

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

Michelet Dorceus, 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, Chelsea D'Almeida, (**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, Amy Simpson, Erica Sower's-Rumble, Rebecca Verscheure, Tina Waring, (**Chatham Kent Health Alliance Workers**)

-and-

Mike Belawetz, Jonathon Croley, Mona Hansen, Ryan Kreeft, Brittany Raymond, (~~City of Windsor Workers (EMS)~~) (**The Corporation of the County of Essex**)

-and-

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

-and-

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

-and-

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

-and-

Denise Allan, Hafiza Ally, Csilla Ankucz, Brian Beatty, Amy Campbell, Bojan
Gagic, Michael Goddard, Jacquie Haugen, Janet Izumi, Danielle Little, Alaa
Maloudi, Martin Mueller, Jody Myers, Diane Radisic, Angela Robinson, Wanda
Ropp, Sarah Roussy, Sherry Roussy, Sarah Samuel, Tatjana Suserski, Erika Toth,
(**Grand River Hospital Workers**)

-and-

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

-and-

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

-and-

Svitlana Alyonkina, Lisa Augustina, ~~Angelika Biljan~~, Gary Blake, Laura Bosch,
Darla Brocklebank, Ilija Bukorovic, Ryan Cino, Alma Cootauco, Susan Davis, Erica
Demers, Natalie Djurdjevic, Colleen Gair, Katharine Gamble, Loredana Gheorghe,
Mario Gheorghe, Sonja Jankovic, Cheryl Jordan, RosaMaria Jorey, Catherine King,
Ashley Loeffen, Denis Madjar, Merima Mahmutovic, Shirley Morin, Calvin
Murphy, Kristine Osenenko, Katarina Pavlovic, Andrea Power, Naomi Quiring,
Brent Scarisbrick, Jocelyn Scholtens, Sharon Schuur, Rob Shortill, Liza Sibbald,
Paola Sivazlian, Bethany Stroh-Gingrich, Lori Swan, Rachel Thibault, Susan
Torenvliet, Tiffany-Anne Toulouse-Sauve, Brooke Vandewater, Taylor Vanyo,
Benjamin Wencel, Justine Wieczorek, 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), Trisha Stansfield (Erie St.Clair), Patricia Weaver (Mississauga Halton), (**Home and Community Care Support Services Workers**)

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Jennifer Backle, Cheryl Baldwin, Tony Best, Sonia Carneiro, Melissa DeMelo, Susan Iori, Camille Mascowe, Antonietta Mongillo Debbie Oliveira, Kristine Sandoval, Felicia Ing-Tyng Tseng, Melanie Wegera, Nicole Welsh, (**Hospital for Sick Children Workers**)

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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, Breanne Poole, Danielle Qawwas, Jonathan Sandor, Michelynne Tremblay, Kattie Westfall, (**Hotel Dieu Grace Healthcare Workers**)

-and-

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

-and-

Glenda Mendoza, (~~**Huron Lodge & Schlegel Villages Worker (Aspen Lake)**~~) (**The Corporation of the City of Windsor**)

-and-

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

-and-

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

-and-

Andrew Adamyk, Andrej Bosnjak, Laurie Bowman, Olga Collins, Tonia Coyle, Mary Eastman, Chiara Marie Elliot, Cathy Lindsay, Jessica Lindsay, Stephanie Liokossis, Heather MacNally, Maria Dorothy Moore, Georgia Murphy, Anita Murray, Mark Read, Katherine Robichaud, Nancy Sawlor, Christopher Squires, Lisa Starogianie, Allison Walsh, Lisa Wolfs (**London Health Sciences Centre Workers**)

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-and-

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

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Wendy Baerg, Rachel Blake, Paula Burke, Brianna Grantham, Norma Smith, Andrew Wilgress, (**Orillia Soldiers Memorial Hospital Workers**)

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-and-

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Gabriela Borovicainin, Kristen Garcia, Madison Kristensen-Piens, Robin Millen, Cheryl Payne, Michelle Piens, (~~Riverview Gardens Long Term Care Chatham-Kent Workers~~) (The Corporation of the Municipality of Chatham-Kent)

-and-

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-and-

Merilyn Gibson, Marcela Kollarova, ~~Bozena Lassak~~, Gabriela Lassak, ~~Gracjana Lassak~~, Justyna Lassak, Paulina Lassak, Crystal Luchkiw, Sasha McArthur, Nadia Mousseau, Jenny Ramsay, (Royal Victoria Regional Health Centre Workers)

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Cecile Butt, Darlene Crang, Jocelyn Ford, Melissa Idenouye, Lisa Marie Mountney, Jennifer Rands-Grimaldi, Judith Schoutsen, Holly Tucker, (~~Saint Elizabeth Home Health Care Workers~~) (Saint Elizabeth Health Care)

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

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Sean Filbey, Musette Hoepfner, Glenda Mendoza, Janet Neuts, Cindy Sorenson, Cassandra Vaseleniuck Dunbar, (Schlegel Villages Workers)

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-and-

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(~~**WFCC Niagara Health System**~~)

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Pietrzykowski, Crystal Simm, Malgorzata Skrzypek-Aviles, Crestina Tolfo, Irene
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PLAINTIFFS (Respondents to motion)

-and-

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**FACTUM OF THE MOVING PARTIES
(GOVERNMENT DEFENDANTS)**

June 14, 2024

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PART I – OVERVIEW

1. This is a motion to strike the Amended Statement of Claim (the “Pleading”) against the defendants His Majesty the King in Right of Ontario (“HMKRO”), Ontario Premier Doug Ford, Former Minister of Health Christine Elliot, Current Minister of Health Sylvia Jones, and Minister of Long-Term Care Paul Calandra (collectively, the “Ontario Defendants”).
2. The convoluted Pleading alleges that various provincial public health measures adopted in response to the COVID-19 pandemic violate the *Canadian Charter of Rights and Freedoms* (“*Charter*”), unwritten constitutional principles, various torts, international laws and treaties, other legislation, and “pre-*Charter* rights.” The claim contains numerous conspiracy theories and speculative and patently false allegations, including that Ontario created a fake pandemic, conducted medical experiments, and enacted martial law. The plaintiffs, who allegedly faced employment consequences for non-compliance with their hospital employers’ proof of vaccination policies, seek damages and declarations that the impugned measures are unconstitutional.
3. All of the plaintiffs’ allegations against the Ontario Defendants should be struck from the Pleading. These allegations are moot because the impugned measures are no longer in force. The Plaintiffs also fail to plead material facts capable of establishing any liability in tort or that their rights under the *Charter* have been infringed.
4. The plaintiffs’ action is also scandalous and vexatious. The lengthy Pleading consists largely of argument and conclusions of law and lacks the necessary clarity to enable the defendants to properly respond.
5. The Ontario Defendants, together with the other hospital defendants, therefore request that the Pleading be struck without leave to amend.

PART II – SUMMARY OF FACTS

A. COVID-19 Public Health Measures

6. On March 11, 2020, the World Health Organization declared the COVID-19 outbreak a pandemic. On March 17, 2020, Ontario declared an emergency pursuant to the provisions of section 7.0.1 of the *Emergency Management and Civil Protection Act* (“EMCPA”). During this declared emergency, Ontario introduced various public health measures to stop the spread of COVID-19 and protect the province’s hospital capacity, none of which are still in effect.¹ These included, for example, the temporary requirement to show proof of vaccination against COVID-19 to attend specified establishments like indoor bars, restaurants and gyms,² social gathering restrictions,³ and various Directives to employers, including hospitals and other health agencies.

7. Ontario’s Chief Medical Health Officer (“CMOH”) issued Directive #6 pursuant to s. 77.7 of the *Health Protection and Promotion Act* c. H.7 (“HPPA”) on August 17, 2021.⁴ The Directive applied to 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* (collectively, the “Covered Organizations”).

¹ See e.g., O Regs [74/20](#), [76/20](#), [77/20](#), [95/20](#), [114/20](#), [116/20](#), [118/20](#), [121/20](#), [141/20](#), [145/20](#), [154/20](#), [195/20](#), [345/20](#), [363/20](#), [364/20](#), [458/20](#), as revoked by O Reg [346/22](#): *Revoking Various Regulation*; O Reg [264/21](#): *Declaration of Emergency*, as revoked by O Reg [454/21](#): *Revoking Various Regulations*; O Reg [82/20](#), [240/20](#), [263/20](#) as revoked by O Reg [168/22](#).

² O Reg [364/20](#).

³ O Reg [82/20](#).

⁴ Directive #6 issued under the *Health Protection and Promotion Act*, RSO 1990, c H.7, [s. 77.7](#); Hospitals’ Motion Record [Hospitals’ MR], Part 1, Tab 2, Schedule A, Ex. 2, pp. 305-325.

8. Pursuant to Directive #6, Covered Organizations were required to establish, implement, and ensure compliance with a COVID-19 proof of vaccination policy by September 7, 2021.

This policy required employees, staff, contractors, volunteers, and students to provide either:

- (a) proof of full vaccination against COVID-19 as defined by the Directive #6, or
- (b) written proof of a medical reason in accordance with Directive #6's specifications 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.

9. However, the Directive did not prescribe any consequence should a particular employee fail to provide proof of vaccination, written proof of a medical reason for remaining unvaccinated, or proof of completion of an educational session. Instead, it was up to Covered Organizations to whom the Directive applied to determine the applicable employment consequences and to administer the policies in accordance with the *Human Rights Code* and other statutory requirements.

10. Ontario's CMOH revoked Directive #6 on March 14, 2022, in response to positive trends in key public health and health system indicators. After March 14, 2022, it was open to Covered Organizations to retain or discontinue their proof of vaccination policies at their sole discretion. Of note, the employment consequences allegedly incurred by some of the plaintiffs occurred after Directive #6 was revoked.⁵

B. The Amended Statement of Claim

11. On June 13, 2022, the plaintiffs commenced this action against the Ontario Defendants as well as their hospital/health agency employers (the "Other Defendants"). On July 14, 2023, the

⁵ See e.g., Hospitals' MR, Part 1, Tab 2, Schedule A, Ex. 4-5, 27-29, pp. 362-363, 416-418.

plaintiffs served an Amended Statement of Claim, with no substantial amendments, that is the subject of this motion.

12. The plaintiffs plead that they are all current or former healthcare workers of the Other Defendants. The Plaintiffs allegedly incurred employment consequences as a result of non-compliance with policies established by their employers in response to the COVID-19 pandemic.

13. The plaintiffs seek various declarations against the Ontario Defendants, including, but not limited to:

- a declaration that vaccines and testing constitute a crime against humanity under international treaty law;⁶
- a declaration that promoting and executing PCR testing is a criminal act;⁷
- a declaration that introducing “vaccine passports” violates *Charter* ss. 6, 7 and 9 and “the pre-*Charter* recognized rights on ‘the liberty of the subject’ remedied by way of *habeas corpus*;⁸
- a declaration that by enforcing and delegating the enforcement of “covid-measures” HMKRO servants, officials and agents committed the criminal offences of knowingly disobeying a statute and counselling and aiding and abetting a criminal offence contrary to s. 126 of the *Criminal Code*;⁹
- a declaration that the creation and requirement of a vaccine passport to access services and maintain chosen vocations violates the pre-*Charter* right to enter and leave Canada, *Charter* ss. 6 and 7, and international treaty law;¹⁰
- a declaration that Directive #6 violates ss. 2, 7, and 15 of the Charter, the pre-*Charter* rights to freedom of conscience and religion, international treaty norms, is outside provincial jurisdiction and is unconstitutional and of no force and effect;¹¹ and
- a declaration that the “lock-downs” and “stay-at-home orders” are “Martial law” outside provincial jurisdiction.¹²

⁶ Ontario’s Motion Record [Ontario’s MR], Tab 2, p. 44.

⁷ Ontario’s MR, Tab 2, p. 44.

⁸ Ontario’s MR, Tab 2, p. 44.

⁹ Ontario’s MR, Tab 2, pp. 44-45.

¹⁰ Ontario’s MR, Tab 2, p. 45.

¹¹ Ontario’s MR, Tab 2, pp. 40-41.

¹² Ontario’s MR, Tab 2, p. 43.

14. The Pleading is replete with other vexatious and scandalous allegations and conspiratorial statements unsupported by fact, including, for example:

- that the COVID-19 vaccines are not “vaccines” but are rather “medical experimentation”,¹³
- that the Ontario defendants engaged in the tort of conspiracy through the declaration of a false pandemic to undermine the plaintiffs’ constitutional, statutory, and common law rights;¹⁴
- that the “COVID Measures” have caused, to a factor of a minimum of five-to-one, more deaths than COVID-19 has caused;¹⁵
- that PCR tests produce a 96.5 “false positive” test rate;¹⁶
- that the Ontario defendants knowingly engaged in misfeasance in public office in establishing vaccination-related measures;¹⁷
- that “vaccine passports” were a furtherance of an irrational, coercive “vaccinate political agenda” knowingly geared at the violation of rights;¹⁸

15. The Pleading also seeks injunctive relief against “vaccine mandates” and “passports”, as well as damages under s. 24(1) of the *Charter* for alleged *Charter* breaches and torts, including intimidation, conspiracy, misfeasance in public office, and intentional infliction of mental distress.¹⁹

16. This proceeding was presumptively stayed due to the application of s. 17(2) of the *Crown Liability and Proceedings Act* (“CLPA”).²⁰ By letter to the plaintiffs dated April 30, 2024, Ontario waived the application of s. 17(2) of the CLPA so that this matter could move forward expeditiously.

¹³ Ontario’s MR, Tab 2, p. 55.

¹⁴ Ontario’s MR, Tab 2, p. 60.

¹⁵ Ontario’s MR, Tab 2, p. 53.

¹⁶ Ontario’s MR, Tab 2, p. 54.

¹⁷ Ontario’s MR, Tab 2, pp. 57-58.

¹⁸ Ontario’s MR, Tab 2, p. 65.

¹⁹ Ontario’s MR, Tab 2, pp. 47-48.

²⁰ *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sched. 17, [s. 17\(2\)](#).

PART III – LAW AND ARGUMENT

A. The Pleading discloses no reasonable cause of action against the Ontario Defendants (Rule 21.01(1)(b))

1. Test under Rule 21.01(1)(b)

17. Under Rule 21.01(1)(b), a pleading may be struck on the ground that it fails to disclose a reasonable cause of action.²¹ The test on a motion to strike is whether it is plain and obvious that the proceeding has no reasonable prospect of success.²² Further, Rule 25.06(1) requires a minimum level of material fact disclosure. If this level is not reached, “the remedy is not a motion for “particulars”, but rather, a motion to strike out the pleadings as irregular.”²³

18. Evidence is not admissible on a motion to strike²⁴ and the plaintiffs’ facts alleged in the Pleading are taken to be true for the purposes of this motion. However, this does not extend to assumptions and speculations, bald conclusory statements of fact unsupported by material facts, or facts that are manifestly incapable of being proven.²⁵

19. While the test for a motion to strike is stringent, there is value to resolving matters through preliminary motions that can be fairly decided without a full hearing. Early resolution of disputes promotes proportionate, timely, and cost-effective justice. Neither the parties nor the Court are served when an action that is without merit, especially one such as this with hundreds

²¹ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, [r. 21.01\(1\)\(b\)](#).

²² *R. v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at [para 17](#).

²³ *Copland v Commodore Business Machines Ltd.*, [1985 CanLII 2190 \(ON SC\)](#); see also *Derenzis v Johnson*, 2021 ONSC 5136 at [para 68](#).

²⁴ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, [r. 21.01\(2\)\(b\)](#); see also *Dafesh v Amormino*, 2017 ONSC 1748 at [para 31](#); *Smith v Her Majesty the Queen in right of Ontario et al.*, 2016 ONSC 7222 at [para 48](#).

²⁵ *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at [para 22](#); *Trillium Power Wind Corporation v. Ontario (Natural Resources)*, 2013 ONCA 683 at [paras 30-31](#); *Miguna v Toronto Police Services Board*, 2008 ONCA 799 at [para 20](#); *Operation Dismantle v The Queen*, [1985] 1 SCR. 441 at [455](#); *Amrane v Abraham*, 2020 ONSC 6718 at [para 10](#).

of individual plaintiffs and more than a dozen independent causes of action, is allowed to proceed down the path of expensive and futile litigation.

2. No Reasonable Cause of Action

20. The plaintiffs' claims against the Ontario Defendants have no reasonable prospect of success.

21. The allegations against the Ontario Defendants generally fall into four categories. First, the plaintiffs allege that various "covid measures", including "vaccine passports" and Directive #6, violate various *Charter* rights and unwritten constitutional principles. Second, the plaintiffs allege that that the provincial declaration of emergency did not meet the criteria established in s. 7.0.1(3) of the EMCPA, contravened ss. 7.0.2(1) and (3) of that Act, and was *ultra vires*. Third, the plaintiffs allege that the Ontario Defendants committed various torts in enacting and enforcing "covid measures". Fourth, the plaintiffs advance several unintelligible miscellaneous claims in relation to various legislation and international laws and treaties.

22. As set out below, the facts pleaded do not establish that any of these claims have a reasonable chance of success. Many of the claims are moot, and there are no facts pleaded to support that the plaintiffs' *Charter* rights were infringed or that the elements of any tort are made out. The plaintiffs also fail to plead any tenable legal challenge to the validity of any Ontario legislation, measure, or declaration. These claims should be struck as having no prospect of success without leave to amend.

i. No *Charter* Breaches

23. The plaintiffs' claims that "covid measures", including "vaccine passports" and Directive #6, violated their *Charter* rights under ss. 2(a), 6, 7, 9 and 15 have no reasonable chance of

success. These claims are moot and, in any event, the plaintiffs plead no material facts to demonstrate a breach of any *Charter* right.

24. The allegations that various public health COVID-19 measures violated the Plaintiff's rights and should be declared of no force and effect are moot because no COVID-19 measures are currently in effect. The repeal or expiry of the impugned measures, which is a "classic example of mootness",²⁶ has eliminated the live controversy between the plaintiffs and the Ontario Defendants.²⁷ The "tangible and concrete dispute" between the parties has disappeared and the constitutional questions raised by the claim have become academic.²⁸ In *Harjee v Ontario*,²⁹ the Court of Appeal dismissed a challenge to COVID-19 public health measures as moot, explaining that there was no "need for additional guidance on the legal principles applicable to consideration of *Charter* rights and government justification for limits on *Charter* rights in the context of public health responses to the COVID-19 pandemic."³⁰ The Court of Appeal dismissed the case despite the Appellants' claim for damages, finding that it did not cure the issue of mootness.³¹

25. In any event, even if a court were to exercise its discretion to hear these moot claims, it is plain and obvious that they are meritless and have no chance of success.

26. To date, Ontario has been entirely successful in defending *Charter* challenges to public health measures enacted in response to COVID-19, including measures impugned by the

²⁶ *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at [354](#) citing *Moir v The Corporation of the Village of Huntingdon*, [1891 CanLII 36 \(SCC\)](#); *Work Safe Twerk Safe v Ontario (Solicitor General)*, 2021 ONSC 6736 at [paras 5-6](#).

²⁷ *Work Safe Twerk Safe v Ontario (Solicitor General)*, 2021 ONSC 6736 at [paras 5-6](#).

²⁸ *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at [353](#); *Work Safe Twerk Safe v Ontario (Solicitor General)*, 2021 ONSC 6736 at [paras 5-6](#).

²⁹ *Harjee v Ontario*, [2023 ONCA 716](#).

³⁰ *Harjee v Ontario*, 2023 ONCA 716 at [para 6](#).

³¹ *Harjee v Ontario*, 2023 ONCA 716 at [para 3](#); *Work Safe Twerk Safe v Ontario (Solicitor General)*, [2021 ONSC 6736](#); *Bowen v City of Hamilton*, [2022 ONSC 5977](#); *Ben Naoum v Canada (Attorney General)*, [2022 FC 1463](#).

plaintiffs in this case. For example, the Pleading takes issue with proof of vaccination and masking measures implemented during the pandemic. This Court has dismissed numerous *Charter* challenges to these requirements, finding no breach of the *Charter* in any case. For example, in *Banas*, this Court dismissed a challenge to masking and proof of vaccination requirements under the *Reopening Ontario Act*,³² finding no violation of ss. 2, 7, 8, or 15 of the *Charter*. In *Harjee*, this Court dismissed a challenge to Ontario's proof of vaccination requirement, finding no violation of ss. 2(b), 7, or 15 of the *Charter*. In *Chowdhury*, this Court struck a challenge to that same requirement, finding no chance of success that it violated ss. 7, 8, or 15 of the *Charter*. In *Costa*, this Court similarly dismissed a challenge to Seneca College's COVID-19 proof of vaccination policy, finding no violation of ss. 2(a), 7, or 15 of the *Charter*.

27. The Court of Appeal has also weighed in on the constitutionality of Ontario's COVID-19 public health measures, finding in *Trinity Bible Chapel*³³ that Ontario's social gathering restrictions were constitutional and accepting that Ontario's response to an unprecedented public health emergency was owed deference.³⁴ In dismissing the appeal in *Harjee* as moot, the Court of Appeal also commented that:

courts across the country have provided guidance on the constitutionality of government public health measures in response to the pandemic – in each case finding that public health restrictions either did not breach *Charter* rights or were justified under s. 1 of the *Charter*".³⁵

³² *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, [S.O. 2020, c. 17](#).

³³ *Ontario (Attorney General) v Trinity Bible Chapel*, [2023 ONCA 134](#).

³⁴ *Ontario (Attorney General) v Trinity Bible Chapel*, 2023 ONCA 134 at [paras 102, 124-125](#).

³⁵ *Harjee v Ontario*, 2023 ONCA 716 at [para 6](#) (emphasis added).

28. The Court of Appeal specifically cited to cases upholding the constitutionality of proof of vaccination and masking requirements;³⁶ self-isolation requirements;³⁷ hospital visitation restrictions;³⁸ restrictions on religious and other in-person gatherings;³⁹ and restrictions on inter-provincial travel.⁴⁰

29. The binding precedents from this Court and the Court of Appeal, and the persuasive decisions from across the country, clearly demonstrate that the plaintiffs constitutional challenges have no chance of success.

30. The plaintiffs have not pleaded facts that would lead this Court to come to a different result on the constitutionality of COVID-19 public health measures. In fact, the plaintiffs do not plead any facts whatsoever to support a claim that their *Charter* rights were infringed. Where a person challenging a law's constitutionality fails to provide an adequate factual basis to decide the challenge, the challenge fails. *Charter* cases cannot be considered in a factual vacuum⁴¹ and “the absence of a factual base is not just a technicality that could be overlooked, but rather it is a flaw that is fatal...”⁴²

³⁶ *Costa, Love, Badowich and Mandekic v Seneca College of Applied Arts and Technology*, [2022 ONSC 5111](#); *Banas v HMTQ*, [2022 ONSC 999](#); *Maddock v British Columbia*, [2022 BCSC 1605](#) (appeal dismissed as moot, *Kassian v British Columbia*, [2023 BCCA 383](#)); *Chowdhury v HMTQ*, [2023 ONSC 7190](#); *Canadian Society for the Advancement of Science in Public Policy v British Columbia*, [2022 BCSC 1606](#); *Syndicat des métallos, section locale 2008 c. Procureur général du Canada*, [2022 QCCS 2455](#).

³⁷ *Canadian Constitution Foundation v Attorney General of Canada*, [2021 ONSC 4744](#); *Spencer v Canada (Health)*, [2021 FC 621](#) (appeal dismissed as moot, *Spencer v Canada (Attorney General)*, [2023 FCA 8](#)).

³⁸ *Sprague v Her Majesty the Queen in right of Ontario*, [2020 ONSC 2335](#).

³⁹ *Beaudoin v British Columbia*, [2021 BCSC 512](#) (appeal dismissed, *Beaudoin v British Columbia (Attorney General)*, [2022 BCCA 427](#)); *Grandel v Saskatchewan*, [2022 SKKB 209](#); *Gateway Bible Baptist Church et al. v Manitoba et al.*, [2021 MBQB 218](#) (appeal dismissed, *Gateway Bible Baptist Church et al v Manitoba et al*, [2023 MBCA 56](#)); *Ontario (Attorney General) v Trinity Bible Chapel*, [2023 ONCA 134](#).

⁴⁰ *Harjee v Ontario*, 2023 ONCA 716 at [para 6](#); *Taylor v Newfoundland and Labrador*, [2020 NLSC 125](#) (appeal dismissed as moot, *Taylor v Newfoundland and Labrador*, [2023 NLCA 22](#)).

⁴¹ *Ernst v Alberta Energy Regulator*, 2017 SCC 1 at [para 22](#).

⁴² *MacKay v Manitoba*, [1989] 2 SCR 357 at [361-62](#), [366](#); *Danson v Ontario (Attorney General)*, [1990] 2 SCR 1086 at [1100](#); *The Christian Medical and Dental Society of Canada v College of Physicians and Surgeons of Ontario*, 2018 ONSC 579 at [para 219](#); *Hamilton v Attorney General of Ontario*, 2018 ONSC 3307 at [para 24](#); *Affleck v The Attorney General of Ontario*, 2021 ONSC 1108 at [paras 62-69](#).

31. The plaintiffs do not plead any material facts to establish state interference with their ability to manifest or practice religious belief contrary to s. 2(a) of the *Charter*,⁴³ nor to establish that they were prevented from entering or leaving the country, or from moving to or taking up residence in another province contrary to s. 6 of the *Charter*.

32. The plaintiffs fail to plead facts establishing any breach of their rights under s. 7 of the *Charter*. Section 7 does not protect the right to practice a profession,⁴⁴ and while it does protect the right to make fundamental personal decisions like refusing medical treatment or making “reasonable medical choices” without threat of criminal prosecution,⁴⁵ the plaintiffs do not plead that they were required to undergo any form of medical procedure under threat of criminal prosecution. Rather, they remained at all times in control of their bodily integrity, free from state interference, as a result of their choice to remain unvaccinated.⁴⁶

33. The plaintiffs do not claim that they were arbitrarily detained or imprisoned by a state agent contrary to s. 9 of the *Charter* nor do they plead any material facts capable of establishing such an infringement.

34. The plaintiffs also do not plead any material facts to establish that they faced discrimination based on any protected ground under s. 15(1) of the *Charter*. The plaintiffs claim that they were discriminated against due to their “vaccination status”.⁴⁷ However, this is not an analogous ground to those enumerated under *Charter* s. 15(1), as confirmed by this Court in both

⁴³ *Harjee v Ontario*, 2022 ONSC 7033 at [paras 61-64](#).

⁴⁴ *Tanase v College of Dental Hygienists of Ontario*, 2021 ONCA 482 at [para 40](#); *Mussani v College of Physicians and Surgeons of Ontario*, 2004 CanLII 48653 (ON CA) at [para 43](#); *Christian Medical and Dental Society of Canada v College of Physicians and Surgeons of Ontario*, 2019 ONCA 393 at [para 187](#).

⁴⁵ *R v Smith*, 2015 SCC 34 at [para 18](#).

⁴⁶ *Harjee v Ontario*, 2022 ONSC 7033 at [para 70](#); Ontario’s MR, Tab 2, pp. 49-50; *Lewis v Alberta Health Services*, 2022 ABCA 359 at [para 56](#); *Canadian Society for the Advancement of Science in Public Policy v British Columbia*, 2022 BCSC 1606 at [para 141](#).

⁴⁷ Ontario’s MR, Tab 2, pp. 57-58.

Costa and *Chowdhury*, noting that such personal preferences and singular beliefs are not appropriate grounds for *Charter* protection.⁴⁸

35. While the plaintiffs also rely on purported unwritten constitutional principles (such as the rule of law, constitutionalism, and democracy) in addition to their *Charter* claims, such principles cannot be relied upon to invalidate legislation that does not otherwise violate the *Charter*.⁴⁹

36. All of these claims should be struck without leave to amend.

ii. No Tenable Challenge to Declaration of Emergency

37. It is plain and obvious that the provincial declaration of emergency met the criteria established in the EMCPA and was *intra vires*. The numerous courts that have upheld the constitutional validity of EMCPA and *Reopening Ontario Act* orders have not expressed any concern regarding the administrative law validity of those orders and the plaintiffs do not plead any material facts to establish otherwise.⁵⁰ Moreover, this question is a matter of statutory interpretation for which governments are owed a high degree of deference.⁵¹ In any event, the last provincial declaration of emergency was lifted over two years ago and this allegation is now moot. The court should not consider this question in the absence of a live controversy⁵² and this claim should be struck as having no reasonable chance of success.

⁴⁸ *Costa, Love, Badowich and Mandekic v. Seneca College of Applied Arts and Technology*, 2022 ONSC 5111 at [paras 91-95](#); *Chowdhury v HMTQ*, [2023 ONSC 7190](#); see also *Corbiere v Canada (Minister of Indian and Northern Affairs)*, 1999 CanLII 687 (SCC) at [para 60](#); *Lewis v Alberta Health Services*, 2022 ABCA 359 at [paras 66-69](#).

⁴⁹ *Toronto (City) v Ontario (Attorney General)*, 2021 SCC 34 at [paras 54-63](#); *Campisi v Ontario*, 2017 ONSC 2884 at [para 55](#); *British Columbia v Imperial Tobacco*, 2005 SCC 49 at [paras 59-60](#) and [66-67](#); see also *Norton McMullen Consulting Inc. v Boreham*, 2015 ONSC 5862 at [paras 90-91](#).

⁵⁰ *Ontario v Trinity Bible Chapel et al.*, [2022 ONSC 1344](#); *Harjee v Ontario*, [2022 ONSC 7033](#); *Banas v Ontario*, [2022 ONSC 999](#); *Chowdhury v HMTQ*, [2023 ONSC 7190](#).

⁵¹ *Katz Group Canada Inc. v Ontario (Health and Long-Term Care)*, 2013 SCC 64 at [para 26](#); *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at [para 109](#).

⁵² *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at [353](#); *Harjee v Ontario*, 2023 ONCA 716 at [para 7](#); *Work Safe Twerk Safe v Ontario (Solicitor General)*, 2021 ONSC 6736 at [paras 9-11](#).

iii. No Liability in Tort

38. It is plain and obvious that the plaintiffs' claims that the Ontario Defendants committed the torts of abuse of process,⁵³ malicious prosecution,⁵⁴ intimidation,⁵⁵ conspiracy,⁵⁶ misfeasance in public office,⁵⁷ and intentional infliction of mental distress and anguish,⁵⁸ through the enforcement of the various "covid measures", are without merit and have no chance of success.

39. The plaintiffs' tort claims against the Ontario Defendants are not supported by any material facts. It is a well-established requirement that plaintiffs must provide full particulars in support of allegations involving malice or intent.⁵⁹ The Ontario Court of Appeal has held that claims involving malice must "meet a stringent standard of particularity."⁶⁰ Intent or malice are an element of all six torts alleged against the Ontario Defendants⁶¹ yet the Pleading provides no material facts to support these claims, let alone the full particulars required to establish liability in tort.

40. Nor can this defect be cured through amendment. There are no material facts of bad faith or malicious intent by any Crown servant with regard to the implementation of the public health measures in question. Instead, the measures reflect core government policies based on public

⁵³ Ontario's MR, Tab 2, p. 45.

⁵⁴ Ontario's MR, Tab 2, p. 45.

⁵⁵ Ontario's MR, Tab 2, p. 47.

⁵⁶ Ontario's MR, Tab 2, p. 48.

⁵⁷ Ontario's MR, Tab 2, pp. 57-58.

⁵⁸ Ontario's MR, Tab 2, p. 48.

⁵⁹ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 25.06(8).

⁶⁰ *Gratton-Masuy Environmental Technologies Inc. v Ontario*, 2010 ONCA 501 at [paras 88-89](#).

⁶¹ *Harris v Glaxosmithkline Inc.*, [2010 ONCA 872](#); *Biladeau v Ontario (Attorney General)*, 2014 ONCA 848 at [para 17](#), citing *Nelles v Ontario*, [1989] 2 S.C.R. 170, at [pp. 192-194](#); see also *Miazga v Kvello Estate*, 2009 SCC 51 at [para 3](#); *McIlvenna v 1887401 Ontario Ltd.*, 2015 ONCA 830 at [para 23](#), citing *The Score Television Network Ltd. v Winner International Inc.*, 2007 ONCA 424 at [para 1](#); see also *Central Canada Potash Co. Ltd. et al. v Government of Saskatchewan*, [1978 CanLII 21 \(SCC\)](#); *Wawrzkiwicz v Integrated Distribution Systems Limited Partnership*, 2017 ONSC 1664 at [para 13](#); *Cement LaFarge v B.C. Lightweight Aggregate*, [1983 CanLII 23 \(SCC\)](#); *Normart Management Ltd. v West Hill Redevelopment Co. Ltd.*, [1998 CanLII 2447 \(ON CA\)](#); *Boucher v Wal-Mart Canada Corp.*, 2014 ONCA 419 at [para 41](#); *Ahluwalia v Ahluwalia*, 2023 ONCA 476 at [para 69](#); see also *Prinzo v Baycrest Centre for Geriatric Care*, [2002 CanLII 45005 \(ON CA\)](#); *Odhavji Estate v Woodhouse*, 2003 SCC 69 at [para 28](#).

health considerations which are immune from tort liability.⁶² In the absence of such material facts, there is no basis for the plaintiffs' claim for vicarious tort liability of the Crown.⁶³ As such, the tort claims pleaded against the Ontario Defendants therefore have no chance of success and should be struck without leave to amend.

iv. Miscellaneous

41. Finally, the plaintiffs advance numerous unintelligible miscellaneous claims in relation to various pieces of legislation and international treaties which have no chance of success. For instance, among other similar claims, the plaintiffs assert that “coerced and mandatory testing” amounts to an offence under the *War Crimes and Crimes Against Humanity Act*; that “promoting, and executing, PCR testing” constitutes a criminal act under the *Genetic Non-Discrimination Act*; and that COVID-19 vaccines are “medical experimentation” amounting to a “Crime Against Humanity born out of the Nuremberg Code” and “also contrary to the Helsinki Declaration”.⁶⁴

42. The plaintiffs do not plead material facts to support any of these claims and they should be struck for having no reasonable prospect of success. These claims are also scandalous and vexatious, as addressed below.

B. The Pleading is Scandalous, Vexatious, Frivolous or an Abuse of Process (Rule 21.01(3)(d) and Rule 25.11)

43. Under Rule 21.01(3)(d), a defendant may move to dismiss an action on the basis that it is frivolous, vexatious or is otherwise an abuse of the process of the court.⁶⁵ Under Rule 25.11, the

⁶² *Robertson v. Ontario*, 2024 ONCA 86 at [paras 42-48](#); *Cirillo v Ontario*, 2021 ONCA 353 at [paras 38-44](#).

⁶³ *Trillium Power Wind Corporation v. Ontario (Natural Resources)*, 2013 ONCA 683 at [paras 47-55](#); *Entreprises Sibeca Inc. v. Frelighsburg (Municipality)*, 2004 SCC 61 at [para 35](#).

⁶⁴ Ontario's MR, Tab 2, pp. 44, 55.

⁶⁵ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, [r. 21.01\(3\)\(d\)](#).

court can also strike out or expunge all or part of a pleading on the ground that it is scandalous, frivolous or vexatious.⁶⁶ In addition to having no reasonable prospect of success, many of the plaintiffs' claims could also be struck on this basis.

44. The Pleading contains noxious rhetoric,⁶⁷ including crass comparisons to the Nazi regime and numerous conspiracy theories, such as that the pandemic did not exist and vaccines are not real.⁶⁸ Moreover, many of the paragraphs in the Pleading are not amenable to either denial or admission, but rather consist of conjecture, assumptions, speculation, and arguments and conclusions of law unsupported by material facts. As noted above, these include allegations of the commission of war crimes, crimes against humanity, and criminal offences⁶⁹ interwoven with conclusory, scandalous statements about the state of medical and scientific knowledge. Such statements do not advance any legal grounds upon which the plaintiffs could properly rely and do not belong in a pleading.⁷⁰

C. Leave to Amend Should not be Granted

45. The plaintiffs should not be granted leave to amend the Pleading as against the Ontario Defendants. Proportionality and delay militate against giving the plaintiffs the opportunity to rehabilitate this claim. The Pleading is improper and is the type to lead to confusion, unfairness, delay, litigation impediments and the consumption of inordinate court resources.⁷¹ Given the very high likelihood that the plaintiffs' claim will ultimately fail, permitting amendment at this

⁶⁶ *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, [r. 25.11](#).

⁶⁷ *Banas v HMTQ*, 2022 ONSC 999 at [paras 38-39](#).

⁶⁸ Ontario's MR, Tab 2, pp. 53, 55.

⁶⁹ Ontario's MR, Tab 2, pp. 44, 58.

⁷⁰ *Turmel v Canada*, 2021 FC 1095 at [para 6](#); *Banas v HMTQ*, 2022 ONSC 999 at [para 39](#).

⁷¹ *Action4Canada v British Columbia (Attorney General)*, 2024 BCCA 59 at [para 2](#).

stage would disproportionately add delay and cost to the proceeding and would prejudice the defendants.⁷²

46. As such, the Ontario Defendants, together with the Other Defendants, therefore request that the Pleading be struck without leave to amend.

PART IV – ORDER REQUESTED

47. Ontario requests:

- i. that the Pleading be struck against the Ontario defendants without leave to amend;
- ii. that the action be dismissed; and
- iii. costs of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of June, 2024



Emily Owens



Sean Kissick

⁷² *Shillington v Stover*, 2023 ONSC 1463 at [paras 37-39](#).

SCHEDULE “A” – LIST OF AUTHORITIES

1. *Action4Canada v British Columbia (Attorney General)*, [2024 BCCA 59](#)
2. *Affleck v The Attorney General of Ontario*, [2021 ONSC 1108](#)
3. *Ahluwalia v Ahluwalia*, [2023 ONCA 476](#)
4. *Amrane v Abraham*, [2020 ONSC 6718](#)
5. *Banas v HMTQ*, [2022 ONSC 999](#)
6. *Beaudoin v British Columbia (Attorney General)*, [2022 BCCA 427](#)
7. *Beaudoin v British Columbia*, [2021 BCSC 512](#)
8. *Ben Naoum v Canada (Attorney General)*, [2022 FC 1463](#)
9. *Biladeau v Ontario (Attorney General)*, [2014 ONCA 848](#)
10. *Borowski v Canada (Attorney General)*, [\[1989\] 1 SCR 342](#)
11. *Boucher v Wal-Mart Canada Corp.*, [2014 ONCA 419](#)
12. *Bowen v City of Hamilton*, [2022 ONSC 5977](#)
13. *British Columbia v Imperial Tobacco*, [2005 SCC 49](#)
14. *Campisi v Ontario*, [2017 ONSC 2884](#)
15. *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019 SCC 65](#)
16. *Canadian Constitution Foundation v Attorney General of Canada*, [2021 ONSC 4744](#)
17. *Canadian Society for the Advancement of Science in Public Policy v British Columbia*, [2022 BCSC 1606](#)
18. *Cement LaFarge v B.C. Lightweight Aggregate*, [1983 CanLII 23 \(SCC\)](#)
19. *Central Canada Potash Co. Ltd. et al. v Government of Saskatchewan*, [1978 CanLII 21 \(SCC\)](#)
20. *Chowdhury v HMTQ*, [2023 ONSC 7190](#)

21. *Christian Medical and Dental Society of Canada v College of Physicians and Surgeons of Ontario*, [2019 ONCA 393](#)
22. *Cirillo v Ontario*, [2021 ONCA 353](#)
23. *Copland v Commodore Business Machines Ltd.*, [1985 CanLII 2190 \(ON SC\)](#)
24. *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999 CanLII 687 \(SCC\)](#)
25. *Costa, Love, Badowich and Mandekic v Seneca College of Applied Arts and Technology*, [2022 ONSC 5111](#)
26. *Dafesh v Amormino*, [2017 ONSC 1748](#)
27. *Danson v Ontario (Attorney General)*, [\[1990\] 2 SCR 1086](#)
28. *Derenzis v Johnson*, [2021 ONSC 5136](#)
29. *Entreprises Sibeca Inc. v. Frelighsburg (Municipality)*, [2004 SCC 61](#)
30. *Ernst v Alberta Energy Regulator*, [2017 SCC 1](#)
31. *Gateway Bible Baptist Church et al. v Manitoba et al.*, [2023 MBCA 56](#)
32. *Gateway Bible Baptist Church et al. v Manitoba et al.*, [2021 MBQB 218](#)
33. *Grandel v Saskatchewan*, [2022 SKKB 209](#)
34. *Gratton-Masuy Environmental Technologies Inc. v Ontario*, [2010 ONCA 501](#)
35. *Hamilton v Attorney General of Ontario*, [2018 ONSC 3307](#)
36. *Harjee v Ontario*, [2022 ONSC 7033](#)
37. *Harjee v Ontario*, [2023 ONCA 716](#)
38. *Harris v Glaxosmithkline Inc.*, [2010 ONCA 872](#)
39. *Kassian v British Columbia*, [2023 BCCA 383](#)
40. *Katz Group Canada Inc. v Ontario (Health and Long-Term Care)*, [2013 SCC 64](#)
41. *Lewis v Alberta Health Services*, [2022 ABCA 359](#)
42. *MacKay v Manitoba*, [\[1989\] 2 SCR 357](#)

43. *Maddock v British Columbia*, [2022 BCSC 1605](#)
44. *McIlvenna v 1887401 Ontario Ltd.*, [2015 ONCA 830](#)
45. *Miazga v Kvello Estate*, [2009 SCC 51](#)
46. *Miguna v Toronto Police Services Board*, [2008 ONCA 799](#)
47. *Moir v The Corporation of the Village of Huntingdon*, [1891 CanLII 36 \(SCC\)](#)
48. *Mussani v College of Physicians and Surgeons of Ontario*, [2004 CanLII 48653 \(ON CA\)](#)
49. *Nelles v Ontario*, [\[1989\] 2 SCR 170](#)
50. *Normart Management Ltd. v West Hill Redevelopment Co. Ltd.*, [1998 CanLII 2447 \(ON CA\)](#)
51. *Norton McMullen Consulting Inc. v Boreham*, [2015 ONSC 5862](#)
52. *Odhavji Estate v Woodhouse*, [2003 SCC 69](#)
53. *Ontario (Attorney General) v Trinity Bible Chapel*, [2023 ONCA 134](#)
54. *Ontario v Trinity Bible Chapel et al.*, [2022 ONSC 1344](#)
55. *Operation Dismantle v The Queen*, [\[1985\] 1 SCR 441](#)
56. *Prinzo v Baycrest Centre for Geriatric Care*, [2002 CanLII 45005 \(ON CA\)](#)
57. *R. v Imperial Tobacco Canada Ltd*, [2011 SCC 42](#)
58. *R. v Smith*, [2015 SCC 34](#)
59. *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, [S.O. 2020, c. 17](#)
60. *Robertson v. Ontario*, [2024 ONCA 86](#)
61. *Shillington v Stover*, [2023 ONSC 1463](#)
62. *Smith v Her Majesty the Queen in right of Ontario et al.*, [2016 ONSC 7222](#)
63. *Spencer v Canada (Attorney General)*, [2023 FCA 8](#)
64. *Spencer v Canada (Health)*, [2021 FC 621](#)

65. *Sprague v Her Majesty the Queen in right of Ontario*, [2020 ONSC 2335](#)
66. *Syndicat des métallos, section locale 2008 c. Procureur général du Canada*, [2022 QCCS 2455](#)
67. *Tanase v College of Dental Hygienists of Ontario*, [2021 ONCA 482](#)
68. *Taylor v Newfoundland and Labrador*, [2020 NLSC 125](#)
69. *Taylor v Newfoundland and Labrador*, [2023 NLCA 22](#)
70. *The Christian Medical and Dental Society of Canada v College of Physicians and Surgeons of Ontario*, [2018 ONSC 579](#)
71. *The Score Television Network Ltd. v Winner International Inc.*, [2007 ONCA 424](#)
72. *Toronto (City) v Ontario (Attorney General)*, [2021 SCC 34](#)
73. *Trillium Power Wind Corporation v. Ontario (Natural Resources)*, [2013 ONCA 683](#)
74. *Turmel v Canada*, [2021 FC 1095](#)
75. *Wawrzkievicz v Integrated Distribution Systems Limited Partnership*, [2017 ONSC 1664](#)
76. *Work Safe Twerk Safe v Ontario (Solicitor General)*, [2021 ONSC 6736](#)

SCHEDULE “B” – TEXT OF RELEVANT LEGISLATION

Crown Liability and Proceedings Act, 2019, S.O. 2019, c. 7, Sched. 17

Proceedings re misfeasance, bad faith

17 (1) This section applies to proceedings brought against the Crown or an officer or employee of the Crown that include a claim in respect of a tort of misfeasance in public office or a tort based on bad faith respecting anything done in the exercise or intended exercise of the officer or employee’s powers or the performance or intended performance of the officer or employee’s duties or functions. [2020, c. 11](#), Sched. 7, s. 1.

Leave to proceed required, automatic stay

(2) A proceeding to which this section applies that is brought on or after the day section 1 of Schedule 7 to the [Smarter and Stronger Justice Act, 2020](#) comes into force may proceed only with leave of the court and, unless and until leave is granted, is deemed to have been stayed in respect of all claims in that proceeding from the time that it is brought. 2020, c. 11, Sched. 7, s. 1.

Health Protection and Promotion Act, RSO 1990, c H.7

Directives to health care providers

77.7 (1) Where the Chief Medical Officer of Health 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. [2007, c. 10](#), Sched. F, s. 15.

Precautionary principle

(2) In issuing a directive under subsection (1), the Chief Medical Officer of Health shall consider the precautionary principle where,

- (a) in the opinion of the Chief Medical Officer of Health there exists or may exist an outbreak of an infectious or communicable disease; and
- (b) the proposed directive relates to worker health and safety in the use of any protective clothing, equipment or device. [2007, c. 10](#), Sched. F, s. 15.

Must comply

(3) A health care provider or health care entity that is served with a directive under subsection (1) shall comply with it. [2007, c. 10](#), Sched. F, s. 15.

No coercion of professionals

(4) For greater certainty, a directive under subsection (1) may not be used to compel regulated health professionals to provide services without their consent. [2007, c. 10](#), Sched. F, s. 15.

No conflict with OHSA

(5) Despite subsection (1), in the event of a conflict between this section and the [Occupational Health and Safety Act](#) or a regulation made under it, the *Occupational Health and Safety Act* or the regulation made under it prevails. [2007, c. 10](#), Sched. F, s. 15.

Definitions

(6) In this section,

“health care provider or health care entity” means:

- 1. A regulated health professional or a person who operates a group practice of regulated health professionals.
- 2. Repealed: [2020, c. 13](#), Sched. 3, s. 4 (1).

3. A health service provider or Ontario Health Team that provides a home and community care service pursuant to funding under [section 21](#) of the [Connecting Care Act, 2019](#), including a person or entity from whom the provider or Team has purchased the home and community care service.
4. A hospital within the meaning of the [Public Hospitals Act](#), a private hospital within the meaning of the [Private Hospitals Act](#), a psychiatric facility within the meaning of the [Mental Health Act](#) or an integrated community health services centre within the meaning of the [Integrated Community Health Services Centres Act, 2023](#).
5. A pharmacy within the meaning of the [Drug and Pharmacies Regulation Act](#).
6. A laboratory or a specimen collection centre as defined in [section 5](#) of the [Laboratory and Specimen Collection Centre Licensing Act](#).
7. An ambulance service within the meaning of the [Ambulance Act](#).
8. A paramedic under the [Ambulance Act](#).
9. A home for special care within the meaning of the [Homes for Special Care Act](#).
- 9.1 A local health integration network within the meaning of the [Local Health System Integration Act, 2006](#).

Note: On a day to be named by proclamation of the Lieutenant Governor, paragraph 9.1 of the definition of “health care provider or health care entity” in [subsection 77.7 \(6\)](#) of the Act is repealed. (See: [2019, c. 5](#), Sched. 3, s. 9 (2))

10. A long-term care home under the [Fixing Long-Term Care Act, 2021](#).

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of “health care provider or health care entity” in [subsection 77.7 \(6\)](#) of the Act is amended by adding the following paragraph: (See: [2023, c. 19, s. 20](#))

10.1 The Service Organization.

11. A centre, program or service for community health or mental health whose primary purpose is the provision of health care.
12. A prescribed person or entity; (“fournisseur de soins de santé ou entité chargée de la fourniture de soins de santé”)

“precautionary principle” has the meaning prescribed in regulations made by the Lieutenant Governor in Council; (“principe de précaution”)

“regulated health professional” means a health practitioner whose profession is regulated under the [Regulated Health Professions Act, 1991](#) or the [Drugless Practitioners Act](#). (“membre d’une profession de la santé réglementée”) [2007, c. 10](#), Sched. F, s. 15; [2009, c. 33](#), Sched. 18, s. 12 (7); [2011, c. 1](#), Sched. 6, s. 3; [2016, c. 30, s. 39](#) (2, 4, 5); 2016, c. 30, s. 39 (3); [2020, c. 13](#), Sched. 3, s. 4; [2021, c. 39](#), Sched. 2, s. 10 (2); [2023, c. 4](#), Sched. 1, s. 72.

O Reg 346/22: Revoking Various Regulation

Revocations

1. The following regulations are revoked:

1. Ontario Regulation 74/20.
2. Ontario Regulation 76/20.
3. Ontario Regulation 77/20.
4. Ontario Regulation 95/20.
5. Ontario Regulation 114/20.
6. Ontario Regulation 116/20.
7. Ontario Regulation 118/20.
8. Ontario Regulation 121/20.
9. Ontario Regulation 141/20.
10. Ontario Regulation 145/20.
11. Ontario Regulation 154/20.
12. Ontario Regulation 157/20.
13. Ontario Regulation 195/20.
14. Ontario Regulation 345/20.
15. Ontario Regulation 363/20.
16. Ontario Regulation 364/20.
17. Ontario Regulation 458/20.

Commencement

2. This Regulation comes into force on the later of April 27, 2022 and the day this Regulation is filed.

O Reg 454/21: Revoking Various Regulations

Revocations

1. The following regulations are revoked:

1. Ontario Regulation 264/21.
2. Ontario Regulation 291/21.

O Reg 168/22: Revoking Various Regulations

Revocations

1. The following regulations are revoked:

1. Ontario Regulation 82/20.
2. Ontario Regulation 240/20.
3. Ontario Regulation 263/20.

Commencement

2. This Regulation comes into force on the later of March 16, 2022 and the day this Regulation is filed.

O Reg 364/20: RULES FOR AREAS AT STEP 3 AND AT THE ROADMAP EXIT STEP

Terms of Order

1. The terms of this Order are set out in Schedules 1 and 4. O. Reg. 541/21, s. 2; O. Reg. 213/22, s. 1.
2. REVOKED: O. Reg. 574/20, s. 1.

Application

3. (1) Subject to subsection (3), this Order applies to the areas listed in Schedules 3 and 4 to Ontario Regulation 363/20 made under the Act. O. Reg. 541/21, s. 3; O. Reg. 99/22, s. 1; O. Reg. 213/22, s. 2 (1).
- (2) REVOKED: O. Reg. 213/22, s. 2 (2).
- (3) Schedule 4 applies throughout the areas at the Roadmap Exit Step. O. Reg. 541/21, s. 3; O. Reg. 213/22, s. 2 (3).
- 3.1 REVOKED: O. Reg. 213/22, s. 3.

Roadmap Exit Step

- 3.2 In this Order, a reference to areas at the Roadmap Exit Step is a reference to all areas listed as being at the Roadmap Exit Step in Schedule 4 to Ontario Regulation 363/20 made under the Act. O. Reg. 541/21, s. 3.

References to this Order

- 3.3 In Schedule 4, a reference to “this Order” is a reference to Schedule 4. O. Reg. 213/22, s. 4.
4. REVOKED: O. Reg. 213/22, s. 5.
5. REVOKED: O. Reg. 98/21, s. 2.

STEP 3

**SCHEDULE 1
GENERAL RULES AT STEP 3**

- 1., 2. REVOKED: O. Reg. 213/22, s. 6 (1).

Fully vaccinated

2.1 A person is fully vaccinated against COVID-19 if,

- (a) they have received,
 - (i) the full series of a COVID-19 vaccine authorized by Health Canada, or any combination of such vaccines,
 - (ii) one or two doses of a COVID-19 vaccine not authorized by Health Canada, followed by one dose of a COVID-19 mRNA vaccine authorized by Health Canada, or
 - (iii) three doses of a COVID-19 vaccine not authorized by Health Canada; and
- (b) they received their final dose of the COVID-19 vaccine at least 14 days before providing the proof of being fully vaccinated.

2.2, 3. REVOKED: O. Reg. 213/22, s. 6 (3).

3.0.0.1 REVOKED: O. Reg. 865/21, s. 1 (3).

3.0.1-7. REVOKED: O. Reg. 213/22, s. 6 (3).

8. REVOKED: O. Reg. 25/22, s. 1 (7).

O. Reg. 364/20, Sched. 1; O. Reg. 415/20, s. 2; O. Reg. 428/20, s. 2; O. Reg. 501/20, s. 1; O. Reg. 530/20, s. 1; O. Reg. 531/20, s. 1; O. Reg. 546/20, s. 2; O. Reg. 574/20, s. 2; O. Reg. 579/20, s. 1; O. Reg. 588/20, s. 1; O. Reg. 642/20, s. 4-7; O. Reg. 655/20, s. 1; O. Reg. 687/20, s. 1; O. Reg. 4/21, s. 1, 2; O. Reg. 98/21, s. 1, 3; O. Reg. 115/21, s. 1; O. Reg. 119/21, s. 1; O. Reg. 147/21, s. 1 (1, 2); O. Reg. 164/21, s. 1; O. Reg. 218/21, s. 1; O. Reg. 223/21, s. 1; O. Reg. 315/21, s. 1; O. Reg. 520/21, s. 5; O. Reg. 541/21, s. 5; O. Reg. 577/21, s. 1; O. Reg. 630/21, s. 1; O. Reg. 645/21, s. 1; O. Reg. 659/21, s. 1; O. Reg. 678/21, s. 1; O. Reg. 698/21, s. 1; O. Reg. 710/21, s. 1; O. Reg. 727/21, s. 1; O. Reg. 732/21, s. 1; O. Reg. 780/21, s. 1; O. Reg. 792/21, s. 1; O. Reg. 846/21, s. 1; O. Reg. 863/21, s. 1; O. Reg. 865/21, s. 1; O. Reg. 25/22, s. 1; O. Reg. 75/22, s. 1; O. Reg. 213/22, s. 6.

SCHEDULES 2, 3 REVOKED: O. REG. 213/22, S. 7.

ROADMAP EXIT STEP

SCHEDULE 4

GENERAL RULES AT THE ROADMAP EXIT STEP

Closures

1. (1) Each person responsible for a business or place, or part of a business or place, that Schedule 5 describes as being permitted to open if certain conditions set out in that Schedule are met shall ensure that the business or place, or part of the business or place, either meets those conditions or is closed.

(2) Each person responsible for a business or place, or part of a business or place, that does not comply with sections 1 to 4 of this Schedule shall ensure that it is closed.

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

- (a) performing work at the business or place in order to comply with any applicable law;
- (b) preparing the business or place to be reopened;
- (c) allowing for inspections, maintenance or repairs to be carried out at the business or place;
- (d) allowing for security services to be provided at the business or place; and
- (e) attending at the business or place temporarily,
 - (i) to deal with other critical matters relating to the closure of the business or place, if the critical matters cannot be attended to remotely, or
 - (ii) to access materials, goods or supplies that may be necessary for the business or place to be operated remotely.

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

- (a) providing goods by mail or other forms of delivery, or making goods available for pick-up; and
- (b) providing services online, by telephone or other remote means.

(5) Nothing in this Order precludes operations or delivery of services by the following in Ontario:

1. Any government.
2. Any person or publicly-funded agency or organization that delivers or supports government operations and services, including operations and services of the health care sector.

General compliance

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

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

- (a) on physical distancing, cleaning or disinfecting;

- (b) requiring the business or organization to establish, implement and ensure compliance with a COVID-19 vaccination policy; or
- (c) setting out the precautions and procedures that the business or organization must include in its COVID-19 vaccination policy.
- (d) REVOKED: O. Reg. 213/22, s. 8 (1).

(2.1), (2.2) REVOKED: O. Reg. 99/22, s. 2 (2).

(3) The person responsible for a business or organization that is open shall operate the business or organization in compliance with any advice, recommendations and instructions issued by a local public health official under the Act before February 25, 2022, other than advice, recommendations and instructions described in clause (2) (b) or (c).

(4) The person responsible for a business or organization described in subsection (4.1) that is open shall ensure that any person in the indoor area of the premises of the business or organization, or in a vehicle that is operating as part of the business or organization, wears a mask or face covering in a manner that covers their mouth, nose and chin during any period when they are in the indoor area unless subsection (5) applies to the person in the indoor area.

(4.1) The businesses and organizations mentioned in subsection (4) are the following:

1. Businesses, organizations, municipalities or local boards that operate a public transit service, but only in respect of the indoor premises and vehicles used for the operation of the public transit service.
2. Businesses or organizations that provide bus passenger transportation service within or between municipalities for compensation, but only in respect of the indoor premises and vehicles used for the operation of the bus passenger transportation service. This paragraph does not apply to businesses or organizations that provide sightseeing or touring services.
3. Hospitals within the meaning of the *Public Hospitals Act*, private hospitals within the meaning of the *Private Hospitals Act*, psychiatric facilities within the meaning of the *Mental Health Act* and independent health facilities within the meaning of the *Independent Health Facilities Act*.
4. Long-term care homes within the meaning of the *Long-Term Care Homes Act, 2007*.

Note: On the later of March 21, 2022 and the day section 204 of Schedule 1 (*Fixing Long-Term Care Act, 2021*) to the *Providing More Care, Protecting Seniors, and Building More Beds Act, 2021* comes into force, paragraph 4 of subsection 2 (4.1) of Schedule 4 to the Regulation is amended by striking out “*Long-Term Care Homes Act, 2007*” at the end and substituting “*Fixing Long-Term Care Act, 2021*”. (See: O. Reg. 213/22, s. 8 (3))

5. Retirement homes within the meaning of the *Retirement Homes Act, 2010*.
6. Clinics that provide health care services.

7. Service agencies as defined under the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008* that provide,

- i. residential services and supports to adults with developmental disabilities who reside in supported group living residences or intensive support residences, as defined in that Act, or
- ii. specialized residential accommodation pursuant to an agreement with the Ministry of Children, Community and Social Services, other than specialized accommodation services that support residential living outside of group living arrangements operated by the service agency.

8. Transfer payment recipients funded by the Ministry of Children, Community and Social Services that provide residential or emergency residential services under the Violence Against Women Support Services program or the Anti-Human Trafficking Community Supports program.

9. Transfer payment recipients funded by the Ministry of Children, Community and Social Services that provide intervenor services for persons who are deafblind in a residential setting.

10. Licensees operating a children's residence within the meaning of Part IX of the *Child, Youth and Family Services Act, 2017*.

11. Licensees to which section 117 of Ontario Regulation 156/18 (General Matters Under the Authority of the Minister) made under the *Child, Youth and Family Services Act, 2017* applies.

12. Businesses or organizations that provide residential care, within the meaning of the *Child, Youth and Family Services Act, 2017*, and that are not required to be licensed under Part IX of that Act, during any period when a child is placed with the business or organization by a service provider within the meaning of that Act.

13. Transfer payment recipients that receive funding from the Ministry of Children, Community and Social Services to provide residential services under the Indigenous Healing and Wellness Strategy.

14. Children's treatment centres that receive funding under the *Child Youth and Family Services Act, 2017* to deliver rehabilitation services for children and youth with special needs.

15. Laboratories and specimen collection centres as defined in section 5 of the *Laboratory and Specimen Collection Centre Licensing Act*.

16. Businesses or organizations that operate a shelter for persons experiencing homelessness, in respect of the premises used for the operation of the shelter.

17. Congregate care supportive housing residences where the residents share facilities for living, dining, sleeping or bathing and that receive funding from,

i. the Ministry of Municipal Affairs and Housing,

ii. the Ministry of Health,

- iii. Ontario Health,
- iv. a service manager designated under the *Housing Services Act, 2011*,
- v. the Ontario Aboriginal Housing Support Services Corporation, or
- vi. the Miziwe Biik Development Corporation.

(4.2) Service providers within the meaning of the *Home Care and Community Services Act, 1994* and local health integration networks within the meaning of the *Local Health System Integration Act, 2006* shall ensure that any employee or other person providing a service to an individual in an indoor area or a vehicle wears a mask or face covering in a manner that covers their mouth, nose and chin while they are providing the service, unless subsection (5) applies to the person in the indoor area.

(5) Where there is any requirement under this Order that a person wear a mask or face covering, the requirement does not apply to a person who,

- (a) is a child who is younger than two years of age;
- (b)-(d) REVOKED: O. Reg. 213/22, s. 8 (4).
- (e) is receiving residential services and supports in a residence listed in the definition of “residential services and supports” in subsection 4 (2) of the *Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008*;
- (f) is in a correctional institution or in a custody and detention program for young persons in conflict with the law;
- (g) REVOKED: O. Reg. 213/22, s. 8 (4).
- (h) has a medical condition that inhibits their ability to wear a mask or face covering;
- (i) is unable to put on or remove their mask or face covering without the assistance of another person;
- (j) needs to temporarily remove their mask or face covering while in the indoor area,
 - (i) to receive services that require the removal of their mask or face covering,
 - (ii) to engage in an athletic or fitness activity,
 - (iii) to consume food or drink, or
 - (iv) as may be necessary for the purposes of health and safety;
- (k) is being accommodated in accordance with the *Accessibility for Ontarians with Disabilities Act, 2005*;
- (l) is being reasonably accommodated in accordance with the *Human Rights Code*; or
- (m) performs work for the business or organization, is in an area that is not accessible to members of the public and is able to maintain a physical distance of at least two metres from every other person while in the indoor area.

(n) REVOKED: O. Reg. 213/22, s. 8 (5).

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

(7) REVOKED: O. Reg. 99/22, s. 2 (3).

(8) For greater certainty, it is not necessary for a person to present evidence to the person responsible for a business or place that they are entitled to any of the exceptions set out in subsection (5).

(9) REVOKED: O. Reg. 99/22, s. 2 (3).

(10) Where directives, policies or guidance that apply to a long-term care home within the meaning of the *Long-Term Care Homes Act, 2007* are issued by the Office of the Chief Medical Officer of Health, the Minister of Long-Term Care or the Ministry of Long-Term Care, such directives, policies or guidance apply despite anything in this Order.

Requirements that apply to individuals

3. (1) Every person on the premises of a business or organization described in subsection 2 (4.1) shall wear a mask or face covering in a manner that covers their mouth, nose and chin during any period in which they are in an indoor area of the premises.

(2) Subsection (1) does not require a person to wear a mask or face covering if they are subject to an exception set out in subsection 2 (5).

4. REVOKED: O. Reg. 213/22, s. 8 (7).

5. REVOKED: O. Reg. 99/22, s. 2 (5).

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

RULE 21 DETERMINATION OF AN ISSUE BEFORE TRIAL

Where Available

To Any Party on a Question of Law

21.01 (1) A party may move before a judge,

- (a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or
- (b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (1).

(2) No evidence is admissible on a motion,

- (a) under clause (1) (a), except with leave of a judge or on consent of the parties;
- (b) under clause (1) (b). R.R.O. 1990, Reg. 194, r. 21.01 (2).

To Defendant

(3) A defendant may move before a judge to have an action stayed or dismissed on the ground that,

Jurisdiction

- (a) the court has no jurisdiction over the subject matter of the action;

Capacity

- (b) the plaintiff is without legal capacity to commence or continue the action or the defendant does not have the legal capacity to be sued;

Another Proceeding Pending

- (c) another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter; or

Action Frivolous, Vexatious or Abuse of Process

- (d) the action is frivolous or vexatious or is otherwise an abuse of the process of the court,

and the judge may make an order or grant judgment accordingly. R.R.O. 1990, Reg. 194, r. 21.01 (3).

Rules of Pleading — Applicable to all Pleadings

Material Facts

25.06 (1) Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved. R.R.O. 1990, Reg. 194, r. 25.06 (1).

Pleading Law

(2) A party may raise any point of law in a pleading, but conclusions of law may be pleaded only if the material facts supporting them are pleaded. R.R.O. 1990, Reg. 194, r. 25.06 (2).

Striking out a Pleading or Other Document

25.11 The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

- (a) may prejudice or delay the fair trial of the action;
- (b) is scandalous, frivolous or vexatious; or
- (c) is an abuse of the process of the court. R.R.O. 1990, Reg. 194, r. 25.11.

Court File No.: CV-22-00685694-0000

MICHELET DORCEUS et al.. -and - HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO et al.
Plaintiffs

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings Commenced at Toronto

FACTUM OF THE MOVING PARTIES (GOVERNMENT DEFENDANTS)

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