Amended pursuant to Rule. 6-1(1)(a)
Original filled October 13, 2023

No. VIC-S-S-233275
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JEDEDIAH JEREMIAH MERLIN FERGUSON and TERRI LYN PEREPOLKIN

Plaintiffs

AND:

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

Defendants

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

AMENDED NOTICE OF CIVIL CLAIM

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

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

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

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

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

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

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

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

Time for Response to Civil Claim

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

a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,

b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,

c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or

d) if the time for Response to Civil Claim has been set by Order of the Court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff Jedediah Ferguson ("Ferguson") was an employee of Island Health at Cumberand Regional Hospital Laundry and had worked as a Laundry Worker (LW1). Ferguson had been an employee of Island Health since June 2015 and maintained an exemplary and unblemished record until he was put on leave without pay on October 26, 2021, and then his subsequent termination effective November 18, 2021. Ferguson was subject to and terminated pursuant to the Provincial Health Officer's ("PHO") issuance of the *Hospital & Community COVID-19 Vaccination Status Information and Prevention Measures Order* ("the Order"). Ferguson is a member of the Hospital Employees' Union ("HEU") and at all material times his employment was governed by the HEU collective agreement ("the HEU Contract"). Ferguson is a resident of British Columbia.

2. The Plaintiff Terri Perepolkin ("Perepolkin") was an employee with Interior Health – Vernon Jubilee Hospital and has worked as a Laboratory Technologist since 2004 and maintained an exemplary and unblemished record until she was placed on leave without pay on October 26, 2021, and was terminated from her position November 18, 2021.

Perepolkin was subject to and terminated pursuant to the PHO Order. Perepolkin is a member of the Health Sciences Association ("HSA") and at all material times her employment was governed by the Health Science Professionals Bargaining Association ("HSPBA") collective agreement ("the HSPBA Contract"). Perepolkin is a resident of British Columbia.

3. The Defendant, His Majesty the King in Right of the Province of British Columbia may exclusively make laws in relation to matters that are not within the jurisdiction of the Government of Canada and its ministers may make orders pursuant to the *Emergency Program Act,* R. S. B. C. 1996, c. 111 (the "EPA"), *Public Health Act*, SBC 2008, C 28 and has an address for service of the Attorney General, Ministry of Attorney General, PO Box 9290 Stn Prov Govt, Victoria, British Columbia (the "Provincial Government).

4. The Defendant, Dr. Bonnie Henry, is British Columbia's Provincial Health Officer appointed under Part 6 of the *Public Health Act*, SBC 2008, C 28 ("PHA") and is responsible for issuing public health orders in British Columbia.

Class Definition

5. This action is brought on behalf of members of the class consisting of all healthcare workers in British Columbia who have been subject to the *Covid-19 Vaccination Status information and Preventative Measures order(s)* issued by the PHO on October 14, 2021, November 9, 2021, November 18, 2021, September 12, 2022, April 6, 2023, and October 5, 2023, pursuant to Sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 *Public Health Act*, S.B.C. 2008 ("the Class").

6. It is estimated that the Class consists of thousands of health care workers in British Columbia.

Standing

7. The Plaintiffs and Class Members assert both private and public interest standing to bring this claim.

8. The Plaintiffs and Class Members plead that they have private interest standing because they are directly affected by the Provincial Health Officer's decision to issue the Orders and thereby induce the breach of their contractual employment agreements leading to significant financial and ancillary harm.

9. The Plaintiffs and Class Members plead that they have private interest standing because they are directly affected by the Misfeasance of the Provincial Officer of Health in issuing the Orders and have been subjected to foreseeable ensuing harm as a result of such conduct.

10. The Plaintiffs and Class Members plead that they also have public interest standing. They raise a serious justifiable issue of public import respecting the constitutionality of the Provincial Officer of Health's Orders which has created, contributed to, and sustained a deprivation of individuals' rights guaranteed under the *Charter*, s. 2d.

11. The Plaintiffs and Class Members plead that they have a real stake in the Provincial Officer of Health's conduct and are both directly and genuinely interested in the resolution of this claim.

12. The Plaintiffs and Class Members plead that this claim advances a reasonable and effective method of bringing the issues before the Court in all of the relevant circumstances. Many individuals impacted by the conduct of the Provincial Officer of Health and the Orders have had their contractual employment agreements breached, were subjected to foreseeable harm caused by Misfeasance in Public Office and had *Charter* rights infringed upon. These acts committed by the Provincial Officer of Health's conduct also impacted the Class's resources to bring forward such a claim.

Public Health Orders

13. On October 14, 2021, , November 9, 2021, November 18, 2021, September 12, 2022, April 6, 2023, and October 5, 2023 the Provincial Public Health Officer, (Pursuant to Sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 *Public Health Act*, S.B.C. 2008),

issued orders respecting Covid-19 Vaccination Status information and Preventative Measures **("the Orders")**.

14. The Orders stated, inter alia,

a. Vaccination is safe, very effective and the single most important preventative health measure;

b. an unvaccinated staff member of an organization which provides health care or services puts staff who provide health care or services, and patients, residents or clients, at risk of infection with SARS-CoV-2, and constitutes a health hazard under the *Public Health Act; and,*

c. An employer must not permit an unvaccinated staff member to whom this Part applies to work after October 25, 2021, unless the staff member is in compliance with either section 2 (a) or (b), or has an exemption and is in compliance with the terms of the exemption.

Island Health COVID-19 Vaccination Policy

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

a) "If a staff member refuses to comply with any required preventative measures, that individual is not permitted to work. The staff member shall be placed on leave without pay and may be subject to discipline or other employment consequences up to and including termination."

Interior Health Covid-19 Vaccination Policy

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

a) Employees who have not received the first dose of COVID-19 vaccine by November 15, should anticipate that their employment and/or other contractual arrangements with IH may be terminated.

Formation of the Contract Mr. Ferguson

17. The HEU Contract is the product of a good faith collective bargaining process. The process includes a procedure through which terms and conditions of employment were settled by negotiations between the employer and their employees on the basis of a comparative equality of bargaining strength.

18. The HEU Contract was negotiated between the Hospital Employees Union ("HEU") and the Health Employers Bargaining Association ("HEABC") which is comprised of members who work in the health care profession of which Mr. Ferguson is a member.

19. The negotiation process included, inter alia:

a) member consultation;
b) development of bargaining proposals;
c) an exchange of proposals;
d) deliberation on proposals;
e) an exchange of consideration;
f) an ability to negotiate, amend, reject proposals;
g) the right to job action if the parties are unable to reach agreement; and,
h) A vote in the affirmative on the proposed contract by both the Employer and HEU members.

20. The HEU Agreement does not contain a term or condition of employment which allows employees to unilaterally be placed on an unpaid leave of absence.

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

Formation of the Contract Ms. Perepolkin

22. The HSPBA Contract is the product of a good faith collective bargaining process. The process includes a procedure through which terms and conditions of employment were

settled by negotiations between the Employer and their employees on the basis of a comparative equality of bargaining strength.

23. The HSPBA Contract was negotiated between the Health Employers Bargaining Association ("HEABC") and The Health Science Professionals Bargaining Association ("HSPBA") which is comprised of members who work in the health science profession of which Ms. Perepolkin is a member.

24. The negotiation process included, inter alia:

a) member consultation;
b) development of bargaining proposals;
c) an exchange of proposals;
d) deliberation on proposals;
e) an exchange of consideration;
f) an ability to negotiate, amend, reject proposals;
g) the right to job action if the parties are unable to reach agreement; and,
h) A vote in the affirmative on the proposed contract by both the Employer and HSPBA members.

25. The HSPBA Agreement does not contain a term or condition of employment which allows employees to unilaterally be placed on an unpaid leave of absence.

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

Covid -19 Vaccinations – Preventing Transmission

27. The Orders and ensuing Policy mandated Covid-19 vaccinations which were approved by Health Canada.

28. Health Canada regulatory approval decisions, product reviews, product monographs, and clinical study date on the Covid-19 vaccines was at all material times available to the Provincial Health Officer to inform the development, implementation, and enforcement of the Orders and ensuing policy.

29. At the time the Orders and Policy were enacted all Health Canada approved COVID-19 vaccinations had filed product monographs which are available to inform the public of the effects of the vaccination. There were six (6) COVID-19 vaccines available to the public in Canada. Listed below is the manufacturer with the name of vaccine in brackets.

a. Pfizer/BioNTech ("Comirnaty")

b. Moderna ("Spikevax")

c. Janssen and Johnson & Johnson ("Jcovden")

d. AstraZeneca ("Vaxsevria")

e. Medicago ("Covifenz")

f. Novavax ("Nuvaxovid")

("the Vaccines")

30. The Plaintiffs and Class Members plead that the Vaccines did not prevent viral transmission of Covid-19 to other people.

31. The Plaintiffs and Class Members plead that clinical reports, product monographs, studies, and observational data existed at the time of the Orders which demonstrated that the Vaccines did not prevent viral transmission of Covid-19 to other people.

32. The Plaintiffs and Class Members plead that the Provincial Health Officer acted in bad faith when issuing the Orders as she knew of could have reasonably discovered that the Vaccines were not effective at preventing vial transmission of Covid-19 to other people.

Covid-19 Vaccination – Safety and Risk of Adverse Events

33. The Plaintiffs and Class Members plead that the Vaccines posed significant risks for potential adverse side effects on their personal health.

34. The Plaintiffs and Class Members plead that safety studies, clinical data, manufacturer

studies, and identified quality control issues existed at the time of the Orders which demonstrated significant risks of the Vaccines on their personal health.

35. The Plaintiffs plead that the Provincial Health Officer acted in bad faith when issuing the Orders as she knew of could have reasonably discovered that the Vaccines were not safe and posed significant risks for potential side effects.

Part 2: RELIEF SOUGHT

36. Damages pursuant to the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, s. 24(1). ("the *Charter*")

37. A declaration that s.92 of the PHA be read so that its effects do not limit rights established under the *Charter*, with respect to *Charter* damages.

38. General damages for Inducement of Breach of Contract

39. General damages for Misfeasance in Public Office

40. Aggravated damages;

41. Punitive damages;

42. Special costs, or in the alternative costs; and

43. And order certifying this action as a class proceeding;

44. In the alternative, if this Honourable Court refuses to certify this proceeding as a class proceeding, an order that it be allowed to continue as a proceeding under the *Supreme Court Civil Rules*;

45. Interest under the *Court Order Interest Act*, R.S.B.C 1996, c. 79;

46. Such further and other relief as the Honourable Court may deem just.

Part 3: LEGAL BASIS

Misfeasance in Public Office

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

a) The Provincial Health Officer had no basis in fact to justify the Order as a measure to prevent transmission of COVID-19. As such the Plaintiffs' and Class Members plead that in perpetuating the stated objective of the Orders as preventing transmission of Covid-19, The Provincial Health Officer acted in bad faith by either recklessly or willfully ignoring the reality of the vaccine in exercising her authority under the Public Health Act, SBC 2008, C 28, with foreseeable losses to the Plaintiffs' and Class Members.

b) Known and unknown potential risk of adverse events associated with the Covid-19 vaccination were either recklessly or willfully ignored and omitted by enactment and enforcement of the Orders under the *Public Health Act,* SBC 2008, C 28, c. A-2with foreseeable losses to the Plaintiffs' and Class Members.

c) There was no long-term safety data available to the Provincial Health Officer when enacting and enforcing the Orders on mandatory vaccinations and as such the Order created a foreseeable and unreasonable risk of harm to the Plaintiffs and Class Members.

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

48. The Plaintiffs' and Class Members plead that as a result of the Provincial Health Officer's actions in enacting and enforcing the Orders on mandatory vaccinations, they

suffered significant economic deprivation and emotional trauma and that such harm was foreseeable by the Provincial Health Officer.

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

Tortious Inducement to Breach Contractual Relations

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

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

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

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

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

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

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

a) Disclosure of private medical information;

b) Being placed on a leave without pay; and

c) Termination of their employment.

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

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

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

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

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

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

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

Breach of the *Charter of Rights and Freedoms*

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

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

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

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

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

Privacy Rights

66. The Plaintiffs and Class Members plead that in requiring them to disclose private medical information to the Employers the Order intentionally or recklessly or willfully, and

without claim of right, intruded upon the Plaintiffs' and Class Members' private affairs; a reasonable person would regard this intrusion as highly offensive and causative of distress, humiliation, or anguish.

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

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

67. The Plaintiffs and Class Members plead that the Orders intrusion in disclosure of private medical information violates common law and statutory privacy rights.

Aggravated and Punitive Damages

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

a) that constitutes conduct that is flagrant and outrageous;

b) that was calculated to produce harm and produce the consequences that flowed from the Orders; and

c) that resulted in injury to the Plaintiffs and Class members.

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

Plaintiff's address for service:	c/o Umar A. Sheikh Sheikh Law PO Box 24062 Broadmead RPO Victoria BC V8X 0B2
Fax number address for service (if any):	
E-mail address for service (if any):	usheikh@sheikhlaw.ca
Place of trial:	Victoria, BC
The address of the registry is:	850 Burdett Avenue Victoria, BC V8W 1B4

Date: April 1, 2024

Umar A. Sheikh

Signature of Plaintiff
Lawyer for Plaintiffs

Umar A. Sheikh

Date: April 1, 2024

Angela M. Wood

Signature of Plaintiff
Lawyer for Plaintiffs

Angela M. Wood

Rule 71 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the Court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a List of Documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

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

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

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

A dispute concerning:

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

Part 3: THIS CLAIM INVOLVES:

- X a class action
- maritime law
- aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4: ENACTMENTS:

Builders Lien Act

Divorce Act

Family Relations Act

Insurance (Motor Vehicle) Act

Insurance (Vehicle) Act

Motor Vehicle Act

Occupiers Liability Act

Supreme Court Act

Wills Variation Act

OR

[description]