Court File No. COA-25-CV-0502

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

DANIEL HARTMAN

Appellant

and

ATTORNEY GENERAL OF CANADA, THE DEPARTMENT OF HEALTH CANADA and PATRICIA A. HAJDU (MINISTER OF HEALTH)

Respondents

FACTUM OF THE APPELLANT

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TABLE OF CONTENTS

Page No.

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PART I - OVERVIEW

This appeal arises from the tragic death of a 17-year-old boy, Sean Hartman, who died on September 27, 2021, thirty-three days after receiving a Pfizer-BioNTech COVID-19 vaccine. The Appellant, Sean's father, commenced an action against the Respondents for negligence and misfeasance in public office, alleging that the Government of Canada, Health Canada, and the Minister of Health failed in their duties regarding the vaccine's approval, promotion, and safety monitoring.

The Appellant appeals the order of the Honourable Justice S. Antoniani of the Superior Court of Justice, dated March 24, 2024, which struck the Appellant's Statement of Claim in its entirety and

without leave to amend. The motion judge found it was "plain and obvious" that the claim disclosed no reasonable cause of action.

The learned motion judge erred in law by fundamentally misapplying the test for striking a claim under Rule 21.01(1)(b). It is respectfully submitted that the judge prematurely decided complex and novel questions of law regarding the government's duty of care and the scope of core policy immunity—issues that require a full evidentiary record. The judge failed to read the pleadings generously and accept the facts as true, instead reaching determinative conclusions on matters that were not "plain and obvious" and were clearly arguable.

This appeal will demonstrate that the government's specific knowledge of risks to an identifiable and targeted group of young people, including Sean Hartman, is sufficient to plead a prima facie duty of care. Furthermore, the claim pleads negligent acts at the operational level, not just immune core policy decisions. Finally, the claim for misfeasance in public office was properly pleaded, and the judge erred by denying the Appellant the opportunity to amend the claim to cure any perceived defects. This case raises critical issues of government accountability in the context of unprecedented public health measures and should be permitted to proceed to trial.

PART II - SUMMARY OF FACTS

A. BACKGROUND

In response to the COVID-19 pandemic, the Minister of Health issued an Interim Order on September 16, 2020, to streamline the approval process for COVID-19 vaccines. The Order still required Health Canada to assess the safety, effectiveness, and quality of the vaccines.[1]

Health Canada publicly committed to assessing and monitoring the safety of all authorized products and to taking "immediate action... to protect the health and safety of Canadians."[2]

On December 9, 2020, Health Canada authorized the Pfizer-BioNTech COVID-19 vaccine, publicly stating that it met the department's "stringent safety, efficacy and quality requirements." This messaging was reinforced through numerous government-funded advertising campaigns and statements by public officials, which encouraged all Canadians, including youth, to get vaccinated.[3]

The Appellant pleads that these representations overstated the vaccine's efficacy and downplayed significant risks, including the risk of myocarditis, particularly in adolescent males. The claim alleges that the government was not merely regulating a product but was the sole purchaser, promoter, and administrator of the vaccination program, creating a direct relationship with recipients.[4]

B. THE DEATH OF SEAN HARTMAN

[1] Statement of Claim filed September 27, 2023, at paras 8-9
[2] *Id* at para 10
[3] *Id* at paras 19, 26-27,41-45
[4] *Id* at paras 17, 77, 80

On August 25, 2021, Sean Hartman, a healthy 17-year-old, received his first dose of the Pfizer-BioNTech COVID-19 vaccine.[5]

On September 27, 2021, thirty-three days after the vaccination, Sean Hartman was found deceased. The Appellant pleads that his death was a result of the vaccine.[6] (Statement of Claim, paras. 54-55.)

C. THE DECISION APPEALED FROM

The Attorney General of Canada moved to strike the claim under Rule 21.01(1)(b). On March 24, 2025, Justice Antoniani granted the motion and struck the claim in its entirety without leave to amend.[7]

The learned motion judge found there was no reasonable cause of action in negligence because: (a) the government's representations were made to the public at large and not to a discrete or identifiable group, and therefore no relationship of proximity existed to ground a private law duty of care; (b) the government's actions were "core policy decisions" made in the context of a public health emergency and were therefore immune from tort liability.[8]

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[5] *Id* at paras 51-52
[6] *Id* at paras 54-55
[7] *Hartman V. Attorney General of Canada et al*., 2025 ONSC 1831
[8] *Id* at paras 52-53,65,70,73,78

The motion judge struck the claim for misfeasance in public office on the basis that the pleadings did not establish the necessary element of subjective awareness by the Respondents that their conduct was unlawful and likely to cause harm to Sean Hartman specifically.[9]

Finally, the judge denied leave to amend, concluding that any proposed amendments would be futile and could not remedy the "primary deficit" in the claim.[10]

PART III - ISSUES ON APPEAL

Did the learned motion judge err in law by misapplying the "plain and obvious" test for striking a pleading and failing to read the claim generously, thereby prematurely dismissing arguable claims?

Did the learned motion judge err in law in his application of the Anns/Cooper test by finding it was plain and obvious that the Respondents owed no private law duty of care to Sean Hartman?

Did the learned motion judge err in law by classifying all the impugned government conduct as immune "core policy," thereby failing to distinguish between policy and operational acts?

Did the learned motion judge err in law by striking the claim for misfeasance in public office where the necessary elements of the tort were pleaded?

Did the learned motion judge err in principle by refusing to grant leave to amend the Statement of Claim?

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[9] *Id* at paras 85-86, 92
[10] *Id* at paras 88,93

PART IV - ARGUMENT, LAW & AUTHORITIES

D. THE MOTION JUDGE ERRED BY MISAPPLYING THE TEST FOR STRIKING A PLEADING

The standard of review for a decision on a Rule 21.01(1)(b) motion is correctness. The question before the Court is whether it is "plain and obvious" that the Appellant's Statement of Claim discloses no reasonable cause of action. [11]

The test for striking a claim is an exceedingly high one, and the power is to be exercised with care, as it denies a litigant their day in court. Courts have repeatedly cautioned that the power to strike should be used only in the clearest of cases. In *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, the Supreme Court underscored that even a novel or complex claim must be allowed to proceed so long as it has "some chance of success".[12] The Supreme Court reaffirmed this principle in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, directing motions judges to "err on the side of permitting a novel but arguable claim to proceed to trial".[13] Likewise, the Ontario Court of Appeal has adopted this generous approach: in *Darmar Farms Inc. v. Syngenta Canada Inc.*, 2019 ONCA 789, the Court emphasized that concerns about indeterminate liability or other public policy implications are matters for a full evidentiary record, not for a pleadings motion.[14]

The learned motion judge failed to adhere to that stringent standard. Instead of accepting the pleaded facts as true, the motion judge embarked on a premature evaluation of the merits, effectively conducting a summary-judgment analysis without a full evidentiary record. The

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[11] *The Catalyst Capital Group Inc. v. Dundee Kilmer Developments Ltd. Partnership*, 2020 ONCA 272, at para.37
[12] *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at pp. 979-980
[13] *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 21
[14] *Darmar Farms Inc. v. Syngenta Canada Inc.*, 2019 ONCA 789 at paras. 72-73

Appellant pleaded that the Respondents knew of a specific, heightened risk of myocarditis to adolescent males, yet continued to target this demographic with broad assurances of safety. Accepting these facts as true would ground an arguable claim that a relationship of proximity existed. By finding no such relationship on the basis that the representations were made to "the general public," the learned motion did not apply the generous reading mandated by *Hunt* and *Imperial Tobacco* and thereby committed a reversible error at the pleadings stage.

The novelty of this claim—suing the government for negligence in the administration of a mass vaccination program during a pandemic—is precisely the type of situation where the law must be allowed to evolve in response to new societal circumstances. In *Ontario (Attorney General) v. Clark*, 2021 SCC 18, the Supreme Court reaffirmed that a claim should be struck only if it is "certain to fail."[15] Novel negligence claims engaging evolving questions of public health, scientific knowledge, and government accountability are precisely the circumstances in which common law principles should develop on a full factual record, not be foreclosed at the pleadings stage.

E. THE MOTION JUDGE ERRED IN THE DUTY OF CARE ANALYSIS

The learned motion judge erred in law by concluding it was "plain and obvious" that no prima facie duty of care existed between the Respondents and Sean Hartman. In doing so, he misapplied the proximity analysis from *Cooper v. Hobart*, [2001] 3 S.C.R. 537, 2001 SCC 79.[16] A finding of a prima facie duty of care requires an analysis of reasonable foreseeability of harm and proximity. Proximity requires an examination of the relationship between the parties to

[15] *Ontario (Attorney General) v. Clark*, 2021 SCC 18 at para. 68
[16] *Cooper v. Hobart*, [2001] 3 S.C.R. 537, 2001 SCC 79

determine if it is "close and direct." This inquiry is not abstract; it must be grounded in the specific facts and interactions as pleaded.[17]

While government representations to the public at large do not typically create a private law duty of care, this case is distinguishable. The Appellant pleads that the Respondents had knowledge of a specific and serious risk of myocarditis to a discrete and identifiable group: adolescent males. The pleadings allege that the government, through Health Canada and the Minister, nonetheless made direct, repeated, and urgent representations to this specific group, encouraging vaccination and providing unqualified assurances of its safety. This direct targeting of a known, vulnerable population—while allegedly concealing or downplaying a material risk specific to that group—creates the requisite "close and direct" relationship sufficient to ground a prima facie duty of care. It is not merely that harm was foreseeable; the relationship between the state as a direct promoter of a medical intervention and the individual recipient is fundamentally different from that of a distant regulator.

Appellate jurisprudence recognizes that such direct, risk-specific representations can supply the "close and direct" relationship required at the first stage of the *Anns/Cooper* test. In *Taylor v. Canada (Attorney General)*, 2012 ONCA 479, the Court of Appeal refused to strike a negligence claim against Health Canada where the pleadings alleged a duty owed to recipients of an implanted medical device.[18] Likewise, *Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1998), 39 O.R. (3d) 487 (Gen. Div.), held that a police force owed a

[17] *Id* at para.34
[18] *Taylor v. Canada (Attorney General)*, 2012 ONCA 479, at paras. 62-66

private law duty to warn an identifiable class of women about a serial rapist when it possessed precise knowledge of the danger.[19]

The facts of this case are strongly analogous to *Jane Doe*. In that case, the police were aware of a serial rapist targeting women who fit a particular profile in a specific geographic area. The court held that where a public authority has knowledge of a specific danger to an identifiable group, a failure to act or warn can breach a private law duty. That knowledge of a specific, foreseeable risk to an identifiable class created a special relationship of proximity and a duty to warn. Similarly, in the present case, the Appellant pleads that the Respondents knew of the heightened risk of myocarditis specifically in adolescent males receiving mRNA vaccines. Despite this knowledge, they continued a broad public campaign that not only failed to adequately warn this group but actively encouraged their participation with unqualified assurances of safety. By targeting this group while possessing knowledge of a specific danger, the Respondents created a relationship of proximity sufficient to ground a duty of care to ensure the information provided was accurate and complete.

This Court's decision in *Meekis v. Ontario*, 2021 ONCA 534, further supports this analysis.[20] In *Meekis*, the Court held that a pattern of conduct by a public authority towards an identifiable, vulnerable group could ground a claim in tort.[21] The sustained and targeted public health campaign aimed at youth—despite internal knowledge of a risk specific to that group—

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[19] *Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (1998), 39 O.R. (3d) 487 (Gen. Div.)
[20] *Meekis v. Ontario*, 2021 ONCA 534
[21] *Id* at paras. 96-101

constitutes such a pattern of conduct, thereby strengthening the proximity argument. The relationship becomes personal and direct when the state moves from governing the public at large to persuading an individual to undertake a specific medical procedure. Here, the relationship is not with Sean Hartman as an anonymous member of the public, but with Sean Hartman as a member of an identifiable, vulnerable, and targeted group to whom direct representations were made.

The motion judge's reliance on *Attis v. Canada (Minister of Health)*, 2008 ONCA 660, 93 O.R. (3d) 35,[22] is misplaced. *Attis* involved the passive regulation of medical devices manufactured and sold by third parties. Health Canada's role in *Attis* was confined to its regulatory oversight capacity, and the Court emphasized that Health Canada had no direct role in the commercial transaction or the medical decision-making.[23] In contrast, in this case, the government was not a mere passive regulator. It was the purchaser, promoter, and administrator of the entire vaccination program. The government created and funded multi-million-dollar advertising campaigns, established and ran vaccination clinics, and used the full weight of its authority to urge all Canadians, including Sean Hartman, to get vaccinated. This active, direct, and all-encompassing role creates a much closer relationship with vaccine recipients than the one considered in *Attis*. The question of whether this specific, active, and promotional relationship gives rise to a novel duty of care is, at a minimum, an arguable point of law that is not "plain and obvious." It should not have been struck at the pleadings stage.

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[22] *Attis v. Canada (Minister of Health)*, 2008 ONCA 660, 93 O.R. (3d) 35

[23] *Id* at paras. 45

Notably, in *Sauer v. Canada (Attorney General)*, 2007 ONCA 454, (56-65) the Ontario Court of Appeal held that Canada's public assumption of a duty to farmers to ensure the safety of cattle feed established proximity and made it not plain and obvious that no duty of care existed.[24] Similarly, here the Respondents' active undertaking to ensure vaccine safety and efficacy for the public — particularly for known high-risk groups — supports a finding of a proximate relationship. At the very least, whether a novel duty of care arises in these circumstances is a triable issue that should be resolved on a full evidentiary record, not determined against the Appellant at the pleadings stage.

F. THE MOTION JUDGE ERRED BY MISCHARACTERIZING ALL CONDUCT AS "CORE POLICY"

A government is not liable for "core policy" decisions, which involve high-level balancing of competing social, economic, and political considerations. However, a government is liable for negligence in the operational implementation of policy. Core policy decisions are deliberate choices about a course or principle of action, while operational decisions concern the practical execution of that policy.[25]

The Supreme Court in *Nelson (City) v. Marchi*, 2021 SCC 41 outlined four factors to distinguish policy from operations: (1) the level and responsibilities of the decision-maker; (2) the process by which the decision was made; (3) the nature and extent of budgetary considerations; and (4) the extent to which the decision was based on objective criteria. The overarching question is

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[24] *Sauer v. Canada (Attorney General)*, 2007 ONCA 454, at paras. 56-65

[25] *See Nelson (City) v. Marchi, 2021 SCC 41*, at paras. 3, 52-54; *R. v. Imperial Tobacco, supra*, at para. 90; *Just. v. British Columbia*, [1989] 2 S.C.R. 1228, at pp. 1245-46

whether court review of the decision would improperly impinge on the core legislative or executive functions.[26]

The motion judge erred by applying a blanket policy immunity to all of the alleged misconduct. While the overarching decision to authorize and roll out vaccines during a pandemic is undoubtedly a core policy decision, the Appellant's Statement of Claim pleads specific failures at the operational level. Applying the *Marchi* framework to the pleadings here:

Failing to adequately and accurately communicate known risks: The decision to initiate a public health advertising campaign is a policy decision. However, the execution of that campaign — including the scientific accuracy of its content and the duty to warn of known, material dangers — is operational. This involves technical and scientific communication governed by standards of reasonableness and accuracy, not high-level political value judgments. The individuals drafting public service announcements and advertisements are not weighing broad policy considerations; they are implementing policy. The decision to omit a warning about myocarditis in young men is not an allocation of scarce resources or a social policy choice; it is an operational choice about the content of a public health communication.

Failing to conduct adequate post-market surveillance: Health Canada publicly (and statutorily) undertook to monitor vaccine safety. The implementation of this

[26] *Nelson (City) v. Marchi*, 2021 SCC 41, at paras. 56,61

safety monitoring — the methods of data collection, the rigor of analysis, and the timeliness of acting on safety signals — is a classic operational function. As established in Just, once the decision to act has been made (here, to monitor safety), the manner in which that action is carried out is operational and subject to judicial scrutiny. A failure to follow through on an established safety protocol is not a policy choice; it is a failure in the execution of an adopted policy.

The specific content and delivery of public health messages: The high-level decision to use advertising to promote vaccination is a policy decision. However, the decision to make specific factual claims in those messages (e.g. describing the vaccine as having "stringent safety" or being "safe and effective"), especially when such claims are contradicted by known risks, is an operational matter subject to a standard of care. Crafting messaging that is factually accurate and not misleading is not a political act but a technical exercise that courts are well-equipped to assess using evidence.

The Ontario Court of Appeal's recent judgment in *Leroux v. Ontario (Attorney General)*, 2023 ONCA 314, confirms that actions alleging negligent implementation of government programs should not be summarily dismissed under policy immunity; a full factual record is required to differentiate a core policy decision from its operational execution.[27] Here, the claim's allegations — which include inaccurate risk communication and inadequate safety monitoring — are

[27] *Leroux v. Ontario (Attorney General)*, 2023 ONCA 314 at paras. 60-63

directed at how policy was carried out, not at the core policy decision of whether to approve or promote the vaccine in the first place. Determining whether these acts are truly policy or operational requires evidence as to how and by whom these decisions were made, what information was available at the time, and what processes were followed. By striking the claim at the pleadings stage, the motion judge improperly decided a complex, fact-specific question that, according to Just and Marchi, should be resolved on a proper evidentiary record.

G. THE MOTION JUDGE ERRED IN STRIKING THE MISFEASANCE IN PUBLIC OFFICE CLAIM

The tort of misfeasance in public office requires: (1) deliberate unlawful conduct in the exercise of public functions; and (2) awareness that the conduct is unlawful and likely to injure the plaintiff. Unlawful conduct for this purpose includes acting for an improper purpose, acting in bad faith, or breaching a statutory duty.[28]

The Statement of Claim properly pleads these elements. It alleges that the Respondents engaged in deliberate unlawful conduct by breaching their statutory duties under the Food and Drugs Act to ensure vaccine safety and to not mislead the public. It further pleads that the Respondents knew that the vaccine was unsafe, was likely to harm individuals such as the Plaintiff's son, and yet took actions that were objectively inconsistent with their statutory duties and specifically ignored the significant and present risk of adverse events.[29]

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[28] *See* *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263, 2003 SCC 69, at para. 23; *Meekis v.Ontario*, 2021 ONCA 534, at para. 81, confirming that a deliberate omission to act can be unlawful.

[29] Statement of Claim Filed September 27, 2023, at paras. 7, 29-39. 56-65

These pleadings satisfy the requirement of subjective awareness of likely harm. The motion judge erred by effectively demanding evidence of the officials' state of mind at the pleadings stage.[30] This approach contradicts the principle that pleaded facts must be assumed true on a motion to strike. As the Court of Appeal noted in *Meekis*, a misfeasance claim should be allowed to proceed where the pleadings allege conduct that is knowingly unlawful or "knowingly foreign to the proper exercise" of the statutory powers.[31] An allegation of a knowing concealment of risks to a specifically targeted group is a sufficient pleading of bad faith to ground the tort.

In *Trillium Power Wind Corp. v. Ontario (Natural Resources)*, 2013 ONCA 683, confirmed that a core policy decision made in bad faith or through unlawful conduct falls outside the ambit of policy immunity.[32] In *Trillium*, the Court allowed a misfeasance claim to proceed where the plaintiff alleged that the government's policy decision was taken for the deliberate purpose of injuring the plaintiff— conduct which, if proven, would be "subject to attack in tort" despite its policy context.[33] These authorities reinforce that the pleadings here — which allege a deliberate concealment of a material safety risk and a willful disregard of statutory duties — satisfy the *Odhavji* test for misfeasance and disclose a reasonable cause of action.[34]

Furthermore, core policy immunity does not apply to the tort of misfeasance in public office in any event. An official who acts in bad faith, for an improper purpose, or with knowledge of likely

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[30] *Hartman V. Attorney General of Canada et al.*, 2025 ONSC 1831 at para. 85
[31] *Meekis v.Ontario, 2021 ONCA 534*, at para.79
[32] *Trillium Power Wind Corp. v. Ontario (Natural Resources)*, 2013 ONCA 683, at para. 48
[33] *Id* at para. 55
[34] *Odhavji Estate v. Woodhouse*, [2003] 3 S.C.R. 263, 2003 SCC 69, at para. 23

harm cannot escape liability by characterizing the act as a "policy" decision. Such conduct is, by definition, an abuse of public office and outside the legitimate bounds of policy-making authority. As the Court of Appeal held in *Trillium*, a policy decision taken with the specific intention of injuring a party or for purely illegitimate reasons is not immune and can be actionable in tort.[35] Even in *Imperial Tobacco*, where the Supreme Court articulated the general rule of policy immunity, the Court expressly left room for an exception where the decision is made in bad faith.[36] In short, if the Appellant proves the pleaded facts at trial, the cloak of "core policy" will not protect the Respondents from liability for misfeasance in public office.

H. THE MOTION JUDGE ERRED IN DENYING LEAVE TO AMEND

Rule 26.01 of the Rules of Civil Procedure mandates that leave to amend a pleading "shall" be granted unless doing so would cause non-compensable prejudice. The jurisprudence is clear that leave to amend should only be denied in the clearest of cases – for example, where the proposed amendment is scandalous, frivolous, or an abuse of process, or where it is plain and obvious that the amended pleading cannot succeed.[37]

The motion judge's conclusion that the claim's defects were incurable was an error in principle.[38] This Court has consistently held that even where a pleading is deficient, leave to amend should be granted. In *Burns* v. *RBC Life Insurance Company*, 2020 ONCA 347, a claim was struck for "lumping together" defendants – a common pleading deficiency – but the Court of Appeal held

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[35] *Trillium supra*, at para.55
[36] *R. v. Imperial Tobacco, supra*, at para. 90
[37] *See Fernandez Leon v. Bayer Inc.*, 2023 ONCA 629, at para. 5; *Burns v. RBC Life Insurance Company*, 2020 ONCA 347, at para. 22.
[38] *Hartman v. Attorney General of Canada et al.*, 2025 ONSC 1831 at para. 90

that leave to amend should have been granted because the deficiency was potentially curable with more specific pleading.[39] In *Fernandez Leon v. Bayer Inc*., 2023 ONCA 629, leave was granted even though the plaintiff could not identify a specific product defect at the pleadings stage; the Court recognized the significant informational asymmetry between plaintiffs and well-resourced corporate or government defendants.[40]

Refusing leave to amend where discovery is needed to provide particulars is contrary to *Shaulov v. Law Society of Ontario*, 2023 ONCA 95. As the Court noted in *Shaulov*, denying leave under such circumstances penalizes the plaintiff for lack of information that can only be obtained from the defendant through discovery – a result the Court described as "manifestly unfair."[41]

The situation here exemplifies why leave to amend is so important. The Appellant's claims are novel and complex. Crucial information about the Respondents' internal knowledge, risk assessments, scientific deliberations, and decision-making processes is in the exclusive possession of the government. As this Court recognized in Shaulov, when a plaintiff requires discovery to obtain information necessary to particularize a claim, it is premature to deny leave to amend simply because the pleading lacks that detail at the outset.[42] Striking the claim without leave to amend in these circumstances effectively punishes the Appellant for not knowing facts that only the Respondents know – facts that would emerge if the case were allowed to proceed

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[39] *Burns supra* at para. 22
[40] *Fernandez Leon supra* at para. 5
[41] *Shaulov v. Law Society of Ontario*, 2023 ONCA 95, at para. 17
[42] *Id*

to discovery. It sets an impossible standard for plaintiffs attempting to hold government accountable.

Given the novelty of the duty of care alleged and the fact-driven nature of the misfeasance and policy/ operational issues, it was not "plain and obvious" that the claim could never be viable. The Appellant had even tendered a draft Amended Statement of Claim with further particulars. By denying leave, the motion judge deprived the Appellant of the opportunity to have his claim adjudicated on its merits – a course particularly unwarranted for arguable claims of significant public interest. The proper approach, especially for novel but arguable claims, is to permit them to proceed so that the law can develop on a full and robust evidentiary record.[43]

PART V - ORDER REQUESTED

The Appellant respectfully requests that this Honourable Court grant an order:

1. Setting aside the order of Justice S. Antoniani dated March 24, 2025;

2. Reinstating the Appellant's action (Statement of Claim) in the Superior Court;

3. Granting leave to the Appellant to amend the Statement of Claim; and

4. Awarding the Appellant the costs of this appeal and of the motion below.

Estimated time for oral argument of the appeal (not including reply): 2 Hours.

[43] *Hunt supra*, at pg. 980

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9th day of June 2025.

US

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Court File No. COA-25-CV-0502

APPELLANTS CERTIFICATE

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1. I estimate that 2 Hours will be needed for my oral argument of the appeal, not including reply.

2. An order under subrule 61.09(2) (original record and exhibits) is not required.

3. The Appellants Factum complies with rule 61.12(5.1)

4. The number of words contained in Parts I to IV of the Appellants Factum is 4105.

5. I am satisfied as to the authenticity of every authority listed in Schedule A.

DATED AT Victoria, British Columbia this 9th day of June 2025.

US

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SCHEDULE "A" - LIST OF AUTHORITIES

1. *Hunt v. Carey Canada Inc., [1990] 2 S.C.R. 959*

2. *Just v. British Columbia, [1989] 2 S.C.R. 1228*

3. *Cooper v. Hobart, [2001] 3 S.C.R. 537, 2001 SCC 79*

4. *Odhavji Estate v. Woodhouse, [2003] 3 S.C.R. 263, 2003 SCC 69*

5. *R. v. Imperial Tobacco Canada Ltd., [2011] 3 S.C.R. 45, 2011 SCC 42*

6. *Attis v. Canada (Minister of Health), 2008 ONCA 660, 93 O.R. (3d) 35*

7. Jane Doe v. Metropolitan Toronto (Municipality) Commissioners of Police (1998), 39 O.R. (3d) 487 (Ont. Gen. Div.)

8. *Taylor v. Canada (Attorney General), 2012 ONCA 479*

9. *Darmar Farms Inc. v. Syngenta Canada Inc., 2019 ONCA 789*

10. *The Catalyst Capital Group Inc. v. Dundee Kilmer Developments Ltd. Partnership, 2020 ONCA 272, 150 O.R. (3d) 449*

11. *Burns v. RBC Life Insurance Company, 2020 ONCA 347*

12. *Nelson (City) v. Marchi, 2021 SCC 41*

13. *Ontario (Attorney General) v. Clark, 2021 SCC 18*

14. *Meekis v. Ontario, 2021 ONCA 534*

15. Trillium Power Wind Corp. v. Ontario (Natural Resources), 2013 ONCA 683, 117 O.R. (3d) 721

16. *Sauer v. Canada (Attorney General), 2007 ONCA 454*

17. *Shaulov v. Law Society of Ontario, 2023 ONCA 95*

18. Fernandez Leon v. Bayer Inc., 2023 ONCA 629

19. *Leroux v. Ontario (Attorney General), 2023 ONCA 314*

SCHEDULE "B" - TEXT OF STATUTES, REGULATIONS & BY-LAWS

Food and Drugs Act, R.S.C. 1985, c. F-27

30.1 (1) The Minister may make an interim order that contains any provision that may be contained in a regulation made under this Act if the Minister believes that immediate action is required to deal with a significant risk, direct or indirect, to health, safety or the environment.

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

21.01 (1) A party may move before a judge (b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence, and the judge may make an order or grant judgment accordingly.

26.01 On motion at any stage of an action, the court shall grant leave to amend a pleading on such terms as are just, unless prejudice would result that cannot be compensated by costs or an adjournment.

DANIEL HARTMAN
Plaintiff

-and-

ATTORNEY GENERAL OF CANADA et al.
Defendants

Court File No. COA-25-CV-0502

Court of Appeal for Ontario

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE APPELLANT

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