

Court File No. CV-20-00643451-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

Vaccine Choice Canada (VCC), Josee Anne McMAHON, Melina LEPE, Petronela GROZA, Carla SPIZZIRRI, _____, Alysa SHEPHERD, Scott Daniel COOKE (by his litigation guardian Denise Adele COOKE), and Denis RANCOURT

Plaintiffs/Responding Parties

- and -

Justin TRUDEAU, Prime Minister of Canada, Dr. Theresa TAM, Chief Medical Officer for Canada, Marc GARNEAU, Canadian Transport Minister, Doug FORD, Premier of Ontario, Christine ELLIOT, Minister of Health and Long-Term Care for Ontario, Stephen LECCE, Minister of Education for Ontario, Dr. David WILLIAMS, Ontario Chief Medical Officer, CITY OF TORONTO, John TORY, Mayor City of Toronto, Dr. Eileen DE VILLA, Toronto Chief Medical Officer, The County of WELLINGTON-DUFFERIN-GUELPH ("CWDG"), Nicola MERCER (Chief) Medical officer for CWDG, **WINDSOR-ESSEX COUNTY, Dr. Wajid AHMED (Chief) Medical Officer for Windsor-Essex County**, His Majesty the King in Right of Canada, His Majesty the King in Right of Ontario, Attorney General of Canada, Attorney General of Ontario, The Canadian Broadcasting Corporation ("CBC"), Johns and James DOE, officials and employees of the above-noted Defendants

Defendants/**Moving Parties**

**FACTUM OF THE DEFENDANTS/MOVING PARTIES
WINDSOR-ESSEX COUNTY, DR. WAJID AHMED (CHIEF) MEDICAL OFFICER FOR
WINDSOR-ESSEX COUNTY
(returnable January 30 and February 1, 2024)**

November 15, 2023

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INDEX

<u>CONTENTS</u>	<u>PAGE</u>
Part I – Overview	1
Part II – Facts	2
Part III – Issues	6
Part IV – Law	7
Part V – Application of the Law to the Facts	10
Part VI – Order Sought	15
Schedule “A” – Authorities Cited	16
Schedule “B” – Legislation Cited	18

PART I – OVERVIEW

1. An action was commenced by seven Plaintiffs who are individuals and a not-for-profit organization called Vaccine Choice Canada (“VCC”) (collectively the “Plaintiffs”) against several defendants including Windsor-Essex County (properly known as the Windsor Essex County Health Unit) and Dr. Wajid Ahmed (Chief) Medical Officer for Windsor-Essex County (properly known as Medical Officer of Health Windsor-Essex County) (collectively “WECHU and Dr. Ahmed”). The action seeks declarations that the imposition of COVID-19 measures by WECHU and Dr. Ahmed, including the mandatory wearing of face-masks, are *ultra vires*, unconstitutional, and an abuse and in excess of their authority.

2. The Amended Statement of Claim in issue does not disclose a specific cause of action as against WECHU and Dr. Ahmed and is scandalous, frivolous and vexatious or are otherwise an abuse of process. For these reasons, all claims against WECHU and Dr. Ahmed should be struck or dismissed in whole or in part, with no leave to amend.

3. Further, Dr. Ahmed is immune from personal liability pursuant to section 95 of the *Health Protection and Promotion Act*, and for this reason, all claims against him should be struck in whole or in part, for disclosing no reasonable cause of action, with no leave to amend.

4. In the alternative, even if the Plaintiffs’ pleadings have disclosed a specific cause of action as against WECHU and Dr. Ahmed, all claims against WECHU and Dr. Ahmed should be dismissed as all Class Orders and Letters of Instruction made by WECHU or Dr. Ahmed or other Medical Officer of Health Windsor-Essex County have expired or been revoked. Therefore, the issues in the pleading are moot and the Court should not exercise its discretion to hear them.

5. WECHU and Dr. Ahmed seek leave to file documentary evidence in support of the issue of mootness by way of this motion, to the extent that such documents are not incorporated by reference in the Amended Statement of Claim.

PART II – FACTS

6. During the COVID-19 pandemic and to decrease or eliminate the risks to health associated with same, WECHU or Dr. Ahmed or the successor Medical Officer of Health Windsor-Essex County issued five Class Orders, pursuant to section 22 of the *Health Protection and Promotion Act*. Such Class Orders addressed matters of self-isolation, quarantine plans, cohorting, mask wearing, suspension of in-person student learning, contact tracing, among other things, within the geographical location of Windsor and Essex County.

Affidavit of J.P. Karam, Tab 3 of the Moving Party's Motion Record, at para 3.

7. WECHU or Dr. Ahmed or the successor Medical Officer of Health Windsor-Essex County also issued three Letters of Instruction per section 2(2) of Schedule 1 to Ontario Regulation 263/20: Rules for Areas in Stage 2 and Section 2(2) of Schedule 1 to Ontario Regulation 364/20: Rules for Areas at Step 3 And At The Roadmap Exit Step, both made under the *Reopening Ontario (A Flexible Response to COVID-19) Act*. These Letters of Instruction addressed matters of workplace safety plans, remote work, limits to indoor capacity, proof of vaccination, and the cancellation, suspension or postponement of entry of temporary foreign workers, among other things, within the geographical location of Windsor and Essex County.

Affidavit of J.P. Karam, Tab 3 of the Moving Party's Motion Record, at para 4.

8. All such Class Orders and Letters of Instruction related to COVID-19 have expired or been revoked since at latest May 2022. There are currently no active COVID-19 related

Class Orders or Letters of Instruction issued by WECHU or its previous or current Medical Officer of Health Windsor-Essex County.

Affidavit of J.P. Karam, Tab 3 of the Moving Party's Motion Record, at paras 3, 4 and 5.

9. On July 6, 2020, the action was commenced by way of a Statement of Claim which was subsequently amended to remove one of the named individual Plaintiffs. The action was also discontinued as against The Canadian Broadcasting Corporation in July 2022.

Notice of Motion dated June 29, 2023 of the Moving Party's Motion Record, at pg 8.

The Plaintiffs' Allegations

10. The Plaintiff, Josee Anne McMahon, is a resident of Mississauga, Ontario. As a Mental Health Therapist, she has experienced challenges working from home and caring for her four small children as she claims that COVID-19 has made it impossible to find childcare. She claims to have been unable to use hand sanitizer due to allergies, has experienced shaming, has been unable to obtain groceries in the Wellington County because of the mandatory masking order, and has been unable to wear a mask because of asthma and lung issues. Ms. McMahon does not mention WECHU or Dr. Ahmed.

11. The Plaintiff, Petronela Groza is a resident of North Augusta, Ontario. She claims she was denied entry into a grocery store in Toronto and at an OnRoute in Cambridge because she refused to wear a face-mask. Ms. Groza does not mention WECHU or Dr. Ahmed.

12. The Plaintiff, Melina Lepe is a resident of the County of Wellington-Dufferin-Guelph, Ontario. She claims that during the lockdown her mental health was negatively impacted due to the inability to attend social events or access health care services which has led to physical pain and an inability to care for her family. She is also opposed to the

Wellington-Duffering-Guelph County's mandatory masking policy. Ms. Lepe does not mention WECHU or Dr. Ahmed.

13. The Plaintiff, Carla Spizzirri is a resident of Toronto, Ontario. As a real estate agent, she claims that the "no showing" rule enacted by Condo Boards across the GTA and the uncertainty of the market has made it difficult to buy and sell units, resulting in a decrease in her income. Ms. Spizzirri also refuses to wear a face-mask. She does not mention WECHU or Dr. Ahmed.

14. The Plaintiff, Alysa Shepherd is a resident of the County of Wellington-Dufferin-Guelph, Ontario. She claims to be impacted by COVID-19 measures which have negatively affected her mental health, caused her to be unable to receive regular nutritional, dental and craniosacral therapy, caused her to be unable to obtain daycare for her children, denied her entry to shopping stores due to her refusal to wear a face-mask and denied her transparency due to the suspension of Parliament. She further claims that COVID-19 measures have caused harm to her children and to her work as a chiropractor. Ms. Shepherd does not mention WECHU or Dr. Ahmed.

15. The Plaintiff, Daniel Cooke by his litigation guardian Denise Adele Cooke is a resident of Hamilton, Ontario. Mr. Cooke suffers from a neurological disability and claims that the COVID-19 measures have deprived him of his routine, as well as his social, medical, therapeutic and emotional network. He does not mention WECHU or Dr. Ahmed.

16. The Plaintiff, Denis Rancourt is a resident of Ottawa, Ontario. Mr. Rancourt is a former tenured Professor of Physics and claims that his videos regarding COVID-19 topics were removed from different internet sites. He further claims that CBC has refused to make mention of his literary works or provide same to the public. He alleges that the

Federal Crown and respective Ministries have not protected against this censorship. Mr. Rancourt does not mention WECHU or Dr. Ahmed.

Amended Statement of Claim, Tab 2 of the Moving Party's Motion Record, at pgs 34-58.

17. The Plaintiff, Vaccine Choice Canada ("VCC") is a federally registered not-for-profit educational society who informs, advocates for and supports people in making vaccination decisions. VCC along with the individual Plaintiffs allege, among other things, that COVID-19 measures accelerated and caused more deaths, that the Defendants were not transparent about the scientific/medical basis of the COVID-19 measures, that the COVID-19 measures are worse than the virus, that the Defendants ignored expert criticism and opposition regarding the use of ventilators, managing the flow of the virus and evidence regarding the efficacy of mask wearing, that isolation measures are not supported by scientific or medical evidence, that significant violations of the Plaintiffs' rights and freedoms are being perpetrated by the Defendants, that the total number of COVID-19 cases are inflated, that the World Health Organization is not an independent body but rather influenced by Bill Gate's companies and associates, and that the global vaccination scheme is aimed at surveillance of the Plaintiffs and all citizens.

Amended Statement of Claim, Tab 2 of the Moving Party's Motion Record.

Relief Sought by the Plaintiffs as Against WECHU and Dr. Ahmed

18. The Plaintiffs seek as against WECHU and Dr. Ahmed the following:
- i. a declaration that the imposition of COVID-19 measures by the Medical Officer Defendants are *ultra vires* and unconstitutional and are actions which are in abuse and excess of their authority;

- ii. a declaration that the orders from the Medical Officer of the County of Windsor-Essex, and any and all County or Municipal By-Law or Health Officers and orders, respecting mandatory wearing face-masks, is unconstitutional; and
 - iii. a declaration that any and/all Municipal/County By-Laws and/or orders, with respect to compulsory face-masks, are *ultra vires* the provincial legislation in that the Province has expressly refused to make face-masking compulsory.
19. The Plaintiffs seek no relief in respect of (i) Class Orders made by WECHU or Dr. Ahmed pursuant to section 22 of the *Health Protection and Promotion Act*; or Letters of Instruction per section 2(2) of Schedule 1 to Ontario Regulation 263/20: Rules for Areas in Stage 2 and Section 2(2) of Schedule 1 to Ontario Regulation 364/20: Rules for Areas at Step 3 And At The Roadmap Exit Step, both made under the *Reopening Ontario (A Flexible Response to COVID-19) Act*.

Amended Statement of Claim, Tab 2 of the Moving Party's Motion Record, at pgs 24 & 30.

PART III – ISSUES

20. The issues to be determined on this motion are:
- i. Should this Court strike the Plaintiffs' pleading as against the Defendants, WECHU and Dr. Ahmed, with no leave to amend, because it discloses no reasonable cause of action?
 - ii. Alternatively, should this Court strike the Plaintiffs' pleading as against the Defendant, Dr. Ahmed, with no leave to amend, because it discloses no reasonable cause of action as he is immune from personal liability?

- iii. Alternatively, should this Court strike or dismiss the Plaintiffs' pleading as against the Defendants, WECHU and Dr. Ahmed, with no leave to amend, because it is scandalous, frivolous and vexatious or is otherwise an abuse of process?
- iv. Alternatively, should this Court dismiss the Plaintiffs' pleading as against the Defendants, WECHU and Dr. Ahmed, with no leave to amend, because the pleading is moot?
- v. Should this Court grant leave, if required, to file documentary evidence in support of the argument of mootness, to the extent that such documents are not incorporated by reference in the Amended Statement of Claim?

PART IV – LAW

21. The Defendants, WECHU and Dr. Ahmed repeat and rely upon the following:
 - i. the Law section regarding immunity from personal liability as set out in the Factum of the Defendant, Nicola Mercer;
 - ii. the Law section regarding pleadings that are scandalous, frivolous, vexatious and are otherwise an abuse of process as set out in the Factum of the Defendants, Justin Trudeau, Prime Minister of Canada, Dr. Theresa Tam, Chief Medical Officer for Canada, Marc Garneau, Canadian Transport Minister, His Majesty the King in Right of Canada and the Attorney General of Canada;
 - iii. the Law section regarding mootness as set out in the Factum of the Defendants, Doug Ford, Premier of Ontario, Christine Elliot, Minister of Health and Long-Term Care for Ontario, Stephen Lecce, Minister of

Education for Ontario, Dr. David Williams, Ontario Chief Medical Officer and the Attorney General of Ontario; and

- iv. the Law section regarding leave to file documentary evidence as set out in the Factum of the Defendants, City of Toronto, John Tory, Mayor City of Toronto and Dr. Eileen De Villa, Toronto Chief Medical Officer.

22. This Factum will set out the law as it relates to pleadings that disclose no reasonable cause of action.

No Reasonable Cause of Action

23. Pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure*, the Court may be asked by a party to make a determination of an issue before trial, specifically to strike a pleading on the ground that it discloses no reasonable cause of action.

24. Rule 25.06(1) provides that every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved.

***Rules of Civil Procedure*, RRO 1990, reg. 194 r. [21.01\(1\)\(b\)](#) and [25.06\(1\)](#).**

25. The test applicable on a motion to strike for not disclosing a reasonable cause of action has been reiterated by the courts on many occasions. A claim will only be struck if it is plain and obvious, assuming the facts to be true, that the pleading discloses no reasonable cause of action or put different, has no reasonable prospect of success. A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true. It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim and is not entitled to rely on the possibility that new facts may turn up as the case progresses.

***R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 (CanLII), at paras [17](#) and [22](#).**

26. It has been outlined in the jurisprudence that it is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and relief sought. Opposing parties cannot be left to speculate as to how the facts support the causes of action pled. Rather, the pleading must tell the defendant who, when, where, how and what gave rise to its liability.

***Mancuso v. Canada*, [2015] FCA 227 (CanLII), at paras [16](#) and [19](#).**

27. To establish a reasonable cause of action, a statement of claim must (1) allege facts that are capable of giving rise to a cause of action; (2) indicate the nature of the action which is to be founded on those facts; and (3) indicate the relief sought, which must be a type which the action could produce, and the court has jurisdiction to grant.

***Zbarsky v. Canada*, 2022 FC 195 (CanLII), at para [13](#).**

28. In *Adelberg v. Canada*, a Statement of Claim was filed by some 600 plaintiffs who alleged they suffered harm because of a COVID-19 vaccination policy issued by the Treasury Board of Canada. The claim was almost 50 pages long, with nine pages devoted to remedies sought, some of which were not available in a civil action, including administrative declarations and injunctive relief. The claim included allegations of constitutional invalidity, criminal culpability and broad assertions of scientific knowledge. The pleading did not particularize the facts and was devoid of material facts pertaining to the personal circumstances of the plaintiffs. The Court found the pleading to be “bad beyond argument” and it was struck in its entirety. It is worthy to note that counsel for the plaintiffs in *Adelberg* is the same plaintiff counsel as in this matter before this Court.

***Adelberg v. Canada*, 2023 FC 252 (CanLII), at paras [45-52](#).**

29. Similarly, the Court in *Action4Canada v. British Columbia (Attorney General)*, struck the plaintiffs' pleading in which they sought damages and other relief from various government entities and employees for harms they allegedly suffered as a result of various restrictions instituted in British Columbia due to the COVID-19 pandemic. The Court held that the pleading could not be properly answered by a responsive pleading as it described wide-ranging global conspiracies and sought rulings of the court on issues of science. The pleading was also labelled as "bad beyond argument" and could not be mended by striking portions of it. The plaintiffs counsel in *Action4Canada* was one in the same as the Plaintiffs' counsel in this case and in *Adelberg*.

Action4Canada v. British Columbia (Attorney General), 2022 BCSC 1507 (CanLII) at paras [45-48](#).

PART V – APPLICATION OF THE LAW TO THE FACTS

No Reasonable Cause of Action

30. The Plaintiffs' pleading should be struck in its entirety on the grounds that it discloses no reasonable cause of action and fails to include a concise statement of the material facts which support the causes of action pled.

31. Assuming all the facts in the Plaintiffs' pleading are true, only one such fact is alleged against WECHU and Dr. Ahmed. At paragraph 136(d), the Plaintiffs plead that WECHU and Dr. Ahmed "announced ordered, that all customers and all employees, of all businesses in the County, would be required to wear face-masks." Despite mention of this fact, the Plaintiffs have failed to establish how this face-masking order by WECHU and Dr. Ahmed is *ultra vires*, in abuse and excess of their authority or has engaged the Plaintiffs' specific constitutional rights especially when none of the Plaintiffs have pled that they reside or do business or attended in Windsor-Essex County, the area over which

such order would apply. WECHU and Dr. Ahmed are left speculating as to how this fact might apply to support the Plaintiffs' claims. Therefore, the alleged violations are entirely hypothetical and do not support the declaratory relief sought by these Plaintiffs.

Amended Statement of Claim, Tab 2 of the Moving Party's Motion Record, at pgs 75.

32. Much like in the cases of *Adelberg* and *Action4Canada*, the pleading in this matter is "bad beyond argument". It is 190 pages long, violates the rules of pleadings, improperly names defendants, is replete with lengthy diatribes and makes allegations of cover-ups and conspiracies. It leaves many of the Defendants speculating as to how the facts support the causes of action pled. The pleading is, simply put, unintelligible and lacking in clarity, and should be struck. It cannot be mended by striking portions as it would only create more confusion and result in greater expenditure by the parties and this Court.

Immunity From Personal Liability

33. In the alternative, should this Court not agree that the Plaintiffs' claim against both WECHU and Dr. Ahmed be struck for failing to disclose a reasonable cause of action per the *Rules*, the action should be struck as against Dr. Ahmed as the Ontario legislature has extended statutory good-faith immunity to all Medical Officers of Health.

34. At the time that the Plaintiffs pleading was commenced, until his resignation effective on September 10, 2021, Dr. Ahmed was the Medical Officer of Health for WECHU. No cause of action or proceeding can be initiated against Dr. Ahmed for any action, including any mask wearing order or otherwise, done in the execution of his duty as Medical Officer of Health for WECHU unless such action was done in bad faith.

35. Dr. Ahmed's Class Order regarding the wearing of face-masks is consistent with the purpose of and squarely within the statutory authority delegated to Medical Officers of Health under the *Health Protection and Promotion Act* as it was made in an effort to

prevent the spread of COVID-19 and protect those within the jurisdiction of Windsor-Essex County. It was also in line with the precautionary principle found in the common law as it was a reasonable action enforced on those in Windsor-Essex County attending commercial establishments to help reduce the serious and sometimes fatal risks of a communicable and highly contagious virus which had resulted in a global pandemic, of which judicial notice has been taken by the Ontario courts.

36. While the Plaintiffs' pleading does not particularize why Dr. Ahmed's Class Order regarding the wearing of face-masks is outside the purpose and statutory authority delegated to him, it also does not particularize any bad faith actions on the part of Dr. Ahmed. Given the existence of COVID-19 at the time and its designation as a disease of public health significance, this Class Order made by Dr. Ahmed was made in good faith as his intention was to decrease or eliminate the risk of health to those attending commercial establishments in Windsor-Essex County. There is nothing pled by the Plaintiffs that Dr. Ahmed acted dishonestly, in an untrustworthy, misleading, malicious, fraudulent, oppressive or neglectful manner in issuing this Class Order.

Affidavit of J.P. Karam, Tab 3 of the Moving Party's Motion Record, at paras 3 & 4 and Exhibit "B".

Scandalous, Frivolous, Vexatious and Abuse of Process

37. In the alternative, this Court should strike or dismiss the Plaintiffs' pleading in its entirety on the grounds that the pleading is scandalous, frivolous, vexatious and otherwise an abuse of process as it contains many hallmarks of litigant behaviour as identified in the jurisprudence. As already indicated, the pleading is 190 pages in length, misnames defendants, contains 235 footers, includes rambling discourse, repeated misuse of legal, medical and other technical terms and makes discerning a legitimate cause of action very

difficult. The pleading is unintelligible and is indicative of litigant behaviour resulting in five separate motions to strike before this Court.

38. The courts have recognized that scarce resources should not be devoted to proceedings that are clearly frivolous and vexatious. They take away from meritorious cases and there is no benefit served in allowing them to continue. Scarce resources have already been devoted to this matter by the numerous counsel and parties involved as well as three days of valuable court time. The Plaintiffs' pleading should be struck in its entirety with no leave to amend. The pleading cannot be partially struck or mended to fix the multiplicity of signposts of a vexatious proceeding. Any attempt to do so would only result in the consumption of more time and limited resources and result in further confusion. It is "bad beyond argument".

Mootness

39. In the alternative, the Court should dismiss the Plaintiffs' pleading because it is moot as none of the Orders, Letters of Instruction or otherwise issued by WECHU, Dr. Ahmed or other Medical Officer of Health regarding COVID-19 remain in effect. Therefore, this action raises merely a hypothetical or abstract question as there is no live controversy that currently impacts the rights of the Plaintiffs and WECHU/Dr. Ahmed. Since there is no dispute between the parties, the declaratory relief sought by the Plaintiffs will serve no practical utility; therefore it is moot and ought not be granted. Further, the Court should be particularly hesitant to decide moot constitutional questions.

Affidavit of J.P. Karam, Tab 3 of the Moving Party's Motion Record, at paras 3 & 4 and Exhibit "A" to "H".

40. While this Court retains the discretion to hear a moot issue, there is no reason for the Court to exercise such discretion for the reasons noted below, and especially in light

of recent decisions of the Divisional Court and Court of Appeal which have refused to hear ongoing challenges to COVID-19 measures:

- i. There are no collateral consequences of the outcome of this litigation that would impact any of the Plaintiffs' rights. There currently are no Orders, Letters of Instruction or otherwise regarding COVID-19 in place and even if there was, none of the Plaintiffs are subject to the jurisdiction of WECHU and its Medical Officer of Health;
- ii. There is no judicial economy to proceed with this action as it will have no practical effect for the Plaintiffs or any member of the public. There is no injustice if this matter is left undecided;
- iii. A judgment in this action in the absence of a dispute would not be consistent with the Court's traditional role as the adjudicative branch of our political system.

Leave to File Evidence on Issue of Mootness

41. WECHU and Dr. Ahmed seek to rely on COVID-19 related Class Orders and Letters of Instruction and their revoking instruments. These documents are incorporated by reference and form an integral part of the Amended Statement of Claim and ought to be before this Court on this motion. Leave should not be required. Alternatively, leave should be granted to WECHU and Dr. Ahmed to file the COVID-19 related Class Orders and Letters of Instruction on this motion as it relates to the issue of mootness. While affidavits are generally not admissible on a motion to strike per Rule 21.01(2)(a), in this case an exception should be made as the justification for the general rule is not undercut and it is in the interests of justice.

42. One of the bases for this motion to strike is that the issues raised in the pleading have become moot. The issue of mootness has arisen in this case because of intervening developments in relation to the facts giving rise to the pleading being issued, in that the COVID-19 Orders and Letters of Instruction issued by WECHU and/or Dr. Ahmed or his successors are no longer in effect. If the Defendants, WECHU and Dr. Ahmed are unable to put such COVID-19 developments before this Court, then the Court will be forced to proceed with a full hearing in relation to a case in which a live controversy no longer exists. Leave should be granted to establish that there is no longer a live controversy.

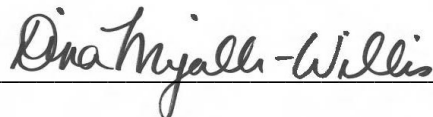
43. Furthermore, unlike federal and provincial legislation and regulations, the Court cannot take judicial notice of the Class Orders and Letters of Instruction issued by WECHU and/or Dr. Ahmed or his successors. Therefore, leave should be granted to prove mootness.

PART VI – ORDER SOUGHT

44. WECHU and Dr. Ahmed request an Order:

- i. striking or dismissing the action as against the defendants, Windsor-Essex County and Dr. Wajid Ahmed (Chief) Medical Officer for Windsor-Essex County, with no leave to amend; and
- ii. for costs of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 15th day of November, 2023.



Dina Mejalli-Willis

SCHEDULE "A" – AUTHORITIES CITED

1. [*Action4Canada v. British Columbia \(Attorney General\)*, 2022 BCSC 1507 \(CanLII\)](#).
2. [*Adelberg v. Canada*, 2023 FC 252 \(CanLII\)](#).
3. [*Amnesty International Canada v. Canadian Forces*, 2007 FC 1147 \(CanLII\)](#).
4. [*Baber v. Ontario \(Attorney General\)*, 2022 ONCA 345 \(CanLII\)](#).
5. [*Borowski v. Canada \(Attorney General\)*, 1989 CanLII 123 \(SCC\)](#).
6. [*Canadian Transit Company v. City of Windsor*, 2018 ONSC 3812 \(CanLII\)](#).
7. [*Dunning v. Colliers Macaulay Nicolls Inc.*, 2023 ONSC 73 \(CanLII\)](#).
8. [*Harjee v. Ontario*, 2023 ONCA 716 \(CanLII\)](#).
9. [*Louie v. Ts-kw'aylaxw First Nation*, 2018 CanLII 116818 \(FC\)](#).
10. [*Mancuso v. Canada*, \[2015\] FCA 227 \(CanLII\)](#).
11. [*McCreight v. Canada \(Attorney General\)*, 2013 ONCA 483 \(CanLII\)](#).
12. [*Oglaza v. J.A.K.K. Tuesdays Sports Pub Inc.*, 2021 ONSC 7473 \(CanLII\)](#).
13. [*Phillips v. Nova Scotia \(Commission of Inquiry into the Westray Mine Tragedy\)*,
1995 CanLII 86 \(SCC\)](#).
14. [*R. v. Boyd*, 2012 ONCJ 126 \(CanLII\)](#).
15. [*R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 \(CanLII\)](#).
16. [*Salehi v. Association of Professional Engineers of Ontario*, 2016 ONCA 438
\(CanLII\)](#).
17. [*Schuyler Farms Limited v. Dr. Nesathurai*, 2020 ONSC 4711 \(CanLII\)](#).
18. [*Spencer v. Canada \(Attorney General\)*, 2021 FC 361 \(CanLII\)](#).
19. [*Work Safe Twerk Safe v. Her Majesty the Queen in Right of Ontario*, 2021 ONSC
1100 \(CanLII\)](#).

20. [Zbarsky v. Canada, 2022 FC 195 \(CanLII\)](#).

SCHEDULE “B” – LEGISLATION CITED

1. [Rules of Civil Procedure, R.R.O. 1990, Reg. 194:](#)

21.01 (1) A party may move before a judge,

(a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially shorten the trial or result in a substantial saving of costs; or

(b) to strike out a pleading on the ground that it discloses no reasonable cause of action or defence,

and the judge may make an order or grant judgment accordingly.

(2) No evidence is admissible on a motion,

(a) under clause (1) (a), except with leave of a judge or on consent of the parties;

(b) under clause (1) (b).

25.06 (1) Every pleading shall contain a concise statement of the material facts on which the party relies for the claim or defence, but not the evidence by which those facts are to be proved.

2. [Health Protection and Promotion Act, R.S.O. 1990, c. H.7:](#)

2 The purpose of this Act is to provide for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario.

22 (1) A medical officer of health, in the circumstances mentioned in subsection (2), by a written order may require a person to take or to refrain from taking any action that is specified in the order in respect of a communicable disease. R.S.O. 1990, c. H.7, s. 22 (1).

(2) A medical officer of health may make an order under this section where he or she is of the opinion, upon reasonable and probable grounds,

(a) that a communicable disease exists or may exist or that there is an immediate risk of an outbreak of a communicable disease in the health unit served by the medical officer of health;

(b) that the communicable disease presents a risk to the health of persons in the health unit served by the medical officer of health; and

(c) that the requirements specified in the order are necessary in order to decrease or eliminate the risk to health presented by the communicable disease.

(3) In an order under this section, a medical officer of health may specify the time or times when or the period or periods of time within which the person to whom the order is directed must comply with the order. R.S.O. 1990, c. H.7, s. 22 (3).

(4) An order under this section may include, but is not limited to,

(a) requiring the owner or occupier of premises to close the premises or a specific part of the premises;

(b) requiring the placarding of premises to give notice of an order requiring the closing of the premises;

(c) requiring any person that the order states has or may have a communicable disease or is or may be infected with an agent of a communicable disease to isolate himself or herself and remain in isolation from other persons;

(d) requiring the cleaning or disinfecting, or both, of the premises or the thing specified in the order;

(e) requiring the destruction of the matter or thing specified in the order;

(f) requiring the person to whom the order is directed to submit to an examination by a physician and to deliver to the medical officer of health a report by the physician as to whether or not the person has a communicable disease or is or is not infected with an agent of a communicable disease;

(g) requiring the person to whom the order is directed in respect of a communicable disease that is a virulent disease to place himself or herself forthwith under the care and treatment of a physician;

(h) requiring the person to whom the order is directed to conduct himself or herself in such a manner as not to expose another person to infection. R.S.O. 1990, c. H.7, s. 22 (4); 1997, c. 30, Sched. D, s. 3 (2).

(5) An order under this section may be directed to a person,

(a) who resides or is present;

(b) who owns or is the occupier of any premises;

(c) who owns or is in charge of any thing; or

(d) who is engaged in or administers an enterprise or activity,

in the health unit served by the medical officer of health.

(5.0.1) An order under this section may be directed to a class of persons who reside or are present in the health unit served by the medical officer of health.

95 (1) No action or other proceeding for damages or otherwise shall be instituted against the Chief Medical Officer of Health or an Associate Chief Medical Officer of Health, a member of a board of health, a medical officer of health, an associate medical officer of health of a board of health, an acting medical officer of health of a board of health or a public health inspector or an employee of a board of health or of a municipality who is working under the direction of a medical officer of health for any act done in good faith in the execution or the intended execution of any duty or power under this Act or for any alleged neglect or default in the execution in good faith of any such duty or power.

3. [Schedule 1 to Ontario Regulation 263/20: Rules for Areas in Stage 2 per the Reopening Ontario \(A Flexible Response to COVID-19\) Act, 2020, S.O. 2020, c. 17:](#)

2(2) The person responsible for a business or organization that is open shall operate the business or organization in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting.

4. [Schedule 1 to Ontario Regulation 364/20: Rules for Areas at Step 3 And At The Roadmap Exit Step per the Reopening Ontario \(A Flexible Response to COVID-19\) Act, 2020, S.O. 2020, c. 17:](#)

2(2) The person responsible for a business or organization that is open shall operate the business or organization in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting.

5. [Legislation Act, 2006, S.O. 2006, c. 21, Sched. F:](#)

13 Judicial notice shall be taken of the enactment and contents of an Act.

29 Judicial notice shall be taken of the making, approval where required, filing, contents and publication of a regulation that is published on the e-Laws website or in *The Ontario Gazette*.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

FACTUM OF THE MOVING PARTIES

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