



FORM 1 (Rule 3-1 (1))

No. *Court File No.* **VIC-S-S-233275**  
Victoria Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

JEDEDIAH JEREMIAH MERLIN FERGUSON and TERRI LYN PEREPOLKIN

Plaintiffs

**AND:**

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and  
DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE  
PROVINCE OF BRITISH COLUMBIA

Defendants

*Brought under the Class Proceedings Act, R.S.B.C. 1996, c. 50*

**NOTICE OF CIVIL CLAIM**

**This action has been started by the Plaintiffs for the relief set out in Part 2 below.**

If you intend to respond to this Action, you or your lawyer must

file a Response to Civil Claim in Form 2 in the above-named registry of this Court within  
the time for Response to Civil Claim described below, and

serve a copy of the filed Response to Civil Claim on the Plaintiffs.

If you intend to make a Counterclaim, you or your lawyer must

a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the  
above-named registry of this Court within the time for Response to Civil Claim  
described below, and

b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiffs and  
on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim  
within the time for Response to Civil Claim described below.

**Time for Response to Civil Claim**

A Response to Civil Claim must be filed and served on the Plaintiffs,

- a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- d) if the time for Response to Civil Claim has been set by Order of the Court, within that time.

## **CLAIM OF THE PLAINTIFFS**

### **Part 1: STATEMENT OF FACTS**

#### **The Parties**

1. The Plaintiff Jedediah Ferguson (“Ferguson”) was an employee of Island Health at Cumberland Regional Hospital Laundry and had worked as a Laundry Worker (LW1). Ferguson had been an employee of Island Health since June 2015 and maintained an exemplary and unblemished record until he was put on leave without pay on October 26, 2021, and then his subsequent termination effective November 18, 2021. Ferguson was subject to and terminated pursuant to the Provincial Health Officer’s (“PHO”) issuance of the *Hospital & Community COVID-19 Vaccination Status Information and Prevention Measures Order* (“the Order”). Ferguson is a member of the Hospital Employees’ Union (“HEU”) and at all material times his employment was governed by the HEU collective agreement (“the Contract”). Ferguson is a resident of British Columbia.
2. The Plaintiff Terri Perepolkin (“Perepolkin”) was an employee with Interior Health – Vernon Jubilee Hospital and has worked as a Laboratory Technologist since 2004 and maintained an exemplary and unblemished record until she was placed on leave without pay on October 26, 2021, and was terminated from her position November 18, 2021. Perepolkin was subject to and terminated pursuant to the PHO Order. Perepolkin is a member of the Health Sciences Association (“HSA”) and at all material times her

employment was governed by the Health Science Professionals Bargaining Association (“HSPBA”) collective agreement (“the Contract”). Perepolkin is a resident of British Columbia.

3. The Defendant, His Majesty the King (“Canada”), in Right of the Province of British Columbia may exclusively make laws in relation to matters that are not within the jurisdiction of the Government of Canada and its ministers may make orders pursuant to the *Emergency Program Act*, R. S. B. C. 1996, c. 111 (the “EPA”), *Public Health Act*, SBC 2008, C 28 and has an address for service of the Attorney General, Ministry of Attorney General, PO Box 9290 Stn Prov Govt, Victoria, British Columbia (the “Provincial Government”).
4. The Defendant, Dr. Bonnie Henry, is British Columbia’s Provincial Health Officer appointed under Part 6 of the *Public Health Act*, SBC 2008, C 28 (“PHA”) and is responsible for issuing public health orders in British Columbia.

#### **Class Definition**

5. This action is brought on behalf of members of the class consisting of all unionized healthcare workers in British Columbia who have been subject to the *Covid-19 Vaccination Status information and Preventative Measures order* issued by the PHO on October 14, 2021 pursuant to Sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 *Public Health Act*, S.B.C. 2008 (“the Class”).
6. It is estimated that the Class consists of thousands of unionized health care workers in British Columbia.

#### **Standing**

7. The Plaintiffs and Class Members assert both private and public interest standing to bring this claim.
8. The Plaintiffs and Class Members have private interest standing because they are

directly affected by the Provincial Health Officer's decision to issue the Orders and thereby induce the breach of their contractual employment agreements leading to significant financial and ancillary harm.

9. The Plaintiffs and Class Members have private interest standing because they are directly affected by the Misfeasance of the Provincial Officer of Health in issuing the Order and have been subjected to foreseeable ensuing harm as a result of such conduct.
10. The Plaintiffs and Class Members also have public interest standing. They raise a serious justifiable issue of public import respecting the constitutionality of the Provincial Officer of Health's Order which has created, contributed to, and sustained a deprivation of individuals' rights guaranteed under the *Charter*, s. 2d.
11. The Plaintiffs and Class Members have a real stake in the Provincial Officer of Health's conduct and are both directly and genuinely interested in the resolution of this claim.
12. This claim advances a reasonable and effective method of bringing the issues before the Court in all of the relevant circumstances. Many individuals impacted by the conduct of the Provincial Officer of Health and the Orders have had their contractual employment agreements breached, were subjected to foreseeable harm caused by Misfeasance in Public Office and had *Charter* rights infringed upon. These acts committed by the Provincial Officer of Health's conduct also impacted the Class's resources to bring forward such a claim.

### **Public Health Order**

13. On October 14, 2021, the Provincial Public Health Officer, (Pursuant to Sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 *Public Health Act*, S.B.C. 2008), issued an order respecting Covid-19 Vaccination Status information and Preventative Measures (**"the Order"**).
14. The Order stated, inter alia,

- a. "Vaccination is safe, very effective, and the single most important preventive measure health professionals, visitors to hospitals, providers of care or services in hospital or community settings, and the staff or contractors of an organization which provides health care or services in hospital or community settings can take to protect patients, residents and clients, and the health and personal care workforce, from infection, severe illness and possible death from COVID-19";
- b. "There are difficulties and risks in accommodating persons who are unvaccinated, since no other measures are nearly as effective as vaccination in reducing the risk of contracting or transmitting SARS-Co-2, and the likelihood of severe illness and death";
- c. "The public health and health care systems are currently experiencing severe stress, and are stretched beyond capacity in their efforts to prevent and respond to illness resulting from the transmission of COVID-19 in the population";
- d. "The public needs to have confidence that when they receive health care from a health professional they are not putting their health at risk";
- e. "Employers need to know the vaccination status of staff in order to enforce preventive measures ordered by me or the medical health officer";
- f. "Medical health officers need to know the vaccination status of staff in order to most effectively respond to exposures to or outbreaks of COVID-19 among patients, clients or staff";
- g. "I recognize the effect which the measures I am putting in place to protect the health of patients and clients and other staff in hospital and community settings may have on people who are unvaccinated and, with this in mind, have engaged and will continue to engage in a process of reconsideration of these measures, based upon the information and evidence available to me, including infection rates, sources of transmission, the presence of clusters and outbreaks, particularly in facilities, the number of people in hospital and in intensive care, deaths, the emergence of and

- risks posed by virus variants of concern, vaccine availability, immunization rates, the vulnerability of particular populations and reports from the rest of Canada and other jurisdictions, with a view to balancing the interests of the people affected by the Order, including constitutionally protected interests, against the risk of harm created by unvaccinated persons providing health care or other services in hospital or community settings”;
- h. “I further recognize that constitutionally protected interests include the rights and freedoms guaranteed by the Canadian Charter of Rights and Freedoms, including the right to life, liberty and security of the person, along with freedom of religion and conscience, freedom of thought, belief, opinion and expression. These rights and freedoms are not, however, absolute and are subject to reasonable limits, prescribed by law as can be demonstrably justified in a free and democratic society. These limits include proportionate, precautionary, and evidence-based restrictions to prevent loss of life, serious illness and death, and disruption of our health system and society. When exercising my powers to protect the health of the public from the risks posed by COVID-19, I am aware of my obligation to choose measures that limit the Charter rights and freedoms of British Columbians less intrusively, where doing so is consistent with public health principles”;
  - i. “a lack of information on the part of employers about the vaccination status of staff interferes with the suppression of SARS-CoV-2 in hospital and community settings, and constitutes a health hazard under the *Public Health Act*”;
  - j. “an unvaccinated person who provides health care or services in a hospital or community setting, puts patients, residents, clients, staff and other persons who provide health care or services at risk of infection with SARS-CoV-2, and constitutes a health hazard under the *Public Health Act*”;
  - k. “an unvaccinated staff member of an organization which provides health care or services puts staff who provide health care or services, and patients, residents or

clients, at risk of infection with SARS-CoV-2, and constitutes a health hazard under the *Public Health Act*”;

- I. in order to mitigate the risk of the transmission of SARS-CoV-2 created by an unvaccinated person as described above, it is necessary for me to exercise the powers in sections 30, 31, 32, 39, 53, 54, 56, 57, 67 (2) and 69 of the *Public Health Act* TO ORDER as follows:
  - a. An employer must request and collect proof of vaccination, or an exemption, from each staff member, and must keep a record of the information.
  - b. A staff member must provide their employer with proof of vaccination, or an exemption, on request from their employer.
  - c. Subject to section 2 and 3, as of October 26, 2021, a staff member who was hired before October 26, 2021, must be vaccinated or have an exemption to work.
  - d. An employer must not permit an unvaccinated staff member to whom this Part applies to work after October 25, 2021, unless the staff member is in compliance with either section 2 (a) or (b), or has an exemption and is in compliance with the terms of the exemption.

#### **Island Health COVID-19 Vaccination Policy**

15. On October 15, 2021, in response to the COVID-19 Public Health Order issued by the BC Provincial Government Island Health announced their mandatory COVID-19 Vaccination Policy. The Island Health Policy stated, *inter alia*:
  - a) “On October 14, 2021, the Provincial Health Officer (the “PHO”) issued an order titled *Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Prevention Measures Order* (the PHO Order).

- b) “This Policy clarifies the applicable process and requirements for staff (defined below) to provide vaccination status information to Island Health and to implement the requirement of the PHO Orders issued October 14, 2021.
- c) “Upon request, all staff must provide Island Health with proof of vaccination in the form of the BC Vaccine Card or other written proof issued by the Province of British Columbia, the federal government or another province of Canada in accordance with public health orders”.
- d) “All Current Staff Members who do not have an approved or pending medical exemption request in accordance with the PHO Order are required to be fully vaccinated (seven days past receipt of Dose 2 of vaccine), or alternatively to have received their first dose of vaccine by no later than October 25, 2021, followed by a second dose between 28-35 days after receipts of the first dose, and to follow preventative measures until fully vaccinated.”
- e) “If a staff member refuses to comply with any required preventative measures, that individual is not permitted to work. The staff member shall be placed on leave without pay and may be subject to discipline or other employment consequences up to and including termination.”
- f) “Any current staff member who has not received a dose of vaccine before October 26, 2021, will be placed on unpaid leave of absence up to November 14th, 2021. If the current staff member receives their first dose of vaccine by no later than November 14th, 2021, they may return to work after seven days have passed from receipt of their first dose, provided that they continue to follow preventative measures until seven days have passed from receipt of their second dose. The staff must receive their second dose of vaccine between 28 to 35 days after their first dose in order to remain eligible to work. Staff who remain unvaccinated at the conclusion of the unpaid leave of absence period above are subject to termination. Staff who are eligible to return to work after receipt of a first dose but who failed to obtain their second dose of vaccine



between 28 and 35 days after their first dose will be placed on unpaid leave of absence and are subject to termination of employment.”

### **Interior Health Covid-19 Vaccination Policy**

16. On October 15, 2021, in response to the COVID-19 Public Health Order issued by the PHO, Interior Health announced their mandatory COVID-19 Vaccination Policy. The Interior Health Policy stated, *inter alia*:

- a) “The Provincial Health Officer (PHO) Order on mandatory vaccination requirements for all health-care workers is now posted on the PHO website: [Hospital and Community \(Health Care and Other Services\) COVID-19 Vaccination Status Information and Prevention Measures.](#)”
- b) “The order requires all interior health (IH) employees, medical staff, contractors, students and individuals who work, study or volunteer at Interior Health to have **received at least one dose of COVID-19 vaccine before October 26** in order to continue working.”
- c) “Those who have received one dose of COVID-19 vaccine before October 26th will be required to receive their second dose 28 to 35 days after receiving their first dose and to follow preventative measures (i.e., wearing a medical mask) until fully vaccinated.”
- d) “Those who are fully vaccinated with two doses of COVID-19 vaccine will be considered in compliance with the order.”
- e) If you have not received your first dose of COVID-19 vaccine before October 26:
  - (i) you will not be permitted to work on site or remotely;
  - (ii) you will be placed on unpaid leave, and/or see a pause to your contract, education experience or on-site research activity;
  - (iii) you will not be able to use bank time or other forms of paid leave.

- f) If you receive your first dose between October 26 and November 15th, you will be able to return to work after seven days and will be required to:
  - (i) Receive your second dose 28 to 35 days after receiving the first dose;
  - (ii) Follow preventative measures (i.e. wearing a medical mask) until fully vaccinated;
  - (iii) Confirm your vaccine status and immunization plan with your manager.
  
- g) Employees who have not received the first dose of COVID-19 vaccine by November 15, should anticipate that their employment and/or other contractual arrangements with IH may be terminated.

**Formation of the Contract Mr. Ferguson**

- 17. The Contract is the product of a good faith collective bargaining process. The process includes a procedure through which terms and conditions of employment were settled by negotiations between the employer and their employees on the basis of a comparative equality of bargaining strength.
  
- 2. The Contract was negotiated between the Hospital Employees Union (“HEU”) and the Health Employers Bargaining Association (“HEABC”) which is comprised of members who work in the health care profession of which Mr. Ferguson is a member.
  
- 18. The negotiation process included, inter alia:
  - a) member consultation;
  - b) development of bargaining proposals;
  - c) an exchange of proposals;
  - d) deliberation on proposals;
  - e) an exchange of consideration;
  - f) an ability to negotiate, amend, reject proposals;
  - g) the right to job action if the parties are unable to reach agreement; and,

- h) A vote in the affirmative on the proposed contract by both the Employer and HEU members.
- 19. The HEU Agreement does not contain a term or condition of employment which allows employees to unilaterally be placed on an unpaid leave of absence.
- 20. The HEU Agreement does not contain a term or condition of employment which mandates Covid-19 vaccinations.

**Formation of the Contract Ms. Perepolkin**

- 21. The Contract is the product of a good faith collective bargaining process. The process includes a procedure through which terms and conditions of employment were settled by negotiations between the Employer and their employees on the basis of a comparative equality of bargaining strength.
- 22. The Contract was negotiated between the Health Employers Bargaining Association (“HEABC”) and The Health Science Professionals Bargaining Association (“HSPBA”) which is comprised of members who work in the health science profession of which Ms. Perepolkin is a member.
- 23. The negotiation process included, inter alia:
  - a) member consultation;
  - b) development of bargaining proposals;
  - c) an exchange of proposals;
  - d) deliberation on proposals;
  - e) an exchange of consideration;
  - f) an ability to negotiate, amend, reject proposals;
  - g) the right to job action if the parties are unable to reach agreement; and,
  - h) A vote in the affirmative on the proposed contract by both the Employer and HSPBA members.
- 24. The HSPBA Agreement does not contain a term or condition of employment which allows employees to unilaterally be placed on an unpaid leave of absence.

25. The HSPBA Agreement does not contain a term or condition of employment which mandates Covid-19 vaccinations.

#### **Covid -19 Vaccinations – Preventing Transmission**

26. The Order and ensuing Policy mandated Covid-19 vaccinations which were approved by Health Canada.
27. Health Canada regulatory approval decisions, product reviews, product monographs, and clinical study data on the Covid-19 vaccines was at all material times available to the Provincial Health Officer to inform the development, implementation, and enforcement of the Order and ensuing policy.
28. At the time the Policy was enacted all Health Canada approved COVID-19 vaccinations had filed product monographs which are available to inform the public of the effects of the vaccination. There were six (6) COVID-19 vaccines available to the public in Canada. Listed below is the manufacturer with the name of vaccine in brackets.
  - a. Pfizer/BioNTech (“Comirnaty”)
  - b. Moderna (“Spikevax”)
  - c. Janssen and Johnson & Johnson (“Jcovden”)
  - d. AstraZeneca (“Vaxsevria”)
  - e. Medicargo (“Covifenz”)
  - f. Novavax (“Nuvaxovid”)

Each of the COVID-19 vaccines presented above have a Product Monograph.

29. A Product Monograph is a factual, scientific document on a drug product that, devoid of promotional material, describes the properties, claims, indications, and conditions of use for the drug, and that contains any other information that may be required for optimal, safe, and effective use of the drug.

30. The Product Monograph of the Pfizer vaccine, Comirnaty, does not include any information related to the transmission of COVID-19. Prevention of viral transmission is NOT an approved indication for Comirnaty. The word 'transmission' or any of its correlates indicating viral conveyance to another person, does not appear in this document and therefore the Plaintiffs plead that the Public Health Officer cannot claim Comirnaty prevents viral transmission of COVID-19 to other people.
31. The Product Monograph of Moderna's vaccine, Spikevax does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim Spikevax prevents viral transmission of COVID-19 to other people.
32. The Product Monograph of VAXZEVRA™, manufactured by AstraZeneca does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim VAXZEVRA™ prevents viral transmission of COVID-19 to other people.
33. The Product Monograph of JCOVDEN™, manufactured by Janssen, does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim JCOVDEN™ prevents viral transmission of COVID-19 to other people.
34. The Product Monograph of COVIFENZ™, manufactured by Medicago does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim COVIFENZ™ prevents viral transmission of COVID-19 to other people.
35. The Product Monograph of NUVAXOVID™, manufactured by Novavax does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim NUVAXOVID™ prevents viral transmission of COVID-19 to other people.

### **Covid-19 Vaccination – Safety and Risk of Adverse Events**

36. On or about March 29, 2021, The National Advisory Committee on Immunization (NACI), recommended immediately suspending the use of the AstraZeneca-Oxford COVID-19 vaccine in Canadians under 55.
37. On June 26, 2021, Health Canada updated the product label for the Vaxzevra vaccine manufactured by AstraZeneca. Health Canada acknowledged that potential side effect of blood clots associated with low levels of platelets following immunization.
38. On November 18, 2020, Pfizer-BioNTech released and published updated results of their Phase 3 clinical trials, for the Pfizer and BioNTech Covid-19 vaccination. (“Study 1”).
39. Study 1 showed that of 18,198 individuals in the Vaccination group, 5770 individuals (26.7%) had an adverse reaction.
40. On April 1, 2021, Pfizer-BioNTech released and published updated results of their Phase 3 clinical trials. (“Study 2”).
41. Study 2 showed that of 21,923 individuals in the Vaccination group, 5241 individuals (23.9%) had a “related adverse event” and 127 (0.6%) suffered “any serious adverse event.”
42. On or about May 1, 2021, Health Canada announced it was stopping distribution of 300,000 doses of the Johnson & Johnson, Jcovden, vaccine to provinces and territories because the regulator had learned the active ingredient was made at a Baltimore facility where an inspection raised concerns.
43. On or about May 3, 2021 NACI recommended the Johnson & Johnson, Jcovden, shot not be given to anyone under 30 because of the risk of extremely rare blood clots combined with low platelets, a syndrome dubbed vaccine-induced immune thrombotic thrombocytopenia (VITT).
44. Moderna submitted results of one phase III randomized trial in support of the emergency use authorization for their vaccines for use in adults. The Moderna trial

exhibited a 6% higher risk of serious adverse events in vaccinated individuals compared to the placebo group. 136 per 10,000 versus 129 per 10,000 – risk difference 7.1 per cent per 10,000.

45. In the Moderna trial Serious Adverse Events of Interests (“AESI”) showed 87 AESI (57.3 per 10,000) were reported in the vaccine group and 64 (42.2 per 10,000) in the placebo group, resulting in a 36% higher risk of serious AESI’s.

46. The Medicago Covifenz COVID-19 vaccine was authorized on February 24, 2022, for use in Canada under the *Food and Drug Regulations*, however this vaccine was cancelled by the sponsor on March 31, 2023.

## **Part 2: RELIEF SOUGHT**

47. Damages pursuant to the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, s. 24(1). (“the *Charter*”)
48. A declaration that s.92 of the PHA be read so that its effects do not limit rights established under the *Charter*, with respect to *Charter* damages.
49. General damages for Inducement of Breach of Contract
50. General damages for Misfeasance in Public Office
51. Aggravated damages;
52. Punitive damages;
53. Special costs, or in the alternative costs; and
54. And order certifying this action as a class proceeding;

55. In the alternative, if this Honourable Court refuses to certify this proceeding as a class proceeding, an order that it be allowed to continue as a proceeding under the *Supreme Court Civil Rules*;
56. Interest under the *Court Order Interest Act*, R.S.B.C 1996, c. 79;
57. Such further and other relief as the Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

#### **Misfeasance in Public Office**

58. The Provincial Health Officer acting under authority of the *Public Health Act*, SBC 2008, C 28 issued and mandated implementation of the Order. The Plaintiffs and Class Members plead that Provincial Health Officer acted with reckless indifference or willful blindness in issuing and enforcing the Order such actions included:

- a) The Provincial Health Officer had no basis in fact to justify the Order as a measure to prevent transmission of COVID-19. As such the Plaintiffs' and Class Members plead that in perpetuating the stated objective of the Order as preventing transmission of Covid-19, The Provincial Health Officer either recklessly or willfully ignored the reality of the vaccine in exercising her authority under the Public Health Act, SBC 2008, C 28, with foreseeable losses to the Plaintiffs' and Class Members.
- b) Known and unknown potential risk of adverse events associated with the Covid-19 vaccination were either recklessly or willfully ignored and omitted by enactment and enforcement of the Order under the *Public Health Act*, SBC 2008, C 28, c. A-2 with foreseeable losses to the Plaintiffs' and Class Members.
- c) There was no long-term safety data available to the Provincial Health Officer when enacting and enforcing the Order on mandatory vaccinations and as such the Order created a foreseeable and unreasonable risk of harm to the Plaintiffs and Class Members.



d) The Provincial Health Officer acted in furtherance of an objective which supplanted the stated objectives of the Order as those objectives were known or should have been known to be unachievable by virtue of the Order.

59. The Plaintiffs' and Class Members plead that as a result of the Provincial Health Officer's actions in enacting and enforcing the Order on mandatory vaccinations, they suffered significant economic deprivation and emotional trauma and that such harm was foreseeable by the Provincial Health Officer.

60. The Plaintiffs' and Class Members plead that the Provincial Health Officer in exercising her statutory authority under the *PHA* with reckless indifference or willful blindness committed the tort of Misfeasance in Public Office.

#### **Tortious Inducement to Breach Contractual Relations**

61. The Plaintiffs' and Class Members plead that the Order was issued in bad faith as:

a) The stated objectives of the Order were either known or could reasonable be known to be unachievable and therefore false;

b) The risks of adverse harm as a result of complying with the Order was either known to the PHO or the PHO acted with reckless indifference to the harm or willful blindness; and,

c) The Order mandated vaccinations that did not prevent transmission of COVID-19 and such fact was either known to the PHO or the PHO acted with reckless indifference or willful blindness resulting in foreseeable harm.

62. The Order introduced new terms and conditions for continued employment which were not negotiated nor contemplated under the Contract.

63. The Plaintiffs' and Class Members have either refused to share their vaccination status or are otherwise unvaccinated and thus did not conform to the Order and were placed on leave without pay, effectively a suspension, and some were subsequently terminated from employment.

64. The Plaintiffs and Class Members allege that the following actions taken by Provincially regulated Healthcare facilities (“the Employers”) were in breach of their contractual employment agreements and induced by the Order:

- a) Disclosure of private medical information;
- b) Being placed on a leave without pay; and
- c) Termination of their employment.

65. Mr. Ferguson pleads that mandating Covid-19 vaccinations, placing him on an unpaid leave of absence and terminating his employment constituted a breach of the HEU Agreement.

66. Ms. Perepolkin pleads that mandating Covid-19 vaccinations, placing her on an unpaid leave of absence and terminating her employment constituted a breach of the HSPBA Agreement.

67. The Plaintiffs and Class Members state that at all material times, their employment contracts were valid and binding upon their Employers. As their Employers have unlawfully purported to suspend or terminate the Plaintiffs’ and Class Members’ contractual agreements and have refused to pay the sums owing to the Plaintiffs and Class Members, the Employers are in breach of their contractual employment agreements.

68. As Provincial Health Officer, the Defendant was aware of the existence of the contractual employment agreements when she decided to issue the Order.

69. The Plaintiffs and Class Members allege that the Defendants intended to and caused and/or induced the Employers to breach contractual employment agreements by their actions in relation to: the disclosure of private medical information; imposition of a leave without pay; and/or unlawful termination by ordering the Employers to enforce the Order absent justification. The breaches of contractual employment agreements are therefore a direct result of the unlawful inducement of the breach as herein before

particularized and as a result of unlawful interference by the Defendants in the contractual relationship between the Plaintiffs, Class Members and their Employers.

70. The Plaintiffs and Class Members allege that the conduct of the Defendants in inducing the breach of Contract was unjustified and thus unlawful.

71. The Plaintiffs and Class Members allege that as a result of the Defendants' interference with the Plaintiffs' and Class Members' contractual relationship with the Employers, the Defendants have caused the Plaintiffs and Class Members to suffer damages.

**Breach of the *Charter of Rights and Freedoms***

72. The Plaintiffs' and Class Members plead that the Order was issued in bad faith through reckless disregard or willful blindness to the disproportional unsubstantiated impact of the Order, and as a result violated their rights under s.2d of the *Charter*.

73. The Plaintiffs' and Class Members plead that the Order constitutes an improper and unjustified imposition by the Provincial Health Officer of a new term and condition of employment absent collective bargaining, memoranda of agreement, consideration, or consent to their existing and freely negotiated employment agreements and as such violates their protected right under s. 2d of the *Charter*.

74. The Plaintiffs and Class Members plead the Order violates s. 2d, by infringing on these rights in a manner that does not accord with the principles of fundamental justice. These infringements cannot be justified pursuant to the criteria of s. 1 of the *Charter*. The infringements cannot be demonstrably justified because they were not minimally impairing and there was no proportionality between the deleterious and salutary effects of the Orders.

75. The Plaintiff's plead that the Order constitutes an improper and unjustified imposition by the Provincial Health Officer of a new term and condition of employment absent collective bargaining memoranda of agreement, consideration, or consent to their

existing and freely negotiated employment agreements and as such violates their protected right under s. 2d of the *Charter*.

76. The Plaintiffs' and Class Members plead that Charter damages are a just and appropriate remedy in this case to vindicate rights, deter conduct, and achieve the objective of compensation.

### **Privacy Rights**

77. The Plaintiffs and Class Members plead that in requiring them to disclose private medical information to the Employers the Order intentionally or recklessly or willfully, and without claim of right, intruded upon the Plaintiffs' and Class Members' private affairs; a reasonable person would regard this intrusion as highly offensive and causative of distress, humiliation, or anguish.

- a) Collection of personal medical information relating to their COVID-19 vaccination status or medical history represents an unreasonable infringement of their privacy rights.
- b) Dissemination of personal medical information relating to their COVID-19 vaccination status or medical history represents an unreasonable infringements and intrusion of their privacy rights.

78. The Plaintiffs and Class Members plead that the Order's intrusion in disclosure of private medical information violates common law and statutory privacy rights.

### **Aggravated and Punitive Damages**

79. The Plaintiffs and Class Members plead that Defendants, by virtue of the conduct included in this Statement of Claim have inflicted mental and emotional distress by engaging in conduct:

- a) that constitutes conduct that is flagrant and outrageous;

- b) that was calculated to produce harm and produce the consequences that flowed from the Order; and
- c) that resulted in injury to the Plaintiffs and Class members.

80. The Plaintiffs and Class Members plead that the conduct of the Defendants as outlined in this Statement of Claim demonstrates a wanton, high-handed and callous disregard for the interests of the Plaintiffs and Class Members. This conduct merits an award of aggravated and punitive damages.

Plaintiff's address for service: c/o Umar A. Sheikh  
Sheikh Law  
PO Box 24062 Broadmead RPO  
Victoria BC V8X 0B2

Fax number address for service (if any):

E-mail address for service (if any): usheikh@sheikhlaw.ca  
Place of trial: Victoria, BC

The address of the registry is: 850 Burdett Avenue  
Victoria, BC V8W 1B4

Date: October 13, 2023 Umar A. Sheikh  
Signature of  Plaintiff  
 Lawyer for Plaintiffs

Umar A. Sheikh

Date: October 13, 2023 Angela M. Wood  
Signature of  Plaintiff  
 Lawyer for Plaintiffs

Angela M. Wood

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the Court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a List of Documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

## APPENDIX

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is an action for Tortious inducement of breach of contract and Misfeasance in Public Office and infringement of *Charter* Rights under s.2d.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- X another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- X a matter not listed here

### **Part 3: THIS CLAIM INVOLVES:**

- X a class action
- maritime law
- aboriginal law

- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4: ENACTMENTS:**

- Builders Lien Act
- Divorce Act
- Family Relations Act
- Insurance (Motor Vehicle) Act
- Insurance (Vehicle) Act
- Motor Vehicle Act
- Occupiers Liability Act
- Supreme Court Act
- Wills Variation Act

OR

[description]