CERTIFICATION HEARING NOTES:

Notes supplied by BCPSEF online postings.

Joint Certification Hearings for 2 Proposed Class Actions

UHCWBC – United Health Care Workers of British Columbia
BCPSEF – British Columbia Public Sector Employees for Freedom

Both cases challenged the implementation of "vaccine passports" in Fall 2021.

PART 1: April 28th to May 2nd, 2025

PART 2: December 1st to December 12th, 2025

Related s.2(d) cases – freedom of association

CASE NAMES	Feds4F/BCPSEF	Free2Fly/UHCWBC/UHCWO
Government Workers?	Yes	No
Filed Federally?	Feds For Freedom	Free2Fly
Filed in B.C.?	BCPSEF	UHCWBC
Filed in Ontario?	n/a	UHCWO
Wrongful Termination by Gov't?	Yes	No
Inducement to Breach Contract?	No	Yes
Breach s.2(d) Charter Rights?	Yes	Yes
Malfeasance of Public Office?	Yes	Yes

All of these cases involve employees fighting back from the 2021 implementation of injection mandates. While similar, there are subtle (but important) differences in how these cases are being argued.

Feds4Freedom is the case of Federal workers (Payne). While the case initially survived a motion to strike, that was overturned by the Court of Appeal.[1] [2] [3] [4]

Free To Fly is the class action of airline workers. This was not exactly a case of wrongful termination, but of *inducement to breach a contract.* It survived a motion to strike.[5] Unlike Federal (or BC employees), government lawyers can't rely on legislation to compel arbitration.

The BC cases are being heard together.[6] [7] The Ontario case is being held off until the other ones can be dealt with.[8]

[1] https://canucklaw.ca/proposed-class-action-mandates-survives-2d/
[2] https://canucklaw.ca/crown-appeals-payne-class-action-s-2d/
[3] https://canucklaw.ca/the-payne-appeal-s2d-challenge/
[4] https://canucklaw.ca/coa-overturns-payne-tosses-case/
[5] https://canucklaw.ca/free-to-fly-case-survives-differs-payne/
[6] https://canucklaw.ca/bcpsef-uhcwbc-certification-hearings/
[7] https://canucklaw.ca/bcpsef-uhcwbc-cert-next-week/
[8] https://canucklaw.ca/uhcwo-class-action-s-2d-violations/

CLASS ACTION UPDATE, Day 1 (April 28th, 2025)

This is the joint BCPSEF-@UHCWBC-supported class action certification hearing focused on an introduction by Plaintiffs' counsel, @uasind, of the two actions argued on behalf of unionized B.C. public servants and healthcare workers who went from being lauded as heroes during the early days of COVID-19 to being treated as public enemies for vaccine mandate non-compliance. The intense fear generated during that time has conditioned how we think of these issues, which is why a careful examination of the facts and evidence is required to adjudicate the claims made in the actions, and why these actions should be certified to allow for an evidentiary inquiry and trial. Plaintiffs' counsel also addressed the important issue of jurisdiction, arguing that the Court retains jurisdiction to adjudicate the claims notwithstanding the Defendants' reliance on labour arbitration exclusivity principles from *Weber v Ontario Hydro*, [1995] 2 SCR 929 (https://canlii.ca/t/1frj9) and *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 (https://canlii.ca/t/jjtkc). Additionally, unilateral state action to nullify or alter the terms of employment contracts of unionized employees (as happened in B.C. with COVID-19 vaccine mandates) has been demonstrated to infringe s. 2d of the *Charter of Rights and Freedoms*, as in *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 (https://canlii.ca/t/1rqmf) and *British Columbia Teachers' Federation v. British Columbia*, 2016 SCC 49 (https://canlii.ca/t/gvlgm). Both actions claim the Provincial Health Officer (PHO), Dr. Bonnie Henry, in issuing Orders and advising government on the imposition of COVID-19 vaccine mandates that prevented neither infection nor transmission of COVID-19, exercised her statutory authority under the *Public Health Act* (PHA) with reckless indifference or willful blindness, acted in bad faith and committed the tort of misfeasance in public office, satisfying the test for this tort under *Odhavji Estate v Woodhouse*, 2003 SCC 69 (https://canlii.ca/t/1g18n). The healthcare workers' action also claims that the PHO induced the breach of their employment contracts by compelling health sector employers to not permit unvaccinated employees to work, meeting the test for this tort under *Canada Steamship Lines Inc. v. Elliott*, 2006 FC 609 (https://canlii.ca/t/1ndcw). Importantly, the Federal Court of Canada recently refused to dismiss these three claims, s. 2d *Charter* right infringement, misfeasance in public office, and inducement of breach of contract, in similar proposed class actions over COVID-19 vaccine mandates against the Government of Canada pled by aviation professionals in *Hill v. Canada*, 2025 FC 242 (https://canlii.ca/t/k9d4f) and federal public servants in *Payne v. Canada*, 2025 FC 5 (https://canlii.ca/t/k8jck).

CLASS ACTION UPDATE, Day 2 (April 29th, 2025)

Day 2 of the hearing focused on aspects of the Plaintiffs' written submissions and affidavit evidence, including the impugned PHO Orders re: mandatory COVID-19 vaccination and designation of unvaccinated healthcare staff as constituting a public health risk and hazard under the PHA; that the unvaccinated were at higher risk of infection/transmission; and that COVID-19 vaccination is safe, effective, and the single most important measure to protect against infection, severe illness and death. Plaintiffs' counsel also reviewed in detail the employment histories and unionized backgrounds of proposed healthcare representative plaintiffs Ferguson and Perepolkin, highlighting the absence of terms in their respective collective agreements mandating COVID-19 vaccination or the disclosure of vaccination status; the absence of terms allowing unilateral employer imposition of leave without pay (LWOP); their grievances for LWOP and termination pursuant to the PHO's COVID-19 vaccine mandate Orders; and labour arbitration decisions finding the terminations be the result of their unavailability for work due to the imposition of the PHO Orders. Day 3 is expected to see continued submissions on Plaintiffs' affidavit evidence, including an expert witness affidavit concerning the safety and efficacy of COVID-19 vaccines from evidence-based pharmaceutical drug policy researcher, Alan Cassels.

CLASS ACTION UPDATE, Day 3 (April 30th, 2025)

This day of the hearing focused on continued Plaintiffs' submissions on affidavit evidence, and in particular the expert evidence offered by pharmaceutical drug policy researcher, Alan Cassels (@AKECassels). The Defendants objected to the admissibility of Cassels' evidence as a qualified expert in this matter, however Plaintiffs' legal counsel @uasindled the Court through the legal framework for admissibility of expert evidence in *R v Mohan*, [1994] 2 SCR 9 (https://canlii.ca/t/1frt1), *White Burgess Langille Inman v Abbott and Haliburton Co*, [2015] 2 SCR 182 (https://canlii.ca/t/ghd4f), and a B.C. Supreme Court case, *Pinch v Morwood*, 2016 BCSC 75 (https://canlii.ca/t/gn11f), demonstrating Cassels' evidence meets the four-part test for admissibility and distinguishing the facts of his evidence from cases cited by the Defendants suggesting it is of the nature of medical opinion or a literature review. Cassels has three decades of experience as an independent health policy researcher, reviewing clinical trial data and pharmaceutical regulatory submissions. He has published 30+ peer-reviewed studies, authored 4 books, served as an advisor to BC Medical Association & Ministry of Health, received the Queen Elizabeth II Diamond Jubilee medal award for his prolific contributions to health journalism, and discloses no financial ties to the pharmaceutical industry. His affidavit evidence focuses on interpreting pharmaceutical product monographs and regulatory documents, subject matter within his established area of expertise. Cassels analyzed COVID-19 vaccine manufacturers' clinical trial data and product monographs and found none of the COVID-19 vaccines approved by Health Canada claimed to prevent viral transmission. The B.C. government and Provincial Health Officer, however, claimed COVID-19 vaccination was necessary to prevent transmission of the virus in the workplace and to protect the health and safety of employees and the public, and therefore mandated the pharmaceutical products for employment in the public service and healthcare.

CLASS ACTION UPDATE, Day 4 (May 1st, 2025)

This continued with submissions on the admissibility of the Cassels expert evidence and proceeded to Plaintiffs' submissions on the evidence of proposed B.C. public servant representative plaintiff, Jason Baldwin. Baldwin's claim challenges the legality of the B.C. government's Order in Council 627/2021, which enacted the *Public Service COVID-19 Vaccination Regulation* making Human Resources Policy 25 regarding COVID-19 vaccination a term and condition of employment for all @BCPublicService employees. Baldwin, a compliance analyst with the Ministry of Finance with 7.5 years of service, was placed on leave without pay in January 2022 and terminated 9 months later for declining to disclose his vaccination status. The mandate allowed no exemptions for freedom of conscience, belief, or remote work, and deemed those terminated pursuant to HR Policy 25 to be terminated for just cause. Baldwin and his wife (also terminated) suffered financially and emotionally and were forced to sell their home and move to another community. His affidavit evidence spoke to lasting harm to his well-being and reputation. Baldwin's union, the BC General Employees' Union (@bcgeu), refused to challenge the COVID-19 vaccination regulation in court. It argued that the mandate was law, not policy, and that labour arbitration, *Charter* challenges, or other legal actions against the government were unlikely to succeed. Baldwin's grievances against his employer for being placed on leave without pay and terminated were dropped by the union. Baldwin subsequently filed a Section 12 complaint under the B.C. *Labour Relations Code*, alleging the union failed in its duty to represent him. The Labour Relations Board dismissed it, stating that a disagreement over legal strategy does not prove misconduct. Baldwin's evidence highlights the far-reaching personal and legal implications of the provincial COVID-19 vaccine mandate, and the obstacles faced by public servants seeking recourse. Plaintiffs' submissions will continue tomorrow, Friday, May 2, the last scheduled day of this hearing. Given the Plaintiffs' submissions have not yet concluded, and the Defendants have yet to respond, future dates are anticipated to be scheduled to conclude this class action certification application hearing.

More updates to come.

CLASS ACTION UPDATE Day 5, (May 2nd, 2025)

Update: B.C. Vaccine Mandate Class Action Hearing Today's hearing focused on whether the Plaintiffs' claims—centered on CVOID-19 vaccine mandates for BC Public Service employees and healthcare workers—meet the legal threshold for class certification, and whether the claim of misfeasance in public office against the Provincial Health Officer (PHO), Dr. Bonnie Henry,

should. proceed to trial.

Key Points on Class Certification: The Plaintiffs argue their claims meet the requirements under section 4(1) of the B.C. *Class Proceedings Act*, which mandates certification if:

1) The pleadings disclose a cause of action.

2) There's an identifiable class.

3) Common issues are raised.

4) A class action is the preferable procedure.

5) A suitable representative plaintiff exists.

Case law supporting certification:

• *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46 (https://canlii.ca/t/520c): Class actions enhance access to justice, judicial economy, and behaviour modification.

• *Hollick v Toronto (City)*, 2001 SCC 68 (https://canlii.ca/t/51zq): Courts must take a generous approach to certification; no merits test is applied.

• *Sun-Rype Products Ltd v Archer Daniels Midland Company*, 2013 SCC 58 (https://canlii.ca/t/g1nz8):

If all five criteria in s. 4(1) are met, certification is mandatory.

• *Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57 (https://canlii.ca/t/g1nz6): Certification doesn't require proving claims—only that there is some basis in fact for each requirement.

• *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 (https://canlii.ca/t/1fst2): A claim must only be struck if it is "plain and obvious" it will fail.

• *Taylor v Canada (Attorney General)*, 2012 ONCA 479 (https://canlii.ca/t/fs0x9): If there's factual/legal uncertainty, it must be resolved at trial, not at certification. The Plaintiffs maintain

their case is well within these standards, and that evidence submitted by the government at this stage (e.g., expert affidavits) is irrelevant to certification because it speaks to merits, not procedural fitness.

Misfeasance in Public Office Allegations: Plaintiffs assert the PHO and B.C. government knowingly issued and enforced vaccination orders under the *Public Health Act,* and Order in Council 627/2021, which enacted the *Public Service COVID-19 Vaccination Regulation* under the *Public Service Act,* that were not supported by scientific data on vaccine safety or effectiveness in preventing transmission. They allege this was done in bad faith, with reckless indifference or willful blindness, and with political self-interest.

Legal standard for misfeasance:

• *Odhavji Estate v Woodhouse*, 2003 SCC 69 (https://canlii.ca/t/1g18n): Two pathways for misfeasance: A) Intent to harm; or B) Acting without authority while knowing harm is likely.

• *Anglehart v Canada*, 2018 FCA 115 (https://canlii.ca/t/hzjq6) and *Canada (Attorney General) v Whaling*, 2018 FCA 38 (https://canlii.ca/t/hqxdh): Government motives—such as political self-interest—can be relevant and pled at this stage.

• *Carducci v Canada (Attorney General)*, 2022 ONSC 6232 (https://canlii.ca/t/jsrr5): Plaintiffs need only plead facts sufficient to infer malice or improper purpose.

• *Hill v Canada*, 2025 FC 242 (https://canlii.ca/t/k9d4f): Similar case challenging COVID-19 vaccine mandates for aviation employees by the federal Minister of Transportation; court upheld plaintiffs' ability to plead misfeasance and *Charter* breaches at certification stage.

• *Payne v Canada*, 2025 FC 5 (https://canlii.ca/t/k8jck): Class action regarding federal public service employee COVID-19 vaccine mandates; misfeasance claim struck with leave to amend, showing courts allow claims to proceed if properly pled. Plaintiffs emphasize that the PHO orders declared unvaccinated individuals a public health hazard and effectively mandated terminations—despite contemporaneous data showing vaccines did not prevent transmission, a fact they say was known or ought to have been known by officials. Plaintiffs claim these orders caused s. 2d *Charter* violations, financial loss, and emotional trauma, and that the real objective was political compliance, not public health. Next Steps: Despite presenting for 5 straight days,

Plaintiffs' submissions have yet to conclude. Madame Justice Emily Burke of B.C. Supreme Court has sought a thorough presentation of the facts and legal basis for the claims, and Plaintiffs' counsel, @uasind, has done a remarkable job arguing this case which encompasses complex areas of constitutional, tort, and labour law, and civil procedure. A further 10 days of hearing dates are anticipated to be scheduled for later this year to conclude Plaintiffs' submissions and hear the response of the Defendants, His Majesty the King in Right of British Columbia, and the PHO, Dr. Henry.

CLASS ACTION UPDATE Day 6 (December 1st, 2025)

Summary of the 10-day, Part 2 class action certification hearing:

1. Setting the scene that the B.C. government/Provincial Health Officer breached the employer/employee contract: they knew of the contract, had intent to break the contract, and the contract was actually broken with subsequent consequences to the employees.

2. The infringement of Section 2d of the Charter of Rights and Freedoms: government had a duty to consult…..there was no consultation with collective bargaining associations in changing the employee contracts to include mandated covid vaccine shots, unpaid leave and termination.

3. BC Privacy Act: the vaccine policies infringed on class members' privacy of medical and vaccine status information.

4. Provincial Health Officer - immunity from legal proceedings unless acting in “bad faith”, where the PHO at the time knew that vaccines did not stop transmission, prevent covid infection, posed significant risks of side effects. If immunity does apply, then this does not limit rights and damages caused by the orders.

5. Identifiable Class: needs to be clearly defined, based on objective criteria, not overly broad, shared common issues, not necessary that all members share a cause of action.

CLASS ACTION UPDATE, Day 7 (December 2nd, 2025)

This was focused mainly on establishing the validity of the claims, and how each of the actions meet the required criteria for a class action proceeding.

Counsel for the plaintiffs discussed how a class action is defined, the requirements for a class action, including that a class action can be for as few as 2 people, and how both healthcare workers and public servants suffered similar damages from the mandates. Counsel specified how the plaintiff parties attempted to settle their claims through the union grievance process, as well as Section 12 complaints against their respective unions for failing to represent them, but grievances were not proceeded with to any extent, as the unions claimed government legislation prevented them from challenging the mandates.

Counsel pointed out errors in those union claims and that the present class actions are the only way to redress the damages suffered. Counsel argued that the claims are not an attack on government, but that the government attempted to circumvent the grievance procedures through legislation.

Counsel referred to past cases referencing that not all class members need to be affected to the same degree to have a valid claim, and discussed the fact that a class action can be begun on generalities, and the judge can determine specifics during the case. Every single argument and position does not have to be presented before certification. Much of the day was spent discussing common issues and why a class action is more efficient and cost effective for all parties than individual cases that would take years of litigation. There are at least 12 union contracts involved in the joint class actions alone.

The day wrapped up with plaintiffs' counsel explaining the differences between the present class actions and the failed Hoogerbrug judicial review and CSASPP class action concerning government COVID-19 orders. Counsel anticipates completing plaintiff submissions tomorrow by noon, and then the defendants' lawyers will respond.

CLASS ACTION UPDATE, Day 8 (December 3rd, 2025)

Today plaintiffs' counsel, Umar Sheikh, concluded submissions, citing numerous court decisions and summarizing why the claims should be addressed via class action due to

1) cost sharing and the prohibitive costs of taking them forward as individual claims; and

2) that class action is the most efficient, least expensive and least burdensome process on the court system as opposed to dealing with hundreds of individual claims. Counsel also discussed how the proposed representative plaintiffs meet all the criteria for class action (common interest with other claimants, no conflicts of interest, etc.) Counsel provided an affidavit outlining his legal experience and his firm's ability to manage this class action. The proposed litigation plan and communication plan were outlined, as well as proposed methods for determining claimant amounts, holding funds, dispersing claims, etc. Counsel concluded his presentation and counsel for the defendants, His Majesty the King in Right of the Province of British Columbia, and Provincial Health Officer Dr. Bonnie Henry, then began their submissions.

The government's position, which they will spend the next several days fleshing out, is that they are seeking a motion to strike with no leave to amend and to have the court dismiss the plaintiffs' application as an abuse of process.

The Province asserts that the plaintiffs are unionized employees who are trying to usurp the role of the union and to circumvent union processes to resolve their complaints via a civil claim instead. They state that the complaints could and should be resolved by grievances, and that this "abuse of process" is heightened because the plaintiffs are trying to litigate the same workplace issues that were already the subject of grievances.

They also stated that there are no reasonable grounds for misfeasance in public office and loss of privacy and that these claims must be dismissed. They stated that the plaintiffs' expert witness identified in the earlier May hearing is not qualified to offer an expert opinion on vaccine safety or efficacy. They will argue that his report is inadmissible.

They will argue that it is unnecessary for the court to consider the certification application and that it should instead be dismissed. They submit that none of the class action criteria have been met. They assert that there are too many different employers/types of employees and too many different collective agreements to be lumped together. They began an overview of their evidence, and presented affidavits from the Executive Director of Labour and Agreements with the Ministry of Health, and ED of Employee Relations with the BC Public Service Agency. The Ministry of Health ED described the BC health care system, its structure, and the various roles employees can have. They reviewed the history of the implementation of the PHO Orders and HR policy 25. They submitted that prior to the health care orders or HR Policy 25 being

implemented approximately 95% of health care workers and 90% of public servants were already vaccinated. (They will use this statistic to argue against the "commonalities" of the proposed class, as 90 to 95% were not, they claim, affected by the mandate).

They also advised the court that a total of 45 exemptions were granted to health care workers and asserted that these employees would therefore be excluded from the class action. Their medical expert is Dr. Brian Emerson, who was the deputy provincial health officer during COVID-19, retiring in 2024, and was very involved in the provincial COVID response as the lead official drafting the health orders. He discusses how they had to move quickly during the public health crisis using the best available evidence. He outlined all the separate PHO orders for hospitals, long term care, etc. (over 20 different orders were issued for health care workers).

Day 9 will continue with further submissions from the defendants.

CLASS ACTION UPDATE Day 9, (December 4th, 2025)

The day started with counsel for the defendants stating their "Relevant Facts":

• The proposed class is “empty” because no-one was mandated to take a vaccine under the orders…..they could choose!

• Justice Coval in Hoogerbrug dismissed a judicial review of health care workers' termination for being unvaccinated. The public health orders compelled none of the workers to take the vaccine, therefore it did not interfere with section 7 of the Charter.

• The size of the class is unknown and can’t be estimated.

• There was an exemption process for workers subject to the mandate.

• Labour grievances for Ferguson, Perepolkin and Baldwin show that employers “complied with the collective agreement” and that both Ferguson and Perepolkin are re-litigating this same issue which is essentially a workplace/union issue and should not come before this court. Counsel submitted this is a collateral attack and abuse of process with Ferguson’s/Perepolkin's submissions and Baldwin’s is a jurisdictional problem and abuse of process

• Counsel submitted that many others have applied for grievances (GEU, PA, BCNU): a total of 292 employees (429 grievances) for various reasons such as they disagree with the mandates, that they were unfair, illegal, a breach of charter and human rights, a requirement to disclose medical information(infringing on privacy), sought exemptions, suffered leave without pay and termination. 177 of the grievances remain open, 252 have been resolved. Arguments against the proposed defined classes:

• As currently pleaded, nobody falls under the health care workers’ proposed class, which was defined as ‘unionized workers who were mandated to be vaccinated’. Their position is that nobody was mandated to take the vaccine; the PHO Orders said that you had to be vaccinated in order to be eligible to work in a health care setting, but no one was compelled to accept unwanted medical treatment, therefore Charter rights were not infringed upon

• They estimate the health care worker class to be ‘well over’ 175,000 proposed class members (all unionized health care workers in BC). Approximately 2,500 employees of regional healthcare authorities were terminated, so they are arguing that the proposed class of 175,000 has little commonality with the 2,500 terminated employees.

• The defendants estimate the public service proposed class to be approximately 40,000 public servants, including roughly 1,200 people who were on leave during the time the COVID-19 vaccination regulation was in place, and 9,040 new employees who were hired while the regulation was in force.

• 365 exemption requests were submitted, 81 were denied, 115 were withdrawn and 10 were undecided at the time the regulation was rescinded in April 2023. 159 were granted an exemption, and are included in the Baldwin class definition.

• 552 employees were put on leave without pay (LWOP) and 297 were terminated for non-compliance. Again they are using these numbers to argue that the majority of the class does not share commonalities with those who were put on LWOP or terminated.

Jurisdiction The defendants are making a motion to strike on the basis that the matter is under the exclusive jurisdiction of a labour arbitrator, and that court does not have jurisdiction to hear the issues before them.

• They went over case law, affidavits and prior decisions to try to demonstrate why court is not the appropriate venue, and asserted that all of the complaints are disputes that fall under the collective agreement.

• They argued that the issues of workplace Charter breaches and privacy breaches should be decided by an arbitrator and that court has no jurisdiction over these claims (however they noted that an arbitrator would not have jurisdiction over the claim of misfeasance from Dr. Henry as she is not a party to any collective agreements).

• They discussed the grievances filed by the representative plaintiffs. They noted that other employees filed grievances for LWOP and/or termination, and that some were settled. The union's position was the the employer had a duty to notify the union of legislative changes affecting the workforce, but no duty to consult, and that the union indicated that they felt they were provided with sufficient notice.

• They summarized that it would be impossible for the court to answer the question of whether or not the employer imposed new terms and conditions of employment which breached the collective agreements or infringed on bargaining rights without interpreting the collective agreements, which is outside of the court's jurisdiction.

• They made the same argument for the 'breach of privacy' claim (under the collective agreement, did the employer have a right to request private medical information? Answering this question also requires interpretation of the collective agreement, which is the sole jurisdiction of an arbitrator. Abuse of Process

• They argue that the plaintiffs are trying to re-litigate issues that have already been decided in arbitration but were unsatisfied with the outcome.

• They described the claim as an 'artful pleading' attempting to bring a workplace complaint before the courts dressed up as a civil claim.

• They stated that the plaintiffs are trying to re-argue the same facts that were already argued at arbitration.

The defendants continue presenting tomorrow.

CLASS ACTION UPDATE, Day 10 (December 5th, 2025)

The defendants continued their submissions against the application for certification of the class action.

• Counsel for the defendants argued that the proposed class members were bound by union collective agreements and the Labour Relations Board, and that a class action would be an abuse of process.

• The defendants argued that the plaintiffs already went through the grievance process and that their grievances were settled. They submit that the plaintiffs are trying to relitigate an already settled issue.

• Counsel for the defendants revisited previously litigated COVID-19 vaccine mandate cases (Hoogerbrugand CSASPP) and drew similarities to where the court held in favour of the Province, finding Dr. Bonnie Henry's public health orders lawful in 2023, submitting that her prior health orders impacting the representative plaintiffs in 2021 were also lawful.

• The afternoon session addressed the misfeasance in public office and breach of privacy claims.

• The defendants argued that to win these arguments it would need to be proved that: • a) Dr. Bonnie Henry's orders were intended to harm

• b) Dr. Bonnie Henry was aware of the inefficacy of vaccines

• Breach of privacy: During an emergency, the PHO can collect information that she normally could not, and is authorized to do so.

• Dr. Bonnie Henry as a public servant has a statutory immunity under section 92 of Public Health Act; however, that does not extend to cabinet and province. The government will continue their submissions at 10:00am on Monday, December 8. The public can attend the hearing in person at the Vancouver Law Courts at 800 Smithe St.

The plaintiffs will conclude the hearing with a reply to the defendants' submissions later next week.

CLASS ACTION UPDATE Day 11, (December 8th, 2025)

Today the Province's lawyers focused on the admissibility of the plaintiffs' evidence, as well as the misfeasance claim against Dr. Henry.

• They argue that the evidence of the plaintiffs' expert witness, drug policy researcher Alan Cassels, should be inadmissible based on his qualifications, because he is not a medical expert on Sars Cov2 viruses and their transmission.

• They referenced the *Mohan* case test which lays out 4 criteria for an expert witness and expert evidence to be accepted by the court:

• a) relevance to the facts of the case

• b) necessity - can they provide scientific or technical knowledge to the judge/jury for facts that may require explanation to a lay audience

• c) absence of an exclusion rule (n/a in this situation)

• d) a properly qualified expert with special knowledge from study or experience

• The government is attempting to argue that Mr. Cassel's opinions regarding vaccine efficacy go beyond his qualifications, because he does not have a direct educational background in medicine. They reviewed his CV and background, and acknowledge his expertise in pharmaceutical policy. (Cassels was previously employed as a consultant for the BC Ministry of Health and the UBC Therapeutics Initiative)

• His conclusion/evidence from his review of the medical literature available at the time of the mandate(s) indicates that vaccination made no difference to transmission rates. They describe his report as a 'literature review' and opine that he needs to be an expert in the exact discipline in order to be qualified to submit the review; "reviewing literature alone doesn't lead to expertise". They assert that he is not equipped to fully understand the literature he is reviewing.

• The defendants' expert witness regarding vaccine safety and efficacy is Dr. Jason Kindrachuk. They discussed his background and qualifications in detail including his expertise in infectious viruses causing disease including SARS viruses, his membership in the WHO advisory group, and that courts in 3 provinces have found him qualified to testify on transmission, variants, herd immunity and vaccinations, and asymptomatic and pre-symptomatic transmission.

• In the afternoon they focused on the misfeasance part of the claim - the pleading asserts that the government employers and Dr. Henry had known or should have known that the vaccines did not prevent transmission, and had known or should have known that they had safety issues.

• They are arguing that their expert witness Dr. Kindrachuk provided evidence that the vaccines were highly effective and extremely safe. If the court grants their application to find Mr. Cassel's report inadmissible, then Dr. Kindrachuck's report stands unopposed, and therefore, they argue, the misfeasance claim should be struck.

• The defendants' argument is that if the vaccines are defacto highly effective and extremely safe then there is "no genuine issue for trial" because there was nothing that Dr. Henry knew or should have known, and therefore no misfeasance. They are asking for the misfeasance claim to be dismissed at summary judgment.

• Efficacy - per their expert witness and government data, Pfizer provided 92% protection and Moderna provided 95% protection. There were some 'breakthrough" cases but vaccination reduced the chances that illness would be severe. Vaccinated persons were 'far less likely' to be hospitalized.

• They submit that the original goal of the vaccine was to protect against symptomatic Covid, and NOT to prevent transmission of SARS Cov-2, but argue that transmission was addressed because vaccination drastically reduced the chance of getting Covid, which in turn reduced the chance of spreading it.

• They also pointed to a report from the Seniors Advocate which indicated that Covid cases leveled off in long term care facilities several weeks after vaccination, as proof of efficacy.

• Safety - as of December 2024, 105 million doses were administered in Canada. As of January 4, 2024, 58,712 adverse advents had been reported. Of those, 11,702 were considered 'serious'. Their expert witness Dr. Kindrachuck confirms that there are safety signals for myocarditis, pericarditis and thrombosis.

• As of January 2024 there were 488 reports of death. Of those, 131 had incomplete information, 357 were undetermined and 4 cases are confirmed as caused by vaccination.

• They state that this is a very small number compared to the 105 million doses given. They compare this to the 2,381 deaths recorded as from Covid from Jan 1 to December 9 2021, to try and illustrate that the risks of illness were much greater than the risks of vaccination.

• They provided a number of statistics regarding hospitalization and death rates between vaccinated and unvaccinated persons, to illustrate their claim that vaccination was highly effective against illness, arguing that unvaccinated persons were hospitalized at much higher rates. They asserted in their conclusion that there was "absolutely no room for doubt that the vaccines were effective and safe."

• The government's lawyers continue tomorrow (Tuesday)

CLASS ACTION UPDATE, Day 12, (December 9th, 2025)

On Tuesday the defendants' lawyers focused on the certification applications and their reasons why they believe they do not meet any of the 5 criteria required to certify a class action. If all 5 are met, the court must certify a class action. They emphasized that the court has a 'gate-keeping role' in screening out cases that don't meet the test. The criteria are:

• 1) do the pleadings disclose a cause of action (does it present sufficient facts that, if proven true, would justify a legal claim or lawsuit)

• 2) an identifiable class of 2 or more

• 3) common issues between the class members

• 4) that the class is the preferable avenue

• 5) that there are representative plaintiff(s) who have a plan for the proceedings and who have no conflict of interest with other class members

• Their position is that none of the criteria has been satisfied.

• They provided 5 arguments:

• 1) They argue that based on the facts and evidence submitted it is 'plain and obvious' that the case cannot succeed, so our application should be dismissed

• 2) They argue that there are problems with the proposed classes.

• For Ferguson (health care workers), they again argue that the class is empty due to the definition ('mandated to be vaccinated' …). They admitted that this wording can be easily fixed, but argue that even if it were, there are still problems with the proposed class. Because there were 20 PHO orders covering various employees and places of employment at various times, there would need legal judgment and opinion about the scope of each order. The orders varied over time, giving uncertainty to who might be included in the class. Class members should be easily able to identify whether or not they might be part of a class action claim, and might not be able to identify themselves due to the complexity of the PHO Orders.

• 3) They say that 213 proposed members would be eligible to belong to both actions (overlap),because they were subject to both the Public Health orders and HR policy 25 and the regulations because of their roles or places of work, and you can't duplicate actions

• 4) They say the definitions are 'vague and subjective' and key terms like 'health care worker' are undefined. Re: the beach of privacy claim, the 95% of health care workers who were vaccinated prior to the Orders could still have a breach of privacy claim but would not know about their eligibility, and would have no notice of that a claim is advancing on their behalf

because the claim focuses on mandatory vaccination and they freely chose to be vaccinated. For the Baldwin (Public Service workers) proposed claim, they also argue the class is vague and it is unclear if it's attempting to include those 90% who freely chose to be vaccinated prior to the policy and legislation.

• 5) They argue the proposed class is over-inclusive, including people who have already filed and settled grievances, and therefore it is an abuse of process to re-litigate these claims in court. In Ferguson, some of the proposed class members have already had their day in court with a request for judicial review, and they state the class action is trying to re-litigate prior court decisions. In Baldwin, 8 proposed class members have settled their claims and have agreed to release the province from all further actions, so those 8 would be precluded from this class action. They also concede that the class definition as proposed could easily be rewritten and 'fixed'.

• The afternoon focused on the 'common issues' required in a proposed class in order to certify. They say that none of the proposed common issues should be certified

• They make 3 arguments as to why there are no 'common issues'

• 1) They say there is no basis in fact for the misfeasance in public office issues,

• 2) The identified issues are not common to all members, and

• 3) All of the breach of privacy/contract breach issues and damages would need to be individually investigated and assessed

• A "common issue" = one in which each class member has an interest in the resolution; "are the proposed issues common across the class" and is there some evidence to support this? They note that the evidence threshold is low.

• They again state that Mr. Cassel's evidence should be inadmissible, which would leave 'no basis in fact' that the misfeasance issues exist. If the court does accept his report then they argue that the misfeasance issues are still not common. Not all class members share an interest in their resolution, because the overwhelming majority of the putative class members were vaccinated voluntarily. Those proposed members would have no legal interest in misfeasance, contract breach or charter damages. The 9,040 public service employees who were hired on after the policy/regulation took effect and before it was rescinded would also have no charter or contract breach claims as they accepted vaccination as a term and condition of their employment, therefore they argue that the charter breach complaint is not a 'common issue'.

• The court would also need to review each collective agreement as well as what actions each employer took to determine if those actions constituted a breach.

• Their main argument is there is too many different kinds of employees and too many employers, with at least 12 collective agreements, and that the court would need to assess the impacts/effects of the policy/regulation on each individual class member which is not how class actions work.

• They also provided some stats:

• 137 unionized public service workers were still on LWOP when the policy was rescinded

• 85 of these workers returned to work

• 43 resigned or retired

• 9 were terminated for refusing to return to work

• The government's lawyers continue Wednesday.

CLASS ACTION UPDATE Day 13 (December 10th, 2025)

• Today the Province's lawyers continued and concluded their arguments on why they say the class actions do not meet the criteria for certification. Some of the plaintiffs' arguments rely on section 7 of the Class Proceeding Act, which says that you can't refuse to certify a class action merely based on the fact that different contracts apply to different class members. The defendants' lawyers argued that this doesn't really apply to this situation because section 7 is based on 'standard form' contracts, while our groups have different contracts with different employers and different unions.

• Privacy breach claim - the lawyers argued the court would have to assess a 'reasonable expectation of privacy' based on each of the collective agreements. For the medical group, each individual collective agreement has differing terms and conditions regarding mandatory vaccination or other medical interventions at employer behest, therefore there would be a presumption that at least some health info would be shared with the employer in some cases. The court would need to review all of the agreements and individual situations to see if there were contract or privacy breaches.

• For the Charter breach claim, they argue that a judge would need to weigh the impacts of the Order/policy/regulation against the State's objective (a 'proportionality analysis'). Each person had different impacts and effects from the orders - most were not affected (the 90 to 95% who were vaccinated prior to the orders/policy/reg); some were on LWOP but able to work from home, some had approved accommodations, some were fired, etc. Damages would need to be determined individually. They argue that someone who received an exemption and worked from home would have different damages from someone who was terminated. They argue that the putative class members do not have a common issue with regard to 'aggravated damages' (mental/emotional harm) and that these are individual, not common issues.

• They note the court would need to consider what information was available to the health officers at the time they made their orders and ongoing until they lifted them. The court would need to consider if the order were justified at various points in time.

• On the criteria that a class action is the 'preferable procedure', they say that a class action is not fair, efficient or manageable, and that the preferable procedure is set out in collective agreements/unions. They note that "many unions have followed these procedures and the labour system is working as it should."

• They argued that there would need to be individual investigations of all 175,000 members (health care) and 40,000 members (public service) and that this is too complex, expensive and unfair to the court. They argue that they need to preserve access to justice for all litigants and

that the action would take up too much court time, depriving other litigants of their day in court.

• In Ferguson, they argue that it is also not fair to all of the health care employers who are not named as defendants but are accused of breaching employment contracts.

• They argue that if not certified, the court is unlikely to be flooded with thousands of individual claims because most people have already gone through the grievance process. They continue to argue that grievances are the appropriate avenue, and that they have already been settled or dismissed.

• Representative Plaintiffs: They argue that our Representative Plaintiffs are not suitable because it's a weighty responsibility where they will need to direct counsel and make decisions on behalf of all class members and its unclear that they could lead such large classes with all of the complexities they've outlined. They also argue that all three have already gone through the grievance process therefore their personal claims are banned.

• They argued that the proposed litigation plan is too rudimentary and not detailed enough. Several times they said that we are taking a 'certify now, worry later' approach.

• They referred to John Rustad's attendance on the BC Zoom meeting, referring to this as his meeting with two 'anti-vax' groups, and note that Mr. Ferguson asked Mr. Rustad during that meeting about his willingness to hold an inquiry, referring to 'Nuremburg 2.0'. They assert that by saying this he compared our public health officials to Nazis and therefore they argue is not a suitable representative.

• They referred frequently to the recent CSASPP decision with a potential class of 4 million (all adults in BC), that was recently dismissed and is now under appeal, and how that decision should help inform the decisions in our case.

• In the afternoon, counsel for the plaintiffs reviewed an affidavit outlining his past litigation experience and the complex matters and industry-wide disputes he has managed.

• The defendants' lawyers responded that plaintiffs' counsel does not have direct class action experience. They noted that he is a 'one man law firm', and argued that this is a massive resource-intensive undertaking that could not be managed by one lawyer no matter how competent and experienced.

• They ask the court that if the Ferguson application is certified, that the action then be stayed until the CSASPP appeal decision is rendered, as it involves overlapping class members and they can't be part of both class actions.

• They concluded their arguments by asking the court to strike the claims in their entirety without leave to amend, as an abuse of process, and to dismiss the actions.

• They ask to dismiss both claims of misfeasance against the PHO based on her statutory immunity.

• They seek an order dismissing the applications, or alternately staying Ferguson pending appeal decision of CSASPP.

• Tomorrow, plaintiffs' counsel will respond to their arguments. It is possible plaintiffs counsel might conclude tomorrow.

CLASS ACTION UPDATE Day 14, (December 11th, 2025)

• Today, plaintiffs' counsel responded to the defense's arguments about why this application should be struck.

• Jurisdictional Argument: the defendants say that the motion should be struck because the court lacks the jurisdiction to hear the case and it should instead be subject to arbitration under collective agreements.

• The plaintiffs argue that the essential character of the claims do not arise from the collective agreement, they arise from the government's decision to add a new term and condition of employment.

• An arbitrator has jurisdiction over matters arising out of a collective agreement. The plaintiffs say the arbitrator does not have exclusive jurisdiction to hear this dispute because the Section 2d Charter and privacy breach claims are about the formation of terms and conditions of employment, not the application of those terms and conditions. The BC Labour Relations Code does not have a section that discusses challenges to the formation of these terms/conditions. This action is about the unilateral imposition of new terms and conditions by the employer.

• The defendants sited case authorities that the plaintiffs say are not applicable to this case. Plaintiffs' counsel went over each of the specific cases that the defense used to try and argue why court is the wrong venue for these actions to showed why they don't apply to this or relate to these claims. The defendants pointed to several cases where litigants were challenging the terms and conditions of their collective agreements or their employer's alleged failure to abide by their collective agreement, and the courts found that those cases should be addressed via arbitration.

• The plaintiffs say those disputes do not apply to this because Baldwin is not challenging the existing terms and conditions of the collective agreement; he is challenging the formulation of the new terms via regulation. Baldwin is not suing the union here or challenging them in this case.

• The defendants raised a 2024 BC Court of Appeal decision to argue that unionized workers give up certain individual rights in exchange for group bargaining rights, and that the union has sole authority over the Baldwin claims. Plaintiffs say the Baldwin case is about government's conduct in formulating and enacting the regulation.

• The BCGEU Collective Agreement did not create the vaccination requirement or medical disclosure requirement, the Regulation did. Baldwin's case is about entirely new terms that did not exist in the collective agreement. The facts go to the challenge of formation via legislation.

• Plaintiffs' counsel discussed the Hill (‘Free to Fly’) case as being most analogous to these. That case is a proposed federal class action against His Majesty the King and federal Minister of Transport concerning orders mandating vaccination for aviation employees, where the Attorney General had brought forward a motion to strike. The proposed class includes unionized aviation employees with multiple employers, unions and collective agreements. Abuse of process was also argued in this case because some class members were bound by collective agreements, but the court found against the defendants and the claim is allowed to continue. The court also said that it was not ‘plain and obvious to the court’ that the Minister had statutory immunity.

• Plaintiffs say the court should look at this case analysis and consider the facts as it is analogous to both the Baldwin and Ferguson actions. The reasoning in Hill is that not every dispute falls within the exclusive scope of arbitration.

• The defendants say Mr. Baldwin availed himself of the section 12 procedure and therefore is barred from a civil claim.

• Mr. Baldwin’s grievances do not preclude his court claims as the defendants suggest. There is no authority that says a grievance bars a ‘validity challenge’. Using the grievance process does not bar someone from their separate Charter/privacy breach claims, and it doesn’t convert these issues into disputes about the collective agreement.

• A grievance seeks to answer “did the employers apply the collective agreement, or comply with the terms of the collective agreement?”, while this claim seeks to answer: “did the government act lawfully in unilaterally creating and enforcing the regulation?”

• The defendants argued that if certified, the court would need to interpret all of the many collective agreements, but the plaintiffs say they are also asking the court to do this anyway in order to decide whether the court has jurisdiction.

• The defendants’ position is that any claim that touches on employment must be adjudicated through labour arbitration. But if this is so, no union employee could ever bring to court an employer action that challenges their rights — that’s not law. The plaintiffs argue that the defendants have not proven that all complaints fall within labour relations claims, and this should not be struck.

• Abuse of Process rebuttal - the defense says this case is attempting to usurp the role of the union and abusively seeking to re-litigate settled issues. For Ferguson they say the misfeasance and privacy breach claims are abusively re-litigating a prior case (the judicial review).

• Plaintiffs presented a 2025 Supreme Court decision regarding Metis Nations claims, which found that the fact that two or more legal actions involving the same parties or similar issues is

not in itself an abuse of process, as there may be a valid reason for bringing separate but related proceedings. That decision used a 3-step process to identify whether there is an abuse of

• 1) identify the purpose of the legal proceedings and remedies sought,

• 2) review prior and concurrent actions,

• 3) review whether or not there is a duplication of issues. The court concluded no abuse of process in that matter.

• The defendant bears a heavy burden here — they must show that this would bring the administration of justice into disrepute and this action is nowhere near doing that.

• Usurping the role of unions/re-litigating issues settled by unions: Plaintiffs are not asking the court to interpret collective agreements. Instead they are asking "did the Provincial Health Officer (PHO) exercise abuse of power', and 'did the legislation beach privacy and Charter rights?' These questions fall under the jurisdiction of the court, not arbitration. Plaintiffs do not seek to re-try or set aside arbitration decisions.

• A challenge to the Regulation under Section 2d of the Charter does not arise under the collective agreement. The Province chose to legislate rather than go through employer/employee policy and procedures. The Province enacted legislation interfering with collective bargaining rights.

• The defendants argue that many of the complaints have already been addressed by the prior judicial review. Plaintiffs say that the judicial review did not address or decide whether the PHO acted in bad faith, whether there was misfeasance, whether it was lawful and proportionate, whether it violated the Privacy Act. Judicial procedure actions are different from civil claim actions. It is not an abuse of process to have separate but related proceedings.

• Misfeasance is not limited to poor conduct and could be done through bad faith (unlawful use of power). The plaintiffs have identified and reviewed the information available to the PHO at the time of the orders and have submitted expert evidence regarding this.

• Mr. Cassel's affidavit - Plaintiffs' counsel referred to recent case law that says any shortcomings in qualifications of experts should go to weight of evidence, not admissibility. This case said "the real test of qualifications is whether the expert's knowledge/skill/experience is sufficient to provide evidence."

• Transmission/Safety Concerns - the Plaintiffs argue that whether the vaccines prevented transmission should be determined at trial, not accepted as fact. The plaintiffs do not 'baldly assert' bad faith. Rather, they discuss data regarding transmission and safety concerns and the data available to the PHO, and these are material facts.

CLASS ACTION UPDATE Day 15 (December 12th, 2025) Summary

Today was the final day of an extremely hard-fought certification hearing that has spanned 15 days of submissions from both sides dating back to April of this year. Now we await the decision of Madam Justice Burke. We want to express our deepest gratitude for the tremendous advocacy and persistence of BCPSEF's and @UHCWBC's legal counsel, Umar Sheikh (@uasind). What he has done to move this litigation forward is truly remarkable. Regardless of the outcome of this certification application, we know that the best possible case has been put forward in defence of B.C. public servants, healthcare workers, #medicalprivacy, and #bodilyautonomy.

Today's Hearing Opening Procedural Dispute · The plaintiffs concluded their response to the defendants' arguments regarding certification criteria · The defendants' objected to the plaintiffs' written summary document submitted to the court · Court broke for 30 minutes to allow the defendants to review the summary · The defendants formally objected, arguing the summary was submitted too late and constituted an improper new submission on the final hearing day · The defendants requested the court reject the document and end the trial · The plaintiffs countered that the defendants had provided supplementary documents throughout trial and that they had a right to reply to all arguments, including new case law raised after their March 2025 written submissions · Justice Burke ruled to allow the summary document on the basis that counsel would present it orally · The defendants requested the judge vary the January 2025 Order; Justice Burke declined and confirmed her decision **Certification Criteria Arguments Identifiable Class** · The plaintiffs argue their proposed classes satisfy all certification criteria · The law requires identification by objective criteria, not perfect precision or exhaustive definition · The fact that some class members may receive no settlement is not grounds for denying certification **"Empty Class" Objection** · The plaintiffs dispute the defense's "empty class" argument · The Province called its own measures "Mandates" · The defendants acknowledged the proposed class definition could be amended to "those unionized employees who were subject to PHO Orders" · The plaintiffs characterize this as the unionized employees' practical reality—concrete, fact-based, and non-subjective

Over-Inclusiveness Claims · The defendants argue the proposed classes are over-inclusive, including people who voluntarily vaccinated and those hired after the mandate · The plaintiffs contend this is a merit-based objection for trial, not certification hearing · Over-inclusiveness is not fatal to certification as long as all were affected by the existence of the order

Class Identification Complexity · The defendants argue legal judgment would be required to identify healthcare worker class members due to complex orders · The plaintiffs respond that unionized workers would know if they worked under a PHO Order and whether their employment was in jeopardy · The defendants claim orders applied to myriad healthcare

employers; the plaintiffs reply this is exactly the type of objective criteria enabling class identification

Overlap with CSASPP Action · The defendants claim the actions overlap or re-litigate the CSASPP action · The plaintiffs clarify their actions concern only PHO Orders regarding employment, not restrictions on restaurants or public gatherings · The plaintiffs acknowledge 213 potential claimants could be part of both classes but assert this is manageable through sub-classes

Substantive Legal Arguments Misfeasance · The plaintiffs argue that if the Cassels report is accepted, the defense argument against including misfeasance collapses · The plaintiffs contend this goes to merits for trial, not certification hearing · At this procedural step, the court is not judging merits · The plaintiffs frame misfeasance as a commonality issue since everyone was subject to the PHO's actions

Expert Evidence on Transmission · The defendants requested the court accept their expert witness's evidence on transmission as incontrovertible truth · The plaintiffs argue this should be determined at trial · Data regarding transmission requires interpretation and is contested

Safety Data · The defendants acknowledge myocarditis, pericarditis, and thrombosis resulting from the vaccines · The plaintiffs argue the defendants' safety position is context-dependent and not without risks

Common Issues General Principles · The defendants argue issues and impacts require individual investigation and are not common · The plaintiffs assert the proper test is whether there is some evidence of issues common to prospective class members · Common issues may be nuanced and varied; the exact same impacts on each class member are not required · The shared interest of a common class need only extend to resolution of common issues 90-95% Participation Argument · The defendants claim 90-95% of the proposed classes have no interest in the action · The plaintiffs respond that a lower degree of damage doesn't establish over-inclusiveness · Not every class member has to recover to same degree · The defendants provide no evidence supporting their 90-95% claim · All vaccinated employees were still forced to reveal their vaccination status and may have privacy breach interests · Even 100% vaccination compliance doesn't reflect an absence of a claim but may reflect a coercive environment

Collective Agreements · The defendants argue there are too many collective agreements/employees in the proposed classes · Plaintiffs point out fundamental inconsistency: defense wants court to interpret Mr. Ferguson's collective agreement while simultaneously arguing court cannot/should not interpret collective agreements **Privacy Breach and Charter Issues** · Regarding reasonable expectation of privacy and privacy breach arguments · Proposed Charter issues are overarching and affect everyone **Aggravated Damages** · The defendants

argue aggravated damages are unsuitable for a civil claim · The Plaintiffs frame damages around Charter breaches · The Court could choose not to certify aggravated damages as common issue without refusing to certify an entire class · Class action certification can't be denied because sub-classes of damages may exist · Section 7 of *Class Proceedings Act* allows assessment for different damages · **Defendants' objection:** claimed plaintiffs already conceded aggravated damages were an individual issue, not common issue · **Plaintiffs' response:** disagreed with that characterization; position unchanged · The defendants noted the plaintiffs did not object when they orally stated the plaintiffs had conceded damages were individual · The judge asked defendants' counsel for their objection/concern; they would advise court in the afternoon **System-Wide vs. Contract-Based Approach** · The plaintiffs characterize the action as a system-wide question about government action, not a contract-by-contract inquiry · The plaintiffs argue the defendants are trying to turn a certification hearing into a determination on merits **Duplication of Claims** · The defendants assert the plaintiffs are duplicating claims already decided through judicial reviews or arbitration · The plaintiffs respond that neither labor arbitration nor judicial review can address the issues outlined in their claim **Complexity and Preferable Procedure** · The defendants emphasized the breadth and complexity of the claims with multiple employers, unions, and collective agreements · The plaintiffs argue this is exactly why class action is the preferable option—it answers questions once and for all instead of repeatedly · The most efficient response to complexities is answering the question once in class action rather than hundreds of tribunals with potentially different outcomes · Individual tribunals would still not address questions regarding government's province-wide actions affecting thousands of workers

· The commonality question should be answered once, then individual damages looked at

· The court has many tools to manage large-scale litigation; complexity is not a reason to deny certification **Representative Plaintiffs and Litigation Plan Representative Plaintiffs**

· Being a representative plaintiff is not onerous burden · Representatives do not need to be perfect; it is not a contest for "best possible representative"

· The only requirement: no conflicts and fair representation of the class

· Affidavits were similarly worded to meet statutory requirements and address similar issues · Similarity of phrasing is not evidence of misunderstanding **Counsel Suitability**

· Plaintiffs' chosen counsel has extensive union experience

· Has managed policy disputes with positive resolutions with very large organizations · Has managed thousands of documents

· Directly experienced regarding specific issues in this case

· Career experience requires managing large teams, complex issues, and bringing resolution · This is counsel's first class action, but the plaintiffs argue that's not the test—the test is whether counsel is competent to bring the action forward

· The plaintiffs note they have brought the case this far and can activate other legal networks if/when needed

· If "one man law firm" is the only impediment, the plaintiffs request the court certify subject to a litigation plan that resolves the issue to the court's satisfaction

Litigation Plan Criticisms

· The defendants complained the litigation plan not thorough enough (lacking dates, etc.)

· The plaintiffs respond that the court has supervisory role in managing case conferences, timelines, etc., which exist for building litigation plans

· The standard being advanced by the defendants seems to require perfection with all dates, evidence, etc. pre-planned

· The plaintiffs argue the litigation plan is a living, evolving document, supported by case law **Opt-Out Process** · The defendants raised concerns about the opt-out process

· The plaintiffs assert this would be simple to address

· The existence of potential opt-outs is not a basis to deny certification Additional Issues **Cabinet Immunity**

· The plaintiffs argue cabinet immunity is an issue for the courts, not the certification hearing · This is not a basis to deny certification **Mr. Ferguson's Remarks**

· Plaintiffs' counsel objected to defense's characterization

· Noted Mr. Ferguson asked Mr. Rustad a question without stating his own position or advocating a particular outcome

· The defendants raised other concerns regarding some social media posts **Final Arguments on Charter Damages Defendants' Position**

· After conclusion of the plaintiffs' response, the defendants addressed objections regarding individual damages

· The pointed to case law illustrating why they assert Charter damages are an individual issue, not a common one

· They argue Charter breaches concern individual rights, not common issues

· They concede this would not bar certification alone but submit it's not the only issue **Plaintiffs' Response**

· The cases cited by defendants (involving strip searches in custody/prisons) are not appropriate to this case

· Those cases did not establish blanket proposition that Charter damages cannot be a common issue

Conclusion · Court concluded the hearing after a total of 15 days of submissions since April 2025 · Justice Burke advised she will reserve judgment and provide it in due course