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File No. 1502-1

August 31, 2021

VIA MAIL

Fraser Health
Suite 400, Central City Tower
13450 – 102nd Avenue
Surrey, BC V3T 0H1

Island Health
1952 Bay Street
Victoria, BC V8R 1J8

Interior Health Corporate Office
505 Doyle Ave
Kelowna, BC V1Y 0C5

Vancouver Coastal Health
800 – 601 West Broadway,
Vancouver, BC V5Z 4C2

Northern Health Regional Office
Suite 600, 299 Victoria St.
Prince George, BC V2L 5B8

First Nations Health Authority
501 – 100 Park Royal South
Coast Salish Territory
West Vancouver, BC V7T 1A2

Dear Sirs/Mesdames:

Re: Public Health Order – COVID-19 Vaccination Status Information and Preventive Measures Order, issued August 20, 2021

Canadian Society for the Advancement of Science in Public Policy v. HMTQ and Dr. Bonnie Henry et al, SCBC Vancouver Registry File No. S210831

We represent the Canadian Society for the Advancement of Science in Public Policy¹ in the above noted action brought pursuant to the B.C. *Class Proceedings Act*. The class action challenges the constitutional basis of the British Columbia Public Health Officer and provincial government's COVID-19 related orders, amongst others. A copy of the Notice of Civil Claim is attached.

On August 20, 2021, the Public Health Officer, Dr. Henry, issued the COVID-19 Vaccination Status Information and Preventive Measures Order, requiring all health care workers to be vaccinated against COVID-19 as of October 12, 2021 (the "Order").

Our client has been contacted by over 5,000 health care workers, expressing concern over their job security and the medically unsubstantiated basis for the Order.

¹ <https://www.covidconstitutionalchallengebc.ca>

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Until October 12, 2021, unvaccinated staff must wear a mask and take a test before each shift. Vaccinated staff are not required to take a test before each shift.

The Order is based on the assumption that vaccinated persons do not spread COVID-19 and are not a danger to others.

This is incorrect as vaccinated persons can and do spread COVID-19.²

Arbitrarily requiring unvaccinated persons to effectively lose their livelihood based on this distinction is not supported by medically accepted scientific evidence or principles.

Hospitals and other institutions under your authority will also be putting patients in danger.

By requiring staff to be vaccinated, the institutions under your management and authority will be discriminating against those who have respiratory and other health or religious concerns that make vaccination not possible or dangerous to their health. This is a form of discrimination based on physical disability and religion and is contrary to s.13 of the BC *Human Rights Code* and the *Charter*.

We have instructions to challenge the Order, including seeking a stay, and hereby put you on notice that any steps taken by an institution under your authority to discriminate against employees that have not been vaccinated may result in liability for unlawful termination, personal injury and other damages, and each institution should verify with its insurer if they are covered in such eventuality.

While the government's actions may be well meaning, in our opinion, they are not based in law or in substantiated scientific evidence and are prejudicial to members of our community.

Yours very truly,

CITADEL LAW CORPORATION

Per: 

POLINA H. FURTULA

Cc: BC Nurses' Union
Burnaby Head Office
4060 Regent Street
Burnaby, BC V5C 6P5

Hospital Employees Union
5000 N Fraser Way,
Burnaby, BC V5J 5M3

² <https://www.nature.com/articles/d41586-021-02187-1> (How do vaccinated people spread Delta? What the science says (nature.com)); <https://www.cbc.ca/news/health/fourth-wave-canada-covid19-vaccine-herd-immunity-delta-variant-1.6156437> (Why Canadians need to keep their guard up in the 4th wave — even if they're fully vaccinated | CBC News)

JAN 26 2021

No.
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

CANADIAN SOCIETY FOR THE ADVANCEMENT
OF SCIENCE IN PUBLIC POLICY

PLAINTIFF

AND

HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF BRITISH COLUMBIA
AND
DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH
OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

DEFENDANTS

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

NOTICE OF CIVIL CLAIM

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

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

- a. file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- b. serve a copy of the filed response to civil claim on the plaintiff.

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

- a. file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- b. serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- a. if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- b. if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- c. if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- d. if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview

1. Pandemic is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death.¹
2. Science is the study of reality. It informs sound public policy.
3. In its response to the COVID-19 virus, the government of British Columbia has invoked extraordinary executive powers predicated on unsubstantiated scientific and legal grounds with catastrophic consequences for British Columbians.

Parties

4. The plaintiff, the Canadian Society for the Advancement of Science in Public Policy (the “Society”), a not-for-profit society duly incorporated under the *Societies Act*, SBC 2015, c. 18 with its head office at 108-2115 Cypress Street, Vancouver, British Columbia.
5. The Society is a non-partisan and secular organization. Its mandate is to advocate for a greater role of science in the formation of public policy. Its directors,

¹ [WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020](#)

officers, donors, and patrons draw themselves from diverse communities and from across the political spectrum.

6. The defendant, Her Majesty the Queen in Right of the Province of British Columbia, may exclusively make laws in relation to matters that are not within the jurisdiction of the Government of Canada and its ministers may make orders pursuant to the *Emergency Program Act*, R.S.B.C. 1996, c. 111 (the “EPA”), and has an address for service care of the Attorney General, Ministry of Attorney General, PO Box 9290 Stn Prov Govt, Victoria, British Columbia (the “Provincial Government”).

7. The defendant, Dr. Bonnie Henry is British Columbia's Provincial Health Officer (the “Provincial Health Officer”) appointed under Part 6 of the *Public Health Act*, S.B.C. 2008, c 28.

Proposed class

8. This action is brought on behalf of members of the class consisting of all persons residing or doing business in British Columbia who, since on or after March 17, 2020, have suffered personal injury or other damages as a result of the actions of the defendants in declaring a state of emergency pursuant to the *EPA* and Part 5 of the *Public Health Act* (the “Class”).

9. It is estimated that the Class consists of hundreds of thousands of residents and businesses in British Columbia.

Government Declares an Emergency

10. On March 17, 2020, the Provincial Health Officer issued a notice under the *Public Health Act* (the “PHA”) that the transmission of the infectious agent SARS-CoV-2, had caused cases and outbreaks of an illness known as COVID-19 in British Columbia.

11. The following day, on March 18, 2020, the Provincial Government declared a “state of emergency” under the *EPA*.

12. A declaration of a state of emergency enabled the Provincial Government to exercise sweeping statutory powers under the *EPA*. This legislation has its roots in the federal *War Measures Act* of 1914. The latter was originally intended to implement a declaration of war for the First World War.

13. The declaration of a public health emergency also provided for a range of emergency powers under the *PHA*, including empowering the Provincial Health Officer to issue verbal orders that had immediate effect.

Rationale for State of Emergency

14. In the period between January 1 to March 31, 2020, there were 3 reported deaths attributed to the COVID-19 virus in British Columbia.

15. In the following months, the mortality rate attributed to COVID-19 increased but clustered around care home facilities, and especially those that were understaffed and without sufficient medical supplies.

16. In its “emergency” response, the Provincial Government closed large sectors of the British Columbia economy issuing orders prohibiting attendance at restaurants, fitness facilities, shopping centres, religious and other peaceful gatherings, issued travel bans and cancelled medical treatments.

17. While hospitals prepared for an influx of COVID-19 patients, many medical procedures and operations were cancelled under the Provincial Government’s directives. However, the high number of intensive care COVID-19 patients did not materialize. Most people infected with COVID-19 experienced mild to moderate influenza-like symptoms that abated quickly.

18. By June 24, 2020, the Provincial Government and Public Health Officer’s restrictions on non-essential travel, hotels, and film industries were lifted. By September 2020, on site and in person instruction at public schools was reintroduced.

19. The authority to exercise emergency powers under Part 5 of the *PHA* ends when the Provincial Health Officer provides notice that the emergency has passed (s. 59(1)).

20. Despite the relatively low number of persons infected by COVID-19 in British Columbia, the Public Health Officer failed to provide notice that the emergency had passed and the Lieutenant Governor in Council continued to extend the emergency declaration under *EPA*.

21. British Columbia is currently in the longest state of emergency in provincial history.

COVID-19

22. The COVID-19 disease is similar in symptoms to influenza (also known as the common seasonal flu), but influenza, according to the World Health Organization can spread faster than COVID-19.

23. The most at risk for severe influenza infection are children, pregnant women, the elderly, those with underlying chronic medical conditions and those who are immunosuppressed. For COVID-19, older age and underlying conditions increase the risk for severe infection.

24. The infection fatality ratio of COVID-19 (the “IFR”) is extremely low, comparable to the seasonal flu. The all-cause mortality of British Columbia from June 30, 2019 to July 1, 2020, the period in which COVID-19 appeared, does not differ drastically from the all-cause mortality statistics since 2016.

25. The language the defendants have used, and continue to use, in public statements respecting COVID-19 deaths misrepresent the true fatality of this disease. The defendants only report the case fatality ratio (the “CFR”) rather than infection fatality ratio of COVID-19 (“IFR”). In reality, the number of persons infected but not reported is significantly higher than the cases reported. This means that the true fatality due to COVID-19 is significantly lower than reported by the defendants.

26. This misunderstanding of statistical data has caused, and continues to cause, unwarranted public alarm.

27. The defendants have refused to take responsibility for the inaccurate information provided to the public. For example, the British Columbia Centre for Disease Control (the “BCCDC”), states as follows in its disclaimer:

“... the Province of British Columbia, including the British Columbia Centre for Disease Control, the Provincial Health Services Authority and the British Columbia Ministry of Health makes no representation or warranties regarding the accuracy of the information in the dashboard and the associated data, nor will it accept responsibility for errors or omissions. (...) Anyone using this information does so at his or her own risk, and by using such information agrees to indemnify the Province of British Columbia, including the British Columbia Centre for Disease Control, the Provincial Health Services Authority and the British Columbia Ministry of Health and its content providers from any and all liability, loss, injury, damages, costs and expenses (including legal fees and expenses) arising from such person’s use of the information on this website.”

pp. 3-4, British Columbia COVID-19 Disclaimer and Data Notes.

COVID-19 Testing is Unreliable to a Significant Degree

28. The tests which the Public Health Officer and the Provincial Government have used, and continue to use, to determine the presence of COVID-19 in a person

inaccurately slant results towards a higher number of positive cases of COVID-19 in the population than there actually are. This in turn causes needless panic and unfounded justification of government emergency orders.

29. This has caused excessive public alarm.

30. The reverse transcriptase polymerase chain reaction (“PCR”) testing methodology used by the Provincial Government has produced significant COVID-19 false-positives.

31. A false-positive is a test that mistakenly appears positive, but in actuality is false.

32. This methodology has produced COVID-19 false-positives for a goat, a papaya, and a kiwi.

33. A growing number of scientists are condemning the use of PCR testing kits in COVID-19 testing, which can be used for multiple purposes. This includes scientists who sell the kits.

34. According to the inventor of the PCR testing method, Dr. Kary Mullis, who earned a Nobel Prize for his work with PCR testing methodology, PCR identifies substances qualitatively not quantitatively, detecting the genetic sequences of viruses, but not the viruses themselves.

35. The PCR test used in British Columbia purported to identify positive cases of COVID-19 is not sufficient to diagnose the presence of an infectious disease, including COVID-19. It is an aid to diagnosis only.

36. These false-positives inflate the number of alleged COVID-19 cases above the true case number of actual COVID-19 infected persons.

37. In 2019, provinces reported 147 lab-confirmed cases of flu the first week of November. This year, they reported four.

38. This comes despite testing more than twice as many people for flu than usual — almost 10,000 tests were done in the first week of November, 2020 compared to a six-year average of about 4,500.

39. Unsurprisingly, by January 18, 2021, the BCCDC confirmed it had not detected a single case of influenza circulating in the community.

40. The number of new cases reported without being qualified by information about the false-positive rate or false discovery rate also misleads the public about the danger represented by the new case number. Such danger is due to a lack of general public

understanding about how disease prevalence, amount of testing, and the probability of obtaining a false-positive, affect the proportion of new cases accurately representing true-positive cases of COVID-19.

41. In spite of this a positive result has been used as a basis to enforce isolation of individuals on the grounds that they may have, and may be contagious for, a disease for which they show no symptoms, and from whom no COVID-19 virus had been isolated, purified, or shown to be biologically active.

42. This causes unnecessary fear and begets additional government policies that restrict the liberty of people to mitigate a problem which has been exaggerated by how these tests have been misused.

Compromised Medical Treatments and Therapies

43. In its “emergency” response, the Provincial Government cancelled medical treatments they deemed “non-essential” for which many residents had been on the waiting list for significant amounts of time.

44. In addition, the defendants have obstructed or discouraged licensed physicians and other treatment providers licensed under the *Health Professions Act*, R.S.B.C. 1996, c. 183, from advocating modalities or therapies with respect to the clinical approach in treating COVID-19 and related diseases, despite the physician having independently undertaken reasonable review of the scientific literature, that may improve a patient’s immune system, reduce the potential negative outcome of a viral infection, and potentially accelerate the time required for recovery.

45. These include therapies that have been studied extensively in the scientific literature for more than half a century and are proven to be safe, inexpensive, ubiquitous, effective, and essential to the optimal function of the immune system (the “Complementary Therapies”), some of which are unpatentable.

46. The defendants knew, or ought to have known, that cancelling medical treatments or obstructing or discouraging the use of any of the Complementary Therapies in the treatment of disease was not grounded in science and would cause harm to the public.

Ministerial Orders

47. As of June 17, 2020, the Provincial Government had issued 30 orders under the authority of s. 10(1) of the *EPA*, including orders that were later repealed and replaced. More orders have been issued since then. All of the orders issued by the Minister

contain a provision stating that they apply only for so long as the declaration of the state of emergency is in effect.

48. Most of the Provincial Government's orders do not reference a specific sub-paragraph in the s. 10(1) and instead rely on the general provision in s. 10(1) that the Minister may "do all acts and implement all procedures necessary to prevent, respond to or alleviate the effects of any emergency or disaster."

49. The reality is that either all or some of the Ministerial orders were not necessary to "prevent, respond or alleviate" the effects of COVID-19 to the population of British Columbia.

50. The Provincial Government also failed to establish legally binding conditions on the use of sub-delegated powers to suspend, waive or otherwise alter statutory provisions for the following Ministerial orders and subsequent orders replacing them:

- a. Ministerial Order M083 was issued on March 26, 2020, after the initial declaration of a provincial state of emergency. This order applied to municipalities, regional districts and the City of Vancouver. Ministerial Order M083 was repealed and replaced by a new order on May 1, 2020, M139, subsequently in turn repealed and replaced by a new order, M192, on June 17, 2020.
- b. M139, Local Government Meetings and Bylaw Process (COVID-19) Order No. 2, which repealed and replaced M083, Local Government Meetings and Bylaw Process (COVID-19) Order;
- c. Ministerial Order M089, Residential Tenancy (COVID-19) Order, 30 March 2020.
- d. Ministerial Order M179, Commercial Tenancy (COVID-19) Order, 29 May 2020;
- e. Ministerial Order M416, Food Liquor premises, Gatherings and Events (COVID-19) Order No. 2; and
- f. Such further orders as will be provided at trial, but which are known to the defendants.

(the "Ministerial Orders")

51. The Provincial Health Officer has issued more than 50 orders under the authority of Part 5 of the *PHA*, including verbal orders (the "PHA Orders").

52. Most of the Provincial Health Officer's PHA Orders do not reference the medical or scientific basis for issuing the order and do not satisfy the requirements of s. 52 of the *PHA*.

53. Indeed, the Ministerial Orders and PHA Orders (collectively, the “Orders”) were and continue to be, inconsistent, contradictory, and contrary to reasonably established medical and scientific principles and research, and do not satisfy the requirements of s. 9 of the *EPA* and s. 52 of the *PHA*, particulars of which include, but are not limited to:

- a. discouraging the public from wearing masks on the basis that they were ineffective;
- b. mandating that masks be worn in public places;
- c. closing in-house dining but permitting take-out;
- d. not mandating that cooks in public dining establishments wear masks while preparing food for take-out;
- e. allowing in-house dining for groups of the same household, that could sit next to groups of different households;
- f. failing to enforce these orders;
- g. allowing shopping in large warehouse grocery and “big box” franchises such as Walmart, Costco, and others (the “Big Box Stores”);
- h. prohibiting religious gatherings;
- i. prohibiting peaceful gatherings if unrelated to work;
- j. limiting shopping in shopping malls;
- k. prohibiting certain travel throughout British Columbia but allowing travellers from other provinces to travel within British Columbia;
- l. admitting that the limit on the size of gatherings is arbitrary and was never grounded in science;
- m. such other particulars as may be proven at trial.

Effect of government measures on British Columbians

54. The effects of these restrictions placed on British Columbians have caused damage disproportionate to any threat posed by COVID-19, including but not limited to the following (the “Restriction Effects”):

- a. Significant increase in overdose deaths. For example, approximately five people die per day in B.C. due to an overdose, which is more than the number of people attributed to COVID-19 related deaths in B.C.;
- b. Increase in suicide rates;

- c. Increase in depression and mental-health illness;
- d. Loss of gainful employment;
- e. Increase in domestic violence, including child battery;
- f. Increase in bankruptcies and foreclosures;
- g. Increase in divorces and deteriorations in personal relationships;
- h. Decrease in critical services for the homeless and low income;
- i. Increase in insurance premiums;
- j. Such other effects as may be proved at trial.

55. To put this in perspective, in 2018, 314 British Columbians died in motor vehicle incidents. In 2019, 984 people died from illicit drug use in British Columbia and in 2020, 1,548 people died from illicit drug use.

56. In contrast, there were 678 deaths in British Columbia attributed to COVID-19 to the end of week 50 in 2020.

57. Commercial insurers have already paid out billions in claims globally as a result of damage caused by government COVID-19 measures rather than physical injuries caused by the virus. The increase in insurance premiums affects the costs of everyday living and doing business in British Columbia.

58. This kind of economic harm has impacted and will continue to impact British Columbians and all those who do business in British Columbia for decades by making British Columbian goods and services less competitive in the global marketplace.

Economic security of defendants versus class members

59. Many British Columbians have experienced, and continue to experience, severe economic hardship as a result of the Orders.

60. Meanwhile the Provincial Government, the Provincial Health Officer, and her staff continue to enjoy economic security through salaries, other benefits, and pensions. All government salaries, other benefits, and pensions are at public expense and far less subject to market conditions than the millions of British Columbians' lack of economic security caused by the continued state of "emergency".

61. Neither the Provincial Government nor the Public Health Officer to-date have conducted a risk assessment to assess the likelihood and severity of the negative consequences of the Orders, including those negative outcomes to economic, physical, emotional, and mental wellbeing mentioned but not limited to the Restriction Effects.

Part 2: RELIEF SOUGHT

1. A declaration that all Ministerial Orders and/or Public Health Orders be set aside as unreasonable.
2. A declaration that the following Ministerial Orders are *ultra vires* the *EPA*:
 - a. Ministerial Order M083, issued on March 26, 2020; repealed and replaced by a new order on May 1, 2020, M139, repealed and replaced by a new order, M192, on June 17, 2020;
 - b. Ministerial Order M089, Residential Tenancy (COVID-19) Order, 30 March 2020;
 - c. Ministerial Order M179, Commercial Tenancy (COVID-19) Order, 29 May 2020; and
 - d. Ministerial Order M416, Food Liquor premises, Gatherings and Events (COVID-19) Order No. 2.
3. A declaration that all decisions of municipal authorities made pursuant to M083, issued on March 26, 2020; repealed and replaced by a new order, M139, repealed and replaced by a new order, M192, on June 17, 2020, that do not otherwise comply with the *Local Government Act*, R.S.B.C. 2015, c. 1 or *Vancouver Charter*, S.B.C. 1953, c. 55 are of no force and effect.
4. A declaration pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), *Part I of the Constitution Act, 1982 being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (the "Constitution Act, 1982")* that each or all of the Orders made since March 17, 2020 and those currently in force are of no force or effect as they unjustifiably infringe and disproportionately limit the following:
 - a. s. 2 of the *Charter*;
 - b. s. 6(1) of the *Charter*;
 - c. s. 7 of the *Charter*;
 - d. s. 8 of the *Charter*;

- e. s. 9 of the *Charter*, and
 - f. s. 15 of the *Charter*.
5. A declaration that any of the Orders be read so that its effects do not limit rights established under the *Charter*.
 6. An injunction enjoining the defendants from issuing any administrative directive, order, or from exercising influence in any manner, including through its agents or regulators, that prevent or discourage any physician licensed under the *Health Professions Act*, R.S.B.C. 1996, c. 183 in the Province of British Columbia from advocating modalities or therapies that, in the physician's sole discretion, after the physician having independently undertaken reasonable review of the scientific literature, and having obtained their patient's informed consent, determines may improve their patient's immune system, reduce the potential negative outcome of a viral infection, and potentially accelerate the time required for recovery.
 7. An injunction enjoining the defendants from issuing further orders under the *EPA* and Part 5 of the *PHA*.
 8. General damages;
 9. Special damages;
 10. Special costs, or in the alternative Costs; and
 11. An order certifying this action as a class proceeding;
 12. Interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
 13. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. The defendants have failed to establish the legally binding conditions necessary to declare a state of emergency and erred in concluding that the criteria for declaring an "emergency" were satisfied under the *EPA* and *PHA*.
2. The continued state of emergency is disproportional and unnecessary to deal with the nature of the problems posed by COVID-19.
3. In the alternative, if the conditions under which the defendants could declare a state of emergency did exist in March 2020, such conditions no longer existed after

May, 2020 and did not warrant the continued renewal of a state of emergency in British Columbia past May 2020.

Public Health Act

4. Part 5 of the *PHA* sets out the emergency powers available to medical health officers, the Provincial Health Officer, and the Minister of Health in a public health emergency.

5. The Provincial Health Officer did not have grounds to reasonably believe that the conditions set out in s. 52 of the *PHA* existed in declaring a state of "emergency".

6. In the alternative, if the Provincial Health Officer did have grounds to reasonably believe that the conditions set out in s. 52 of the *PHA* existed to provide the requisite notice in March 2020, which is denied, then the Provincial Health Officer did not have grounds to continue to reasonably believe that such conditions existed past May 2020.

7. The authority to exercise emergency powers under Part 5 of the *PHA* ends as soon as reasonably practical after the emergency has passed, and in the case of a regional event, when the provincial health officer provides notice that the emergency has passed.

8. The Provincial Health Officer has failed to provide notice that the emergency has passed despite reasonable medical, statistical, and scientific evidence.

9. Following May 2020, the Public Health Officer continued to exercise emergency powers pursuant to Part 5 of the *PHA*, despite there being insufficient evidence or reasonable evidence that the prerequisites of s. 52 of the *PHA* were met.

10. In the alternative, if the Provincial Health Officer had grounds to be reasonably satisfied of the requirements of s. 52 of the *PHA* to continue a state of emergency, the *PHA* Orders exceeded her statutory authority and were inconsistent with established medical and scientific principles and the actual ramifications of COVID-19 in British Columbia.

Hippocratic Oath

11. The Hippocratic Oath (the "Oath") is an oath of ethics by which physicians are bound. It is one of the oldest legal documents in attested history.

12. The Oath's most sacrosanct tenet is *primum non nocere*, or first do no harm.

13. The Provincial Health Officer is in violation of her Oath.

Emergency Program Act

14. The *EPA* establishes the conditions under which the government can declare a state of emergency, for how long those declarations can last, and when they can deploy emergency powers to protect human lives and mitigate property damage.

15. Pursuant to the *EPA* an "emergency" means "a present or imminent event" that is "caused by accident, fire, explosion, technical failure or the forces of nature," and that "require[s] prompt coordination of action or special regulation of persons or property to protect the health, safety or welfare of a person or to limit damage to property" (s. 1(1)).

16. The effects of COVID-19 in British Columbia did not fit within the definition of an "emergency" under the *EPA*.

17. The Provincial Government's interpretation of the *EPA*, its assessment of the situation, and actions taken were "unreasonable" as a matter of administrative law.

18. In the alternative, if an "emergency" existed pursuant to s. 9 of the *EPA*, which is denied, the Provincial Government exceeded the limits on its power under s. 10(1) and s.10.1(1) of the *EPA*, by making Ministerial Orders that:

- a. did not fit into, or were inconsistent with, the powers specified in s. 10(1) and s. 10.1 of the *EPA*; and
- b. were not "necessary to prevent, respond to, or alleviate the effects of an emergency or disaster".

19. The *EPA* does not authorize or give the Provincial Government and its ministers absolute discretion to suspend, amend or override valid statutes or regulations when acting under s. 10(1) of the *EPA*.

20. The plaintiff says that COVID-19 mostly seriously affects senior citizens, and that the vast majority of British Columbians, even if infected, would not be in mortal or other danger, thus an emergency order affecting all citizens is a substantial and unnecessary overreach.

21. Section 26 of the *EPA*, is not a defence as it does not include ministerial orders.

22. The Provincial Government failed to establish legally binding conditions on the use of sub-delegated powers to suspend, waive or otherwise alter statutory provisions in Ministerial Orders. The Ministerial Orders do not sufficiently guard against arbitrary or inconsistent decision making by sub-delegates.

23. In addition to being unauthorized, the Ministerial Orders do not demonstrate consideration of the principle of proportionality.

24. The *EPA*'s lineage has its roots in the federal *War Measures Act* of 1914. The latter was originally intended to implement a declaration of war for the First World War.

25. The *PHA* Orders do not discriminate between the sick and the healthy, collectively punishing a whole group in violation of Article 33 of the *Fourth Geneva Convention* of 1949.

26. An emergency order is a hammer, and now, the defendants have seen all matters relating to COVID-19 as a nail.

Doctrine of unconscionability

27. The doctrine of unconscionability is applicable to any waiver of liability issued by the defendants in the "British Columbia COVID-19 Disclaimer and Data Notes" and related notices.

The Canadian Charter of Rights and Freedoms (the "Charter")

28. The *Charter* limits British Columbia's response to an emergency under the *EPA* and the *PHA*.

29. The Orders made under the *EPA* and *PHA* are inconsistent with the *Charter* as follows:

- a. Orders that prohibit religious gatherings infringe on the s. 2(a) *Charter* right of freedom of conscience and religion;
- b. Orders that prohibit peaceful gatherings infringe on the s. 2(c) *Charter* right of freedom of peaceful assembly and s. 2(d) *Charter* right of freedom of association;
- c. Orders that prohibit or limit medical procedures infringe on the s. 7 *Charter* right of life, liberty and security of the person and s. 15 equality rights;
- d. Orders that control or prohibit travel to or from any area of British Columbia under s. 10(1)(f) of the *EPA* limit the freedom of peaceful assembly" under s. 2(c) of the *Charter*, or "the right ... to move to and take up residence in any province" under s. 6(2)(a) of the *Charter*, and the right not to be arbitrarily detained or imprisoned under s. 9 of the *Charter*;

- e. Orders that require a person to render assistance of a type that the person is qualified to provide under s. 10(1)(e) of the *EPA* limit the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice under s. 7 of the *Charter*, and
- f. Orders that authorize the entry into any building or on any land, without warrant under s. 10(1)(i) of the *EPA* limit the right to be secure against unreasonable search or seizure under s. 8 of the *Charter*.

30. Therefore, the Orders violate ss. 2, 6-9 and 15 by infringing on these rights in a manner that does not accord with the principles of fundamental justice. These infringements cannot be justified pursuant to the criteria of s. 1 of the *Charter*.

31. The plaintiff relies on s. 52 of the *Constitution Act, 1982*, in seeking a declaration that the Orders are unconstitutional and of no force or effect.

Plaintiff's address for service: Citadel Law Corporation
1400 – 1125 Howe Street
Vancouver, BC V6Z 2K8

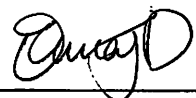
Fax number address for service: N/A

E-mail address for service: N/A

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street, Vancouver, BC

Date: January 26, 2021

 For: _____

Signature of Polina Furtula
Lawyer for the plaintiff

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

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

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

In its response to the COVID-19 virus, the government has invoked extraordinary executive powers predicated on unsubstantiated scientific and legal grounds with catastrophic consequences for British Columbians. In doing so, the defendants have overreached their authority under the *Emergency Program Act*, the *Public Health Act*, and have infringed on *Charter* rights in a manner that does not accord with the principles of fundamental justice.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

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

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

1. *Emergency Program Act*, RSBC 1996, c. 111;
2. *Public Health Act*, SBC 2008, c 28;
3. *Canadian Charter of Rights and Freedoms (the "Charter"), Part I of the Constitution Act, 1982 being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.*