

Court File No. 22 6 4

ONTARIO
SUPERIOR COURT OF JUSTICE

MICHAEL HEYNSBROEK, JASON BLANCHARD, VALARIE 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, FLORIN BELCIUG AND JANE DOE et al

Plaintiffs

-and-

THE CORPORATION OF THE CITY OF WINDSOR

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$ To be determined for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and an amount for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____

Local Registrar

Address of court office: **Superior Court of Justice**
393 University Avenue, 10th Floor
Toronto ON M5G 1E6

TO: THE CORPORATION OF THE CITY OF WINDSOR
400 City Hall Square
Suite 201, Windsor Ontario
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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 (“Affiliated Entities”).
 - 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.

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 councillors (one per ward) representing the City. 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. 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 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. 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.

2. Plaintiff Joshua Konopasky was a First Responder with the City of Windsor's fire department from July 2013 to January 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. 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.
3. Plaintiff Natalie Seal served as Fire Fighter and First Responder with the City of Windsor from 2006 to January 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 also as a hero working on the frontline to keep the City of Windsor safe.

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. Against all odds she had fulfilled her life dream of being a fire fighter 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.

City of Windsor Employees

5. Plaintiff Michael Heynsbroek was an Analyst Programmer with the City of Windsor. 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.

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. 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 has 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.

7. Plaintiff Adam Fevreau was a Personal Computer Analyst with the City of Windsor between September 2000 to January 4, 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 default on his mortgage. The end result is that Adam lost his home, lost his family, and is now forced to live with his parents. Adam, a single father of 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.
8. Plaintiff Jasen Gannon commenced his bright career with the City of Windsor in October 2018 as a Data Analyst. 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.

9. Plaintiff Paul Giroux was the City Forester and Manager of Forestry and Natural Areas of the City of Windsor until January 4, 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 significant impact on his lifestyle. The change in family dynamic, the 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.

10. Plaintiff Vera Gorica was a Recreational Clerk at the City of Windsor prior to the termination of employment in December 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.

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. 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 breach of her constitutional rights by the City of Windsor.

12. Plaintiff Kimberley Hamm is a lifer, having dedicated her life to serving the City of Windsor for almost three (3) decades. 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 with 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 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 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 on her and her family as a result of the breach of her constitutional rights.

13. Plaintiff Denise Morand is another lifer at the City of Windsor. 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. Her long and illustrious career with the City of Windsor ended in 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.

14. Plaintiff Delilah Liburdi was a Data Analyst at the City of Windsor from July 2017 to January 4, 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, great stress, emotional instability, decline in quality of life and anguish due to the breach of her constitutional rights.

15. Plaintiff Paul Zettel served the City of Windsor as an Operating Engineer for 6 years from April 2016 to January 4, 2022, when he was fired. Prior to his termination, Paul had requested for accommodation under the Policy, citing his religious beliefs; unfortunately, his accommodation request was denied. Paul's job loss has led to a dramatic decline of 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.

EnWin Employees

16. Plaintiff Craig Patterson served the City under EnWin as a Water Distribution Operator from April 2004 to 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.

17. Plaintiff John Journey was an Apprentice Powerline Splicer with EnWin from February 2018 to 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.

18. Valerie D'Ambrosio worked as a Water Engineering Technician with EnWin for over 23 years. She is known as someone who takes great pride in her work; she loved 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. Her whole-scale loss has left her in a desperate situation as a result of the breach.

19. Plaintiff Florin Belciug was an Apprentice Maintenance Operator- Electrician with EnWin Utilities. 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 Employee

20. Plaintiff Melissa Marlein's devotion to Huron Lodge commenced in 2002 when she took up duties as a Personal Support Worker. 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 have had to endure 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.

21. 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, 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, who were hailed as Heroes for their amazing work on the frontlines.

22. To fully perform its administrative functions, the Defendant set up Huron Lodge; a caregiving facility, and EnWin Utilities; the electric power generating, transmission, and the distributing

outlet for the City of Windsor. Both EnWin and Huron Lodge are Affiliate Entities of the Defendant. The City of Windsor Policy and guidelines on which these *Charter* arguments are made also apply to both EnWin Utilities and Huron Lodge.

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

C. JURISDICTION OF THE COURT

24. 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*.
25. 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 enactment was *Ultra Vires* the powers statutorily delegated to the City of Windsor by the Ontario *Municipal Act, 2001, SO 2001, c 25* and 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 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*.
26. 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, the Municipal Act*, and the provincial guidelines and mandates issued by the Chief Medical Officer of Ontario. This has resulted in irreparable harm to the Plaintiffs who now seek the assistance of this Honourable Court.
27. 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, 1982 30 & 31 Vict, c 3* and the *Municipal Act* and the guidelines issued by the

Province of Ontario. 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 of law pursuant *s. 92 (10) Constitution Act, 1982*.

28. 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. The Defendant has similarly consistently argued that the Collective Bargaining Agreement did not address the issues outlined in *HRHAS – POL – 0002*.
29. 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 seem fit pursuant to *s. 24(2) of the Canadian Charter of Rights and Freedoms* or any other form of common law Equity or relief.

D. THE IMPUGNED POLICY

30. The Plaintiffs plead that the City of Windsor on September 17, 2021, implemented a mandatory vaccination requirement — *HRHAS-Pol-002* (“Policy”). The Policy mandated a specific path targeting unvaccinated employees by creating an identifiable group and then metered out the punishment to be delivered to that group.
31. 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 request of medical or religious exception were denied by the City.

32. 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.
33. 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*).
34. 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.
35. 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*.

36. 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.
37. 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.
38. 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 in spite of the City's own policy which made no mention or gave any authorization for the firing of the Plaintiffs. This decision was made without regards 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, the Charter of Rights and Freedoms, the Municipal Act* and even the City's own policy passed by Council which gave no legal authority for the firing of the Plaintiffs.
39. 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 and the benefit of working from home.

40. 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 Plaintiffs' *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.

41. 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.**

42. 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 so *that'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)**

43. 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.

E. CHARTER VIOLATIONS

SECTION 7 – Constitutional Breaches

44. The Plaintiffs say that their right to security of the person interest protected under section 7 of the *Charter* is violated by the Policy requiring attestation of being fully vaccinated or undergoing COVID-19 testing as this interferes with personal autonomy, and one's ability to control their own physical or psychological integrity. Such state action that seriously impairs their physical health and has caused severe psychological harm that is not in accordance with the principles of fundamental justice. It has also caused the deprivation of economic rights fundamental to human survival that are not in accordance with the principles of fundamental justice.

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 Plaintiff's s.2(a) *Charter* rights.

SECTION 15 – Constitutional Breaches

46. 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".

47. 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, and the equal protection and equal benefit of the law.

48. As articulated by the Supreme Court in its first s.15 case and subsequently reaffirmed, “the promotion of equality entails the promotion of a society in which all are secure in the knowledge that they are recognized at law as human beings equally deserving of concern, respect and consideration” (*R. v. Kapp*, [2008] 2 S.C.R. 483 at paragraph 15 citing *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143, at 171, *per* McIntyre J.). See also more recently *Quebec (A.G.) v. A*, [2013] 1 S.C.R. 61, at paragraph 417, where McLachlin C.J., concurring with the majority on s. 15, noted that discrimination perpetuates or promotes “the view that the individual is less capable or worthy of recognition or value as a human being or as a member of Canadian society, equally deserving of concern, respect, and consideration.”
49. Section 15 of the *Charter* 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.

Oakes Test and Section 1 – The Reasonable Limits Clause

50. 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.
51. 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*.

52. The Policy enacted 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*.

53. 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.

F- Irreparable Injury to Plaintiffs from the Policy

54. 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.

55. The Plaintiffs have also suffered significant mental anguish. They are left to contemplate whether they will have the funds available to meet their basic needs, including the purchase of food, clothing, and shelter for themselves and their families. Some of the Plaintiffs are now left to rely on the humanity of neighbours and friends for food and shelter, or the support of the food banks

in Windsor. The challenges faced by these families in Windsor has been documented by the United Way.

56. 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 because of the implementation of the Policy, which is discriminatory. The Plaintiffs reserve their rights to amend the amounts claimed for punitive damages to account for future economic losses, including but not limited to loss of income due to suspension or dismissal because of their refusal to comply with the Policy.

57. In addition to damages for *Charter* violations, the Defendant is liable for further aggravated and punitive damages stemming from the unduly harsh, insensitive manner in which it carried out the firing (*Honda Canada Inc v Keays*, [2008] 2 SCR 362), by using the media and social platforms to illegally again inflict further harm on the Plaintiffs.

58. As a result of these breaches, 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. REMEDY SOUGHT

The Plaintiffs claim:

- a. A declaration that the Policy *HRHAS-Pol-002* and its implementation by the City of Windsor was *Ultra Vires*, the legal powers of the City of Windsor under the *Constitution Act, Municipal Act*, and the dictates of the powers of Ontario, specifically Premier Doug Ford and the Chief Medical Officer, Kieran Moore is acting and continues to act illegally in breach of the *MUNICIPAL ACT, 2001, S.O. 2001, C. 25*;
- b. 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;
- c. 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;
- d. 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;

- e. A declaration that the Plaintiff's sections 2(a), 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;
- f. General damages for violation of the Plaintiffs' constitutional rights and freedoms pursuant to sections 2(a), 7, 8 and 15 of the Charter in the amount of \$250,000 per Plaintiff;
- g. Special damages to be determined for each Plaintiff;
- h. Punitive and exemplary damages in the total amount of \$1,000 per day per Plaintiff beginning March 01, 2022. 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*;
- i. 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;
- j. Costs of this action on a substantial indemnity basis plus applicable taxes, pursuant to s. 131(1) of the *Courts of Justice Act*;
- k. Prejudgment interest, pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 128;
- l. Post judgment interest, pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 129; and
- m. Such further and other relief this Honourable Court may determine just and equitable in the circumstances.

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THE CORPORATION OF
THE CITY OF WINDSOR

Court File No. CV-22-00684908-0000

Plaintiffs -and-

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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