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pursuant to Rule 26.02(b).
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Court File No. CV-22-00684908-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

**MICHAEL HEYNSBROEK, JASON BLANCHARD, VALERIE D'AMBROSIO, ANDREA
DEWHURST, ADAM FEVREAU, JASEN GANNON, PAUL GIROUX, VERA GORICA,
KIMBERLEY HAMM, JOSHUA KONOPASKY, DELILAH LIBURDI, MELISSA
MARLEIN, DENISE MORAND, BRANDY ROBERT, NATALIE SEAL, PAUL ZETTEL,
CRAIG PATTERSON, JOHN JOURNEAY, JANE DOE, FLORIN BELCIUG, WENDY
ANGIONE, DOMINIQUE SCHILLER, JEAN MARC SMITH, ISAM BASHIR,
YOUSOUF MUHAMMAD, JESSE MICELI, PRISCILLA BUCK and JANE DOE II et al**

Plaintiffs

-and-

THE CORPORATION OF THE CITY OF WINDSOR

Defendant

AMENDED STATEMENT OF CLAIM

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STATEMENT OF FACTS RELIED ON

A. Definitions

1. The following definitions apply for the purposes of this Statement of Claim:
 - a. **“Employee”** means all permanent, temporary, casual, student and fixed term employees on the company payroll of the City of Windsor and EnWin Utilities Limited (“EnWin”) and Huron Lodge and Transit Windsor Facility (“Affiliated Entities”), were fired by the City of Windsor in breach of their legal and constitutional rights.
 - b. **“Employment Insurance Benefits”** (“EI Benefits”) means those benefits established under the *Employment Insurance Act*, SC 1996, c 23.
 - c. **“Partially Vaccinated”** means having received the first dose of a two-dose series of a Health Canada approved vaccine to curb the spread of against COVID-19.
 - d. **“Fully Vaccinated”** means having received the complete series of doses (or a single dose of the Janssen (Johnson & Johnson) COVID-19 vaccine) of a Health Canada approved vaccine that provides protection against COVID-19; and having allowed the time recommended by public health authorities to produce an immune response to COVID-19 elapse (14 days from receipt of a single-dose vaccine or of the second dose of a two-dose series). In time, being Fully Vaccinated may mean having received booster shots, when and as recommended by the applicable public health authorities.
 - e. **“Proof of Vaccination”** means providing to the City of Windsor, and/or its Affiliated Entities official documentation issued by the government or the non-governmental entity that is authorized to issue the evidence of COVID-19 vaccination in the jurisdiction in which the vaccine was administered (including a QR code, if issued by the applicable authorities) confirming receipt of the complete series of doses (or a single dose of the

Janssen (Johnson & Johnson) COVID-19 vaccine) of a Health Canada approved vaccine that provides protection against COVID-19. In time, this may require providing proof of receipt of booster shots, when and as recommended by the applicable public health authorities.

- f. **“Privacy”** means the fundamental right of individuals to create boundaries limiting access to their person, communications, or personal information, including but not limited to, medical and health records.
- g. **“Informed Consent”** means the ability to determine the acceptance or otherwise of a proposed treatment by a health practitioner. It covers the ability to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion, with sufficient knowledge and comprehension of the elements of the subject matter involved as to enable the individual to make an understanding and enlightened decision. Health Care Consent Act of Ontario 1996.
- h. **“Collective Bargaining Agreement”** means any agreement negotiated by the Plaintiffs Union representatives with the City of Windsor defining the benefits and boundaries of the employment.
- i. **“Directive#6”** means the mandatory vaccination directive issued by the Province of Ontario issued to and 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*

B. The Parties

1. Plaintiffs – Employees of the City of Windsor and affiliates

The Plaintiffs (“Plaintiffs”) were, at all relevant and material times, employees of the Corporation of the City of Windsor (the City) and its Affiliated Entities who were either fired or forced to resign under duress from the City of Windsor in breach of their legal, constitutional and Charter Rights.

2. The Defendants – City of Windsor*

The Defendant, the City of Windsor, is a statutorily created body whose governing body is the Windsor City Council. The council consists of the mayor and ten elected city councilors (one per ward) representing the City. For all plaintiffs, irrespective of what roles or entities they worked with, the decision to fire was made by the City of Windsor. As a Municipal government, the City of Windsor is responsible for areas such as parks, community water systems, local police, roadways and parking. The powers of municipal governments are determined by the provincial government. All legal authorities for these areas flow from the Ontario provincial government, presently and during all material times by Premier Doug Ford. This legal authority is governed by the *MUNICIPAL ACT, 2001, S.O. 2001, C. 25*.

Plaintiffs: Frontline Workers and Hailed Heroes

1. Plaintiff Jason Blanchard was a First Responder with the City of Windsor’s Fire Service. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on January 04, 2022. Until the termination of his employment, Mr. Blanchard was responsible for his team and their response to emergency calls from the City’s residents under the leadership of his Captain. Regarded as a team leader, Mr. Blanchard dedicated fourteen (14) years of his life to the City before he was placed on unpaid leave and subsequently terminated. In the midst of a disorienting experience, the pandemic, winter, denial of medical accommodation and other challenges, Mr. Blanchard had to grapple with his new and devastating reality. Not only did

Mr. Blanchard lose his income, but he also lost every accumulated unpaid vacation allowance, accumulated sick-day allowances, floating holidays, and banked overtime payment. The immediate destitution caused by the City of Windsor can be demonstrated by the fact the Blanchard household ~~will potentially lose their family home and mortgage~~ has lost their family home and currently lives in the basement of one of his friend's. The loss of Mr. Blanchard's accommodation and the subsequent termination of his employment has led to a state of depression, extreme emotional stress for the entire Blanchard household, and particularly his marriage. His tremendous loss includes; loss of financial security, loss of family status, loss of marriage, loss of mental and physical well-being. Not too long ago, the City of Windsor and its residents hailed him as a hero working on the frontline to keep their city safe. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Mr Blanchard an offer to return to his original position at the City. Mr. Blanchard accepted the rehire offer from the City. This communication took place outside of any grievance process or involvement of the Union.

2. Plaintiff Joshua Konopasky was a First Responder with the City of Windsor's fire department from July 2013 to January 2022. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on January 04, 2022. The City's decision to terminate his employment turned his life upside down. Joshua went from being hailed as a "Hero" to facing destitution. In the middle of one of the greatest challenges faced by the world, Joshua faced a rollercoaster ride from being praised as a hero to destruction of his life. In its punitive approach, the City of Windsor deprived Joshua of his income, pension, post- employment benefits, accumulated unpaid vacation payment, allowances, accumulated sick-day allowances, floating holidays, and banked overtime payment. Joshua and his family faced immediate destitution, ~~as can be evidenced by his family's present residence in an RV trailer~~ after the loss of

his house and mortgage. Mr. Konopasky was forced to secure another mortgage on a fixer-upper house while living on the premises with his family in an RV until November 2022. He also suffers incredible bouts of anxiety and PTSD; conditions that have led to fractured relationships with his family and wife. Similar to Jason, Natalie and Jane Doe, Joshua finds himself at the bottom of the ladder with no one to help him. Not too long ago, the City of Windsor and its residents hailed him as a hero working on the frontline to keep their city safe. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Mr Konopasky an offer to return to his original position at the City. Mr. Konopasky accepted the rehire offer from the City. This communication took place outside of any grievance process or involvement of the Union.

3. Plaintiff Natalie Seal served as Fire Fighter and First Responder with the City of Windsor from 2006 to January 2022. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on January 04, 2022. The City, in a clearly punitive action, deprived Natalie of her income, pension, post-employment benefits, accumulated benefits and entitlements. In the midst of the stresses and uncertainties that accompanied the pandemic, Natalie saw her family being ravaged by the impact of the City's decision. Natalie's household is a single income family to which she was the sole income provider. To ensure her family stayed afloat Natalie was forced to sell her most prized possessions and sacrifice her retirement future. Natalie's greatest pain is the suffering that her young children have had to experience as a result of the illegal actions of the City of Windsor. The immense stress, instability, anxiety and hardship on Natalie and her family has caused irreparable harm to herself, husband and their young children. Not too long ago, the City of Windsor and its residents also hailed her as a hero working on the frontline to keep the City of Windsor safe.

Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Natalie Seal an offer to return to her original position at the City. Natalie accepted the rehire offer from the City. This communication took place outside any grievance process or involvement of the Union.

4. Plaintiff Jane Doe commenced her career with the City of Windsor as a Refuse Collector in 2005, and in 2006 joined the Fire Service as a Fire fighter. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on January 04, 2022. Against all odds she had fulfilled her life dream of being a fire fighter and helping the Citizens of Windsor in their time of need. Despite 16 years of commitment and service, Jane Doe was fired unceremoniously. She was placed in a further desperate situation when the City of Windsor denied her accumulated benefits and legal entitlements. In the midst of the life defining challenges caused by the pandemic, Jane Doe had to grapple with being fired and denied all forms of support which she was legally entitled to from her years of dedicated service. This devastated her family's well-being. The living conditions of Jane Doe's family have since seen a tremendous decline. This burden has placed a significant strain on her family and marriage. The termination of her employment has had a lifelong and far-reaching effect on not only her family's financial and health well-being but also her career. Not too long ago, the City of Windsor and its residents hailed her as a hero working on the frontline to keep their city safe. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Ms. Doe an offer to return to her original position at the City. Ms. Doe accepted the rehire offer from the City. This communication took place outside of any grievance process or involvement of the Union.

City of Windsor Employees

5. Plaintiff Michael Heynsbroek was an Analyst Programmer with the City of Windsor. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on January 04, 2022. Mr. Heynsbroek's life work had been dedicated to the City of Windsor for over two decades. In many ways, Michael is a life-time public servant of the City of Windsor. Despite facing his own medical challenges, he continued to play a leading role in ensuring that the needs of his fellow Windsor residents were met. In addition to denying Mr. Heynsbroek medical accommodation and the decision to illegally terminate his employment, the City of Windsor went a step further in illegally denying Michael his basic right to apply for unemployment insurance. This action was found to be illegal by Service Canada, after his House of Commons representative escalated the matter and lent his voice to Michael's cause. Following the termination of his employment, Michael Heynsbroek has experienced severe financial loss. As a major contributor to his family's income, he has seen an immense decline in his ability to provide for his family's daily needs. In addition, Mr. Heynsbroek has had to deal with depression and anxiety; a development that has had adverse effect on his family and quality of life. The loss of Mr. Heynsbroek's employment has left an enduring and devastating effect on his quality of life, his mental health, as well as his career. Michael has been left in a desperate situation as a result of the callous deprivation of his hard earned accumulated sick time, vacation days, floating holidays, banked overtime, management overtime, and other accumulated entitlements. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Mr. Heynsbroek an offer to return to his original position at the City. Mr. Heynsbroek accepted the rehire offer from the City. This communication took place outside any grievance process or involvement of the Union.

6. Plaintiff Andrea Dewhurst commenced her career with the City of Windsor in 2017 as an Early Childhood Educator. She held the role until 2020 when she was redeployed to Huron Lodge (an Affiliated Entity) as a COVID-19 screener and frontline worker. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on January 04, 2022. Her employment with the City was terminated on January 4, 2022, following the City's decision not to provide her with the much-needed accommodation from the Policy. Andrea Dewhurst was faced with the unfortunate situation of living from pay cheque to pay cheque, in addition to then losing her health benefits. She had relied solely on her income from the city to meet her basic daily needs and further losing her health benefits had been detrimental to her wellbeing. As a result of her loss of employment, the stress and trauma led to a major breakdown in her family. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Ms. Dewhurst an offer to return to her original position at the City. Ms. Dewhurst did not accept the rehire offer from the City.
7. Plaintiff Adam Fevreau was a Personal Computer Analyst with the City of Windsor between September 2000 to January 4, 2022. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on January 04, 2022. On January 4, 2022, his 22-year thriving and rewarding career serving his fellow residents of the City of Windsor came to an abrupt end. While working with the City of Windsor Mr. Fevreau was an indispensable member of the team that developed the City's work from-home program. This provided the City with a framework for its employees to have the infrastructure to work from

home. Adam's goal through this disorienting period of the pandemic was to help not only his fellow employees but also the people of Windsor. Mr. Fevreau relied on his job to pay his mortgage, utility bills, health insurance, child and family support. The loss of employment has caused him to lose health insurance and inevitably defaulted on his mortgage. The end result is that Adam lost his home, lost his family structure, and has experienced both mental and physical health related issues. Adam and his youngest son are ~~is~~ now forced to live with his elderly parents. Adam, a single father of three (3), has been left in a desperate situation as a result of the deprivation of his accumulated sick time, vacation days, pension, post-employment benefits, floating holidays, banked overtime, management overtime, and other accumulated entitlements in breach of his constitutional rights. Mr. Fevreau was not provided with a rehire offer from the City in retaliation for being vocal in defending his Constitutional Rights.

8. Plaintiff Jasen Gannon commenced his bright career with the City of Windsor in October 2018 as a Data Analyst. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on January 04, 2022 Jasen Gannon relied on his job with the City of Windsor for insurance and to meet his daily expenses. The loss of his employment has resulted in significant consequences to his financial, emotional, and physical well-being. As a Union leader, Jasen gladly took on the responsibility to advocate and fight for the rights of his colleagues and wider community. Jasen has been left in a desperate situation as a result of the deprivation of his accumulated sick time, vacation days, floating holidays, banked overtime, management overtime, and other accumulated entitlements. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Mr. Gannon an offer to return to his original position at the City. Mr. Gannon accepted the rehire offer from the City. This communication took place outside

of any grievance process or involvement of the Union.

9. Plaintiff Paul Giroux was the City Forester and Manager of Forestry and Natural Areas of the City of Windsor until January 4, 2022. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on January 04, 2022. He had started his career with the City of Windsor in March 2015. The City of Windsor has received many compliments for its natural forestry and parks. This made the city pleasant and enjoyable for not only its residents but visitors to the city. Much of this is attributable to Paul's hard work, brilliance and dedication to the city. Mr. Giroux' rich career of more than half a decade was brought to an abrupt end when the City of Windsor fired him in breach of his constitutional rights. The loss of his job has had a significant impact on his lifestyle. The change in family dynamics, financial pressure and loss of income has also had a destructive impact on his children's education and emotional wellbeing. The damage to Mr. Giroux' career has also been far-reaching and irreparable. Paul has been left in a desperate situation as a result of the illegal deprivation of his accumulated sick time, vacation days, floating holidays, banked overtime, management overtime, and other accumulated entitlements. Mr. Giroux was not provided with a rehire offer from the City in retaliation for being vocal in defending his constitutional rights.
10. Plaintiff Vera Gorica was a Recreational Clerk at the City of Windsor prior to the termination of employment in December 2021. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on December 03, 2021. She dedicated 17 years of her life to the City.

Losing her employment has led to excruciating strain, stress, and debilitating consequences for her family. Vera has been left in a desperate situation as a result of the denial of her accumulated sick time, vacation days, floating holidays, banked overtime, management overtime, and other accumulated entitlements in breach of her Constitutional Rights. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Ms. Gorica an offer to return to her original position at the City. Ms. Gorica has not accepted the rehire offer from the City as yet.

11. Plaintiff Brandy Robert commenced her career with the City of Windsor as an Early Childhood Educator from June 2000 until the closure of the childcare centers in 2010. Here, Brandy enjoyed working with young children and enforcing values of self-worth. Mrs. Robert continued to dedicate her service to the city, working as a Parks and Recreational Clerk from March 2011 to January 4, 2022. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on January 04, 2022. Mrs. Robert relied on her job with the City of Windsor for health insurance and to contribute toward her family's monthly expenses. Brandy has been left in a desperate situation as a result of the deprivation of her accumulated sick time, vacation days, pension, post-employment benefits, floating holidays, banked overtime as well as the breach of her constitutional rights by the City of Windsor. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Mrs. Robert an offer to return to her original position at the City. Ms. Robert has not accepted the rehire offer from the City as yet.

12. Plaintiff Kimberley Hamm is a lifer, having dedicated her life to serving the City of Windsor for almost three (3) decades. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on January 04, 2022. When Kimberley began her service with the City of Windsor in April of 1992, she made a decision to commit her life to serve the residents of Windsor. Serving them brought her enjoyment, satisfaction, happiness and fulfilment. Kimberley enjoyed working for the city. For almost 30 years she had an illustrious career holding several different positions starting as a Cashier for the Traffic Department, Custodian for the Property Dept, and File Clerk for the Social Services Department. She served as Records & Supply Clerk for eleven (11) years, a Senior License Issuer for Council Services, and finally finishing her career as a Clerk for the Leamington Satellite Office, all for the City of Windsor. In a completely ruthless fashion, rather than providing Kimberley with the keys to the city for her long years of service, the City of Windsor, on January 4, 2022, fired Kimberley when she was only a mere 6 months away from retiring. The loss of her job, along with her health insurance, has devastated Kimberley and caused great undue stress, emotional trauma and hardship for her and her family as a result of the breach of her constitutional rights. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Ms. Hamm an offer to return to her original position at the City. Ms. Hamm has rejected the rehire offer from the City.
13. Plaintiff Denise Morand is another lifer at the City of Windsor. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on January 04, 2022.

Her career with the city can be summed up in two words — “dedication” and “devotion”. She began her career with the city over 34 years ago in December 1987. Ms. Morand dedicated the majority of her career to helping society’s most vulnerable in the Social Services Department. Her long and illustrious career with the City of Windsor ended on January 4, 2022. Ms. Morand relied on her job with the City of Windsor for health insurance and to contribute toward her everyday expenses. Denise has been left in a desperate situation as a result of the breach of her constitutional rights. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Ms. Morand an offer to return to her original position at the City. Ms. Morand has accepted the rehire offer from the City. This communication took place outside any grievance process or involvement of the Union.

14. Plaintiff Delilah Liburdi was a Data Analyst at the City of Windsor from July 2017 to January 4, 2022. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on January 04, 2022. Ms. Liburdi relied on her employment with the City of Windsor for health insurance and to contribute toward her family’s monthly expenses. Delilah has been left in a desperate situation as a result of the loss of financial security, pension, suffered great stress, emotional instability, decline in quality of life and anguish due to the breach of her constitutional rights. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Ms. Liburdi an offer to return to her original position at the City. Ms. Liburdi has not accepted the rehire offer from the City as yet.

15. Plaintiff Paul Zettel served the City of Windsor as an Operating Engineer for six (6) years from April 2016 to January 4, 2022, when he was fired. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on January 04, 2022. Prior to his termination, Paul had requested accommodation under the Policy, ~~citing his religious beliefs~~; unfortunately, his accommodation request was denied. Paul's job loss has led to a dramatic decline in his living conditions. For instance, he continues to live with his mother and sister, following the loss of opportunity to purchase his first house which he was dedicatedly saving towards. He has suffered loss of financial security, loss of pension, great stress, emotional instability, anxiety, and anguish due to the breach of his constitutional rights. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Mr. Zettel an offer to return to his original position at the City. Mr Zettel accepted the rehire offer from the City. This communication took place outside any grievance process or involvement of the Union.
16. Plaintiff Priscilla Buck was a Facility Attendant with the City of Windsor from the fall of 2015 to June 9, 2022. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on June 09, 2022. Her duties included: working at the front desk, fitness desk, paperwork processing, cashier, and registration. Following the termination of her employment, Mrs. Buck experienced a critical financial situation including her mortgage payments and transportation. In addition, she suffered loss of sleep, stress, and anxiety. The damage to her career is also indisputable as she works to get her life back on track.

Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Ms. Buck an offer to return to her original position at the City. Ms. Buck accepted the rehire offer from the City. This communication took place outside any grievance process or involvement of the Union.

17. Plaintiff Jean Marc Smith served as technical and maintenance support with the City of Windsor from August 26, 2002 to January 4, 2022. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on January 04, 2022. His duties included: issuing payment releases and conducting building inspections. He also provided advice, and guidance to social housing and provided technical reviews. Mr. Smith ensured that the residents of the City were safe. Following the termination of his employment, Jean Marc Smith has experienced severe financial loss including all of his post-retirement benefits, life insurance etc. In addition to losing his income, he was left financially devastated to the point he could not purchase prescriptive medication and new glasses. The Smith's family relied on his income to meet the family's daily needs and future stability. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Mr. Smith an offer to return to his original position at the City. Mr. Smith has accepted the rehire offer from the City. This communication took place outside any grievance or involvement of the Union.

18. Plaintiff Dominique Schiller was a Social Service Worker with the City of Windsor between June 2019, to January 4, 2022. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on January 04, 2022. Her duties included Administering Ontario Works to eligible applicants.

On November 10, 2021, she was placed on unpaid emergency leave and subsequently terminated on January 4, 2022. Dominique had requested accommodation under the Policy from the disability management specialist. Unfortunately, her accommodation request was denied. The loss of her employment resulted in significant consequences financially, emotionally and to her physical well-being. Dominique also struggles to pay her mortgage and experiences symptoms of anxiety and depression. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Mr. Schiller an offer to return to her original position at the City. Ms. Schiller has not accepted the rehire offer from the City.

19. Plaintiff Youssouf Muhammed was an employee with the City of Windsor between January 17, 2018, to January 4, 2022. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on January 04, 2022. His job with the City was as a Pool Operator. His duties included: Maintaining the Recreational Centre, managing the pool along with most building requirements. On November 15, 2021, Mr Muhammed was placed on unpaid leave and thereafter terminated on January 4, 2022, as he did not provide proof of vaccination. As a result of the termination, Mr Muhammed suffered significant financial loss and was forced to live with his parents. He also suffered severe emotional damages such as anxiety, depression and loss of hope in life. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Mr. Muhammed an offer to return to his original position at the City. Mr. Muhammed has not accepted the rehire offer from the City as yet.

20. Plaintiff Jesse Miceli was an employee of the City of Windsor, He started to work for the City in 2013. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on January 04, 2022. His position was as a caretaker. His duties included sweeping, mopping, dusting, cleaning washroom facilities, furniture, windows, walls, ceilings, carpet cleaning, vacuuming, cleaning sinks and toilets, air vents, appliances, and collecting garbage. On November 15, 2021, he was informed by the City of Windsor that he would be placed on Unpaid Leave. Subsequent to this, he was informed on January 4th, 2022, that his employment with the City of Windsor was terminated. He was terminated because he did not get vaccinated. The City did not offer any alternative to continue his employment other than to show proof of vaccination, despite filling out the necessary paperwork provided to him by the City for religious exemption which was subsequently denied. As a result of the termination, he suffered severe financial loss, for example, he was not entitled to insurance government funds, thus he was forced to live with his parents. Moreover, he feels that he suffered discrimination by the City because of his religion, this situation created further problems with his family, that made him feel worthless. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Mr. Miceli an offer to return to his original position in the City. Mr. Miceli has accepted the rehire offer from the City to return to work. This communication took place outside any grievance process or involvement of the Union.

EnWin Employees

21. Plaintiff Craig Patterson served the City under EnWin as a Water Distribution Operator from April 2004 to February 2022. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him in February 2022. His career with EnWin was terminated in February 2022. Craig maintained insurance for his entire family and losing that insurance coupled with loss of his employment devastated his family's well-being. The Patterson household has and continues to experience severe financial difficulty, pressure, and emotional trauma.
22. Plaintiff John Journeay was an Apprentice Powerline Splicer with EnWin from February 2018 to February 2022. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him in February 2022. He was responsible for constructing and maintaining the City's overhead and underground power infrastructure. John is also solely responsible for the upkeep of his children. John, like his colleagues, has been left in a desperate situation as a result of the breach of his constitutional rights.
23. Valerie D'Ambrosio worked as a Water Engineering Technician with EnWin for over 23 years. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her in February 2022. She is known as someone who takes great pride in her work: she enjoyed producing the Mapping of the Water Distribution System for the City of Windsor and loved to help others from different Departments.

EnWin accommodated all inside staff as of March 2020 with the purchase of new computers to take home as the Company developed a work- from-home model due to the Covid Pandemic. Everything was seamless during the time she worked from home, and in fact she was even more productive due to the quiet atmosphere in her home office. She was put on an unpaid leave of absence as of November 29, 2021, then subsequently terminated from her job on February 1, 2022, due to her decision not to disclose her vaccination status. It should be noted that while Valerie was on unpaid leave and terminated from her job, her co-workers and other inside staff at EnWin were allowed to continue working from home until July 4, 2022. ~~Valerie has been deprived of her Lifetime Medical Benefits and Pension.~~ Valerie was forced to withdraw her pension and invest it herself, lost her life-time benefits, accumulated sick-leave, and was denied her severance pay. Her whole-scale loss has left her in a desperate situation as a result of the breach.

24. Plaintiff Florin Belciug was an Apprentice Maintenance Operator- Electrician with EnWin Utilities. In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on February 01, 2022. He commenced his career with EnWin more than a year ago in February 2021. His promising career with EnWin ended in November 2021. Mr. Belciug relied on his job with EnWin for health insurance and to contribute toward his family's everyday expenses. He has had to cope with severe emotional trauma, pain and anguish as a result of breach of his Constitutional Rights.

Huron Lodge Employees

25. Plaintiff Melissa Marlein's devotion to Huron Lodge commenced in 2002 when she took up duties as a Personal Support Worker. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on January 04, 2022. In 2020, in a time of need for Huron Lodge, she assumed the role of a COVID-19 screener. Melissa was fired on January 4, 2022. Melissa and her family endured severe financial pressure following the termination of her employment. Her family has had to depend on her husband's disability pension pay-outs, leading to a dramatic change in her family's living conditions. The Marlein's family has had to depend on the goodwill and largesse of third parties, extended family, and well-wishers to cope and survive. The stability of Melissa's marriage also hangs in the balance as a consequence of the severe pressure she faces. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Ms. Marlein an offer to return to his original position at the City. Ms. Marlein has not accepted the rehire offer from the City as yet.

26. Plaintiff Wendy Angione was a Registered Nurse at the City of Windsor from July 22, 2011, to January 21, 2022. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her on January 21, 2022. She dedicated 11 years of her life to the City. Her duties as an R.N. included managing the care for geriatric residences. She also supervised Staff Physician rounds, processed Doctor's orders for the residences, notified Physicians of changes in resident's health status, updated management and staff of changes and incidences that required attention following health and safety guidelines, education, and training.

Losing her employment has led to excruciating strain, stress and debilitating consequences for her family. Wendy and her family have been left in a desperate situation as a result of the denial of her constitutional rights. Wendy was forced to put her house up for sale to avoid foreclosure. Ms. Angione was not provided with a rehire offer from the City in retaliation for being vocal in defending her Constitutional Rights.

27. Plaintiff Jane Doe II was an employee of Huron Lodge from December 2003 to December 2021. In breach of her Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired her in December 2021. Jane Doe II was a Personal Support Worker and her duties included providing ongoing personal care based on individual needs. Other duties included the lifting and transfer of residents, toileting, bathing, assisting with personal needs, palliative care, and emotional support to residents. On November 15, 2021, Jane Doe II was informed by Huron Lodge that she would be placed on an unpaid leave of absence. Subsequently, Jane Doe II was informed in December 2021 that her employment with Huron Lodge was terminated. As a result of the termination, Jane Doe II suffered severe financial loss, incurred in debt, and her pension plan was penalized with a significant amount of money lost in taxes. Furthermore, Jane Doe II suffered from extreme depression and anxiety. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Jane Doe II an offer to return to her original position at the City. Jane Doe II is in discussions about returning to work.

Transit Windsor Facility Employee

28. Plaintiff Isham Bashir was a bus driver at Transit Windsor from July 1999 to November 24, 2021.
- In breach of his Constitutional Rights, Charter Rights and without any legal justification or authority the City of Windsor fired him on November 24, 2021. He dedicated 22 years of his life to Transit Windsor before his employment was abruptly terminated on November 24th, 2021. When his employment ceased, he did not receive any benefits or severance from the company, even though he was entitled to those benefits. Mr. Bashir suffers from serious pre-existing medical conditions such as high cholesterol, high blood pressure, and diabetes. His wife and children also suffer from various diagnosed medical conditions. As a result of his unlawful termination, the health conditions of Mr. Bashir and his family have worsened as he is unable to purchase their prescriptive medication. Following the termination of his employment, he lost his retirement benefits, health benefits and had to refinance his home to maintain his family. Mr. Bashir also faces mental health challenges and has been diagnosed with anxiety, depression, and hallucinations. Subsequent to the filing of this Statement of Claim on August 16, 2022, the City of Windsor on December 15, 2022, directly communicated with Mr. Bashir an offer to return to his original position at the City. Mr. Bashir has accepted has accepted his offer to return to work with the City.

29. The Plaintiffs all made the very difficult decision that compliance with the City of Windsor vaccination Policy would negatively impact on their health, religious beliefs, reasons of conscience, or lifelong personal beliefs. At all material times, the Plaintiffs served as public servants for the City of Windsor and its Affiliate Entities and played a role in initially helping the City of Windsor deal with challenges which arose because of COVID-19. These included, but were not limited to, First Responders and health care workers who were hailed as Heroes for their amazing work on the frontlines.

30. At all material times the City of Windsor, and all its Affiliate Entities including but not limited to Huron Lodge, EnWin, Windsor Lodge were legally required to secure and protect the Constitutional and legal rights of the Plaintiffs.

6. JURISDICTION OF THE COURT

31. The Plaintiffs apply to this court as a court of competent jurisdiction within s.24 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”), seeking remedies provided for under s.24(2) of the *Charter*.

32. This claim raises constitutional issues both procedural and substantive in relation to ~~Policy HRHAS – POL – 0002 enacted by the City of Windsor on September 17, 2021, the decision made by the City of Windsor on January 4, 2022, to terminate the employees who did not get the vaccination against Covid 19.~~ This ~~enactment~~, decision was Ultra Vires the powers statutorily delegated to the City of Windsor by the Ontario Municipal Act, 2001, SO 2001, c 25,

the Canada Constitution Act, 1982, ~~The claim also raises further constitutional challenges in the failure to accurately apply~~ the directives and mandates of the Chief Medical Officer of the Province of Ontario, and even the Policy HRHAS – POL – 0002 enacted by the Counsel of the City of Windsor on September 17, 2021, which ordered mandatory vaccination for all of the City employees, ~~and further failure to interpret and apply the provincial guidelines,~~ contrary to and in breach of sections 1,7, and 15 of the Canadian Charter of Rights and Freedoms.

33. The Government of Ontario has never issued any mandate or direction requiring that all unvaccinated employees be laid off, terminated, or denied benefits to which they were otherwise entitled. The issues arising in this claim do not form part of any Collective Bargaining Agreement or agreed negotiation between the Plaintiffs and the City. The crux of the claim is the illegal and continued illegal action of the City of Windsor in acting Ultra Vires the powers clearly defined by the Constitution Act 1867 Constitution Act, 1867 (UK), 30 & 31 Victoria, c 3, the Municipal Act, the provincial guidelines and mandates issued by the Chief Medical Officer of Ontario, and even the Policy HRHAS – POL – 0002 enacted by the Counsel of the City of Windsor on September 17, 2021. This has resulted in irreparable harm to the Plaintiffs who now seek the assistance of this Honourable Court.

34. The issues forming the subject matter of this Claim are, in their pith and substance, Constitutional in nature questioning the authority of the City of Windsor to act outside the authority of the Constitution Act, 1867, 30 & 31 Vict, c 3, the Municipal Act 2001, SO 2001, the guidelines issued by the Province of Ontario, and even the Policy HRHAS – POL – 0002 enacted by the Counsel of the City of Windsor on September 17, 2021 There is no other competent authority which has the jurisdiction to address these issues in their totality. Consequent on the above, the exclusive jurisdiction of this Honourable Court is a product of fact and law pursuant s.92 (10)

Constitution Act, 1867. Constitution Act, 1867 (UK), 30 & 31 Victoria, c 3,

35. The constitutional issues and the questions to be determined by this Honourable Court are not directly nor indirectly, expressly nor tacitly, addressed or provided for in any collective agreement between the unionized Plaintiffs, their respective unions, and the City.
36. The Collective Bargaining Agreement does not have any express or implied provision that contains an obligation to get vaccinated. If that was the case, the City should have negotiated a Memorandum of Agreement to include a provision that provides for mandatory vaccination for employees. There was not any sort of negotiation between the Union and the City that shows a clear intention to include mandatory vaccinations in the Collective Bargaining Agreement. This is further evidenced by the fact that on December 15, 2022, the city sent letters directly to the workers, and not to the Union containing an offer to rehire the unvaccinated and undisclosed employees. By sending these letters to the workers without the intervention of the Union, the City acknowledges that enacting a policy requiring mandatory vaccinations is outside of the Collective Bargaining Agreement, and, furthermore, the City recognizes that its decision to fire unvaccinated and undisclosed workers on January 4th, 2022, was outside its legal authority.
37. Consequently, no Arbitrator, Adjudicator, nor Board has exclusive jurisdiction over whether the City of Windsor acted ultra vires the powers under the Municipal Act, the Constitution Act, the health directives enacted by the Province of Ontario, and the Canadian Charter of Rights.

38. This Court has the jurisdiction to grant the Plaintiffs' prayer for relief regarding damages, including punitive damages, special damages, distress damages, and any other damages the court may deem fit pursuant to s. 24(2) of the Canadian Charter of Rights and Freedoms or any other form of common law or relief.

~~D. THE IMPUNGED POLICY~~

D. THE POLICY AND ITS UNLAWFUL IMPLEMENTATION

39. The Plaintiffs plead that the City of Windsor on September 17, 2021, enacted and implemented a mandatory vaccination requirement — *HRHLAS-Pol-002* ("Policy"). The Policy mandated a specific path targeting unvaccinated and undisclosed employees. The Policy required all employees to prove they were fully vaccinated by November 15, 2021. The Policy further provided for accommodation by creating medical or religious exceptions. Almost all requests for medical or religious exceptions were denied by the City.

40. Pursuant to clause 6.11.3 of the Policy, the City dictated that "these employees would be placed on an unpaid leave of absence and will not be permitted to use sick time, vacation days, floating holidays, banked overtime, management overtime, or any other pay or time off options instead." The decision of the City of Windsor to place the Plaintiffs on unpaid leave of absence and to further deny the use of "sick time, vacation days, floating holidays, banked overtime, management overtime, or any other pay or time off options" was a form of punishment carried out by the City of Windsor and was outside of the City's legal authority under the Municipal Act and more importantly, the guidelines issued by the Province of Ontario to address the provinces concern around the control of COVID-19.

41. On November 15, 2021, the City of Windsor placed on unpaid leave employees who did not consent to get vaccinated, and those who did not show proof of vaccination. This Policy, on its face and in its application, created a distinction based on enumerated or analogous grounds. The effect of the Policy was to create a toxic workplace which segregated unvaccinated workers from vaccinated staff while simultaneously punishing and denying the Plaintiffs their s.15 equality rights of equal treatment and equal benefits under the law (Charter of Rights and Freedoms).
42. The Policy discriminates against those who do not consent to the vaccination or who do not consent to providing their vaccination record to their employer, effectively forcing these individuals to consent to a medical treatment they cannot accept or risk losing their employment.
43. The Policy denied a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage in breach of their s.15 guaranteed rights under the Charter of Rights and Freedoms.
44. The Policy provided a benefit to vaccinated employees in that, they were authorized to work from home, while conversely denying the Plaintiffs. Both are the same class of the City's employees, trying to earn a living.
45. But for the discriminatory policy enacted by the City of Windsor, there is no other legal basis for laying off the Plaintiffs and the subsequent denial of benefits previously accumulated and the pain and suffering endured by the Plaintiffs.

46. On January 4, 2022, the City of Windsor took further steps to punish the Plaintiffs without regard to the Constitutional Rights of the Plaintiffs by wrongfully firing them without any legal authority. This was done despite the city's own policy which made no mention of any authorization for the firing of the Plaintiffs. This decision was made without regard to years of services or respect for frontline responders. The decision of the City of Windsor to fire the Plaintiffs is a further breach of the *Constitution Act, 1867 (UK), 30 & 31 Victoria, c 3*, the *Charter of Rights and Freedoms*, the *Municipal Act* and even the City's own policy passed by City Council which gave no legal authority for the firing of the Plaintiffs.
47. On January 4, 2022, Mayor Drew Dilkens announced: "In keeping with public health measures announced yesterday, the City of Windsor is required to close some facilities. **We have also returned to a work-from-home scenario for the vast majority of our employees consistent with the new rules.**" (Emphasis supplied). While the Mayor mandated that city staff work remotely, he simultaneously fired the Plaintiffs, denying them the opportunity to earn their livelihood. **The actions of the City were completely unreasonable, had no legal basis, and defies all logic of protecting the workplace since the City on the same date mandated that the vast majority of City staff would be required to work from home.**
48. Breach of the employees Canadian Charter of Rights and Constitutional Rights does not have any legal or rational connection with protecting the health and safety of the workers. Rather the measure of terminating the employees is a form of retaliation and punishment against the unvaccinated and undisclosed workers for exercising their Constitutional Rights.

49. ~~The Plaintiffs claim that the decision by the City of Windsor to fire the Plaintiffs on January 4, 2022, was in breach of the basic principles of fundamental justice and the Plaintiff's s.7 Charter rights not to be deprived of the right to life, liberty and security except in accordance with the principles of fundamental justice.~~
50. On February 14, 2022, Premier Doug Ford announced to a welcoming Ontario, that the province is ending its COVID-19 vaccine passport system starting on **March 1, 2022**. Premier Doug Ford also declared that **Ontario *will also lift proof of vaccination requirements for all settings at this time.***

51. The following quote by Dr Kieran Moore the Province of Ontario's Chief Medical Officer on February 17, 2022, is demonstrative of the intent of the Provincial mandate:

We have not mandated immunizations (Vaccinations). We have mandated that organizations have immunization policies "say *let's get immunized, get educated regarding the benefits and risks of the vaccine and or have a testing strategy.*" So that mandate to have an immunization Policy, it's my intent, together with negotiation with partners, to have them removed by March 1. **And I think that's prudent it follows the removal of proof of immunization for other venues.** So, I think it's timely to remove them for businesses. There may be mandates by organizations that are not government that would want to have a testing strategy continue, especially if they have a high-risk setting. **And I'll just also be particular that there was mandate for vaccination in long term care facilities by the Minister that is separate as it wasn't a directive by the chief medical officer health office. (Emphasis supplied)**

The failure of the City of the Windsor to follow the guidelines of the Chief Medical Officer of the Province of Ontario is not an issue that can be addressed in the Collective Bargaining process but one which requires Judicial interpretation, external to any potential issues under the Collective Bargaining Agreement in the context of the Constitutional rights of the Plaintiffs.

52. ~~The Plaintiffs claim that their Charter right to freedom of religion as protected under section 2(a) was violated by the City of Windsor. The Policy offends their sincerely held religious beliefs in a manner that is more than trivial or substantial.~~
53. On December 15, 2022, the City sent a letter including an offer to rehire most of the Plaintiffs. In that letter the City offered the plaintiffs to go back to work under certain conditions. This letter is a clear indication that the city acknowledges that the decision taken on January 4th, 2022, to terminate the employees was done without any legal authorization. The City is recognizing that firing the employees was an egregious violation of the Constitutional Rights of the Plaintiffs, and was in fact a punishment or retaliation against the unvaccinated and undisclosed workers for exercising their right to control their own bodily integrity

E. THE CITY RETALIATED AGAINST UNVACCINATED AND UNDISCLOSED WORKERS

54. The January 4, 2022, decision by the Mayor of Windsor to wrongfully fire the employees without any legal authority is a form of retaliation and punishment against the unvaccinated and undisclosed workers. This punishment and retaliation were done despite the city's own policy which made no mention of any authorization for the firing of the Plaintiffs. Terminating the employees and denying their basic rights does not have an adequate rational connection with protecting the health and safety of the workers.
55. The fact that the City demanded the unvaccinated and undisclosed workers to go back to work in December, 2022, is a clear indication that the City knew that terminating the employees was a wrongful act.

F. THE CITY ACTED ULTRA VIRES ITS POWERS

56. The City of Windsor has an obligation to act within the powers given by the Constitution and the law. On January 4th, 2022 the City of Windsor punished and terminated the unvaccinated and undisclosed workers without any legal authority to do so. The City acted Ultra Vires the Constitution Act, section 92(8) *Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3, which assigns to provinces exclusive legislative authority regarding “Municipal Institutions in the Province”, The Municipal Act of Ontario 2001, which states that the city’s policies and regulations must be in accordance with the provincial mandates, the health directives mandated by the Province of Ontario, and even against the Policy passed by the City Council which did not provide any guidelines or authority for firing the Plaintiffs.

~~E.~~ G. BREACH OF CANADIAN CHARTER OF RIGHTS VIOLATIONS

SECTION 7 – Constitutional Breaches

57. The Plaintiffs say that their right to security of the person interest protected under section 7 of the Charter “Canadian Charter of Rights and Freedoms, s 7, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.” is violated by the decision made by the City of Windsor to terminate the unvaccinated employees as this interferes with personal autonomy, and one’s ability to control their bodies. The plaintiffs were also deprived of their economic rights fundamental to human survival without accord to the principles of fundamental justice.
58. The principles of fundamental justice include the principles against arbitrariness, overbreadth and gross disproportionality. The firing of the Plaintiffs on January 04, 2022, was an arbitrary decision, an

overreach of the City's own policy and an arbitrary decision by the Mayor.

59. Common Law Rights and the protections guaranteed by S.7 of the Canadian Charter of Rights have clearly established that forced vaccination constitutes forced medical treatment contrary to the principles developed in Canadian jurisprudence. The decision of the mayor to simultaneously issue an order for employees to work from home while firing unvaccinated workers cannot be demonstrably justified in a free and democratic society.

~~SECTION 2(a) — Constitutional Breaches~~

- ~~45. As set out in the Charter of Rights and Freedoms, everyone has wide-ranging fundamental freedoms, namely including: freedom of conscience and religion. The City of Windsor, based on the claims set out above, have violated the Plaintiffs s.2(a) Charter rights.~~

SECTION 15 – Constitutional Breaches

60. Section 15 of the Charter Canadian “Charter of Rights and Freedoms, s 15, Part 1 of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.” applies to government action in the form of legislation, regulations, directions, policies, programs, activities and the actions of government agents carried out under lawful authority. Under the Charter of Rights and Freedoms, “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 without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”.
61. The City of Windsor denied the rights to equal protection and equal benefit of the law to the Plaintiffs, in a manner Ultra Vires the powers of the City of Windsor.

62. The Plaintiffs claim discrimination, in violation of equality rights under section 15 of the Charter. The firing of the Plaintiffs on January 04, 2022, was clearly discriminatory in that on the same day the Mayor ordered that the bulk of City workers work from home. The City of Windsor denied the Plaintiffs the right to equal protection and equal benefit of the law in a manner that was *Ultra Vires* the legal powers of the City of Windsor.
63. ~~The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out within subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. The issue of demonstrably justified must be considered in the context of the fact that the City of Windsor continues to deny livelihood to the Plaintiffs, in total contradiction to all acceptable science including the Centre for Disease Control and the Federal Government of Canada, the Premiers of the Provinces, the Chief Medical Officer of Ontario and a further 44 municipalities across the province of Ontario.~~
64. ~~The facts as stated above clearly demonstrate that the actions of the City of Windsor are not demonstrably justified in a free and democratic society. The Plaintiffs strongly assert that the Policy fails to meet the Oakes test of demonstrably justified in a free and democratic society as mandated by section 1 of the Charter.~~

65. The decision to terminate the employees by the City of Windsor is not prescribed by Law. To the contrary, the Policy was capricious, bore no relationship to the stated objectives and was overly broad in a manner which was outside the jurisdiction of the City contrary to the Municipal Act, the guidelines enacted by the province of Ontario and the Canadian Constitution Act and the Canadian Charter of Rights and Freedoms.
66. The actions of the Mayor on January 04, 2022, in one breath declared that the majority of City workers will work from home and in the second breath fired the Plaintiffs. This, therefore, cannot be demonstrably justified under section 1 of the Charter. At this moment in time, there is no possible rationale that it was reasonable to fire the employees on the basis that it was necessary to protect the workplace demonstrably justified under section 1 of the Charter.
67. There were several other alternative measures that the City could have mandated in order to achieve its objective of creating a “safe environment for the employees” without destroying the lives of the Plaintiffs. The simple solution would be to follow the guidelines and direction of the Province of Ontario by using prescribed measures, such as rapid testing, wearing gloves, distancing etc.

68. The firing of the Plaintiffs was not part of the Policy enacted by the City of Windsor, and therefore lacks any legal authority. To the contrary, the Policy was capricious, bore no relationship to the stated objectives and was overly broad in a manner which was outside the jurisdiction of the City contrary to the *Municipal Act*, the guidelines enacted by the province of Ontario, the *Canadian Constitution Act, 1867* (UK), 30 & 31 Victoria, c 3, and the *Canadian Charter of Rights and Freedoms*.

F. H. Irreparable Injury to Plaintiffs from the Policy

69. ~~Absent an order of Mandamus requiring the City of Windsor to comply with the Ontario Government Covid mandates, the Municipal Act, and ordering the “City” to stop acting Ultra Vires and beyond its legal powers, the Plaintiffs will suffer tremendous on-going damages.~~
70. Furthermore, the decision on January 4th, 2022, to terminate the plaintiffs while simultaneously allowing city workers to work from home was clearly a form of retaliation intended to punish the plaintiffs, raising the need for punitive relief from this Honourable Court.
71. The Plaintiffs claim punitive damages from the Defendant who acted in a manner knowingly that would cause the most extreme harm and damage suffered by the Plaintiffs and their families. The Plaintiffs reserve their right to amend the amounts claimed for punitive damages.

72. As a result of the illegal decision by the Mayor on January 04, 2022, the Plaintiffs have suffered the following damages:

- a. Severe and permanent psychological, physical and emotional trauma;
- b. Loss of employment opportunities;
- c. Worsening physical health because of inadequate medical support;
- d. Reputational damage;
- e. Loss of sleep;
- f. Loss of trust in others;
- g. Loss of self-confidence;
- h. Loss of income;
- i. Loss of opportunity for future income;
- j. Post-traumatic stress disorder;
- k. Families' breakdown and financial, social and emotional consequences;
- l. Breakdown of marriages;
- m. Children with stagnation and loss of educational opportunity;
- n. Homelessness;
- o. Loss of pension;
- p. Loss of Post-Retirement Benefits;
- q. Loss of family status; and
- r. Other such damages as will be proven at the trial of this action;

G. I. REMEDY SOUGHT

The Plaintiffs Claim:

A- A declaration that the Mayor of the City of Windsor acted Ultra Vires the Constitutional Act Constitution Act, 1867 (UK), 30 & 31 Victoria, c 3,, the Ontario Municipal Act, the City of, and Charter protected rights by firing the Plaintiffs.

- a. ~~A declaration that the application of the Policy by suspending and or terminating unvaccinated employees was unconstitutional and an infringement of the constitutional rights of a specific group, the Plaintiffs;~~
- a. ~~An order of Mandamus directing the City of Windsor to follow the guidelines issued by the Province of Ontario and remove the need for proof of vaccination in the workplace as a condition of employment with the City of Windsor;~~
- b. ~~e. An order of Mandamus requiring the City of Windsor to appropriately comply with the Ontario Municipal Act, the province of Ontario mandates, and the Policy enacted by the City of Windsor;~~
- ~~c. A declaration that the application of the Policy by suspending and or terminating unvaccinated employees was unconstitutional and an infringement of the constitutional rights of a specific group, the Plaintiffs;~~
- b. A declaration that the Plaintiff's sections 7, and 15 *Charter* rights have been violated by the Defendant in a manner that is not reasonable and justified in a free and democratic society;
- c. A declaration that the City punished and retaliated against the Plaintiffs for exercising their Constitutional Right not to disclose their vaccination status and/or get vaccinated.
- d. General damages for violation of the Plaintiffs' constitutional rights and freedoms pursuant to sections, 7 and 15 of the Charter in the amount of \$250,000 per Plaintiff;
- e. Special damages to be determined for each Plaintiff;
- f. Punitive and exemplary damages in the total amount of \$1,000 per day per Plaintiff beginning March 01, 2022. ~~I These damages continue daily until the City of Windsor ceases the illegal practice of forced vaccination contrary to the powers granted under the *Municipal Act*.~~
- g. Aggravated damages for mental distress in the amount of \$ 50,000 per Plaintiff or in such other amount as is determined by this Honourable Court;
- h. Costs of this action on a substantial indemnity basis plus applicable taxes, pursuant to s. 131(1) of

the *Courts of Justice Act*;

- i. Prejudgment interest, pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 128;
- j. Post judgment interest, pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 129; and
- k. Such further and other relief this Honourable Court may determine just and equitable in the circumstances.

~~August 16, 2021~~
January 19, 2023

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Court File No. CV-22-00684908-0000

BETWEEN

**MICHAEL HEYNESBROEK
et al**

(Plaintiffs)

and

**THE CORPORATION OF
THE CITY OF WINDSOR**

(Defendant)

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

AMENDED STATEMENT OF CLAIM

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