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

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 Ankucza, 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 Augustino, ~~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)**

-and-

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)**

-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, 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)**

-and-

Sharon Addison, Maxim Avtonomov, Marlene Brouwer, Cassandra Craig, Tasha Crump, Alex D'Souza, Christine L. Ehgoetz, Alyssia Elias, Chuck Evans, Vanessa Gallant, Dawn Greer, 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, Kathy Walsh, Sarah Walter, **(North Bay Regional Health Centre Workers)**

-and-

Sherri Bond, Ronnie Esau, Roman Goldshmidt, 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, Rachel Blake, Paula Burke, Brianna Grantham, Norma Smith, Andrew Wilgress,**(Orillia Soldiers Memorial Hospital Workers)**

-and-

Nataliya Burlakov, Gabriele Caporale, Catherine Cox, Shelley Flynn, Sirpa Joyce, Amy McNutt, Shawn Riopelle, Slaven Savic, Robert Voith, 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, Beth Ann Dick, ***Cynthia June Jordan***, Matthew Langdon, Amanda Osbourne, Jonathan Raby, Sarah Rogerson, Rachel Runions, Dr. John Doe #1, Stephanie VanderSpruit, ~~**(Quinte Health Care Workers)**~~ **(Quinte Healthcare Corporation)**

-and-

Gabriela Borovicanin, 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 Chatam-Kent)**

-and-

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

-and-

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

-and-

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)**

-and-

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

-and-

Sean Filbey, Musette Hoeppner, Glenda Mendoza, Janet Neuts, Cindy Sorenson, Cassandra Vaseleniuck Dunbar, **(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-

Jesse Gratz, Sandra Zurkan, **(St. Joseph's Care Group)**

-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, Renee Daviault, Barb Fisher, Cheryl Jeffrey, Gail Magarrey, Graham Nishikawa, Jennifer Pluck, Rhonda Rohr, Brooke Simpell, 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-

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

-and-

Derick Anderson Jr., Joanna Carabetta, Andrea R. DeVries, Juanita Diorio, Rosa Grobanopoulos, Panagiota Patricia Jovanovic, Katarzyna Kobylinski, Vanessa MacLeish, Rosemary Morgan, Veronica Pereira, Karen Rotham, Tianilla Weigert Corredoura, **(Trillium Health Partners Workers)**

-and-

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

-and-

Cheryl Bamford, Romana Freitas, Danica Dana Jovanovic, Nadiya Kaminska, Joanna Kiwak, Magdalena Kulikowski, Anna Piri, Afrodite Vorvis, Danijela Vukovic, Elaine Walker-Esson, **(University Health Network Workers (UHN)**

-and-

Sarah Boyington, Corinna Gayle, Sara Hampton, Sheila Jean Mackie, Anna Pavsic, Victoria Tiessen, William Vowels, Josh Wahl, **(Waypoint Centre for Mental Health Care Workers)**

-and-

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

-and-

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

-and-

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

-and-

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

PLAINTIFFS

-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 ~~Services~~ Sciences, ~~Home and Community Care Support Services~~ (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, ~~Huron Lodge Long Term Care Home~~ 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 Health Care~~ Quinte Healthcare Corporation, ~~Riverview Gardens Long Term Care Chatham-Kent~~ 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

DEFENDANTS

FACTUM OF THE RESPONDING PARTIES

July 25th, 2024

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PART II – THE FACTS

2. The Plaintiffs 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[2].

PART III – ISSUES/LAW AND ARGUMENT

- **ISSUES**

3. Whether this Amended Statement of Claim should be Struck?

4. Whether, if this claim is struck, leave to amend should be granted?

- **LAW AND ARGUMENT**

A/ Motion to Strike – The Jurisprudence – General Principles

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

   (a) the facts pleaded by the Plaintiffs must be taken as proven and fact:[3]

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

---

[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] ***Ibid***

[3] ***Ibid***

> "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:

> "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 Defendants 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 Plaintiff's Claim

6. The Plaintiffs, in their claim, seek the following:

(a) monetary damages;

Based on the following torts:

(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;

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

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

7. Contrary to what the Defendants posit, the claim is 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.**

C/ The Constitutional Right to Declaratory Relief

8. The Plaintiffs 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***

9. 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***

10. 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

11. 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.

12. 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)***

13. 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.***

14. 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.).

Moreover, the Indian Supreme Court, 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.

15. 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

16. The Ontario Superior Court has ruled that these issues of Covid-measures are not to be dealt with on a perfumatory 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***

17. It is further submitted that the B.C. Supreme Court dismissed a motion to strike B.C's Covid-measures, **albeit** on standing, pointing out the complexity of the issues that the Covid-measures present.

- Canadian Society for the Advancement of Science in Public Policy v. Henry, 2022 BCSC 724

18. Furthermore, with respect to the Defendants' bald and baseless assertion 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 Defendant's postulation 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)

19. 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/ ***Claim barred by Labour Legislation***

20. 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)***

21. In the same way that an employee could not raise this basis for an employer (sexually) assaulting an employee in the context of employment, the coercive and intimidation measures to violate bodily and psychological integrity contrary to s.7 of the ***Charter***, and from common-law, is not a bar to this action.

22. There is no distinction between a sexual or common assault and a violation done to bodily integrity and psychological integrity under s.7 of the ***Charter***. At common law, and under the ***Charter***, mandating medical treatment is prohibited and coercive measures in furtherance of this is both a constitutional violation to bodily and psychological integrity;

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

as well as constitute the common-law, tort of intimidation, pleaded in the within claim. The prohibition against mandatory vaccination, or any medical treatment under constitutional jurisprudence, is not disputable.

> ***- Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331 at P.67***
> ***- Fleming v. Reid (1991), 48 O.A.C. 46 (CA)***

- ***Claim Discloses No Reasonable Cause of Action***

23. With respect to Defendants' position, in paragraphs 17 to 42 of the Government Defendant's Factum and 85 to 105 of the Healthcare Defendants Factum, the Plaintiffs state that, in analyzing the issue, 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.

24. 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.

25. 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 misfeasances in public office. Thus, the Ontario Superior Court, in ***Muirhead*** ruled as follows:

> [5] For the reasons that follow, I strike the Muirheads' Statement of Claim **with leave to Constable Muirhead to plead a claim in misfeasance in public office,** the constituent elements of which are: (1) the defendant is a public official or public authority; (2) the defendant engaged in deliberate unlawful conduct in his, her, or its capacity as a public official or public authority; (3) the defendant had a culpable mental state; namely the public official or public authority was aware that: (a) the conduct was unlawful, and (b) that the conduct was likely to harm the plaintiff; (4) the conduct caused the plaintiff harm; and, (5) the harm is compensable under tort law.
>
> [6] See *Odhavji Estate v. Woodhouse,* 2003 SCC 69 (CanLII), [2003] 3 S.C.R. 263; *Freeman-Maloy v. Marsden*, (2006), 2006 CanLII 9693 (ON CA), 79 O.R. (3d) 401 (C.A.), rev'g (2005), 2005 CanLII 14319 (ON SC), 253 D.L.R. (4th) 728 (S.C.J.), leave to appeal to the S.C.C. ref'd [2006] S.C.C.A. No. 201; *Reynolds v. Kingston (City) Police Services Board*, 2007 ONCA 166 (CanLII), [2007] O.J. No. 900 (C.A.), rev'g (2006), 2006 CanLII 16837 (ON SCDC), 267 D.L.R. (4th) 409 (Ont. Div. Ct.) restoring [2005] O.J. No. 3503 (Master); *Martineau v. Ontario (Alcohol and Gaming Commission)*, [2007] O.J. No. 1141 (C.A.); *Roncarelli v. Duplessis,* [1950] S.C.R. 121
>
> [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: *Energy & Chemical Workers Union, supra*, per La Forest J.A. Sometimes the time when the claim originated may be important, as in *Wainwright v. Vancouver Shipyards Co.* (1987), 38 D.L.R. (4th) 760 (B.C.C.A.), where it was held that the court had jurisdiction over contracts pre-dating the collective agreement. See also *Johnston v. Dresser Industries Canada Ltd*. (1990), 75 O.R. (2d) 609 (C.A.). In the majority of cases the nature of the dispute will be clear; either it had to do with the collective agreement or it did not. Some cases, however, may be less than obvious. The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement.

53. Because the nature of the dispute and the ambit of the collective agreement will vary from case to case, it is impossible to categorize the classes of case that will fall within the exclusive jurisdiction of the arbitrator. ….

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*.
>
> [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:

> [81] In my opinion, however, in the circumstances of the Muirheads' case, **it remains to be determined whether Constable Muirhead has a claim for misfeasance in public office.** I appreciate that in *Heasman v. Durham Police Services Board* and in other cases claims for misfeasance in public office were precluded by the *Weber* principle, **but those cases might be distinguishable on the basis that it is a factual determination in every particular case about the fundamental nature of the dispute.**
>
> [82] The Court of Appeal in those cases concluded that the misfeasance in public office allegations essentially arose out of an employment relationship dispute, which may be true in a given case, and in those cases, the court's jurisdiction to decide the tort would be ousted, **but it does not follow that whenever there is an employment relationship between a plaintiff and defendant that the plaintiff's tort claims arise out of that employment relationship in a way that ousts the court's jurisdiction.**
> ….
>
> [85] As noted above, **the *Weber* principle does not inevitably oust the court's jurisdiction over tort claims because the facts include an employment relationship.** This thought brings the discussion to the tort of misfeasance in public office. In *Freeman-Maloy v. Marsden*, *supra*, Justice Sharpe described the nature of the tort of misfeasance in public office; he stated:
>
> > The tort of misfeasance in a public office is founded on the fundamental rule of law principle that those who hold public office and exercise public functions are subject to the law and must not abuse their powers to the detriment of the ordinary citizen. As Lord Steyn put it in *Three Rivers District Council v. Bank of England (No. 3)*, [2000] 2 W.L.R. 1220, at p. 1230 W.L.R.: "The rationale of the tort is that in a legal system based on the rule of law executive or administrative power 'may be exercised only for the public good' and not for ulterior and improper purposes." The "underlying purpose" of the tort of misfeasance in a public office "is to protect each citizen's reasonable expectation that a public officer will not intentionally injure a member of the public through deliberate and

> unlawful conduct in the exercise of public functions:" *Odhavji*, *supra*, at para. 30.
>
> …..
>
> [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 81-82, 85, 87***

26. 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 Plaintiffs, 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.

27. 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.***

28. There has also been recent U.S. jurisprudence in the context of successful litigation and damages awarded in the context of co-erosive measures.[4]

29. These coercive measures, under common law, not only violates s.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)

F/Charter Does Not Apply to Hospitals

30. With respect to the Defendants' submissions that the **Charter** does not apply to hospitals, at paragraphs 106 to 117 of the Hospital Defendants' Factum, the Plaintiffs state that:

(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**

[4] ***- 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

> **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 Hospital, by their own admissions and position, were implementing "Directive #6" and are therefore acting as agents of the state and are reviewable and caught under the **Charter** for their conduct;

(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 Plaintiffs from coercive, mandatory measures, violated the Plaintiffs **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**

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

31. It is submitted that the Defendant's contention that this action for damages cannot be brought because it has to be brought as judicial review is embarrassing in its misstatement of the clear jurisprudence as well as embarrassing in its not dealing with the binding jurisprudence on the issue;

32. 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

33. 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***

34. It is further submitted that this anemic attempt by the Defendants to so qualify this action, 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 Defendants' ends on this motion, contrary to the clear ruling of the Federal Court of Appeal in ***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

H/ Claim Discloses No Reasonable Cause of Action

35. With respect to Defendants' position, in paragraphs 17 to 42 of the Government Defendant's Factum and 85 to 105 of the Healthcare Defendants Factum the Plaintiffs state:

(a) when the facts pleaded are taken as proven, as is required on this motion; and

(b) when the causes of action, both in common-law and constitutional **torts** are assessed on the facts pleaded;

the Plaintiffs state that reasonable causes of action are made out, on material facts pleaded, for the purposes of this motion to strike.

36. The jurisprudence is clear that, at common law, and under the ***Charter***, mandatory medical treatment without informed consent is a tortious and constitutional violation.

- Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331 at P.67
- Fleming v. Reid (1991), 48 O.A.C. 46 (CA)

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.

37. These coercive measures, under common law, not only violates s.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)***

38. Lastly, with respect to the Defendants incantation of complaints about the pleadings, the Plaintiffs deny that the pleadings are defecient, and further states that, at a maximum this echoing complaint may, if at all, go only to a request for particulars.

- ***Action is an abuse of Process, Frivolous, Vexatious***

39. With respect to Defendants' position, in paragraphs 43 to 44 of the Government Defendant's Factum and 52 to 84 of the Healthcare Defendants Factum and that the claim is an abuse of process, frivolous, vexatious, the Plaintiffs state:

(a) This action is not an abusive process in that:

(i) the facts;
(ii) causes of action pleaded;
(iii) relief sought; and
(iv) jurisdiction at common law, and s.24(1) and s.52 of the ***Constitution Act 1982*** ground the action; and

(b) it is not strikable on that basis..

I/ Judicial Notice

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.\

J/ Leave to Amend

41. With respect to Defendants' position, in paragraphs 45 to 46 of the Government Defendant's Factum that the claim should be given no leave to amend, the Plaintiffs state:

(a) If struck, in whole or in part, the Plaintiffs should be granted leave to amend in accordance with the jurisprudence in this Court:

- ***Collins v. Canada*** [2011] D.T.C. 5076
- ***Simon v. Canada*** [2011] D.T.C. 5016
- ***Spatling v. Canada*** 2003 CarswellNat 1013
- ***Larden v. Canada*** (1998) 145 F.T.R. 140
- ***Action4Canada v British Columbia (Attorney General), 2022 BCSC 1507 (CanLII)***
- **Adelberg v. Canada, 2023 FC 252 (CanLII)**
- ***Adelberg v. Canada, 2024 FCA 106 (CanLII)***

(b) In a recent, COVID-measure cases, which was struck due to it being prolix at (398 pages) the Court struck it without prejudice to issue an amended claim

- Action4Canada v British Columbia (Attorney General), 2022 BCSC 1507 (CanLII)

- Adelberg v. Canada, 2023 FC 252 (CanLII)

- ***Adelberg v. Canada, 2024 FCA 106 (CanLII)***

PART IV - ORDER SOUGHT

42. The Plaintiffs respectfully request that:

(a) That the Defendants motion be dismissed.

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

(c) That, if struck, in whole or in part, that leave to amend be granted.

(d) costs of the motion and the within appeal to the Plaintiff, 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 July 2024.

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SCHEDULE A - AUTHORITIES

- **Jurisprudence**

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. ***Hanson v. Bank of Nova Scotia (1994) 19 O.R .(3d) 142 (C.A.);***
12. ***Adams-Smith v. Christian Horizons (1997)14 C.P.C.(4th)78 (Ont. Gen. Div.);***
13. ***Miller (Litigation Guardian of) v. Wiwchairyk (1997) 34 O.R. (3d) 640 (Ont.Gen.Div)***
14. ***R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd. (1991) 5 O.R. (3d) 778 (C.A.)***
15. ***Dalex Co. v. Schawartz Levitsky Feldman (1994) 19 O.R. (3d) 463 (Gen. Div)***
16. ***Grant v. Cormier – Grant, et. al (2001) 56 O.R. (3d) 215 (Ont. C.A.),***
17. ***TD Bank v. Delloitte Hoskins & Sells (1991) 5 O.R. (3d) 417 (Gen. Div.)***
18. ***Dunsmuir v. New Brunswick, 2008 SCC 9,***
19. ***Canada v. Solosky, [1980] 1 S.C.R. 821***
20. ***Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14***

21. ***Roman Catholic Diocese of Brooklyn, New York V. Andrew M. Cuomo, Governor Of New York U.S. 592 (2020)***
22. ***Jacob Puliyel vs Union Of India on 2 May, 2022***
23. ***Fleming v. Reid (1991), 4 O.R. (3d) 74 (C.A.).***
24. ***Carter v. Canada (Attorney General), 2015 SCC 5 (CanLII), at para 67***
25. ***Sgt Julie Evans et al. v. AG Ontario et al.***
26. ***M.A. v. De Villa, 2021 ONSC 3828***
27. ***J.N. v. C.G., 2022 ONSC 1198***
28. ***Canadian Society for Advancement of Science in Public Policy v. Henry, 2022 BCSC 724***
29. ***Let them Choose et al. v. San Diego Unified School District (2022)***
30. ***Teamsters Local Union No. 31 v Purolator Canada Inc., 2023 CanLII 120937 (CA LA)***
31. ***R. v. Fernando, 2024 ONCJ 336 (CanLII)***
32. ***Canadian Constitution Foundation v. Canada (Attorney General), 2024 FC 38***
33. ***Benton V. Bluecross Blueshield Of Tennessee, Inc. 1:22-Cv-118***
34. ***Loper Bright Enterprises Et Al. V. Raimondo, Secretary Of Commerce, Et Al. [June 28, 2024]***
35. ***National Federation Of Independent Business, Et Al., Applicants 595 U.S. [Jan. 13, 2022]***
36. **Godbout *v.* Longueuil (City), [1997] 3 S.C.R. 844**
37. **Vriend *v.* Alberta, [1998] 1 S.C.R. 493**
38. ***Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929***
39. ***Northern Regional Health Authority v. Horrocks, 2021 SCC 42 (CanLII)***

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

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

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

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

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

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

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

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

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

49. ***Edwards v. Canada (2000) 181 F.T.R. 219;***

50. ***Canada (Prime Minister) v. Khadr, [2010] 1 S.C.R. 44;***

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

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

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

54. ***Collins v. Canada [2011] D.T.C. 5076;***

55. ***Simon v. Canada [2011] D.T.C. 5016;***

56. ***Spatling v. Canada 2003 CarswellNat 1013;***

57. ***Larden v. Canada (1998) 145 F.T.R. 140;***

58. ***Action4Canada v British Columbia (Attorney General), 2022 BCSC 1507 (CanLII);***

59. Adelberg v. Canada, 2023 FC 252 (CanLII)

60. ***Adelberg v. Canada, 2024 FCA 106 (CanLII)***

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

SCHEDULE B RELEVANT LEGISLATION

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[5] 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 session must, at minimum address:

[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.

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 No.: CV-22-00685694-000

Michelet Dorceus et al.

Plaintiffs

-and-

HIS MAJESTY THE KING et al.

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commended at Toronto

FACTUM OF THE RESPONDING PARTY
(Returnable August 13th and 14th, 2024)

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