Plaintiffs appeal both the order striking the claim as well as the order as to costs. The Appellants rely on the facts as set out in the statement of claim, which, for the purposes of this motion and appeal, are required to be taken as proven[1].

2. The Appellants take issue with the judgment of the Superior Court in its ruling:

   (a) that the **Weber**[2] decision ruled that a labour arbitrator has jurisdiction to make an **in rem** declaration, and declare a statute, regulation or executive (in) action unconstitutional;

   (b) that it could take judicial notice of scientific evidence, ever, let alone on a motion to strike, contrary to the Supreme Court of Canada decision in **R v. Find**[3];

   (c) making non jurisdictional findings of fact on a motion to strike;

   (d) refusing to address the pointed oral and written submissions of the Appellants on issues ruled upon by the Court.

   (e) ruling that hospitals are not covered, nor arguably covered, by the **Charter**;

   (f) ruling that Doctors' hospital privileges could only be determined or rectified by way of judicial review and not in an action for damages.

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[1] ***A.G. Canada v. Inuit Tapirasat of Canada [1980] 2 S.C.R. 735; Nelles v. Ontario (1989) 60 DLR (4th) 609 (SCC); Operation Dismantle Inc. v. The Queen [1985] 1 S.C.R. 441; Hunt v. Carey Canada Inc [1990] 2 S.C.R. 959; Dumont v. A.G. Canada [1990] 1 S.C.R. 279; Trendsetter Ltd. v. Ottawa Financial Corp. (1989)32 O.A.C. 327 (C.A.); Nash v. Ontario (1995) 27 O.R. (3d) 1 (Ont. C. A.). Canada v. Arsenault 2009 FCA 242; B.C. v. Imperial Tobacco Canada Ltd., [2005] 2 S.C.R. 473***

[2] ***Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929***

[3] ***R. v. Find, 2001 SCC 32 (CanLII), [2001] 1 SCR 863***

PART II – SUMMARY OF FACTS

3. The Appellants rely on the facts as set out in the statement of claim, which, for the purposes of the motion and appeal, are required to be taken as proven[4].

PART III – ISSUES AND LAW

- **ISSUES**

4. Whether the Court erred, in law, in misinterpreting and misapplying the **Weber** decision?

5. Whether the court erred, in law, in:

   (a) taking judicial notice of scientific facts, contrary to the Supreme Court of Canada decision in, **inter alia**, **R v. Find?** And

   (b) moreover, and in particular, exceeded jurisdiction in taking judicial notice in the context of a motion to strike?

6. Whether the Court erred, and exceeded jurisdiction, in making non jurisdictional "findings of fact", beyond the unionized vs. non-unionized issue, on a motion to strike, which contradicted the facts pleaded?

7. Whether the Court erred, in law, in refusing to address and ignore the Appellants' oral and written submissions on points ultimately decided by the Court and thus breach the Appellants' rights to natural and fundamental justice and their rights to written reasons?

8. Whether the Court erred in determining that it was bad beyond argument to advance the position that hospitals be covered under the **Charter**?

9. Whether the Court erred, contrary to the Supreme Court of Canada jurisprudence, that doctors who are suing for damages for loss of hospital privileges are barred and can only proceed by way of judicial review?

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[4] ***Appellants' Appeal Book ("AB"), Amended Statement of Claim at Tab 6, pg. 13497 – 13515, para. 24-80***

10. Whether the Court erred in:

(a) awarding costs at all; and

(b) in awarding costs, erred in the quantum of costs awarded?

- **LAW**

A/ Motion to Strike – The Jurisprudence – General Principles

11. It is submitted and tritely held, by the Supreme Court of Canada, and the Appellate Courts, that:

(a) the facts pleaded by the Appellants must be taken as proven and fact:[5]

(b) it has been further held, that on a motion to strike, the test is a rather high one, namely that,

> "A Court should strike a pleading under Rule 126 **only in plain and obvious cases where the pleading is bad beyond argument.**
>
> **Furthermore, I am of the view that the rules of civil procedure should not act as obstacles to a just and expeditious resolution of a case.** Rule1.04(1) of the Rules of Civil Procedure in Ontario, O. Reg 560/84, confirms this principle in stating that "these rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits."
>
> **-** ***Nelles, supra,*** **p. 627**

and rephrased, re-iterated by the Supreme Court of Canada, in ***Dumont***, wherein the Court stated that,

> "***It cannot be said that the outcome of the case is 'plain and obvious' or 'beyond doubt'***.
>
> Issues as to the proper interpretation of relevant provisions…and the effect…upon them would appear to be better determined at trial where a proper factual base can be laid."
>
> **-** ***Dumont, supra.*** **p. 280**

and further, that:

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[5] ***Ibid., footnote #1.***

> "It is not for this Court on a motion to strike to reach a decision as to the Plaintiff's chance of success."
>
> ***- Hunt, supra (SCC)***

and further that:

> **The fact that a pleading reveals "an arguable, difficult or important point of law" cannot justify striking out part of the statement of claim. Indeed, I would go so far as to suggest that where a statement of claim reveals a difficult and important point of law, it may well be critical that the action be allowed to proceed. Only in this way can we be sure that the common law in general, and the law of torts in particular, will continue to evolve to meet the legal challenges that arise in our modern industrial society.**
>
> …
>
> This brings me to the second difficulty I have with the defendants' submission. **It seems to me totally inappropriate on a motion to strike out a statement of claim to get into the question whether the Plaintiff's allegations concerning other nominate torts will be successful. This a matter that should be considered at trial where evidence with respect to the other torts can be led and where a fully informed decision about the applicability of the tort of conspiracy can be made in light of that evidence and the submissions of counsel.** If the Plaintiff is successful with respect to the other nominate torts, then the trial judge can consider the defendants' arguments about the unavailability of the tort of conspiracy. If the Plaintiff is unsuccessful with respect to the other nominate torts, then the trial judge can consider whether he might still succeed in conspiracy. Regardless of the outcome, it seems to me inappropriate at this stage in the proceedings to reach a conclusion about the validity of the defendants' claims about merger. I believe that this matter is also properly left for the consideration of the trial judge.
>
> **-** ***Hunt, supra*** **p. 14**

and further that:

> [21] Valuable as it is, the Motion to Strike **is a tool that must be used with care.** The Law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. Before *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.) introduced a general duty of care to one's neighbour premised on foreseeability, few would have predicted that, absent a contractual relationship, a bottling company could be held liable for physical injury and emotional trauma resulting from a snail in a bottle of ginger beer. Before *Hedly Byrne & Co. v. Heller & Partners*, Ltd., [1963] 2 All E.R. 575 (H.L.), a tort action for negligent

> misstatement would have been regarded as incapable of success. The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions, like that one at issue in *Donoghue v. Stevenson.* therefore, on a Motion to Strike, it is not determinative that the law has not yet recognized the particular claim. **The Court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.**
>
> ***- R. v. Imperial Tobacco Canada Ltd., supra at para 21.***

and that "the court should make an order only in ***plain and obvious cases*** which it is satisfied to be beyond doubt";

***- Trendsetter Ltd*, *supra,* (Ont. C.A.).**

(c) (i) and that a statement of claim should not be struck just because it is "novel";

- ***Nash v. Ontario (1995) 27 O.R. (3d) (C.A.)***
- ***Hanson v. Bank of Nova Scotia (1994) 19 O.R .(3d) 142 (C.A.)***
- ***Adams-Smith v. Christian Horizons (1997)14 C.P.C.(4th)78 (Ont. Gen. Div.)***
- ***Miller (Litigation Guardian of) v. Wiwchairyk (1997) 34 O.R. (3d) 640 (Ont.Gen.Div)***

(ii) that "matters law not ***fully settled*** by the jurisprudence should not be disposed of at this stage of the proceedings";

- ***R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd.*** (1991) 5 O.R. (3d) 778 (C.A.)

(iii) and that to strike, the Respondents must produce a "decided case ***directly on point*** from the same jurisdiction demonstrating that the very same issue has been ***squarely dealt with and rejected***";

- ***Dalex Co. v. Schawartz Levitsky Feldman*** (1994) 19 O.R. (3d) 463 (Gen. Div).

(d) and that, in fact, the Court ought to be generous in the drafting of pleadings and not strike but allow amendment before striking.

- ***Grant v. Cormier*** – ***Grant, et. al*** (2001) 56 O.R. (3d) 215 (Ont. C.A.)
- ***TD Bank v. Delloitte Hoskins & Sells*** (1991) 5 O.R. (3d) 417 (Gen. Div.)

B/ Nature of Appellants' Claim

12. The Appellants', in their claim, seek the following:

(a) Declaratory relief as to jurisdiction, legislation, regulations and executive action and inaction;

(b) monetary damages;

Based on the following torts, **which do NOT arise out of any collective bargaining agreement but Directive #6, also applying to non-unionized workers**:

(i) Misfeasance of public;
(ii) Conspiracy;
(iii) Intimidation;
(iv) Violations of ss.2,6, 7, and 15 of the ***Charter***;
(v) Intentional infliction of mental anguish;

(c) injunctive relief or relief in the nature of **mandamus[6].**

13. Contrary to what the Respondents posit, and Superior Court ruled, the claim is NOT based on any contract or labour paradigm. The claim is solely based on common law and constitutional tort, with declaratory relief ancillary to those torts, particularly the constitutional torts (violations), **all** grounded in various forms of **misfeasance of public office.** The dispute does NOT arise from any collective bargaining agreement.

[6] ***AB, Amended Statement of Claim at Tab 6, AB @ pages 13485- 13494, at para. 1,2,3,4,5,6,7***

C/ The Constitutional Right to Declaratory Relief

14. The Appellants submit that Declaratory relief goes to the crux of the constitutional right to judicial review, which right the Supreme Court of Canada has re-affirmed in ***Dunsmuir:***

> **31** The legislative branch of government cannot remove the judiciary's power to review actions and decisions of administrative bodies for compliance with the constitutional capacities of the government. Even a privative clause, which provides a strong indication of legislative intent, cannot be determinative in this respect (*Executors of the Woodward Estate v. Minister of Finance*, [1973] S.C.R. 120, at p. 127 [page213]). The inherent power of superior courts to review administrative action and ensure that it does not exceed its jurisdiction stems from the judicature provisions in ss. 96 to 101 of the *Constitution Act, 1867*: *Crevier*. As noted by Beetz J. in *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, at p. 1090, "[t]he role of the superior courts in maintaining the rule of law is so important that it is given constitutional protection". ***In short, judicial review is constitutionally guaranteed in Canada,*** particularly with regard to the definition and enforcement of jurisdictional limits..,.
>
> ***- Dunsmuir v. New Brunswick, 2008 SCC 9, at Paragraph 31***

15. The Federal Court, in ***Singh v. Canada (Citizenship and Immigration), 2010 FC 757,*** re-affirmed the ample and broad right to seek declaratory relief, in quoting the Supreme Court of Canada in ***Solosky***:

> Declaratory relief is a remedy **neither constrained by form nor bounded by substantive content**, which avails persons sharing a legal relationship, in respect of which a "real issue" concerning the relative interests of each has been raised and falls to be determined.
>
> ***- Canada v. Solosky, [1980] 1 S.C.R. 821, @ p. 830***

16. More recently, the Supreme Court of Canada, in the ***Manitoba Metis*** case reaffirmed the breadth of the right to declaratory relief to rule that it cannot be statute-barred:

> [134] This Court has held that although claims for personal remedies flowing from the striking down of an unconstitutional statute are barred by the running of a limitation period, courts retain the power to rule on the constitutionality of the underlying statute: *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, 2007 SCC 1, [2007] 1 S.C.R. 3; *Ravndahl v. Saskatchewan*, 2009 SCC 7, [2009] 1 S.C.R. 181. ***The constitutionality of legislation has always been a justiciable***

> ***question:*** *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138, at p. 151. ***The "right of the citizenry to constitutional behaviour by Parliament" can be vindicated by a declaration that legislation is invalid, or that a public act is ultra vires:*** *Canadian Bar Assn. v. British Columbia*, 2006 BCSC 1342, 59 B.C.L.R. (4th) 38, at paras. 23 and 91, citing *Thorson*, at p. 163 (emphasis added). **An "issue [that is] constitutional is always justiciable**": *Waddell v. Schreyer* (1981), 126 D.L.R. (3d) 431 (B.C.S.C.), at p. 437, aff'd (1982), 142 D.L.R. (3d) 177 (B.C.C.A.), leave to appeal refused [1982] 2 S.C.R. vii (*sub nom. Foothills Pipe Lines (Yukon) Ltd. v. Waddell*).
>
> …
>
> [140] ***The courts are the guardians of the Constitution and, as in Ravndahl and Kingstreet, cannot be barred by mere statutes from issuing a declaration on a fundamental constitutional matter. The principles of legality, constitutionality and the rule of law demand no less:*** see *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 72.
>
> …
>
> [143] ***Furthermore, the remedy available under this analysis is of a limited nature. A declaration is a narrow remedy. It is available without a cause of action, and courts make declarations whether or not any consequential relief is available***. As argued by the intervener Assembly of First Nations, it is not awarded against the defendant in the same sense as coercive relief: factum, at para. 29, citing *Cheslatta Carrier Nation v. British Columbia*, 2000 BCCA 539, 193 D.L.R. (4th) 344, at paras. 11-16.

- ***Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14***

D/Jurisprudence on Covid-19 measures mitigating against striking claim

17. It is further submitted that jurisprudence, both in Canada and abroad, to the same claims and issues set out in the within claim, clearly weighs against striking this claim, whether in whole or in part.

18. Thus, the United States Supreme Court, struck, as unconstitutional measures against barring church gatherings on constitutional provisions indistinguishable from s.2 of the Canadian ***Charter***.

- Roman Catholic Diocese of Brooklyn, New York V. Andrew M. Cuomo, Governor Of New York U. S. 592 (2020)

19. Recently, the Indian Supreme Court struck as unconstitutional, the Covid-vaccine, **coercive measures** as unconstitutional for offending a provision of their constitution protecting bodily integrity, indistinguishable from s.7 of the Canadian ***Charter***, and equality rights indistinguishable from s.15 of the **Charter.**

- Jacob Puliyel Vs. Union of India & Ors.

20. Moreover, it has already been established, in Canadian jurisprudence that any medical treatment without informed, voluntary, consent violates s.7 of the ***Charter*** and not saved by s.1:

- Fleming v. Reid (1991), 48 O.A.C. 46 (CA)
- Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331

Wherein, the Supreme Court of Canada, in ***inter alia, Carter*** ruled:

> [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), 2000 CanLII 5762 (ON CA), 49 O.R. (3d) 481 (C.A.)). As noted in Fleming v. Reid (1991), 1991 CanLII 2728 (ON CA), 4 O.R. (3d) 74 (C.A.), the right of medical self-determination is not vitiated by the fact that serious risks or consequences, **including death, may flow from the patient's decision. It is this same principle that is at work in the cases dealing with the right to refuse consent to medical treatment, or to demand that treatment be withdrawn or discontinued**: see, e.g., Ciarlariello v. Schacter, 1993 CanLII 138 (SCC), [1993] 2 S.C.R. 119; Malette v. Shulman (1990), 1990 CanLII 6868 (ON CA), 72 O.R. (2d) 417 (C.A.); and Nancy B. v. Hôtel-Dieu de Québec (1992), 1992 CanLII 8511 (QC CS), 86 D.L.R. (4th) 385 (Que. Sup. Ct.).

The Indian Supreme Court further ruled, under their equality provision, indistinguishable from s.15 of the ***Charter***, that, based on the scientific evidence, drawing a distinction or discriminating as between "vaccinated" and "unvaccinated" individuals is

unconstitutional because the vaccinated could equally transmit and receive the Covid-19 virus. In fact, this Indian Supreme Court decision heavily relies on jurisprudence from other common-law jurisdictions including the USA, Australia and New Zealand.

- Jacob Puliyel Vs. Union of India & Ors.

21. In Ontario, attempts at moving to strike applications, ***in limine***, challenging the Covid-measures, have been dismissed.

- Sgt. Julie Evans et al. v. AG Ontario et al. CV-21-00661200-0000
- M.A. v. De Villa, 2021 ONSC 3828

22. The Ontario Superior Court has ruled that these issues of Covid-measures are not to be dealt with on a perfunctory basis, assuming and adopting the baldly-stated positions of public health officials, but to be dealt with, like any other case, on the available evidence and material bearing on the issue(s) before the Court.

- J.N. v. C.G., 2022 ONSC 1198

23. Furthermore, with respect to the Court's ruling that the vaccine mandates are not "mandatory" but a "choice", albeit coercive in that the choice is "be vaxxed or be fired", the caselaw on this point defies the Court's ruling, in that:

(a) the Indian Supreme Court ruled that coercive measures are as unconstitutional as mandating measures: and

- Jacob Puliyel Vs. Union of India & Ors.

(b) the California Court of Appeal Fourth Appellate District recently ruled that a "choice" of vaccination or staying away from school was **not** a choice but a coercive, **de facto**, mandatory measure.

- Let Them Choose et al. v. San Diego Unified School District (2022)

24. In any event, the evidence in the record indicated that the Defendants saw them, and interpreted them as mandatory.[7] And, moreover, whether or not they were mandatory is not a finding to be made on a motion to strike without a proper evidentiary inquiry

25. Recent U.S., and Canadian jurisprudence, has been successful in finding measures unwarranted, as well as granting damages for coercive measures, akin to those challenged in the within claim.

> ***- Teamsters Local Union No. 31 v Purolator Canada Inc., 2023 CanLII 120937 (CA LA) - R. v. Fernando, 2024 ONCJ 336 (CanLII); - Canadian Constitution Foundation v. Canada (Attorney General), 2024 FC 38; - Benton v. Bluecross Blueshield of Tennessee, Inc. 1:22-cv-118; - Loper Bright Enterprises Et Al. V. Raimondo, Secretary Of Commerce, Et Al. No. 22–45, June 28, 2024 - National Federation of Independent Business, Et Al., Applicants, 595 U. S. ____ (2022)***

E/ Errors of the Superior Court

- **Interpretation of Weber**

26. In its interpretation of **Weber**, the Superior Court stated as follows:

> [8] Section 48 (1) of the Ontario *Labour Relations Act*[4] provides that:
>
> > 48(1) Every collective agreement shall provide for the final and binding settlement by arbitration, ***without stoppage of work***, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.
>
> **- AB, Decision of Justice Koehnen, Tab 3, page 41, para. 8.**

Which is an **in limine** error by the Court because upon applying Directive #6, for those sent home without pay and/or fired, there was a "stoppage of work" and furthermore there was, nor could there be, binding arbitration under s.48 in law, nor in practice as most of the unions refused to arbitrate the issue.

- **AB, Tab 6, pages 13766 - 13837**

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[7] ***AB, Responding Record, at Tab 6, pages 0329 – 0330, 0364, 0403, 13662- 13690, , AB, Tab 10, Compendium, pages 15449 - 15618***

27. The Court further ruled that:

> [11] The Supreme Court of Canada has similarly emphasized that in conducting this analysis, the court ought not to be tied to the legal characterization that the plaintiffs have placed on their claims. Rather, it is the "essential" character of the dispute that matters:
>
> > The issue is not whether the action, defined legally, is independent of the collective agreement, but rather whether the dispute is one arising under the collective agreement. Where the dispute, regardless of how it may be characterized legally, arises under the collective agreement, then the jurisdiction to resolve it lies exclusively with the labour tribunal and the courts cannot try it.9
>
> **- AB, Tab 3, Decision of Justice Koehnen, page 42, para. 11**

which is a further error in that the "dispute" did not arise out of any collective bargaining agreement as Directive #6 was applied to **both** non-unionized and unionized workers as a public health mandate of the province, at large, and thus, the Court erred in its analysis and backward circular argument and analysis on this point in its decision.

- AB, Tab 3, Decision of Justice Koehnen, pages 41-47 para. 8-25

28. On the **Weber** analysis, the Superior Court further erred in ruling:

> [19] First, they argue that that they need access to the courts because they are seeking relief under the Charter, including a declaration, which the Plaintiffs say arbitrators have no jurisdiction to grant. I am unable to accept that submission. The Supreme Court of Canada stated clearly in Weber v. Ontario Hydro,15 that **arbitrators do have the power to grant declarations, under the Charter.**
>
> **- AB, Tab 3, Decision of Justice Koehnen, page 45, para. 19**

29. It is submitted that this is exactly the opposite of what **Weber** ruled. Only Superior Courts have the jurisdiction to issue **in rem** declarations. Declaratory relief is part of the core jurisdiction of s.96 Courts, and the statutory, concurrent jurisdiction of the Federal Court of Canada in the Federal context. The Supreme Court of Canada, in ***Weber*** ruled and guided as follows:

> 54 This approach **does not preclude all actions in the courts between employer and employee.** Only **disputes which expressly or inferentially arise out of the collective agreement** are foreclosed to the courts: *Elliott v. De Havilland Aircraft Co. of Canada Ltd.* (1989), 32 O.A.C. 250 (Div. Ct.), at p. 258, *per* Osler J.; *Butt v. United Steelworkers of America*, *supra*; *Bourne v. Otis Elevator Co.*, *supra*, at p. 326. **Additionally, the courts possess residual jurisdiction based on their special powers, as discussed** by Estey J. in *St. Anne Nackawic*, *supra.*
>
> ***- Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929 at paragraph 54***

and further ruled that:

> 57 **It might occur that a remedy is required which the arbitrator is not empowered to grant. In such a case, the courts of inherent jurisdiction in each province may take jurisdiction**. This Court in *St. Anne Nackawic* confirmed that the New Brunswick Act did **not oust the residual inherent jurisdiction of the superior courts to grant injunctions in labour matters** (at p. 724). Similarly, the Court of Appeal of British Columbia in *Moore v. British Columbia* (1988), 1988 CanLII 184 (BC CA), 50 D.L.R. (4th) 29, at p. 38, **accepted that the court's residual jurisdiction to grant a declaration was not ousted by the British Columbia labour legislation**, although it declined to exercise that jurisdiction on the ground that the powers of the arbitrator were sufficient to remedy the wrong and that deference was owed to the labour tribunal. What must be avoided, to use the language of Estey J. in *St. Anne Nackawic* (at p. 723), is a "real deprivation of ultimate remedy".
>
> ***- Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929 at paragraph 57***

No arbitrator has jurisdiction to grant the **in rem** declaratory and injunctive relief sought.

30. The Supreme Court of Canada, as well as other Appellate courts, have continually and consistently held that the collective bargaining or employment context does NOT exclude an action for **tort** within that relationship.

- Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929
- Northern Regional Health Authority v. Horrocks, 2021 SCC 42 (CanLII)

31. Furthermore, when the Superior Court ruled that the dispute arises out of the collective agreement(s), this is diametrically contradicted by the fact that the policies arise out of Directive #6 which was a government Regulation that applied to ALL heath workers in the Province, whether unionized or NOT. If it equally applies to NON-unionized workers, how can the dispute arise out of the collective agreement? Furthermore the Hospital Defendants read Directive #6 as mandatory.

-AB, Tab 10, Compendium, Pages 15449-15618

32. The Supreme Court of Canada thus set out and ruled that:

(a) Declaratory relief is the purview of the Superior Court; and

(b) The Superior Court has the discretion to exercise its jurisdiction where the Labour scheme cannot provide the (adequate) remedies available in the Superior Court.

Both of the criteria are present in the within case.

33. The Ontario Courts, in interpreting ***Weber*** have further found that, **notwithstanding the existence of a labor regime in the context of a collective bargaining agreement**, this does **NOT** oust the Superior Court jurisdiction to adjudicate an action for the tort of misfeasance in public office. Thus, the Ontario Superior Court, in ***Muirhead*** ruled as follows:

…

> [7] **As currently pleaded, Constable Muirhead's claim is a discipline dispute for which the court's jurisdiction has been ousted; however, it may be that he will be able to plead the material facts for a dispute that is about misfeasance in public office, which is an abuse of power dispute that must be adjudicated by a Superior Court.** It may be that the material facts of the circumstances of Constable Muirhead's **claim have crossed the line from being an employment relations dispute, which must be adjudicated by an arbitrator, to a dispute about abuse of power, bigotry, and racism by a public official or public authority against a citizen who happens to be an employee.**
>
> *- **Muirhead v. York Regional Police Services Board, 2014 ONSC 6817 at paragraph 5 - 7***

and further ruled:

> [62] In *Weber,* Chief Justice McLachlin (L'Heureux-Dubé, Gonthier, and Major JJ. concurring) discussed the matter of characterizing the dispute to determine whether or not the jurisdiction of the court was ousted, and she noted that **the fact that the parties are employer and employee may not be determinative and whether the court's jurisdiction was ousted would depend on the facts of each particular case.** She stated at paras. 52-54:
>
> > 52. **In considering the dispute, the decision-maker must attempt to define its "essential character", to use the phrase of La Forest J.A**. in *Energy & Chemical Workers Union, Local 691 v. Irving Oil Ltd.* (1983), 148 D.L.R. (3d) 398 (N.B.C.A.). T**he fact that the parties are employer and employee may not be determinative. Similarly, the place of the conduct giving rise to the dispute may not be conclusive; matters arising from the collective agreement** may occur off the workplace and conversely, not everything that happens on the workplace may arise from the collective agreement:…
>
> [63] **The recent decision of the Court of Appeal in *George v. Anishinabek Police Services*, *supra,* discussed further below, makes the point that to determine whether the court's jurisdiction has been ousted will require a contextual fact-based analysis of the circumstances of each case.** …..
>
> *- **Muirhead v. York Regional Police Services Board, 2014 ONSC 6817 at paragraph 62-63***

and further ruled:

> [87] **The tort of misfeasance in public office requires deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff**; the defendant must know what he or she is doing is wrongful and have a conscious disregard for the interests of those who will be affected by the misconduct in question: *Odhavji Estate v. Woodhouse*, *supra* at para. 29. Misfeasance in public office is an intentional tort; it is not directed at a public

> officer who inadvertently or negligently fails adequately to discharge the obligations of his or her office: *Odhavji Estate v. Woodhouse*, *supra* at para. 26. As an intentional tort, it requires proof of subjective awareness that harm to the plaintiff is a likely consequence of the alleged misconduct or reckless disregard to the possibility that harm was a likely consequence of the alleged misconduct: *Odhavji Estate v. Woodhouse*, *supra* at para. 38.
>
> ***- Muirhead v. York Regional Police Services Board, 2014 ONSC 6817 at paragraphs 87***

34. It is respectfully submitted that, given the jurisprudence in ***Weber***, and the Ontario Courts rulings in interpreting ***Weber*** on the same issues **in favour** of the Appellants, that it is not "plain and obvious" that the Amended Statement of Claim is "bad beyond argument". The test on a motion to strike, as opposed to a motion for summary judgment, on proper evidence, in determining that it is "plain and obvious, beyond argument" that the case cannot succeed when in fact it **has** succeeded in other cases, was clearly misapplied.

35. The Courts have also ruled, in the COVID-19 context that **coercive measures** to vaccinate constitute a violation of bodily and psychological integrity of the person, and that to treat the vaccinated an unvaccinated differently, in the face of the scientific and medical data that shows that vaccination does not prevent transmission, discriminates and violates equality of treatment.

> ***- Let Them Choose et al. v. San Diego Unified School District (2022)***
> ***-Jacob Puliyel Vs. Union of India & Ors.***

36. There has also been recent U.S. jurisprudence in the context of successful litigation and damages awarded in the context of co-erosive measures.[8]

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[8] ***- Benton V. Bluecross Blueshield Of Tennessee, Inc.***
- Loper Bright Enterprises Et Al. V. Raimondo, Secretary Of Commerce, Et Al.
- National Federation Of Independent Business, Et Al., Applicants

37. These coercive measures, under common law, not only violates.2, 7 and 15 of the ***Charter***, but further constitute the **tort** of **intimidation under common law**.

- ***McIlvenna v. 1887401 Ontario Ltd., 2015 ONCA 830 (CanLII)***

- **Judicial Notice of Scientific fact regarding Covid and Vaccine.**

38. In its decision in striking the whole claim under the heading "abuse of process", the Superior Court took judicial notice, citing Ontario jurisprudence.

-AB, Tab 3, Decision of Justice Koehnen, pages 59-61, 67-68 paras. 50,51,53,70

39. This finding is diametrically opposed to the Supreme Court of Canada jurisprudence in **R. v. Find**, which explicitly rejected this jurisdiction with respect to scientific evidence, as pleaded orally and in writing, in the Appellants' factum which was ignored and not addressed by the Superior Court.

40. It is respectfully submitted that the law of judicial notice, with respect to scientific fact, from the Supreme Court of Canada is clear. Judicial Notice of scientific fact CANNOT be taken. In ***R. v. Find, 2001 SCC 32 (CanLII), [2001] 1 SCR 863*** the Supreme Court of Canada ruled:

> 48 In this case, the appellant relies heavily on proof by judicial notice. Judicial notice dispenses with the need for proof of facts that are clearly uncontroversial or beyond reasonable dispute. Facts judicially noticed are not proved by evidence under oath. Nor are they tested by cross-examination. Therefore, the threshold for judicial notice is strict: a court may properly take judicial notice of facts that are either: (1) so notorious or generally accepted as not to be the subject of debate among reasonable persons; or (2) capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy: *R. v. Potts* (1982), 1982 CanLII 1751 (ON CA), 66 C.C.C. (2d) 219 (Ont. C.A.); J. Sopinka, S. N. Lederman and A. W. Bryant, *The Law of Evidence in Canada* (2nd ed. 1999), at p. 1055.
>
> 49 **The scientific and statistical nature of much of the information relied upon by the appellant further complicates this case. Expert evidence is by definition neither notorious nor capable of immediate and accurate**

> **demonstration. This is why it must be proved through an expert whose qualifications are accepted by the court and who is available for cross-examination.** As Doherty J.A. stated in *R. v. Alli* (1996), 1996 CanLII 4010 (ON CA), 110 C.C.C. (3d) 283 (Ont. C.A.), at p. 285: "[a]ppellate analysis of untested social science data should not be regarded as the accepted means by which the scope of challenges for cause based on generic prejudice will be settled".

And as to how ***Find*** and ***Morgan*** is interpreted by the Alberta Court of Appeal in ***R v Church in the Vine and Fortin, 2022 ABKB 704 (CanLII)*** where in it ruled:

> [53] This principle was adopted in this Court by Graesser J in ***R v Mella***, 2021 ABQB 785(released in September 2021) at para 40 and Whitling J in ***Sembaliuk v Sembaliuk***, 2022 ABQB 62 (released in January 2022) at para 8. In ***LMS v JDS***, 2020 ABQB 726 (released in October 2020) at para 18, Hollins J stated the following:
>
> > [18] I can take judicial notice of certain things about COVID, namely that it is a global pandemic and that our own public health officials have provided us with commonly-accepted precautions to avoid contracting COVID (wearing a mask, keeping distanced whenever possible, reducing contacts, washing hands). **However, in my view, I cannot take judicial notice of much more than that.**

And further by the Ontario Superior Court in ***J.N. v. C.G., 2022 ONSC 1198 (CanLII),***

wherein the Court stated:

> [1] When did it become illegal to ask questions? *Especially in the courtroom?*
>
> [2] And when did it become unfashionable for judges to receive answers? *Especially when children's lives are at stake?*
>
> [3] How did we lower our guard and let the words "unacceptable beliefs" get paired together? *In a democracy? On the Scales of Justice?*
>
> [4] **Should judges sit back as the concept of "Judicial Notice" gets hijacked from a *rule* of evidence to a *substitute* for evidence?**
>
> [5] And is "misinformation" even a real word? Or has it become a crass, self-serving tool to pre-empt scrutiny and discredit your opponent? To de-legitimize questions and strategically avoid giving answers. Blanket denials are almost never acceptable in our adversarial system. Each party always has the onus to prove their case and yet "misinformation" has crept into the court lexicon. A childish – but sinister – way of saying *"You're so wrong, I don't even have to explain why you're wrong."*

> [6] What does *any* of this have to do with family court? Sadly, these days it has *everything* to do with family court.
>
> [7] Because when society demonizes and punishes anyone who disagrees – or even dares to ask really important questions – the resulting polarization, disrespect, and simmering anger can have devastating consequences for the mothers, fathers and children I deal with on a daily basis.

41. Furthermore, based on an examination of the scientific and medical evidence, the B.C. Supreme Court. recently, in upholding a labour arbitrator, ruled that while the measures were justified up to June 30, 2022, past this date they were not justified.

- Purolator Canada Inc. v Canada Council of Teamsters, 2025 BCSC 148 (CanLII)

42. Furthermore, a panel of the Discipline Committee of the British Columbia College of Surgeons and Physicians ruled that it could not take judicial notice of the efficacy nor safety of the Covid-19 vaccines in a charge of alleged misconduct in criticizing their safety and efficacy by a B.C. Doctor.

– **BC College Physicians and Surgeons v. Dr. Hoffe, 2025**

43. This approach, that Courts do not determine scientific facts, was also rejected by the Federal Court in **Responsible Plastic Use Coalition v. Canada (Environment and Climate Change), 2023 FC 1511 (CanLII)** where the Court declared a total ban on all plastics unreasonable and unconstitutional **because the science did not support the conclusion of harm.** It is respectfully submitted that, taken to its logical extension, all medical malpractice and negligent suits involving any science, medicine, of engineering, would all disappear.

44. It is submitted that the Superior Court erected and burned down its own straw man. The Appellants were not requesting that the Court be turned into an Oracle to determine the Covid-19 measures, as it pretends, the action deals only with the constitutional and tort violations in applying those measures. Yet, ironically, the Court did exercise the function of a government oracle, by way of judicial notice, by enacting the "safe and effective" mantra, without looking at any evidence, even when government institutions have long conceded that the vaccines were not effective, nor safe, which speaks to constitutional violations of the recognized s.7 Charter right to refuse.

-AB, Tab 6, Amended Statement of Claim, pages 13501 – 13502, paras. 47- 50

45. It is respectfully submitted that to take judicial notice of these facts is an error of law. To take judicial notice of them in the context of a motion to strike, contrary to the facts pleaded, is an excess of jurisdiction.[9]

46. The court further went wayward, at paragraph 53, when it stated:

> [53] I have the distinct impression from reading the Amended Claim as a whole that its object is not to vindicate the employment rights of the plaintiffs so much as it **is to mount a political crusade in which the court will be used as a grandstand to conduct an inquiry into the effectiveness of vaccines and the effectiveness of government measures** in response to the Covid-19 pandemic by opponents of those measures…

- AB, Tab 3, Decision of Justice Koehnen, page 61-62, para. 53

It is submitted that this out of the blue, and totally unwarranted and unsubstantiated conclusion on the reading of the claim, is an error in jurisdiction as it is a blatant loss of impartiality by the Court. There is no "political crusade" in the claim. It is further submitted that this statement, undermines and taints the entire decision as it manifests an apprehension of bias with respect the Court's approach to the law and issues.

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[9] **Ibid, para. 1**

- **Findings of Fact, Contrary to Facts pleaded and out of thin Air – Error of Law**

47. It is further submitted that the Superior Court erred, and exceeded jurisdiction, in making **inter alia**, the following "findings of fact," on a motion to strike:

(a) By making the wayward findings in paragraphs 53 and 69 of the decision;

(b) By stating, at paragraph 73;

> [73] In addition, the Plaintiffs have not pled any facts regarding the Defendants' intent to injure the Plaintiffs. I accept that those facts may sometimes be difficult to ascertain given that a plaintiff is not always privy to evidence of intention. On the facts of this case, however, it is important to plead facts surrounding intention for the same reason that it is important to plead specific facts to demonstrate a predominant purpose to injure for the conspiracy claims. **It is simply so unlikely on the facts of this case that the Defendants had any intention to harm the Plaintiffs as opposed to having an intention to safeguard public health and safety that the claim should be struck out in the absence of pleaded facts.**
>
> **- AB, Tab 3, Decision of Justice Koehnen, page 69, para. 73**

(c) By making findings of all other facts, without evidence, and in complete contradiction to the facts pleaded, that in the Court's mind lay **behind** the Court's application of judicial notice. With respect, this is not adjudication by legal principle, here on a motion to strike, but by judicial incantation without basis, and with bias..

48. It is thus submitted that the Superior Court further erred and exceeded jurisdiction in applying the test on a motion to strike.

- **Refusing to Address and ignoring oral and written submissions of Appellants' Counsel and misstating submissions.**

49. It is respectfully submitted that the Superior Court breached the Appellant's right to a fairness, natural and fundamental justice, as well as their right to reasons, in not addressing the following submissions, made both orally and in writing.

(a) The submissions on judicial notice, and the leading and binding Supreme Court of Canada in **R. v. Find** and other cases cited in the Appellants' factum before the Court;

– **AB, Tab 13, Responding Factum, at pages 15799-15801 , para. 40**

(b) Ignoring and not dealing with the Appellants' submissions on hospitals as being covered, or potentially covered, by s. 32 of the **Charter**;

- AB, Tab 13, Responding Factum, at pages 15794-15795, at para. 30(c)

(c) The arguments on the government's liability for **Charter** violations, by way of act (through Directive #6) or by way of omission and the Supreme Court of Canada holding in **Vriend**, in Directive #6 not placing safeguards to ensure the Appellants' constitutional right to refuse medical treatment was not violated.

- AB, Tab 13, Responding Factum, at pages 15794-15795, at para. 30

(d) By making wayward misstatements of the Appellants' submission such as:

> [69] It strains all credulity to accept that the Premier of Ontario, a number cabinet ministers and 54 Non-Governmental Defendants somehow conspired to concoct a plan to declare a "false pandemic" all for the predominant purpose of harming the plaintiffs. The outlandish nature of that allegation becomes even more obvious when one considers that the World Health Organization declared the COVID-19 outbreak a to be a pandemic on March 11, 2020, and Ontario declared an emergency on March 17, 2020 as did governments of a variety of political stripes in a large number of industrial democracies.

- AB, Tab 3, Decision of Justice Koehnen, page 67, para. 69

when no such submission was made. The conspiracy pleaded was a conspiracy to deprive the Appellants of their constitutional and common law rights, as well as knowingly commit intentional torts, with respect to the violations inflicted in the implementation of Directive #6.

(e) By failing to address the pointed submissions on hospital privileges and suing for damages based on the **Telezone** line of cases[10] and erroneously distinguishing and ignoring them on specious grounds.

- AB, Tab 13, Responding Factum, pages 15795-15797 at para. 32-33

(f) By refusing to address, or rule, given the total circumstances of the case, whether to exercise the Superior Court's discretion , given that non-unionized workers were affected by the same implementation through Directive #6, and that the various relief sought was in the strict jurisdiction and purview of the Superior Court.

50. It is submitted that this is a breach of natural (fundamental) justice and the right to reasons as enunciated by the Supreme Court of Canada in Baker and other appellate Courts.

- Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39.

and, as **Baker** has been interpreted by the Courts of Appeal in Ontario:

> [47] The decision to surrender a fugitive to an extradition party is as important as the humanitarian and compassionate determination under s.114(2) of the Immigration Act, R.S.C. 1985, c. I-2 (now s. 25 of the Immigrant and Refugee Protection Act, R.S.C. 2001, c. 27), dealt with in Baker. **The appellant was entitled to reasons that were responsive to the factors relevant to his situation**.

- **USA v. Johnson (2002), 62 O.R. (3d) 327**

and in British Columbia:

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[10] **Canada (Attorney General) v. TeleZone Inc., 2010 SCC 62 (CanLII), [2010] 3 SCR 585; Canada (Attorney General) v. McArthur, 2010 S.C.C. 6; Parrish & Heimbecker Ltd. v. Canada (Agriculture and Agri-Food), 2010 S.C.C. 64; Nu-Pharm Inc. v. Canada (Attorney General), 2010 S.C.C. 65; Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada, 2010 S.C.C. 66; Manuge v. Canada, 2010 S.C.C. 67; Sivak et al. v. MCI, 2011 FC 402**

> [18]… **In my view, the Minister's reasons in this case were not responsive to theapplicant's submissions**. More particularly, while he stated that he had given them atter full consideration, his reasons are conclusory and do not demonstrate that he performed his mandatory duty…
>
> In other words, the Minister did not explain why he reached his conclusion. This amounts to a failure to afford the applicant procedural fairness: Baker v. Canada (Minister of Citizenship and Immigration),
>
> - **USA v. Taylor, 2003 BCCA 250 at para 18**

and as reaffirmed by the Federal Court:

> [15] The duty to provide reasons is well established in law. This duty requires that the reasons be adequate. They must set out the findings of fact and **must address the major points in issue …**
>
> - **Thalang v. MCI, [2007] FCJ no. 1002 at para 15**

F/Charter Does Not Apply to Hospitals

51. With respect to the Court's ruling that the **Charter** does not apply to hospital and that the law could not be extended to so apply.

- AB, Tab 3, Decision of Justice Koehnen, pages 71-77, paras. 79-92

The Appellants state:

(a) This is an open question, undetermined by the Courts, and left open by the decision of the Supreme Court of Canada in **Godbout**.

- Godbout *v.* Longueuil (City), [1997] 3 S.C.R. 844

And the proviso of the Supreme Court of Canada in **Imperial Tabacco:**

> [21] Valuable as it is, the Motion to Strike **is a tool that must be used with care.** The Law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. Before *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.) introduced a general duty of care to one's neighbour premised on foreseeability, few would have predicted that, absent a contractual relationship, a bottling company could be held liable for physical injury and emotional trauma resulting from a snail in a bottle of

> ginger beer. Before *Hedly Byrne & Co. v. Heller & Partners*, Ltd., [1963] 2 All E.R. 575 (H.L.), a tort action for negligent misstatement would have been regarded as incapable of success. The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions, like that one at issue in *Donoghue v. Stevenson.* therefore, on a Motion to Strike, it is not determinative that the law has not yet recognized the particular claim. **The Court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.**
>
> - ***R. v. Imperial Tobacco Canada Ltd., supra at para 21.***

(b) The Hospitals, by their own admissions and position, were implementing "Directive #6", as a perceived mandatory measure, and are therefore acting as agents of the state and are reviewable and caught under the **Charter** for their conduct;

-AB, Tab 10, Compendium, Pages 15449-15618

(c) In any event, the state, through Directive #6, not only are in violation of the **Charter** by acts, but also, in failing to protect the Appellants from coercive, mandatory measures, violated the Appellants **Charter** rights by way of "omission" as set out by the Supreme Court of Canada in **Vriend**.

- **Vriend *v.* Alberta, [1998] 1 S.C.R. 493**

52. It is submitted that the Appellants' submissions, both oral and contained in their factum, on all these above issues, were not addressed.

G/ Doctors' Privileges should be a matter of Judicial Review in Divisional Court

53. It is submitted that the Court's conclusion that this action for damages cannot be brought because it has to be brought as judicial review

- AB, Decision of Justice Koehnen at Tab 3, pages 48-56 paras. 26-45

is clearly wrong in its misstatement of the clear jurisprudence as well as wrong in its not dealing with the binding jurisprudence on the issue.

54. In the ***Telezone*** line of cases, six (6) concurrent judgments from the Supreme Court of Canada, in the Federal context, and in the Provincial Superior Court context, the Supreme Court of Canada clearly ruled that whether or not judicial review could be, or was/ was not brought did not preclude an action for damages in either the Federal Court, or the Provincial Superior Courts.

- Canada (Attorney General) v. TeleZone Inc., 2010 SCC 62 (CanLII), [2010] 3 SCR 585
- Canada (Attorney General) v. McArthur, 2010 S.C.C. 63
- Parrish & Heimbecker Ltd. v. Canada (Agriculture and Agri-Food), 2010 S.C.C. 64
- Nu-Pharm Inc. v. Canada (Attorney General), 2010 S.C.C. 65
- Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada, 2010 S.C.C. 66
- Manuge v. Canada, 2010 S.C.C. 67
- Sivak et al. v. MCI, 2011 FC 402

55. It is further submitted, with respect to the distinction between judicial review and action for damages, the Saskatchewan Court of Appeal, citing the six (6) Supreme Court of Canada ***Telezone*** line of cases, had this to say:

> [73] This distinction, between actions that seek to invalidate the effect of a previous court or tribunal order and legal proceedings which seek damages allegedly suffered as a consequence of such an order, was developed in six companion decisions of the Supreme Court of Canada released in 2010. The most frequently cited case out of this series is *Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62, [2010] 3 SCR 585 [*TeleZone*].

[74] In *TeleZone*, the party of that name had initiated a claim for breach of contract, negligence, and unjust enrichment arising from the Minister of Industry Canada's decision not to issue the company a licence to provide telecommunications services. Industry Canada had indicated to TeleZone that six licences would be issued to applicants, but then ultimately only issued four, not including TeleZone. The defendants' position was that TeleZone's action was improper because it had not challenged Industry Canada's decision through judicial review. Justice Binnie described the principle underlying the question confronting the Court in the following terms:

> [18] This appeal is fundamentally about access to justice. People who claim to be injured by government action should have whatever redress the legal system permits through procedures that minimize unnecessary cost and complexity. The Court's approach should be practical and pragmatic with that objective in mind.
>
> (Emphasis added)

[75] He then set the line which divides those cases where a claim for damages can proceed and those cases where a litigant must pursue a matter in an alternative forum by reference to the litigant's objective or purpose for initiating the impugned proceeding:

> [19] If a claimant seeks to set aside the order of a federal decision maker, it will have to proceed by judicial review, as [*Canada v Grenier*, 2003 FCA 348, 262 DLR (4th) 337] held. However, if the claimant is content to let the order stand and instead seeks compensation for alleged losses (as here), there is no principled reason why it should be forced to detour to the Federal Court for the extra step of a judicial review application (itself sometimes a costly undertaking) when that is not the relief it seeks. Access to justice requires that the claimant be permitted to pursue its chosen remedy directly and, to the greatest extent possible, without procedural detours.
>
> (Emphasis added)

[76] On the facts, the Supreme Court held that TeleZone was seeking to recover damages from the Minister of Industry Canada's alleged tortious actions and contractual violations, and not to overturn the administrative decision not to issue it a licence. Accordingly, the Supreme Court allowed its claim to proceed in the Ontario Superior Court. In reaching this conclusion, Binnie J. offered the following additional guidance:

> [76] Where a plaintiff's pleading alleges the elements of a private cause of action, I think the provincial superior court should not in general decline jurisdiction on the basis that the claim looks like a case that

> should be pursued on judicial review. If the plaintiff has a valid cause of action for damages, he or she is normally entitled to pursue it.
>
> ***- Solgi v College of Physicians and Surgeons of Saskatchewan, 2022 SKCA 96 (CanLII)***
> ***- Canada (Attorney General) v. TeleZone Inc., 2010 SCC 62 (CanLII), [2010] 3 SCR 585***

56. While the Superior Court obliquely rules and errs on this issue,

- AB, Tab 3, Decision of Justice Koehnen pages 48-56 paras. 26-45

The Court further fails to squarely address the submissions of Appellants' counsel before the Court, both orally and in the factum.

-AB, Tab 13, Responding Factum, pages 15795 – 15797, paras. 31-33

57. It is further submitted that this approach by the Court, to so recharacterize this action, from what it is, runs afoul of the clear admonition of the Federal Court of Appeal in not taking the claim as pleaded, but rather nebulously and vaguely re-configuring it to suit the Respondents' ends on their motion, contrary to ***Arsenault***, wherein the Court ruled:

> **10** In my view, for the purposes of Rule 221(1) of the *Federal Courts Rules,* SOR/98-10, the **moving party must take the opposing party's pleadings as they find them, and cannot resort to reading into a claim something which is not there**. The Crown cannot, by its construction of the respondents' claim, make it say something which it does not say.
>
> ***- Canada v. Arsenault*** 2009 FCA 242, @ paragraph 10

- **Costs**

58. For the reasons submitted by the Appellants before the Superior Court,[11] the Appellants' respectfully submit that the award of cost was unwarranted and, in any event, the quantum was excessive in that:

(a) The jurisdictional issue of unionized versus non-unionized did not warrant the avalanche of non-relevant motion material nor number of lawyers assigned by the Respondents; and

(b) With respect the non-unionized Appellants, the result was divided.

PART IV - ORDER REQUESTED

59. The Appellants respectfully request that:

(a) That the decision of the Superior Court dated December 18th, 2024, be set aside;

(b) That the matter be allowed to proceed to trial in accordance with the ***Rules:***

(c) Costs of the motion and the within appeal to the Appellants, and, in accordance with ***Native Women's Assn. of Canada vs. Canada [1994] 3 SCR 627***, such further and other relief as this Honourable Court deems just.

All of which is respectfully submitted

Dated this 25th day of February 2025.

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[11] **AB, at Tab 20, Cost Submissions, pages 15910 – 15917, para. 1-25**

CERTIFICATE

I, Rocco Galati. lawyer for the Appellants hereby certify that:

(i) An order under Rule 61.09(2) is NOT required; and

(ii) The Appellant's oral argument, not including Reply, will take three (3) hours

(iii) The Appellants factum complies with subrule (3)

(iv) The number of words contained in Parts I to V is 9162.

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SCHEDULE A – AUTHORITIES TO BE CITED

1. *A.G. Canada v. Inuit Tapirasat of Canada [1980] 2 S.C.R. 735;*
2. *Nelles v. Ontario [1989] 2 S.C.R. 170 ;*
3. *Operation Dismantle v. The Queen, 1985 CanLII 74 (SCC), [1985] 1 SCR441;*
4. *Hunt v. Carey Canada Inc [1990] 2 S.C.R. 959; ;*
5. *Dumont v. A.G. Canada [1990] 1 S.C.R. 279;*
6. *Trendsetter Ltd. v. Ottawa Financial Corp. (1989)32 O.A.C. 327 (C.A.);*
7. *Nash v. Ontario (1995) 27 O.R. (3d) 1 (Ont. C. A.).*
8. *Canada v. Arsenault 2009 FCA 242;*
9. *B.C. v. Imperial Tobacco Canada Ltd., [2005] 2 S.C.R. 473*
10. *R. v. Imperial Tobacco Canada Ltd., 2011 SCC 42 (CanLII), [2011] 3 SCR 45*
11. *Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929*
12. *R. v. Find, 2001 SCC 32 (CanLII), [2001] 1 SCR 863*
13. *Hanson v. Bank of Nova Scotia (1994) 19 O.R .(3d) 142 (C.A.);*
14. *Adams-Smith v. Christian Horizons (1997)14 C.P.C.(4th)78 (Ont. Gen. Div.);*
15. *Miller (Litigation Guardian of) v. Wiwchairyk (1997) 34 O.R. (3d) 640 (Ont.Gen.Div)*
16. *R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd. (1991) 5 O.R. (3d) 778 (C.A.)*
17. *Dalex Co. v. Schawartz Levitsky Feldman (1994) 19 O.R. (3d) 463 (Gen. Div)*
18. *Grant v. Cormier – Grant, et. al (2001) 56 O.R. (3d) 215 (Ont. C.A.),*
19. *TD Bank v. Delloitte Hoskins & Sells (1991) 5 O.R. (3d) 417 (Gen. Div.)*
20. *Dunsmuir v. New Brunswick, 2008 SCC 9,*
21. *Canada v. Solosky, [1980] 1 S.C.R. 821*

22. ***Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14***

23. ***Thorson v. AG of Canada [1975] 1 SCR 138, @ p. 15***

24. ***Roman Catholic Diocese of Brooklyn, New York V. Andrew M. Cuomo, Governor Of New York U.S. 592 (2020)***

25. ***Jacob Puliyel vs Union Of India on 2 May, 2022***

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

27. ***Carter v. Canada (Attorney General), 2015 SCC 5 (CanLII), at para 67***

28. ***Sgt Julie Evans et al. v. AG Ontario et al.***

29. ***M.A. v. De Villa, 2021 ONSC 3828***

30. ***J.N. v. C.G., 2022 ONSC 1198***

31. ***R v Church in the Vine and Fortin, 2022 ABKB 704 (CanLII)***

32. ***Let them Choose et al. v. San Diego Unified School District (2022)***

33. ***Teamsters Local Union No. 31 v Purolator Canada Inc., 2023 CanLII 120937 (CA LA)***

34. ***R. v. Fernando, 2024 ONCJ 336 (CanLII)***

35. ***Canadian Constitution Foundation v. Canada (Attorney General), 2024 FC 38***

36. ***Benton V. Bluecross Blueshield Of Tennessee, Inc. 1:22-Cv-118***

37. ***Loper Bright Enterprises Et Al. V. Raimondo, Secretary Of Commerce, Et Al. [June 28, 2024]***

38. ***National Federation Of Independent Business, Et Al., Applicants 595 U.S. [Jan. 13, 2022]***

39. **Godbout *v.* Longueuil (City), [1997] 3 S.C.R. 844**

40. **Vriend *v.* Alberta, [1998] 1 S.C.R. 493**

41. ***Northern Regional Health Authority v. Horrocks, 2021 SCC 42 (CanLII)***

42. ***Muirhead v. York Regional Police Services Board, 2014 ONSC 6817***

43. ***McIlvenna v. 1887401 Ontario Ltd., 2015 ONCA 830 (CanLII)***

44. ***Canada (Attorney General) v. TeleZone Inc., 2010 SCC 62 (CanLII), [2010] 3 SCR 585***

45. ***Canada (Attorney General) v. McArthur, 2010 S.C.C. 63***

46. ***Parrish & Heimbecker Ltd. v. Canada (Agriculture and Agri-Food), 2010 S.C.C. 64***

47. ***Nu-Pharm Inc. v. Canada (Attorney General), 2010 S.C.C. 65***

48. ***Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada, 2010 S.C.C. 66***

49. ***Manuge v. Canada, 2010 S.C.C. 67***

50. ***Sivak v. Canada (Citizenship and Immigration), 2011 FC 402 (CanLII)***

51. **Purolator Canada Inc. v Canada Council of Teamsters, 2025 BCSC 148 (CanLII)**

52. **Responsible Plastic Use Coalition v. Canada (Environment and Climate Change), 2023 FC 1511 (CanLII)**

53. **BC College Physicians and Surgeons v. Dr. Hoffe, 2025**

54. ***Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39.***

55. **USA v. Johnson (2002), 62 O.R. (3d) 327**

56. **USA v. Taylor, 2003 BCCA 250**

57. **Thalang v. MCI, [2007] FCJ no. 1002**

58. ***Solgi v College of Physicians and Surgeons of Saskatchewan, 2022 SKCA 96 (CanLII)***

59. ***Native Women's Assn. of Canada vs. Canada [1994] 3 SCR 627***

SCHEDULE B RELEVANT LEGISLATION PROVISIONS

COVID-19 Directive #6 for Public Hospitals within the meaning of the *Public Hospitals Act,* Service Providers in accordance with the *Home Care and Community Services Act, 1994*, Local Health Integration Networks within the meaning of the *Local Health System Integration Act, 2006*, and Ambulance Services within the meaning of the *Ambulance Act, R.S.O. 1990, c. A.19*.

Issued under Section 77.7 of the Health Protection and Promotion Act (HPPA), R.S.O. 1990, c. H.7

WHEREAS under section 77.7(1) of the HPPA, if the Chief Medical Officer of Health (CMOH) is of the opinion that there exists or there may exist an immediate risk to the health of persons anywhere in Ontario, he or she may issue a directive to any health care provider or health care entity respecting precautions and procedures to be followed to protect the health of persons anywhere in Ontario;

AND WHEREAS, many health care workers (HCW) in higher risk settings remain unvaccinated, posing risks to patients and health care system capacity due to the potential (re) introduction of COVID-19 in those settings, placing both HCW and patients at risk due to COVID-19 infection;

AND HAVING REGARD TO the prevalence of the Delta variant of concern globally and within Ontario, which has increased transmissibility and disease severity than previous COVID-19 virus strains, in addition to the declaration by the World Health Organization (WHO) on March 11, 2020 that COVID-19 is a pandemic virus and the spread of COVID-19 in Ontario

AND HAVING REGARD TO the immediate risk to patients within hospitals and home and community care settings who are more vulnerable and medically complex than the general population, and therefore more susceptible to infection and severe outcomes from COVID-19

I AM THEREFORE OF THE OPINION that there exists or may exist an immediate risk to the health of persons anywhere in Ontario from COVID-19;

AND DIRECT pursuant to the provisions of section 77.7 of the HPPA that:

Directive #6 for Public Hospitals within the meaning of the *Public Hospitals Act,* Service Providers within the meaning of *the Home Care and Community Services Act, 1994,* Local Health Integration Networks within the meaning of the *Local Health System Integration Act, 2006*, and Ambulance Services within the meaning of the *Ambulance Act, R.S.O. 1990 c. A19*.

Date of Issuance: August 17, 2021

Effective Date of Implementation: September 7, 2021

Issued To: Public hospitals within the meaning of the *Public Hospitals Act,* service providers within the meaning of the *Home and Community Care Act, 1994* with respect to their provision of community services to which that Act applies, Local Health Integration Networks within the meaning of the *Local Health System Integration Act, 2006* operating as Home and Community Care Support Services with respect to the provision of community services and long-term care home placement services, and Ambulance Services within the meaning of the *Ambulance Act*, with respect to paramedics (collectively the "**Covered Organizations**").

Required Precautions and Procedures

1. Every Covered Organization must establish, implement and ensure compliance with a COVID-19 vaccination policy requiring its employees, staff, contractors, volunteers and students to provide:

    a) proof of full vaccination[12]against COVID-19; or

    b) written proof of a medical reason, provided by a physician or registered nurse in the extended class that sets out: (i) a documented medical reason for not being fully vaccinated against COVID-19, and (ii) the effective time-period for the medical reason; or

    c) proof of completing an educational session approved by the Covered Organization about the benefits of COVID-19 vaccination prior to declining vaccination for any reason other than a medical reason. The approved

[5] [1] For the purposes of this document, "fully vaccinated" means having received the full series of a COVID- 19 vaccine or combination of COVID-19 vaccines approved by WHO (e.g., two doses of a two-dose vaccine series, or one dose of a single-dose vaccine series); and having received the final dose of the COVID-19 vaccine at least 14 days ago.

session must, at minimum address:

i. how COVID-19 vaccines work;

ii. vaccine safety related to the development of the COVID-19 vaccines;

iii. the benefits of vaccination against COVID-19;

iv. risks of not being vaccinated against COVID-19; and

v. possible side effects of COVID-19 vaccination.

2. Despite paragraph 1, a Covered Organization may decide to remove the option set out in paragraph 1(c) and require all employees, staff, contractors, volunteers and students to either provide the proof required in paragraph 1 (a) or (b).

3. Where a Covered Organization decides to remove the option set out in paragraph 1(c) as contemplated in paragraph 2, the Covered Organization shall make available to employees, staff, contractors, volunteers and students an educational session that satisfies the requirements of paragraph 1(c).

4. Every Covered Organization's vaccination policy shall require that where an employee, staff, contractor volunteer, or student does not provide proof of being fully vaccinated against COVID-19 in accordance with paragraph 1(a), but instead relies upon the medical reason described at paragraph 1(b) or the educational session at 1(c) or if applicable, the employee, staff, contractor volunteer or student shall

a) submit to regular antigen point of care testing for COVID-19 and demonstrate a negative result, at intervals to be determined by the Covered Organization, which must be at minimum once every seven days.

b) provide verification of the negative test result in a manner determined by the Covered Organization that enables the Covered Organization to confirm the result at its discretion.

5. Where the Covered Organization is a public hospital, the Covered Organization's vaccination policy applies to any businesses or entities operating on the hospital site.

6. Every Covered Organization must collect, maintain and disclose, statistical (non-identifiable) information as follows:

a) Documentation that includes (collectively, "the statistical information"):

i. the number of employees, staff, contractors, volunteers and students that provided proof of being fully vaccinated against COVID-19;

ii. the number of employees, staff, contractors, volunteers and students that provided a documented medical reason for not being fully vaccinated against COVID-19; and

iii. the number of employees, staff, contractors, volunteers and students that completed an educational session about the benefits of COVID-19 vaccination in accordance with 1(c), where applicable.

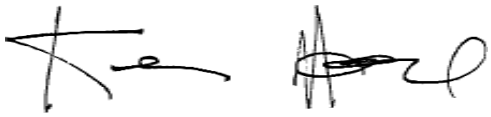
iv. the total number of the Covered Organization's employees, staff, contractors, volunteers and students to whom this Directive applies.

b) Upon request of OCMOH, disclose the statistical information to the Ministry of Health in the manner and within the timelines specified in the request. The ministry may seek additional detail within the requested statistical information outlined above which will also be specified in the request. The Ministry of Health may further disclose this statistical information and may make it publicly available.

Questions

Covered Organizations may contact the ministry's Health Care Provider Hotline at 1- 866-212-2272 or by email at emergencymanagement.moh@ontario.ca with questions or concerns about this Directive.

Covered Organizations are also required to comply with applicable provisions of the Occupational Health and Safety Act and its Regulations.



Kieran Moore, MD
Chief Medical Officer of Health

Constitution Act, 1982, ss. 2, 7, 15, 24, 52.

Fundamental freedoms

2 Everyone has the following fundamental freedoms:

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

Life, liberty and security of person

7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Equality before and under law and equal protection and benefit of law

- **15 (1)** Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

- **Affirmative action programs**

  (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.[(85)]

Enforcement of guaranteed rights and freedoms

- **24 (1)** Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

- **Exclusion of evidence bringing administration of justice into disrepute**

  (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

Primacy of Constitution of Canada

- **52 (1)** The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

- **Constitution of Canada**

  (2) The Constitution of Canada includes

  - **(a)** the *Canada Act 1982*, including this Act;
  - **(b)** the Acts and orders referred to in the schedule; and
  - **(c)** any amendment to any Act or order referred to in paragraph (a) or (b).

- **Amendments to Constitution of Canada**

  (3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

Court File: COA-25-CV-0051

Hirani et al.

Appellants

Respondents
HMTK et al.

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

APPELLANTS' FACTUM

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