



No. PRG-S-S-2260982  
Prince George Registry

**In the Supreme Court of British Columbia**

BETWEEN:

Kewal Bagri, Steve Sager, Heather Sager, Nanine Bjornson, Teresa Whittet,  
Paula Redden, Candice Halliday, Robert Ross, Krystal Rawles, Deanna Dunphy

Plaintiffs

AND:

Corporation of the City of Quesnel, ~~Byron Johnson, City Manager~~ and  
Her Majesty the Queen in Right of the Province of British Columbia

Defendants

**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

- (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 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

#### Definitions

1. The following definitions apply for the purposes of this Statement of Claim:
  - a. BC: refers to Her Majesty the Queen in Right of the Province of British Columbia.
  - b. ~~a~~ **Covid-19**: means both the virus responsible for COVID-19 (i.e.: “severe acute respiratory syndrome coronavirus 2” or SARS-CoV-2 and all relevant variants) and the disease caused by SARS-CoV-2 (i.e.: “coronavirus disease” or COVID-19).
  - c. ~~b~~ **EI Benefits**: means those benefits established under the *Employment Insurance Act*, SC 1996, c. 23.
  - d. ~~e~~ **Employee**: means all employees of the City of Quesnel regardless of worksite location, including permanent, temporary, casual, student, seasonal, fixed-term, and part-time employees, as well as employees working remotely or teleworking.
  - e. ~~d~~ **Experimental Vaccines**: means vaccines authorized for use on an emergency basis by Health Canada, all of which are undergoing clinical trials until 2023 or later, including **Pfizer-BioNTech** Comirnaty mRNA vaccine (BNT162b2), **Moderna** Spikevax mRNA vaccine (mRNA-1273), **AstraZeneca** Vaxzevria adenovirus-vector vaccine (AZD1222), **Johnson & Johnson** Janssen adenovirus-vector vaccine (Ad26.COV2.5), **Novavax** Nuvaxovid protein subunit vaccine (NVX-CoV2373), **Medicago** Covifenz virus-like particle vaccine (CoVLP-AS03), and **Verity/Serum Institute of India** Covishield adenovirus-vector vaccine, the approval for which expired on 16 September 2021.

- f. e. Fully Vaccinated:** means an individual has received two doses of a Health Canada approved two-dose vaccine series (e.g.: Pfizer-BioNTech, Moderna, AstraZeneca, Novavax, Medicago, or Verity/SII), two doses of any combination of a Health Canada approved two-dose vaccine, or one dose of a Health Canada approved one-dose vaccine (e.g.: Johnson & Johnson) against Covid-19. As in other jurisdictions, the definition of “Fully Vaccinated” may evolve to include booster doses as and when recommended by the relevant public health authorities.
- g. f. Informed Consent:** means the ability to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion, with sufficient knowledge and comprehension of the elements of the subject matter involved as to enable the individual to make an understanding and enlightened decision (~~The Nuremberg Code, 1947~~).
- h. g. Mandate:** means the “Covid-19 Mandatory Vaccination Policy” issued on or about 22 November 2021 by the Defendant, Byron Johnson, the Corporation of the City Manager of Quesnel.
- i. h. Privacy:** means the fundamental right of individuals to create boundaries limiting access to their person, communications, or personal information including, but not limited to, medical and health records.
- j. i. Proof of Vaccination:** means a BC Vaccine Card, which is a record of personal information (i.e.: legal name, date of birth, Personal Health Number, date of vaccination, vaccine type, lot number of vaccine, and clinic where the vaccine was received) in Quick Response (QR) or PDF format, a Federal Vaccine Card, or a document issued by any provincial government for the purpose of showing proof of vaccination for public health or travel purposes.
- k. j. Voluntariness:** means conditions free of coercion and undue influence. **Coercion** occurs when an overt threat of harm is intentionally presented by one person to another in order to obtain compliance. **Undue influence** occurs through an offer of an excessive, unwarranted, inappropriate or improper reward or other overture in order to obtain compliance (*The Belmont Report, 1979*).

## The Defendants

2. The Defendant **Corporation of the City of Quesnel** is a municipality incorporated under the *Local Government Act*, RSBC 2015, c. 1 located in northern British Columbia that was, at all material times, the Plaintiffs’ employer (the “City”).
3. ~~The Defendant Byron Johnson, is the City Manager for the Defendant City. Mr. Johnson was the driving force behind the imposition of a mandate that required current and prospective City employees, volunteers, and contractors to be Fully Vaccinated against Covid-19, and a key proponent of the idea that medical risk-taking is a purely-administrative matter over which City Council has no jurisdiction.~~

3. ~~4.~~ The Defendant, Her Majesty the Queen in Right of the Province of British Columbia, is named in these proceedings pursuant to section 7 of the *Crown Proceedings Act*, RSBC 1996, c. 89 (the “**Province**”). The Province is named in right of the ~~Minister of Municipal Affairs (the “Minister”).~~ Ministers of
- 1. Municipal Affairs;
  - 2. Health;
  - 3. Jobs, Economic Recovery and Innovation; and
  - 4. Labour.
4. ~~5.~~ The Defendant Province is statutorily and constitutionally liable for the acts and omissions of its agents and officials, particularly with respect to *Charter* damages as set out by the Supreme Court of Canada in, *inter alia*, *Vancouver (City) v. Ward*, 2010 SCC 27, [2010] 2 SCR 28.
5. Moreover, the Province pressured British Columbia businesses to implement the Mandate on their employees, as an overall objective of protecting the British Columbia public, and not just individual workplaces and employees. The City of Quesnel, along with countless other businesses, took this erroneous direction from the Province, and implemented the illegal, unconstitutional and damaging Mandate on its employees.

## The Plaintiffs

6. The Plaintiff **Kewal Bagri** lives in Quesnel, BC, his job title was Equipment Operator I/Sub-Foreman, and he had worked for the City since 1987, a period of 34 years. At all material times Mr. Bagri performed his duties ethically, diligently and effectively, and was a competent, hard-working and valuable employee. Mr. Bagri was placed on an involuntary unpaid leave of absence effective 10 January 2022.
7. The Plaintiff **Steve Sager** lives in Quesnel, BC, his job title was Maintenance Foreman, and he had worked for the City since 1992, a period of 30 years. At all material times Mr. Sager performed his duties ethically, diligently and effectively, and was a competent, hard-working and valuable employee. Mr. Sager was placed on an involuntary unpaid leave of absence effective 10 January 2022.
8. The Plaintiff **Heather Sager** lives in Quesnel, BC, her job title was Facilities Attendant III/Maintenance, and she had worked for the City since 2006, a period of 15.5 years. At all material times Ms. Sager performed her duties ethically, diligently and effectively, and was a competent, hard-working and valuable employee. Ms. Sager was placed on an involuntary unpaid leave of absence effective 10 January 2022.

9. The Plaintiff **Nanine Bjornson** lives in Quesnel, BC, her job title was Gardener/Labourer, and she had worked for the City since 2012, a period of 10 years. At all material times Ms. Bjornson performed her duties ethically, diligently and effectively, and was a competent, hard-working and valuable employee. Ms. Bjornson was placed on an involuntary unpaid leave of absence effective 10 January 2022.
10. The Plaintiff **Teresa Whittet** lives in Quesnel, BC, her job title was Occupational First Aid Attendant/Labourer, and she had worked for the City since 2013, a period of 8 years. At all material times Ms. Whittet performed her duties ethically, diligently and effectively, and was a competent, hard-working and valuable employee. Ms. Whittet was placed on an involuntary unpaid leave of absence effective 10 January 2022.
11. The Plaintiff **Paula Redden** lives in Quesnel, BC, her job title was Facilities Maintenance II/Labourer, and she had worked for the City since 2013, a period of 8 years. At all material times Ms. Redden performed her duties ethically, diligently and effectively, and was a competent, hard-working and valuable employee. On 7 December 2021, Ms. Redden submitted a request for an exemption from her employer's unjust Mandate on the basis of religion, but her request was denied. Ms. Redden was placed on an involuntary unpaid leave of absence effective 10 January 2022.
12. The Plaintiff **Candice Halliday** lives in Quesnel, BC, her job title was Facilities Maintenance II/Laborer, and she had worked for the City since 2018, a period of 4 years. At all material times Ms. Halliday performed her duties ethically, diligently and effectively, and was a competent, hard-working and valuable employee. Ms. Halliday was placed on an involuntary unpaid leave of absence effective 10 January 2022.
13. The Plaintiff **Robert Ross** lives in Quesnel, BC, his job title was Facilities Maintenance III, and he had worked for the City since 2018, a period of 3.5 years. At all material times Mr. Ross performed his duties ethically, diligently and effectively, and was a competent, hard-working and valuable employee. Mr. Ross was placed on an involuntary unpaid leave of absence effective 10 January 2022.
14. The Plaintiff **Krystal Rawles** lives in Quesnel, BC, her job title was Seasonal Labourer, and she had worked for the City since 2019, a period of 3 years. At all material times Ms. Rawles performed her duties ethically, diligently and effectively, and was a competent, hard-working and valuable employee. Ms. Rawles was placed on an involuntary unpaid leave of absence effective 10 January 2022.
15. The Plaintiff **Deanna Dunphy** lives in Quesnel, BC, her job title was Landfill Attendant, and she had worked for the City since 2021, a period of 4 months. At all material times Ms. Dunphy performed her duties ethically, diligently and effectively, and was a competent, hard-working and valuable employee. Ms. Dunphy was placed on an involuntary unpaid leave of absence effective 10 January 2022.
16. Certain Plaintiffs work remotely, while the remainder do so in person.

17. Certain Plaintiffs perform their work outside or in close proximity to few or no colleagues.
18. All of the Plaintiffs are members of the Canadian Union of Public Employees, Local 1050 and 1050-01 (“CUPE”).
19. The Mandate is not expressly or implicitly, directly or indirectly part of ~~any Collective Agreement~~ the collective agreement between the Plaintiffs’ employers and the Plaintiffs’ unions–(the “Collective Agreement”).
20. The subject matter of this Statement of Claim is not directly or indirectly, expressly or tacitly, addressed or provided for in ~~any the~~ Collective Agreement between the unionized Plaintiffs and their unions and the Defendants.
21. The dispute raised in this Statement of Claim is not a dispute within the meaning of the Plaintiffs’ Collective Agreements.
22. No grievance, arbitration, or adjudication procedure provided for in the Plaintiffs’ Collective Agreement or any applicable law applies to the present issue. Consequently, no arbitrator, adjudicator, or board has exclusive jurisdiction over the issues raised in this Statement of Claim.
23. The Plaintiffs oppose the requirement to submit to an unwanted medical procedure that:
  - a. undermines their personal autonomy and bodily integrity;
  - b. has a purpose that is to protect British Columbians and the greater community despite evidence that the Experimental Vaccines are dangerous and ineffective;
  - c. ~~b.~~ involves the injection of Experimental Vaccines that are ineffective at preventing infection and transmission and carry severe risks, up to and including the risk of death; and
  - d. ~~e.~~ overrides their right to exercise informed consent in matters of medical risk-taking.
24. The Plaintiffs oppose the requirement to attest to their Covid-19 vaccination status and to divulge private health information ~~as a condition of their ongoing employment~~ in order to protect British Columbia and the greater community. The Mandate’s objectives were to protect the British Columbian community overall, and not just the employees at the City of Quesnel.

## The Vaccine Mandate

25.    On November 1, 2021, the Province announced that it finalized its proof of vaccination policy for public sector employees (the “Announcement”). This policy went into effect on November 22, 2021, and afterwards those that refused to disclose their vaccination status were considered unvaccinated (the “BC Public Mandate”).
26.    The Province’s stated purpose of the BC Public Mandate was to boost British Columbia’s vaccination rates, not just the rates of vaccination of its public sector employees.
27.    The City is an agent of the Crown by virtue of its status as an incorporated municipal entity under the *Local Government Act* (BC). The Minister of Municipal Affairs is accountable to the public for the activities and actions of municipalities in British Columbia.
28.    The City carries out its duties and functions in relation to public health under the overall authority of the Lieutenant Governor in Council of British Columbia.
29.    ~~25.~~ On 12 October 2021, ~~Mr.~~ Byron Johnson (“Mr. Johnson”), City Manager for the City, sent a memo to the City’s employees titled “Covid-19 Pandemic Preparedness” warning that the City may in future impose a vaccine mandate: “To be clear, we are not currently requiring full vaccinations to work at the City, however it is possible that we may be compelled to do so in the future, especially given the low vaccination numbers in the North...”
30.    ~~26.~~ On 3 November 2021, Mr. Johnson sent an email to Bob Simpson, Mayor of Quesnel, urging the imposition of a vaccine mandate, ~~coldly-unjustly~~ suggesting that depriving loyal employees of their income right after Christmas would help drive up vaccination rates: “If the mandate looks feasible while still providing appropriate service levels, then I think we should set a date and move to a mandate.... That date being right after the holiday season may also help to convince some holdouts that it is important to be able to pay the bills. Our [communications] with the workforce will be deliberately hard line, with a hard date set for termination discussed, similar to [Prince George].” [emphasis added]
31.    ~~27.~~ On 5 November 2021, Mr. Johnson sent an email to Quesnel City Council informing council members that “...the City is imposing a vaccination mandate for employees, volunteers, and contractors working for the City.” He noted that employees would be required to provide proof of full vaccination by 3 January 2022, and that non-compliant employees would be terminated on 28 January 2022 with no recall rights. Mr. Johnson was of the view that Council need not bother debating his decision, despite the fact that mandating medical risk-taking with products that carry the risk of death clearly engaged the *Charter* rights of affected individuals and ought to have been widely debated; he also urged council members not to speak publicly about the Mandate, despite the fact the City’s loyal employees were also their constituents: “[W]e feel that this issue is an Administrative decision, so it will not be coming to council for ratification.... My



recommendation is that you do not speak to any employees or media about this issue, feel free to refer any questions back to me.” [emphasis added]

32. ~~28.~~ On 5 November 2021, a News Release issued by Linda McIntyre, Communications Clerk, stated the City had decided to align its actions with those of the provincial government by imposing a vaccine mandate on employees, volunteers, and contractors: “As an employer, the City feels it is important to act in alignment with the provincial mandate that all BC public sector employees must be vaccinated, and the Provincial Health Officer’s recommendation that all large employers put similar policies in place.”
33. The City was effectively directed by the Province to implement the Mandate, and acquiesced to the Province’s public health jurisdiction. The Mandate was thereby implemented to further the Province’s objectives to protect the healthcare system and overall community health of British Columbia. The Province’s officials and lawmakers repeatedly emphasized the need for its citizens to vaccinate, while not mandating vaccines for the Province as a whole. In effect, the Province relied on employers to implement vaccine mandates to increase rates of vaccination in the province as a whole, without having to resort to an overall provincial vaccination mandate.
34. ~~29.~~ On 22 November 2021, Mr. Johnson published a document titled “COVID-19 Mandatory Vaccination Policy” requiring all current and prospective City employees, volunteers, and contractors to be fully vaccinated against Covid-19. This date exactly coincides with the Province’s date of 22 November 2021, where public sector employees that had not disclosed their vaccination status would be considered unvaccinated.
35. In effect, the City of Quesnel implemented the Province’s proof of vaccination policy, which was to impact British Columbians, of all ages, demographics and geographical locations, regardless of where they were employed.
36. Mr. Johnson reiterated the purpose of the Mandate to not just protect co-workers, but also individual employees and their families. Additionally, the Mandate policy document stated its purpose as to protect the public, not just the workplace. The policy’s purpose was clearly aimed at society-at-large, and not just the workplace at the City.
37. Since the Mandate was aimed at protecting the greater community and not just the City’s workplace, the dispute over this Mandate lies well outside the ambit of the collective bargaining agreements. Collective bargaining agreements are not tailored to handle disputes that arise wholly outside of labour matters. An employer mandating Experimental Vaccines to protect British Columbian citizens, as directed by governmental authority and in collaboration with the Province, is not an exclusive employer-employee matter.
38. ~~29.~~ Insofar as it related to current employees, the ~~policy~~ Mandate had three key components:
- a. **Vaccination Mandate:** all employees were required to be Fully Vaccinated against Covid-19, regardless of worksite location;



- b. **Proof of Vaccination:** all employees were required to provide Proof of Vaccination by 3 January 2022; and
- c. **Consequences of Non-Compliance:** employees who failed to provide Proof of Vaccination by 3 January 2022 “disqualified themselves” from attending work; after four weeks leave without pay, those who refused to be vaccinated and who had not received an accommodation under the *Human Rights Code* would be terminated and likely would not qualify for EI Benefits.

(the “**Mandate**”)

- 39. ~~30.~~ On 20 December 2021, Mr. Johnson sent an email to Council urging council members to ignore concerned employees: “I am writing this note to encourage you all to be quiet on the topic of vaccine mandates, regardless of any personal belief that you may hold.... Do not muddy the waters here by putting your opinions out there in the public realm on this topic. This is very important!”
- 40. ~~31.~~ On 11 January 2022, Councillor Martin Runge sent an email to Mr. Johnson suggesting council should discuss the Mandate: “A discussion might shed some clarification on/from where this sudden proof of vaccination requirement originated from, the intended reasons and duration of the policy, which policy you are referring, and some other questions and discussions with regards to the quickly-shifting/changing variants.”
- 41. ~~32.~~ On 12 January 2022, Mayor Bob Simpson replied to the email from Councillor Runge indicating that elected council members had no business discussing the Mandate, even though they and their constituents were affected by it: “Council was not involved in this decision because it was a corporate decision related to the work place and the safe working conditions of City employees.... As a Council member you have a limited role to play in the governing of the City. That role does NOT include the direct management of the City’s workforce.”
- 42. ~~33.~~ On 31 January 2022, Mr. Johnson sent an email to Council reminding council members that the decision to impose the Mandate was an administrative one and, as such, it was basically none of their business: “As has been discussed, and agreed to through this whole process, this is an administrative policy. An administrative policy means that it falls within the purview of staff to administrate. Similar to many other administrative policies there are potentially some serious consequences to staff members who do not comply with the rules. This is a reason that the role of the City Manager includes the ability to terminate employees if necessary.”
- 43. ~~34.~~ On 16 March 2022, Mayor Simpson sent an email to Mr. Johnson and Kari Bolton, Deputy City Manager, telling them he’d  ~~chastised~~   treated unfairly  two council members  ~~who’d who had the audacity to suggest~~   suggested  the Mandate might be a matter for elected officials to discuss: “I was able to reiterate that it isn’t Council’s business and should not be and that you two have the issue well in hand.”

44. ~~35.~~ The foregoing chain of communications clearly indicates that the decision to impose a vaccine mandate for employees, volunteers, and contractors of the City was driven by Mr. Johnson and the City, who arrogantly wrongly considered this important matter of medical risk-taking that deprived affected individuals of their personal autonomy and violated their *Charter* rights to be a mere “administrative policy.”
45. ~~36.~~ The Collective Agreement between the City and CUPE (~~the “CUPE” Code~~) covers financial, legal and regulatory matters. There is no suggestion in the ~~CUPE Code~~ Collective Agreement that vaccination for Covid-19, nor any virus, is an occupational requirement.
46. ~~37.~~ Upon acceptance of their respective offers of employment, the Plaintiffs did not agree to ~~any condition of employment involving~~ compulsory vaccinations, particularly injection of a novel gene therapy that is still undergoing clinical trials and that bears a Health Canada warning of injuries and deaths. The Mandate is causing severe hardship and irreparable harm to the Plaintiffs.
47. ~~38.~~ The CUPE Code was supplemented on 22 November 2021 with the City’s implementation of the Mandate, which created a hostile and toxic work environment.
48. ~~39.~~ Before implementing the Mandate, the Defendant City refused to meet with the Plaintiffs’ union to develop an Adjustment Plan, as required by s. 54 of the *Labour Relations Code*, RSBC 1996, c. 244. The City clearly held the belief that the Mandate had higher, more comprehensive purposes, than merely protecting employees.
49. Though the City was of the view that it had no obligation to meet with the Plaintiffs’ union to develop an Adjustment Plan, a recent decision of the Labour Relations Board suggests otherwise. In *BCRTC v. CUPE Local 7000*, 2021 BCLRB 185 at para. 66, Arbitrator Barker ~~chastised~~ criticized the Defendant BCRTC for failing to engage in a process of cooperative consultation with the relevant union before implementing a mandatory vaccination policy, noting, “The Policy also creates organizational changes in the workforce by temporarily and likely permanently removing those employees who do not meet a new requisite qualification in the form of “fully vaccinated” status. In this sense, unpaid leaves and dismissals are not merely the result of non-compliance with the Policy but are the purpose of the Policy by way of creating a new condition for continued employment within the context of the COVID-19 pandemic and removing those employees who do not meet it.”
50. ~~40.~~ The time limit for complying with the Mandate was modified, extending the deadline for providing Proof of Vaccination from 3 January to 10 January 2021.
51. ~~41.~~ No viable alternatives to vaccination were offered and no reasonable accommodations were permitted, such as weekly testing or working remotely.
52. ~~42.~~ With the exception of Ms. Rawles, who received EI Benefits until May, all of the Plaintiffs were placed on leave without pay on 10 January 2021.

53.     ~~43.~~ On 7 February 2022, all of the Plaintiffs were terminated from their employment.

### **Punitive Deprivation of Social Security Benefits**

54.     ~~44.~~ On 15 October 2021, Employment and Social Development Canada (“**ESDC**”) announced new codes for the Record of Employment (“**ROE**”) relating to the termination of employees in relation to Covid-19 (the “**ESDC Announcement**”).

55.     ~~45.~~ The ESDC Announcement demands that employers who suspend or terminate an employee because of failure to comply with a mandatory Covid-19 vaccination policy are to indicate **code M** (dismissal) on that employee’s ROE, disqualifying them from eligibility.

56.     ~~46.~~ The ESDC website has been further updated to advise potential claimants that “[i]n most cases, if you lose or quit your job because you didn’t comply with your employer’s mandatory Covid-19 vaccination policy, you won’t be eligible for EI regular benefits.”

57.     ~~47.~~ The ESDC website states:

#### **COVID-19 vaccination**

When the employee doesn’t report to work because they refuse to comply with your mandatory COVID-19 vaccination policy, use **code E (quit)** or **code N (leave of absence)**.

When you suspend or terminate an employee for not complying with your mandatory COVID-19 vaccination policy, use **code M (dismissal or suspension)**.

If you use these codes, we may contact you to determine:

- if you had adopted and clearly communicated to all employees a mandatory COVID-19 vaccination policy
- if the employees were informed that failure to comply with the policy would result in loss of employment
- if the application of the policy to the employee was reasonable within the workplace context
- if there were any exemptions for refusing to comply with the policy

58.     ~~48.~~ The ESDC uses the facts provided by the employer and the suspended or terminated employee to determine if the employee will be entitled to EI Benefits which, by the ESDC’s own admission, they likely will not be.

59.     ~~49.~~ The Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion, mentioned during a CBC Radio interview on 21 October 2021 that Employees who do not comply with vaccine mandates will be ineligible for EI Benefits, stating that if getting vaccinated is “a condition of employment that hasn’t been

met and the employer [is] choosing to terminate someone for that reason, [then that] would make that person ineligible for EI.”

60. ~~50.~~ With the exception of Ms. Rawles, who received EI Benefits until May, all of the Plaintiffs lost their sole or primary source of income on 10 January 2022 and were rendered ineligible for EI Benefits.
61. ~~51.~~ The Plaintiffs say the Mandate and the ESDC Announcement are a form of state control and state sanction that pressured employers to suspend their employees without pay, punished the Plaintiffs for exercising their *Charter* rights, and deprived the Plaintiffs of their right to claim EI Benefits.

### **Covid-19**

62. ~~52.~~ The risk of severe illness and death from Covid-19 is entirely dependent upon one’s age, sex, and health status. By any rational assessment, SARS-CoV-2 poses minimal risk to most people, typically producing only mild symptoms, and the Omicron strain is clinically indistinguishable from the common cold. Vast segments of society are at extremely low risk, with healthy young and middle-aged people at a statistical zero risk of death.
63. ~~53.~~ According to the BC Centre for Disease Control, the median age of death from or with Covid-19 in BC is 82 years. SARS-CoV-2 virus poses no serious health risk to the vast majority of Canadians, and nearly all deaths directly attributable to the virus occur in persons over the age of 80 with multiple co-morbidities and compromised immune systems. These vulnerable people are not part of the Canadian workforce.
64. ~~54.~~ The Infection Fatality Rate for people under 60 is 0.0013 – 0.14%, meaning 99.9% of otherwise healthy working-age people with no relevant co-morbidities have a negligible risk of dying from Covid-19. The risk of serious illness or death for people under 60, which includes all of the Plaintiffs, remains vanishingly low.
65. ~~55.~~ There is a negligible risk of asymptomatic spread of the Covid-19 virus, even among persons living in the same household.

### **The Experimental Vaccines**

66. ~~56.~~ The Covid-19 vaccines are experimental. Clinical trials are ongoing, key toxicological studies were never performed (particularly genotoxicity, carcinogenicity, and developmental and reproductive toxicity studies), and there is no long-term safety data.
67. ~~57.~~ The Experimental Vaccines have not undergone the same stringent scientific approval process by Health Canada as have previous vaccines and medications. The novel mRNA vaccines were authorized for emergency use in humans after being monitored for safety concerns for a mere two months. Due to their infancy, these novel therapeutics could cause side effects that are unknown—and *unknowable*—at this time. No one can be

certain about the long-term effects of a vaccine that has not been in long-term existence and has not been studied over a span of years.

68. ~~58.~~ The Mandate states falsely or erroneously that vaccination:
- a. is the best defense currently available for preventing workplace transmission;
  - b. is a control method to minimize risks of Covid-19 and its variants; and
  - c. will provide indirect protection to others, including colleagues.
69. ~~59.~~ There is no scientific data to suggest the Experimental Vaccines have had any meaningful impact on reducing the spread of the SARS-CoV-2 virus. Israel, the most highly vaccinated nation in the world, is experiencing a huge spike in new cases.
70. ~~60.~~ There is no material difference between the infection and transmission risk posed by vaccinated and unvaccinated individuals. Fully vaccinated individuals can become infected and transmit Covid-19 to others.
71. ~~61.~~ The CEO of Pfizer has publicly acknowledged the Experimental Vaccines do not provide immunity to Covid-19 or its known variants, they merely provide some “benefits” or “protection” that may, at best, lessen the severity of symptoms or reduce the risk of hospitalization.
72. ~~62.~~ The “benefits” or “protection” offered by the vaccines vary depending on factors that are still being observed and studied, including underlying health conditions, the individual’s age, and when the vaccine was administered in relation to variants of concern.
73. ~~63.~~ The Experimental Vaccines carry severe risks, up to and including the risk of death. During the brief 3-month period covered by Pfizer’s “Post-authorization Adverse Event Report” for BNT162b2, there were 158,893 adverse events, 1,223 deaths, 9 pages of “Adverse Events of Special Interest,” and 9,400 cases having an unknown outcome. This report shows that adverse reactions and side-effects, including death, are not only more severe, but more frequent than anticipated based on initial data released to the public.
74. ~~64.~~ The latest data from VAERS, the CDC’s Vaccine Adverse Event Reporting System, lists 1,301,356 adverse event reports for all age groups, including 238,412 reports of serious injuries and 28,859 deaths between 14 December 2020 and 10 June 2022.
75. ~~65.~~ 14 December 2020 and 10 June 2022. Adverse events are known to be significantly under-reported, and the number of deaths in Canada is likely proportional to the VAERS numbers. Health Canada has warned about serious reactions from the Experimental Vaccines, including myocarditis, pericarditis, Bell’s Palsy, thrombosis, immune thrombocytopenia, venous thromboembolism, acute myocardial infarction, and cardiac sarcoidosis anaphylaxis, ~~and even syphilis.~~

76. ~~66.~~ The Government of Alberta published statistics indicating that a significant number of the deaths attributed to Covid-19 occur within 14 days of receiving a second dose of an Experimental Vaccine.
77. ~~67.~~ The novel mRNA shots cause terrible adverse effects that are often worse than coronavirus infection, especially for young, healthy recipients.
78. ~~68.~~ Those previously infected with Covid-19 are at increased risk of harm from subsequent mRNA vaccines, as those with natural immunity are more likely to endure a blood thrombohemostasis adverse effect from vaccination.
79. ~~69.~~ For men under the age of 40, the risk of myocarditis after one dose of mRNA exceeds the risk of myocarditis from Covid infection. A group of US researchers quantified this increased risk, finding the risk of myocarditis following mRNA vaccination was 133 times greater than the background risk in the population.
80. ~~70.~~ Many countries that aggressively pushed vaccination last year, and authorized the roll-out of boosters to target the mild Omicron strain this winter, are experiencing an alarming and unprecedented rate of excess deaths. Insurance executives have warned of a surge in all-cause mortality, with death rates up 40% among working-age people.
81. ~~71.~~ Pfizer missed its all-cause mortality endpoint, i.e.: there were more deaths in the vaccinated group than in the placebo group. A drug that fails this endpoint would not ordinarily be approved, as there is no benefit to a reduction in cases if it comes at a cost of increased illness and death.
82. ~~72.~~ Though Phase III of Pfizer's clinical trial will not complete until 2023, the majority of placebo participants have already "crossed over" to the inoculated group. Because Pfizer unblinded its trial prematurely, it can no longer be considered a "gold-standard" randomized controlled trial, and it will *never* be possible to assess safety and efficacy by comparing the outcomes of an inoculated group against a placebo group.
83. ~~73.~~ Vaccine-induced immunity can, at best, mimic the effect of natural immunity which provides robust and durable protection against Covid-19.
84. ~~74.~~ The only meaningful immunity conferred by the Experimental Vaccines is that enjoyed by the manufacturers, who've been granted immunity by the Canadian government from liability for injuries and deaths caused by their defective products.
85. ~~75.~~ Because the Experimental Vaccines do not meaningfully reduce the Plaintiffs' risk of catching Covid-19 and transmitting it to others, the Mandate treats the Plaintiffs' bodies as tools for reducing (but not eliminating) the perceived risk of others, which is ethically indefensible.

## **Charter Violation Damages and Aggravated, Punitive and “Bad Faith” Damages**

86. ~~76.~~ The Plaintiffs have suffered significant mental anguish as a result of the rapidly evolving situation. They are left to contemplate whether or not they will have the funds available to meet their basic needs, including the purchase of food, clothing and shelter for themselves and their families.
87. ~~77.~~ The Plaintiffs have suffered measurable damages, including mental distress, anxiety and, in particular, injury to dignity and self-respect. The Plaintiffs are therefore entitled to seek significant damages due to the manner in which the City suspended their employment, including a claim for punitive aggravated damages arising from flagrant human rights violations.
88. ~~78.~~ The Plaintiffs claim punitive damages for the prejudice suffered by them and their families as a result of the implementation of the discriminatory Mandate. The Plaintiffs reserve their right to amend the amounts claimed for moral and punitive damages to account for future economic losses, including but not limited to loss of income due to suspension or dismissal as a result of their refusal to comply with the Mandate.
89. ~~79.~~ In addition to damages for *Charter* violations, the Defendants are liable for further aggravated and punitive damages stemming from the unduly harsh and insensitive manner in which it carried out the suspensions.
90. ~~80.~~ As a result of the Defendants’ actions, the Plaintiffs have each suffered the following damages:
- a. severe and permanent psychological, physical and emotional trauma;
  - b. loss of employment opportunities;
  - c. worsening physical health because of inadequate medical support;
  - d. threats and assaults;
  - e. loss of sleep;
  - f. loss of trust in others;
  - g. loss of self-confidence;
  - h. loss of income;
  - i. loss of opportunity for future income;
  - j. post-traumatic stress disorder; and



- k. other such damages as will be proven at the trial of this action.
91.     ~~81.~~ The Defendants actively, knowingly, and wilfully participated in harming the Plaintiffs.
92.     ~~82.~~ The Defendants' conduct was high-handed and improper.
93.     ~~83.~~ The Plaintiffs seek all of their common law and/or statutory entitlements.

## **Part 2: RELIEF SOUGHT**

1. The Plaintiffs seek the following relief:
- a. A Declaration pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c.11 (the “**Charter**”) that the Mandate is government action that violates the Plaintiffs’ section 2(a), 7, 8, 12, and 15(1) *Charter* rights, as set out below, and that these violations are not demonstrably justified under section 1 of the *Charter*;
  - b. A Declaration that the Mandate issued by the City requiring the Plaintiffs to become Fully Vaccinated and to disclose private medical information verifying their Covid-19 vaccination status be declared inoperative and unconstitutional;
  - c. A Declaration that the Defendants discriminated against the Plaintiffs on the basis of religion, creed, disability, genetic characteristics, or other protected grounds by refusing to continue to employ the Plaintiffs due to their medical status as unvaccinated persons contrary to section 13(1) of the *Human Rights Code*, RSBC 1996, c. 210;
  - d. A Declaration pursuant to section 21(1) of the *Workers Compensation Act*, RSBC 2019, c. 1, that the City created an unsafe work environment by mandating experimental products linked to serious adverse events, including myocarditis, heart attacks, and death, potentially jeopardizing the lives of its employees;
  - e. A Declaration pursuant to sections 217, 217.1 & 219(1) of the *Criminal Code*, RSC 1985, c. C-46, that the City violated the *Workers Compensation Act* by failing to provide its employees with information about the adverse effects and harms associated with the Experimental Vaccines—information essential to the exercise of their right of informed consent—and this conduct amounts to criminal negligence causing harm;
  - f. A Declaration pursuant to sections 217, 217.1 & 219(1) of the *Criminal Code* that the Defendants violated the *Workers Compensation Act* by failing to capture within their safety minutes any discussion to educate, review or document the potential hazards or dangers associated with the Experimental Vaccines with the Plaintiffs’ union;

- g. A Declaration pursuant to sections 217, 217.1 & 219(1) of the *Criminal Code* that the Defendants violated the *Workers Compensation Act* and the *Occupational Health and Safety Regulation* by mandating various Covid-19 vaccines as personal protective equipment in the workplace; not only did the Defendants fail to provide employees with the information necessary to properly use said personal protective equipment, the Defendants also failed to ensure the personal protective equipment was safe under all conditions of its intended use;
- h. A Declaration pursuant to sections 217, 217.1 & 219(1) of the *Criminal Code* that the Defendants violated the *Workers Compensation Act* and the *Occupational Health and Safety Regulation* by refusing to properly investigate numerous employee health and safety concerns regarding the vaccine products mandated for use by the Defendants, instead deeming reluctant employees “non-compliant” and placing them on leave without pay status;
- i. A Declaration pursuant to sections 217, 217.1 & 219(1) of the *Criminal Code* that the Defendants violated the *Workers Compensation Act* and the *Occupational Health and Safety Regulation* by failing to review, document and disclose to employees the proprietary ingredients recognized as dangerous goods within the vaccines they were assigning to employees as personal protective equipment;
- j. A Declaration pursuant to sections 2(g) and 5(1)(f) of the *Assisted Human Reproduction Act*, SC 2004, c. 2 that the City may have permanently and irreparably damaged its employees’ genetic makeup by recommending the use of mRNA vaccine technologies from Pfizer and Moderna;
- k. A Declaration pursuant to section 265(1) of the *Criminal Code* that the Mandate violated the *Workers Compensation Act* and the *Occupational Health and Safety Regulation* by subjecting employees to confusing and ineffective workplace processes and expectations in relation to the Defendants’ Covid-19 protocols, and also by subjecting unvaccinated employees to regular psychological violence in the form of coercion and ridicule from colleagues, supervisors, and managers;
- l. Progressive damages for violation of the Plaintiffs’ rights pursuant to the *Workers Compensation Act*, the *Occupational Health and Safety Regulation*, and section 217.1 of the *Criminal Code* in the amount of \$500,000.00 per Plaintiff;
- m. Damages pursuant to section 24(1) of the *Charter* in the amount of \$500,000.00 per Plaintiff to compensate the Plaintiffs for violation of their section 2(a), 7, 8, 12, and 15(1) *Charter* rights and to deter further infringements of the *Charter*;
- n. Punitive and exemplary damages in the amount of \$500,000.00 per Plaintiff;
- o. Aggravated damages for mental distress in the amount of \$500,000.00 per Plaintiff or in such other amount as is determined by this Honourable Court;

- p. Punitive damages arising from flagrant human rights violations in an amount to be determined by this Honourable Court;
- q. Prejudgment and post judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79;
- r. Costs, including special costs, elevated costs, and costs on a full indemnity basis plus any applicable taxes; and
- s. Such further and other relief as to this Honourable Court may deem just.

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

1. The Plaintiffs plead and rely upon the following:
  - a. The inherent jurisdiction of the court to grant declaratory relief;
  - b. *Human Rights Code*, RSBC 1996, c. 210;
  - c. *Workers Compensation Act*, RSBC 2019, c. 1;
  - d. *Occupational Health and Safety Regulation*, BC Reg 296/97;
  - e. *Labour Relations Code*, RSBC 1996, c. 244;
  - f. *Criminal Code*, RSC 1985, c. C-46;
  - g. *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c.181;
  - h. *Employment Insurance Act*, SC 1996, c 23;
  - i. the *Charter* and, in particular, sections 2(a), 7, 8, 12, 15(1), 24(1), 26, and 32;
  - j. *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976, accession by Canada 19 May 1976) (the “**ICCPR**”);
  - k. The City’s COVID-19 Mandatory Vaccination Policy; and
  - l. Such other enactments and legislation as the Plaintiffs may advise and this Honourable Court may consider given the circumstances.

## Violation of Duty to Ensure the Health and Safety of Workers

1. The Plaintiffs claim the City has violated its statutory duty in section 21(1) of the *Workers Compensation Act* to ensure the health and safety of its workers. By mandating experimental products linked to serious adverse events such as myocarditis, heart attacks, and death, the City has jeopardized the lives of its employees for a non-employment purpose, being the protection of the community.
2. The Defendants, who are not medical professionals, have failed to recognize the importance of screening to identify and exempt from their draconian Mandate those with immunity to Covid-19. There is no ethically defensible reason to require those with cross-reactive cellular immunity to SARS-CoV-2 from previous exposure to other coronaviruses, or those with persistent antibodies from previous Covid-19 infection, to subject themselves to the risks inherent in vaccination, particularly since Covid-19 vaccination puts those with natural immunity at increased risk of thrombosis (clotting).
3. The draconian steps taken by the Defendants to enforce the Mandate, as well as the Mandate itself, are incompatible with the City's stated goal of protecting the health and safety of its employees, volunteers and contractors.

## Unlawful Discrimination

4. The Plaintiffs plead discrimination and a breach of the *Human Rights Code* on the basis of religion, creed, disability, genetic characteristics, or other protected grounds of discrimination.
- ~~5. The City claims to have zero tolerance for discrimination, harassment and violence, and it is obliged to treat all employees with integrity, trust and respect. Specifically, Article 4.01 of the CUPE Code states the Employer shall not discriminate in matters of hiring, assigning wage rate, training, upgrading, promotion, transfer, layoff, recall, discipline, classification, discharge, or any other action, by reason of age, race, creed, colour, ancestry, national origin, religion, political affiliation or activity, sexual orientation, sex, marital or parental status, family relationship, place of residence, handicap, nor by reason of his membership or activity in the Union, or any other reason.~~
5. ~~6.~~ The Mandate discriminates against an identifiable group—those who have not received a Covid-19 vaccine—and does not provide reasonable exemptions for: (a) those with acquired immunity to Covid-19, (b) those who raise conscientious objections to treatment with experimental medical products, (c) those who work remotely, and (d) those who have little-to-no contact with colleagues.
6. ~~7.~~ The Mandate required all employees to attest to their medical status regarding the Covid-19 vaccine; those who refused were put on leave without pay and were threatened with termination. This discriminates against an identifiable group on the basis of medical status. Notably, discrimination by grounds of medical status is a novel ground of discrimination, not contemplated by any collective bargaining agreements, and untested by labour arbitrators or boards. Making a finding of a novel identifiable group on the

basis of medical status is not the place of a labour arbitrator, that cannot set binding precedent on any jurisdiction.

7.     ~~8.~~ The Plaintiffs say the City had a legal duty to respect the autonomy and dignity of its employees and the confidentiality of their medical information; the City is obliged not to use medical knowledge to violate the human rights and civil liberties of its employees. These duties have not been met in the application of the Mandate.
8.     ~~9.~~ Accommodations taking the form of an exemption may be limited by undue hardship or denied because the activity is a *bona fide* occupational requirement. Where taking part in an activity can be shown to be a *bona fide* requirement, organizations are required to accommodate to the point of undue hardship as, for instance, by assigning an employee an alternative assignment or method of compliance. The Mandate was a blanket policy that granted no alternatives.
9.     ~~10.~~ Exemptions are a type of accommodation. Where a person would be adversely affected based on their religion, the duty to accommodate can require organizations to exempt individuals from taking part in activities that would contravene their religious beliefs or practices. But the Mandate permitted only medical exemptions, i.e.: diagnosis with “...a medical disability which prevents [a person] from being vaccinated, as recognized by human rights legislation.” This purported exemption was illusory at best, as repeated attempts by the Plaintiffs to obtain information about the exemption process were stonewalled, indicating the Defendants failed to take requests for exemptions or accommodations seriously.
10.    ~~11.~~ At the outset of the pandemic when the country desperately needed its “essential” workers, the Plaintiffs were among those lauded as heroes for ensuring locked-down Canadians had continued access to key goods and services. The Plaintiffs were able to perform these essential tasks because of protocols devised to ensure the safety of the workforce. These protocols were sufficiently effective at controlling the spread of Covid-19 before the Mandate was implemented, and they continue to be reasonable and practical alternatives to mandatory vaccination. They are also far less prejudicial than suspending without pay loyal employees who have chosen to exercise their right to informed consent in matters of medical risk-taking, and who object to the requirement to attest to their Covid-19 vaccination status, which violates their right to privacy.
11.    ~~12.~~ The Plaintiffs object to any accommodation that would require them to be singled out for discriminatory treatment in the form of regular and repeated Covid-19 testing, presuming them “sick until proven healthy”. If the Defendants’ intention is to limit the spread of Covid-19, and not merely to punish unvaccinated employees for their refusal to comply with an unjust directive, there is no rational reason for subjecting only the unvaccinated to an intrusive and discriminatory regime of regular testing when the vaccinated are just as likely to spread Covid-19. Furthermore, insofar as testing kits may expose the Plaintiffs to harmful chemicals such as ethylene oxide and sodium azide, repeated testing poses a clear health hazard.

## Violation of the Right to Informed Consent

12.     ~~13.~~ The Plaintiffs claim the Defendants, which are not medical professionals, have violated the Plaintiffs' right to exercise informed consent and their right to refuse an unwanted medical procedure.
13.     ~~14.~~ The consent process has three elements: **voluntariness** (i.e.: the ability to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion), **comprehension**, and **information** which includes, at a minimum, information about the risks and anticipated benefits of any proposed treatment.
14.     ~~15.~~ The Mandate forced the Plaintiffs to make an unconscionable choice: sacrifice their bodily autonomy and be inappropriately rewarded, or decline the Experimental Vaccines and face harmful social, economic, and psychological consequences. Either way, the consent process was vitiated by **involuntariness**:
- a. **Coercion** occurs when an overt threat of harm is intentionally presented by one person to another in order to obtain compliance. By threatening to terminate the employment of those who refused to submit to an unwanted and irreversible experimental medical treatment that carries the risk of death—an overt threat of social, economic, or psychological harm—the Defendants' conduct was coercive.
  - b. **Undue influence** occurs through an offer of an excessive, unwarranted, inappropriate or improper reward or other overture in order to obtain compliance. By conditionally severing the Plaintiffs' employment and offering it as a reward for compliance—ongoing employment is clearly an “inappropriate or improper reward” for compliance—the Defendants exerted undue influence.
15.     ~~16.~~ Pursuant to s. 4 of the *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c. 181, the Plaintiffs have the right to give, refuse or revoke consent to health care on any grounds, even if the refusal will result in death, and the right to have their decisions respected. Section 5(1) prohibits health care providers from administering non-consensual care, and section 6 stipulates that consent must be voluntary and cannot be obtained by fraud or misrepresentation.
16.     ~~17.~~ The corollary of informed consent is the right to refuse an unwanted medical procedure, including treatment deemed beneficial: *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 SCR 519 at 588, 107 DLR (4th) 342.
17.     ~~18.~~ The Defendants have disregarded the Plaintiffs' right to weigh their personal risk of contracting Covid-19 against the known (and as-yet unknown) risks of the Experimental Vaccines, they have disregarded the Plaintiffs' right to refuse to consent to medical treatment, and they have disregarded the Plaintiffs' right to refuse to participate in a medical or scientific experiment.

18.     ~~19.~~ The Plaintiffs say vaccination absent informed consent, the denial of the Plaintiffs' right to refuse an unwanted medical procedure, and forced disclosure of their private health information under threat of administrative and/or disciplinary measures, ranging from unpaid leave to termination of employment, constitute serious human rights violations.
19.     ~~20.~~ Any medical procedure carried out on a person without that person's consent is an assault: *R. v. Morgentaler*, [1988] 1 SCR 30 at 53, 44 DLR (4th) 385.
20.     ~~21.~~ Where there is risk, there must be choice.

### **Criminal Assault**

21.     ~~22.~~ Forcing a medical intervention on employees under threat of loss of livelihood is a clear violation of the *Criminal Code* which states in part:
- 265(1) A person commits an assault when
- (a)     without the consent of another person, he applies force intentionally to that other person, directly or indirectly;
- ....
- 265(3) For the purposes of this section, **no consent** is obtained where the complainant submits or does not resist by reason of
- ... (d)     the exercise of authority. [emphasis added]
22.     ~~23.~~ Forcing employees to be vaccinated under threat of loss of livelihood is a violation of the Criminal Code. Every Defendant who supports the Mandate supports the criminal assault of colleagues, coworkers, and constituents.
23.     Furthermore, any alleged criminal misconduct must be investigated thoroughly. It is unlikely that such action has been taken by police services, or internal investigations by the City or Province. However, such actions should have been done immediately upon the possible criminal misconduct applied by the City in imposing the Mandate on the Plaintiffs.

### **Duty of Persons Directing Work**

24.     The *Criminal Code* imposes a duty on all organizations and individuals directing the work of others to take reasonable steps to ensure the safety of their workers:
- 217.1 Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.



25. The experimental nature of Canada's Covid-19 injection program was evident from the outset. The AstraZeneca shot was withdrawn from circulation in Canada because it caused thrombosis in 1 out of 58,000 citizens over the age of 80. That shot was then mixed and matched with Pfizer and Moderna injections, without adequate research having been done as to possible adverse effects.
26. By forcing loyal employees to take experimental injections ~~as a condition of ongoing employment to purportedly protect the greater community-at-large~~, the Defendants have breached their legal duty to take reasonable steps to prevent bodily harm to their employees, contrary to section 217.1 of the *Criminal Code*.

## Charter Violations

### Section 2(a)

27. The Plaintiffs say the Mandate violates their section 2(a) *Charter*-protected freedoms of conscience and religion. Requiring the Plaintiffs to inject ~~Experimental Products~~ Experimental Vaccines that carry the risk of death and to disclose private medical information verifying their Covid-19 vaccination status offends the Plaintiffs' conscientiously-held beliefs and their sincerely-held religious beliefs in a manner that is more than trivial or substantial.
28. The Plaintiffs believe in "the centrality of individual conscience and the inappropriateness of governmental intervention to compel or to constrain its manifestation", and they believe the "absolute prerequisite" for the legitimacy of our democratic tradition is the individual's ability to make "free and informed decisions": *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295 at paras 121-22, 18 DLR (4th) 321.
29. The Plaintiffs believe "[f]reedom can primarily be characterized by the absence of coercion or constraint," and "...no one is to be forced to act in a way contrary to his beliefs or his conscience": *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295 at para 95, 18 DLR (4th) 321. A person forced to act against their conscience is not truly free.

### Section 7

30. The Plaintiffs say the Mandate engages and infringes their section 7 right to life. Because the Defendants are "government" within the meaning of section 32 of the *Charter*, the requirement to be Fully Vaccinated with products that carry the risk of death constitutes state action. If the direct result of state action is an increased risk of death, this can not, in any rational sense, be in accordance with the principles of fundamental justice.
31. The Plaintiffs say the Mandate engages and infringes their section 7 right to liberty. Insofar as section 7 is protective of both physical and psychological integrity, the liberty interest will be engaged by state interference with "inherently private choices" that go to the "core of what it means to enjoy individual dignity and independence": *Godbout v. Longueuil (City)*, [1997] 3 SCR 844 at para 66, 152 DLR (4th) 577.

32. Requiring the Plaintiffs to inject experimental products that carry the risk of death and to disclose private medical information verifying their Covid-19 vaccination status interferes with the Plaintiffs' protected sphere of personal autonomy over inherently private choices, including the right to refuse unwanted or unnecessary experimental medical treatments. This state interference with the Plaintiffs' bodily autonomy is not in accordance with the principles of fundamental justice.
33. The Plaintiffs say the Mandate engages and infringes their section 7 right to security of the person which encompasses "...a notion of personal autonomy involving, at the very least, control over one's bodily integrity free from state interference": *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at para 100, [2009] 2 SCR 181. A key aspect of bodily integrity is the right to be free from non-consensual medical treatment: "Everyone has the right to decide what is to be done to one's own body. This includes the right to be free from medical treatment to which the individual does not consent": *Ciarlariello v. Schacter*, [1993] 2 SCR 119 at 135, 100 DLR (4th) 609.
34. Requiring the Plaintiffs to inject ~~experimental products~~ Experimental Vaccines that carry the risk of death and to disclose private medical information verifying their Covid-19 vaccination status interferes with the Plaintiffs' ability to control their own physical and psychological integrity. This state action has deprived the Plaintiffs of their livelihoods, which is fundamental to their survival, it has seriously impaired the Plaintiffs' physical health, and it has caused them severe psychological harm. This egregiously harmful state action is not in accordance with the principles of fundamental justice.
35. The Plaintiffs say section 7 also protects "fundamental life choices" from state interference, including "state compulsions or prohibitions": *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 49, [2000] 2 SCR 307. If "state compulsions and prohibitions" mandate proof of non-consensual medical risk-taking as a ~~condition of ongoing employment means to protect the British Columbian community~~, this clearly engages both liberty and security of the person. Nobody who has a constitutionally-protected right to liberty and security of the person should ever be forced to choose between (a) engaging in medical risk-taking and (b) having the means to feed their family and keep a roof over their heads.
36. The principles of fundamental justice are, in essence, an added layer of protection against arbitrary, overbroad, and grossly disproportionate laws: *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para 72, [2015] 1 SCR 331.
37. There is no direct connection between the purpose of the Mandate (limiting the spread of Covid-19) and the effect on the unvaccinated, who are singled out for discriminatory treatment on the basis of a presumption, rather than proof, of infection. The Mandate is therefore **arbitrary** and irrational.
38. The Mandate presumes the unvaccinated to pose a grave risk of infection and transmission, necessarily capturing uninfected and/or naturally-immune unvaccinated people who are not contributing to the spread of Covid-19. Because the Mandate "overreaches in its effect," it is **overbroad**.

39. The Plaintiffs have been deprived of their livelihoods because they have chosen to exercise their right to refuse to engage in medical-risk-taking. The detrimental effects of the Mandate are so **grossly disproportionate** to the objective of limiting the spread of Covid-19, and any alleged benefits are so grossly disproportionate to the gravity of the infringements on the Plaintiffs' *Charter* rights, that the Mandate cannot be rationally supported.
40. The Plaintiffs say no impairment of section 7 rights that violates the principles of fundamental justice can ever be justified: “[No] limit on the s. 7 right which has been imposed in violation of the principles of fundamental justice can be either ‘reasonable’ or ‘demonstrably justified in a free and democratic society’”: *Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486 at 523, 24 DLR (4th) 536. The egregious violations of the Plaintiffs' section 7 rights to life, liberty and security of the person are not in accordance with the principles of fundamental justice and cannot be justified under section 1.
41. The Plaintiffs say their privacy rights, which are protected by sections 7 and 8 of the *Charter*, have been violated by the Mandate which requires them to disclose private medical information verifying their Covid-19 vaccination status. Furthermore, the collection of personal health information was not confidential. When the Plaintiffs were placed on unpaid leave, their vaccination status was immediately apparent to colleagues, and non-employees that knew of their changed employment status.

## Section 12

42. The Plaintiffs say their section 12 right not to be subjected to cruel or unusual treatment is engaged and infringed by the Mandate. “Treatment” includes measures imposed by the state in non-penal contexts that involve a “more active state process” and “an exercise of state control”: *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 SCR 519 at 611-12, 107 DLR (4th) 342.
- ~~43. Insofar as the Defendant employers, who are “government” for purposes of s. 32 of the Charter, unilaterally imposed a medical diktat on the Plaintiffs requiring them to inject an unwanted, experimental, non-consensual medical treatment that carries the risk of death and to attest to their vaccination status as a condition of their ongoing employment, the Plaintiffs were clearly subject to a “more active state process” involving an “exercise of state control”.~~
43. 44. Because section 12 is “anchored in human dignity”, even a monetary fine can constitute cruel and unusual punishment if it is “so excessive as to outrage standards of decency”: *Quebec (Attorney General) v. 9147-0732 Québec inc.*, 2020 SCC 32 at para 17.
44. ~~45.~~ The Plaintiffs say it is “incontestable” that irreversible and psychologically harmful measures “engage the underlying values” that animate section 12: *United States v. Burns*, 2001 SCC 7 at para 78, [2001] 1 SCR 283. Insofar as the Mandate compels City employees to submit to an unwanted and irreversible treatment that carries the risk of death, it clearly “engages the underlying values” that animate s. 12.

~~46. The Mandate makes no attempt to constrain the activities of those actually infected with Covid-19, and discriminates against healthy individuals who are presumed to pose a risk of infection and transmission, and is therefore “unusually severe and hence degrading to human dignity and worth.” Because the Mandate necessarily captures uninfected and naturally immune unvaccinated people who are not in any way contributing to the spread of Covid-19, it overreaches in its effect and “goes beyond what is necessary to achieve a legitimate aim” in violation of section 12: R. v. Smith (Edward Dewey), [1987] 1 SCR 1045 at para. 44, 40 DLR (4th) 435.~~

45. 47. The Plaintiffs say the Defendants have violated their right to refuse to participate in medical or scientific experimentation, which is ancillary to their section 12 right not to be subjected to cruel and unusual treatment. Having acceded to the *ICCPR*, which applies during wartime and peacetime, the government is bound by its obligations. Ancillary to the right of every person not to be subjected to “cruel, inhuman or degrading treatment” under Article 7 of the *ICCPR* is the right not to be subjected to non-consensual medical or scientific experimentation:

Article 7      No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

## Section 32

~~48. Article 4(1) permits States Parties to depart from their ICCPR obligations during a public emergency, but Article 4(2) stipulates that certain fundamental rights may not be abridged or limited even during an emergency, including the rights enshrined in Article 7.~~

~~49. Insofar as the right to refuse to consent to medical or scientific experimentation is ancillary to the right not to be subjected to “cruel, inhuman or degrading treatment or punishment” in Article 7 of the ICCPR, it should also be seen as ancillary to the right not to be subjected to “cruel and unusual” treatment for purposes of section 12 of the *Charter*. Furthermore, the right of every Canadian not to be subjected to non-consensual medical or scientific experimentation must be seen as a right “that exist[s] in Canada” within the meaning of section 26 of the *Charter*.~~

46. Insofar as the Defendant employers, who are “government” for purposes of s. 32 of the *Charter*, unilaterally imposed a medical policy on the Plaintiffs requiring them to inject an unwanted, experimental, non-consensual medical treatment that carries the risk of death and to attest to their vaccination status in order to protect the British Columbian population, the Plaintiffs were clearly subject to a “more active state process” involving an “exercise of state control”.

47. The Mandate makes no attempt to constrain the activities of those *actually* infected with Covid-19, and discriminates against healthy individuals who are *presumed* to pose a risk of infection and transmission, and is therefore “unusually severe and hence degrading to human dignity and worth.” Because the Mandate necessarily captures uninfected and

naturally-immune unvaccinated people who are not in any way contributing to the spread of Covid-19, it overreaches in its effect and “goes beyond what is necessary to achieve a legitimate aim” in violation of section 12: *R. v. Smith (Edward Dewey)*, [1987] 1 SCR 1045 at para. 44, 40 DLR (4th) 435.

48. 49. Insofar as the right to refuse to consent to medical or scientific experimentation is ancillary to the right not to be subjected to “cruel, inhuman or degrading treatment or punishment” in Article 7 of the ICCPR, it should also be seen as ancillary to the right not to be subjected to “cruel and unusual” treatment for purposes of section 12 of the *Charter*. Furthermore, the right of every Canadian not to be subjected to non-consensual medical or scientific experimentation must be seen as a right “that exist[s] in Canada” within the meaning of section 26 of the *Charter*.

#### Section 15(1)

49. 50. The Plaintiffs say their section 15(1) equality rights are engaged and infringed by the Mandate. On its face and in its impact, the Mandate creates a distinction between the unvaccinated and those who have chosen to accept vaccination as a condition of ongoing employment. Though “medical status” is not an enumerated ground of discrimination in section 15, it is an analogous ground that is actually or constructively immutable:
- i. for those unable to be vaccinated for reasons of health, their medical status as unvaccinated persons is a personal characteristic that is ***actually immutable*** because their health would be harmed if they were to be vaccinated;
  - ii. for those unwilling to be vaccinated for reasons of conscience or religion, their medical status as unvaccinated persons is a personal characteristic that is ***constructively immutable***, i.e.: “changeable only at unacceptable cost to personal identity”: *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 SCR 203 at para 13, 173 DLR (4th) 1.

Whether the Plaintiffs’ medical status as unvaccinated persons is actually or constructively immutable, this is a characteristic the Defendants have “no legitimate interest in expecting [the Plaintiffs] to change to receive equal treatment,” particularly since the Experimental Vaccines offer little-to-no protection against infection and ~~transmission.~~

50. 51. The Plaintiffs say they are being discriminated against on the basis of medical status by being forced to either: (a) disclose private medical information verifying their Covid-19 vaccination status, or (b) be placed on an unpaid leave of absence under the threat of discipline or termination.

#### Conclusion on *Charter* violations

51. 52. The Mandate violates the Plaintiffs’ *Charter* rights and punishes them for the lawful exercise of their fundamental constitutional rights and freedoms.

52. ~~53.~~ The infringements of sections 2(a), 7, 8, 12, and 15(1) cannot be demonstrably justified under section 1 of the *Charter*. They are neither in the public interest nor a rational means of achieving their stated objective, as there is no evidence to indicate that terminating the employment of those who do not attest to being Fully Vaccinated reduces the spread of Covid-19. By depriving the Plaintiffs of their livelihoods and their means of survival, the Mandate does not minimally impair the rights of the Plaintiffs. Furthermore, the deleterious and negative impacts of the Mandate are disproportionate to their minimal or non-existent benefits. These infringements clearly cannot be justified in a free and democratic society.

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Place of trial: Quesnel

The address of the registry is: 250 George Street  
Prince George, BC  
V2L 5S2

Date: 1 September 2022

  
Stephen Whitehead (Sep 1, 2022 11:23 MDT)

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Signature of Lawyer for Plaintiffs  
Stephen E. Whitehead

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

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

## APPENDIX

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

This claim challenges the constitutional validity of a unilaterally-imposed ~~employment-condition~~ medical policy to protect the public, contingent on maintaining employment income, that deprives the Plaintiffs of their right to refuse an unwanted experimental medical treatment that carries the risk of death.

### 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:

- *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c.11
- *Human Rights Code*, RSBC 1996, c. 210
- *Workers Compensation Act*, RSBC 2019, c. 1