

CITATION: M.A. v. De Villa, 2021 ONSC 3828
COURT FILE NO.: CV-21-661284
DATE: 20210527

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: M.A. and L.A. (Minors represented by their Litigation Guardian Renata Dziak), E.P. and R.P. (Minors represented by their Litigation Guardian Catherine Braund-Pereira), L.S. (Minor represented by his Litigation Guardian Bojan Sajlovic), N.K. (Minor represented by his Litigation Guardian Helena Kosin) (Students at the Toronto District School Board), Nancy O'Brien (Toronto District School Board Teacher);
G.M., W.M., J.M., and L.M. (Minors represented by their Litigation Guardian Scarlett Martyn), M.D. (Minor represented by Litigation Guardian Lindsay Denike) (Students at the Durham District School Board), Katrina Wiens (Teacher at Durham District School Board);
M.L.J. and M.G.J. (Minors represented by their Litigation Guardian Angela Johnston), C.V., E.W., and M.V. (Minors represented by their Litigation Guardian Jeff Varcoe) (Students at the Halton District School Board), David Sykes (Teacher, Resource Consultant for the Deaf, Provincial Schools Authority);
N.M. (Minor represented by his Litigation Guardian Lorie Lewis) J.R.B. (Minor represented by his Litigation Guardian Jocelyne Bridle), Children's Health Defence (Canada), and Educators for Human Rights, Applicants

AND:

Eileen De Villa, (Chief Medical Officer, City of Toronto Public Health), City of Toronto, Dr. Lawrence Loh, (Chief Medical Officer for Peel Public Health), Hamidah Meghani, (Chief Medical Officer for Halton Public Health), Robert Kyle, (Chief Medical Officer for Durham Public Health), Dr. Nicola Mercer, (Chief Medical Officer for Wellington-Dufferin-Guelph Public Health), Dr. David Williams (Ontario Chief Medical Officer of Health), The Attorney General for Ontario, The Minister of Education, The Minister of Health and Long-Term Care, The Toronto District School Board, The Halton District School Board, The Durham District School Board, Robert Hochberg, Principal at Runnymede Public School, Superintendent Debbie Donsky of Toronto District School Board, Johns and Janes Does (Officials of the Defendants Minister of Education, Health and Long-Term Care and School Boards), Respondents

BEFORE: E.M. Morgan J.

COUNSEL: *Rocco Galati*, for the Applicants

Padriac Ryan, for the Respondents

HEARD: In writing

ENDORSEMENT

[1] Counsel for the Attorney General of Ontario has written to the Court asking for a ruling in writing for this Application to be dismissed as being frivolous and vexatious. The Applicants bring a Charter challenge against numerous public officials alleging that the formulation and implementation of various public health policies and measures relating to the ongoing COVID 19 pandemic violate the rights of Canadians.

[2] I do not have before me a full record. I only have the Notice of Application issued April 9, 2021, setting out the grounds for the Application and the remedies sought.

[3] The grounds described in the Notice are wide-ranging and, perhaps, a tad outlandish in content and tone. Without the benefit of a complete record and full legal argument, however, I would not want to opine on whether the Application promises to be a success or failure. Counsel for the Attorney General obviously believes that the entire litigation is problematic. But the Notice of Application does cite known grounds of Charter challenge while at the same time it seems to stretch existing legal concepts in an effort to perhaps make new law.

[4] It strikes me that there are serious legal challenges awaiting the Applicants, not the least of which is that some of their claims at first blush appear to be potentially in the jurisdiction of Divisional Court rather than this Court. But those questions require the Court to have before it an Application Record, and not just a Notice. They also require the input of counsel. As it is, I only have a letter from counsel for the Attorney General and it does not appear that counsel for the Applicants has had notice of the Attorney General's request.

[5] For the moment, I can only repeat the words of the Court of Appeal in *Khan v. Krylov & Company*, 2017 ONCA 625, at para. 12: "Rule 2.1 is an extremely blunt instrument. It is reserved for the clearest of cases, where the hallmarks of frivolous, vexatious, or abusive litigation are plainly evident on the face of the pleading. Rule 2.1 is not meant to be an easily accessible alternative to a pleadings motion, a motion for summary judgment, or a trial." The Notice of Application does not meet this test. I cannot say that the Application is frivolous and vexatious within the meaning of Rule 2.1.01 of the *Rules of Civil Procedure*.

[6] This Application is in need of some case management, and the sooner the better. Counsel for the Attorney General and counsel for the Applicants are to be in touch with my assistant in order to schedule a case conference prior to any responding materials being served.



Morgan J.

Date: May 27, 2021