

MAR 07 2022



No. S 22 17 96
Vancouver Registry

In the Supreme Court of British Columbia

Between

NORTHERN HEALTH AUTHORITY and RAINA FUMERTON, in
her capacity as a designated health officer under the *Public Health*
Act, S.B.C. 2008, c. 28

Plaintiffs

and

LEARN TO EARN BARTENDING SCHOOL AND CONSULTING
LTD. doing business as LAMBDA CABARET and LINDA ALLEN

Defendants

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 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 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 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,

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- (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.

Part 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff, Northern Health Authority ("**NHA**"), is a regional health board designated under the *Health Authorities Act*, R.S.B.C. 1996, c. 180. NHA has an address for service in this proceeding at 1800 – 510 West Georgia Street, Vancouver, BC V6B 0M3.
2. The Plaintiff, Raina Fumerton ("**Dr. Fumerton**"), is a Medical Health Officer ("**MHO**") under the *Public Health Act*, S.B.C. 2008, c. 28 (the "**Public Health Act**") who, at the relevant time, was Acting Chief MHO for the geographic area of British Columbia for which NHA is responsible. Dr. Fumerton has an address for service in this proceeding at 1800 – 510 West Georgia Street, Vancouver, BC V6B 0M3.
3. As a health officer under the *Public Health Act*, Dr. Fumerton has various rights and obligations under the *Public Health Act*, including the authority to issue orders respecting health hazards and contraventions of the *Public Health Act*. Specifically, Dr. Fumerton is responsible for, among other things, investigating complaints on a variety of public health related problems and issuing orders and recommendations as required.
4. The Defendant, Learn to Earn Bartending School and Consulting Ltd., dba Lambda Cabaret (the "**Nightclub**"), is incorporated pursuant to the laws of British Columbia, with a registered and records office at #614 1488 Fourth Avenue, Prince George, British Columbia, V2L 4Y2.
5. The Defendant, Linda Allen, is the owner and sole director and officer of the Nightclub, with an address of 22355 Camp Road, Prince George, British Columbia, V2K 5M1.

COVID-19 and Past Non-Compliance with Public Health Orders

6. On or about March 17, 2020, the Provincial Health Officer, Dr. Bonnie Henry (the "**PHO**"), provided notice under section 52(2) of the *Public Health Act* that the transmission of the infectious agent, SARS-CoV-2, constitutes a regional event, as defined in section 51 of the *Public Health Act*.
7. A person infected with SARS-CoV-2 can infect other people with whom the infected person is in direct contact through droplets in the air, or from fluid containing SARS-CoV-2 left on surfaces.
8. Vaccines, which prevent or reduce the risk of infection with SARS-CoV-2, have been and continue to be made available in British Columbia. While substantial progress has been

made in vaccinating the population of British Columbia five years of age or older, a significant portion of the public remains unvaccinated. People who are unvaccinated experience higher rates of hospitalization intensive care admissions than unvaccinated people, although SARS-CoV-2 is also causing illness in vaccinated people. This situation has been exacerbated by the presence of the highly transmissible Omicron variant of SARS-CoV-2 in British Columbia.

9. Unvaccinated persons are at a higher risk than vaccinated persons of being infected with SARS-CoV-2 and of transmitting SARS-CoV-2 to other persons. The gathering of people in close contact with other people can promote the transmission of SARS-CoV-2 and increase the number of people who develop COVID-19 and become seriously ill.

Breaches of Past Public Health Orders

10. In order to reduce the public health risk from SARS-CoV-2, the PHO issued several public health orders to which the Nightclub was subject, including (among others):
 - (a) PHO *Food and Liquor Serving Premises Order – September 10, 2021*; and
 - (b) *Face Coverings (COVID-19) – September 2, 2021*.
 (together, the “**Past Orders**”)
11. The Past Orders required, among other things, that patrons in the Nightclub provide proof of vaccination and wear face coverings.
12. Throughout September 2021, NHA received several complaints from the public that the Nightclub was not requiring that its staff wear masks and was also not checking proof of vaccination.
13. On September 20, 2021, Yvonne Liang (“**EHO Liang**”), an environmental health officer at NHA, called Ms. Allen to remind her of the requirements contained in the Past Orders. However, NHA continued to receive complaints from the public, informing them that the Nightclub continued to operate in non-compliance with the Past Orders. EHO Liang again left a message with Ms. Allen, advising her of the ongoing concerns.
14. On September 29, 2021, EHO Liang issued a report of non-compliance with the Past Orders, which indicated that further enforcement action would be taken under the *Public Health Act* if the Nightclub continued to operate in non-compliance with the Past Orders.
15. Sometime in October 2021, the Nightclub closed for several months (though according to its social media accounts, the closure was for renovations and not to comply with public health orders).
16. On November 18, 2021, Dr. Jong Kim (MHO) issued the *Gatherings and Events COVID-19 Order for Northern Health Authority – November 18, 2021*, which required “[p]remises which are licensed to serve liquor, and which do not have full meal service” (i.e., nightclubs) in NHA’s geographic region to close. This order was amended and reissued

on November 30, 2021, December 9, 2021, and December 24, 2021, but always required establishments like the Nightclub to remain closed.

17. The *Gatherings and Events COVID-19 Order for Northern Health Authority – December 24, 2021* was repealed on January 19, 2022, but on January 17, 2022, the PHO issued another public health order, *PHO Food and Liquor Serving Order – January 17, 2022* (the “**January 17 Serving Order**”), requiring premises that serve liquor without full meal service, such as the Nightclub, to close.
18. However, the Nightclub opened in contravention of the January 17 Serving Order. A violation ticket was issued to the Nightclub on February 4, 2022 for failure to comply with the January 17 Serving Order, but it was not served on the Defendants until February 18, 2022.
19. Despite repeated warnings, the Nightclub continued to operate, permitting unmasked patrons to congregate, without so much as checking proof of vaccination. Accordingly, on February 9, 2022, Dr. Fumerton issued a closure order pursuant to sections 30, 31, 32, and 39 of the *Public Health Act* (the “**First Closure Order**”), requiring the Nightclub to close immediately and to remain closed until the January 17 Serving Order expired. The Nightclub's liquor licence was suspended the same day.
20. Despite the January 17 Serving Order, the First Closure Order, and the suspension, the Defendants continued to operate the Nightclub on February 11 and 12, 2022, and even asked patrons to remove their face coverings upon entry.
21. A second violation ticket in the amount of \$345 was issued on February 11, 2022, but was not served on the Defendants until February 18, 2022.
22. On February 17, 2022, *PHO Food and Liquor Serving Premises Order – February 16, 2022* (the “**February 16 Serving Order**”) came into effect, permitting establishments such as the Nightclub to open, provided they abided by certain safety protocols. The First Closure Order was cancelled accordingly, effective February 17, 2022.

Breaches of the Current Public Health Orders

23. In addition to the February 16 Serving Order, *PHO Face Coverings Order - December 3, 2021* (together, the “**Public Health Orders**”) remains in effect in attempt to limit the spread of COVID-19 in British Columbia.
24. As with the Past Orders, the Public Health Orders provide the rationale for the measures required therein. In particular, they indicate that unvaccinated people in close contact with other people can promote the transmission of SARS-CoV-2. The February 16 Serving Order also explains that the consumption of alcohol, which increases risky behaviour, is specifically associated with increases in the transmission of SARS-CoV-2.
25. Programs that require proof of vaccination, such as the Public Health Orders, promote vaccination uptake, thereby reducing transmission and reducing the burden on health care systems.

26. The Nightclub is a liquor primary establishment, and is therefore subject to the Public Health Orders. Accordingly, under the Public Health Orders, the Nightclub was able to open, but must, among other things, obtain proof of vaccination for all patrons, require its staff to wear face coverings unless an exemption applies, and post signage at the entrance notifying patrons that face coverings are required to be worn.
27. However, on or about February 18, 2022, Tom Chen (EHO) and Joey Cheng (EHO) attended at the Nightclub with RCMP Constable Colby Nowlin. There, they observed the security guards admitting patrons without requesting proof of vaccination and the required signage was not posted at the entrance.
28. The next day, Dr. Fumerton issued another closure order pursuant to sections 30, 31, 32, and 39 of the *Public Health Act* (the "**Closure Order**"), again requiring the Nightclub to close immediately.
29. However, contrary to the Closure Order, the Nightclub opened on February 19, 25, and 26, 2022, openly boasting "Zero Mandates" on its social media page.
30. The Nightclub's ongoing operation presents a significant risk of causing a health hazard.

Part 2: RELIEF SOUGHT

1. Declarations that the Defendants, and each of them, are in breach of the Closure Order.
2. Interim, interlocutory and permanent injunctions enjoining and restraining the Defendants, and each of them, by themselves, their servants or agents or otherwise, from operating the Nightclub, or otherwise not complying with the Closure Order, for so long as the Closure Order is in effect.
3. Interim, interlocutory and permanent injunctions prohibiting the Defendants and each of them by themselves, their servants or agents or otherwise, from interfering with or obstructing the posting of the Closure Order at the Nightclub.
4. An order authorizing any police officer with the RCMP to arrest and/or remove from the Nightclub any person who the RCMP has reasonable and probable grounds to believe is contravening or has contravened any order granted by the Court in this proceeding.
5. Costs.
6. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. The facts set out in Part 1 constitute breach of the Closure Order, the Public Health Orders, and sections 15, 42 and 99(1)(k) of the *Public Health Act*:
 - (a) section 15 of the *Public Health Act* states that a person must not willingly cause a health hazard, or act in a manner that the person knows, or ought to know, will cause a health hazard;

- (b) section 42 of the *Public Health Act* requires that a person named or described in an order made under Part 4 of the *Public Health Act* must comply with that order; and
- (c) section 99(1)(k) of the *Public Health Act* states that a person who fails to comply with an order of a health officer commits an offence.

2. Section 48 of the *Public Health Act* states:

Injunctions

- 48** (1) Without notice to any person, a health officer may apply, in the manner set out in the regulations, to a judge of the Supreme Court for an order under this section.
- (2) A judge of the Supreme Court may grant an injunction restraining a person from contravening, or requiring a person to comply, with
- (a) a provision of this Act or a regulation made under it, or
 - (b) a term or condition of the person's licence or permit issued under this Act, or an order made under this Act,
- if satisfied by evidence on oath or affirmation that there has been or will be a contravention of this Act, the regulations, the licence, the permit or the order.
- (3) A judge of the Supreme Court may order a person to do or refrain from doing those things the judge considers necessary if satisfied by evidence on oath or affirmation that the person is interfering with or obstructing, or will likely interfere with or obstruct, a person who is exercising powers or performing duties under this Act.
- (4) A judge of the Supreme Court may grant an interim injunction or order until the outcome of an application commenced under this section.

- 3. The Defendants have and are continuing to willfully contravene the Closure Order, the Public Health Orders, and the *Public Health Act*. The conduct of the Defendants is, among other things, putting the health and safety of the public at serious risk. The relief sought by the Plaintiffs should be granted in the circumstances.
- 4. The Plaintiffs plead and rely on the following:
 - (a) the *Public Health Act*, including ss. 15, 30-33, 39, 42, 49, 54 and 99; and
 - (b) the inherent jurisdiction of this Honourable Court.

Plaintiff's address for service: 1800 – 510 West Georgia Street
Vancouver, British Columbia
V6B 0M3

Place of trial: Vancouver

The address of the registry is:

The Law Courts
800 Smithe Street
Vancouver, British Columbia
V6Z 2E1

Norton Rose Fulbright Canada LLP

Date: 07/MAR/2022

per:



for:

Signature of James H. Goulden Q.C.

☒ Lawyer for Plaintiffs

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:

Claim for injunctive relief.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

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:

[Check all boxes below that apply to this case]

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law

- ☐ conflict of laws
- ☒ none of the above
- ☐ do not know

Part 4:

Public Health Act, R.S.B.C. 2008, c. 28

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2008, c. 28

Plaintiff

and

LEARN TO EARN BARTENDING SCHOOL AND
CONSULTING LTD. dba LAMBDA CABARET and
LINDA ALLEN

Defendants

NOTICE OF CIVIL CLAIM

NORTON ROSE FULBRIGHT CANADA LLP

Barristers & Solicitors
1800 – 510 West Georgia Street
Vancouver, BC V6B 0M3
Attention: James H. Goulden, Q.C.
Telephone: 604.687.6575
Facsimile: 604.641.4949

JHG/EAF/dg

Matter# 1001178201