



(Court file no.)

FORM 14E

Courts of Justice Act

Electronically issued : 15-Oct-2021
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Toronto

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**SARAH HARJEE, EVAN KRAAYENBRINK, HIBAH AOUN, SARAH LAMB, SAM
SABOURIN, JACKIE RAMNAUTH, MARK MCDONOUGH and LINDA MCDONOUGH**

Applicants

-and-

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF ONTARIO**

Respondent

APPLICATION UNDER the *Canadian Charter of Rights and Freedoms*, s 24(1), Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK), 1982*, c 11 and Rule 14.05 of the *Rules of Civil Procedure*, RRO 1990, Reg 194.

(Court seal)

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing:

- In person
- By telephone conference
- By video conference

at the following location:

393 University Avenue, Toronto, Ontario, M5G 1E6 on(day),
(date), at(time) (or on a day to be set by the registrar).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant’s lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant’s lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date

Issued by

Local registrar

Address of court office Toronto Superior Court of Justice
393 University Ave,
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TO THE ATTORNEY GENERAL OF ONTARIO
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APPLICATION

THE APPLICANTS MAKES APPLICATION FOR:

1. A Declaration pursuant to section 52(1) of the *Constitution Act*, 1982 that sections 2(2.1) and 2.1 of Schedule 1 of O. Reg 364/20 (entitled *Rules for Areas at Step 3 and at the Roadmap Exit Step*) and any related amendments (the “**Stage 3 Regulation**”), established under the *Reopening Ontario (A Flexible Response to Covid-19) Act*, 2020, S.O. 2020, c. 17 (the “**ROA**”), create a vaccine passport, i.e., a digital or paper proof of requisite vaccination, which unjustifiably infringes rights and freedoms guaranteed under sections 2 (a) and (b), 7, 8 and 15 of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”), and therefore has "no force or effect."
2. A Declaration pursuant to section 52(1) of the *Constitution Act*, 1982 that section 2.1 and 2 (2.1) of the Stage 3 Regulation are of no force or effect.
3. Alternatively, a Declaration pursuant to section 24(1) of the *Charter* that Section 2(2.1) and subsection 2.1 infringe the Applicants' rights and freedoms under sections 2, 7, 8 and 15 of the *Charter*, and thus are deserving of such remedy as the court considers appropriate and just in the circumstances.
4. Further, a Declaration pursuant to section 52(1) of the *Charter* that any "advice, recommendations and instructions" issued under section 2(2.1) violate the Applicants' rights and freedoms under sections 2, 7, 8, & 15 of the *Charter*, and therefore are of no force or effect.
5. A Declaration that sections 2(2.1) and 2.1 and any "advice, recommendations or instructions" issued under that provision to create or support a vaccine passport system that violate section 38(1) of the *Freedom of Information and Protection Act*, RSO 1990, c F.31 and sections 10 and 11 of the *Health Care Consent Act*, 1996, S.O. 1996, c. 2, Sched. A.
6. A Declaration that Sections 2 and 2(2.1) of Stage 3 Regulation are *ultra vires* the Lieutenant Governor-in-Council and therefore are of no force or effect.
7. Further, a Declaration that Section 2(2.1) of the Stage 3 Regulation is an improper delegation of authority and therefore is of no force or effect.
8. Alternatively, a Declaration that Section 4(2)(b) of the ROA is an improper delegation of authority to the Lieutenant Governor-in-Council insofar as it is arbitrary and overbroad and therefore is of no force or effect.
9. An interim interlocutory injunction enjoining the Respondent and its agents, employees, contractors, and other persons acting under their instruction from enforcing sections 2(2.1) and 2.1 and any orders, directions, advice, guidance, and instructions made thereunder.
10. An Order abridging the time for the service and filing of this Notice of Application, the Notice of Constitutional Question, and supporting materials, if necessary.

11. Such further and other relief as counsel may advise and this Honourable Court permits.

GROUND FOR THE APPLICATION ARE:

The Background

12. The Government of Ontario has introduced laws that require Ontarians to show proof of being fully vaccinated against COVID-19, i.e., a vaccine passport, as a condition of entering various private establishments, such as indoor areas of restaurants, food and drink establishments with dance facilities, indoor meeting spaces and conference centres, indoor facilities for sports, concert venues, theatres, among others.
13. On or about August 24th, 2021, the Government of Ontario amended Section 2 of Schedule 1 of the Stage 3 Regulation, delegating broad authority to the Chief Medical Officer of Health and regional Medical Officers of Health to require persons operating a businesses or organization to create and enforce COVID-19 vaccination policies.
14. On or about September 22nd, 2021, the Government of Ontario further amended the Stage 3 Regulation, requiring that persons operating a business or organization to review and confirm the proof of vaccination and deny access and services to patrons who fail to show proof of COVID-19 vaccination. Proof of vaccination (or proof of medical exemption) is not required for employees of these businesses.
15. Non-compliance can result in charges under the *Reopening Ontario Act* and people can be subject to serious penal consequences. Maximum penalties include fines of up to \$100,000 and up to a year in jail for an individual; up to \$500,000 and up to a year in jail for an individual who is a director or officer of a corporation; and up to \$10 million for a corporation.
16. Four vaccines are currently authorized in Canada to treat COVID-19; these are AstraZeneca Vaxzervai, Moderna Spikevax, Pfizer-BioNtech Comirnaty and Johnson & Johnson Janssen COVID-19. All vaccines are still undergoing clinical trials, which will likely be completed in 2023.
17. COVID-19 vaccines, while widely recommended, are also known to cause severe adverse effects for some individuals, including serious disabilities and death.
18. The Government of Ontario has declared there are very limited exemptions from the vaccine passport requirement including those who are verifiably allergic to vaccine ingredients or those who developed myocarditis or pericarditis, which are heart diseases, after taking their first dose.
19. The vaccine passport does not provide an exemption for those who have natural immunity to COVID-19, those who have experienced any of the other wide-ranging adverse effects to a vaccine or those who object on the grounds of freedom of religion or conscience, or the right to informed consent.

The Applicants

20. All Applicants are adults who have decided not to consent to medical treatment, namely, one or more doses of a COVID-19 vaccine.

Ms. Sarah Harjee

21. The Applicant Sarah Harjee is a 34-year-old nurse, who has a 14-month-old son and is expecting a second child in March 2022.
22. Ms. Harjee has two Bachelor's degrees one in Science, and another in Nursing, as well as a Master's degree in Public Health which she received from Lakehead University.
23. Ms. Harjee is concerned about the possible infliction of adverse effects from the vaccine on herself and her unborn child, and therefore has decided to wait until more data and studies are available before deciding whether to take a COVID-19 vaccine.
24. The vaccine passport infringes Ms. Harjee's rights and freedoms as guaranteed under sections 2, 7, 8 and 15 of *Charter*.
25. It is Ms. Harjee's moral and legal right to weigh the safety and efficacy of the COVID-19 vaccine so that she may make her decision on the basis of informed consent.
26. Moreover, Ms. Harjee has the moral and legal right to make her decision in the absence of threats, coercion or duress from the Respondent or anyone else.

Mr. Evan Kraayenbrink

27. The Applicant Evan Kraayenbrink, resides in Moorefield, Ontario, is 30 years old and a paramedic for Niagara Emergency Medical Services (EMS).
28. He has chosen not to be vaccinated because he believes he is not yet fully informed on the potential side-effects of COVID-19 vaccines. He also does not believe he should be discriminated against or punished for choosing not to be vaccinated against COVID-19.
29. Mr. Kraayenbrink is also a professing Christian, and sincerely holds the view that he is ultimately accountable to God for what he allows to be done to his body, including with respect to drugs such as the COVID-19 vaccine.
30. Sections 2(2.1) and 2.1, which authorize vaccine passports, infringe his rights and freedoms under sections 2, 7, 8 and 15 of the *Charter*.
31. It is Mr. Kraayenbrink's moral and legal right to weigh the safety and efficacy of the COVID-19 vaccine so that he can make a decision regarding vaccination on the basis of informed consent.
32. Moreover, Mr. Kraayenbrink has a moral and legal right to consider his position in the absence of threats, coercion or duress from the Respondent or anyone else.

Ms. Hibah Aoun

33. The Applicant Hibah Aoun is 27 years old and resides in Windsor, where she works as a personal trainer and manager of LaSalle Gym.
34. Ms. Aoun subscribes to wholistic and naturopathic beliefs that require her to seek natural approaches to protecting her health and treating illnesses.

35. The vaccine passport wrongfully pressures and coerces Ms. Aoun into submitting to a medical intervention that violates her religious, spiritual, and conscientious beliefs, which are protected under section 2(a) and (b) of the *Charter*.
36. Further, the vaccine passport wrongfully compels her to discriminate against her customers and clients based on their vaccination status contrary to her conscientious belief in equality as guaranteed under sections 2(a) and (b) of the *Charter*;
37. The vaccine passport also violates her rights and freedoms guaranteed under sections 7, 8 and 15 of the *Charter*.
38. It is Ms. Aoun's moral and fundamental legal right to weigh the safety and efficacy of the COVID-19 vaccine in relation to her right to make medical decisions based on informed consent.
39. Moreover, Ms. Aoun has a moral and legal right to consider her position in the absence of threats, coercion or duress from the Respondent or anyone else.

Mr. Sam Sabourin

40. The Applicant Sam Sabourin is 29 years old and the owner of Between the Bumpers gym located in Ottawa, where he also resides.
41. Mr. Sabourin finds it unconscionable to exclude customers from his gym based on their vaccination or medical status.
42. The vaccine passport wrongfully compels Mr. Sabourin to discriminate against his customers and clients based on their vaccination status contrary his freedom to act in accordance with his conscience as guaranteed under sections 2(a) of the *Charter*.
43. The vaccine passport also violates his rights and freedoms guaranteed under sections 7, 8 and 15 of the *Charter*.
44. It is Mr. Sabourin's moral and legal right to treat all individuals equally and provide a safe and caring environment for each patron, and to do so in the absence of threats, coercion and duress from the Respondent.

Ms. Sarah Lamb

45. The Applicant Sarah Lamb is 41 years old and resides in Kitchener, where she owns and operates a dog walking business; she is married and has a 5-year-old son.
46. Ms. Lamb received the first dose of the COVID-19 vaccine in May 2021.
47. She has suffered serious adverse effects such as numbness from the waist down and has had to go to the hospital for treatment. She is seeing a neurologist about the adverse effects associated with taking a COVID-19 vaccine.

48. Due to the serious adverse effects, she has already suffered, Ms. Lamb does not want to take the second dose of a vaccine and fears that she will not be able to get a medical exemption due to the extremely narrow exemptions accepted by the government.
49. The vaccine passports violate Ms. Lamb's rights and freedoms as guaranteed under sections 7, 8 and 15 of the *Charter*.
50. Further, it is Ms. Lamb's moral and legal right to weigh the safety and efficacy of the COVID-19 vaccine in relation to her right to make health decisions based on informed consent.
51. Ms. Lamb has a moral and legal right to consider her position in the absence of threats, coercion or duress from the Respondent or anyone else.

Jackie Ramnauth

52. The Applicant Jackie Ramnauth is 46 years old, resides in Markham, Ontario and is a single mother of a 13-year-old boy.
53. She has a history of blood clots, and her son has a history of severe seizures.
54. Ms. Ramnauth has valid concerns about the potential adverse effects of the COVID-19 vaccine on her son's health and well-being, as well as her own.
55. The vaccine passports infringe Ms. Ramnauth's rights and freedoms and those of her son as guaranteed under sections 2, 7, 8 and 15 of the *Charter*.
56. As her child's legal guardian, it is Ms. Ramnauth's moral and legal right and duty to weigh the safety and efficacy of a COVID-19 vaccine and judge for herself whether to subject her child to medical treatment.
57. Moreover, Ms. Ramnauth has a moral and legal right to make her decisions in the absence of threats, coercion or duress from the Respondent or anyone else.

Mark McDonough

58. The Applicant Mark McDonough is 66 years old and resides in Simcoe, Ontario. He is the spouse of the co-Applicant Linda McDonough.
59. Mr. McDonough has a history of blood clots, adverse health reactions to antibiotics, flu vaccines, respiratory health problems and other ailments such as diverticula.
60. Mr. McDonough is also a professing Christian, and sincerely holds the view that he is ultimately accountable to God for what he allows to be done to his body, including with respect to drugs such as the COVID-19 vaccine.
61. He has chosen not to be vaccinated because he believes he is not yet fully informed on the potential long-term side-effects of COVID-19 vaccines; the potential adverse effects of a COVID-19 vaccine and impact on his natural immune system and current medical conditions.

62. Mr. McDonough has a moral and legal right to make decisions about whether to take the COVID-19 vaccine in the absence of threats, coercion or duress from the Respondent or anyone else.

Linda McDonough

63. The Applicant Linda McDonough is 66 years old and resides in Simcoe, Ontario with her spouse Mark McDonough.

64. Ms. McDonough suffers from chronic inflammation and pain caused by a failed knee surgery. She also has a condition called Complex Regional Pain Syndrome causing her chronic and severe pain which she must constantly and carefully manage.

65. Ms. McDonough also suffers from Acoustic Neuroma, Diverticula, and Horner's Syndrome and is concerned about adverse side effects short and long term which may aggravate these medical conditions.

66. Ms. McDonough has decided not to take COVID-19 vaccine as she is concerned about its adverse effects and the possibility it may aggravate her medical conditions. To date, she has been unable to obtain a medical exemption letter from her treating pain clinic physician.

67. Ms. McDonough is also a professing Christian, and sincerely holds the view that he is ultimately accountable to God for what he allows to be done to her body, including with respect to drugs such as the COVID-19 vaccine.

68. Ms. McDonough has a legal, moral, and ethical right to make decisions about whether to take the COVID-19 vaccine in the absence of threats, coercion or duress from the Respondent or anyone else.

Charter Violations

69. Section 2.1 and 2 (2.1) of the Stage 3 Regulation:

- a. override an individual's objections to COVID-19 vaccinations based on the fundamental rights of freedom of conscience, religion, thought, belief and opinion contrary to section 2(a) and (b) of the *Charter*;
- b. require people to wrongfully discriminate against others based on their vaccine status contrary to section 2(a) of the *Charter*, i.e., the fundamental right of freedom of conscience and religion;
- c. violate the right to life, liberty and security of the person, and its corollaries, the right to informed consent and the principles of fundamental justice, contrary to section 7 of the *Charter*;
- d. infringe the right to be free from unreasonable search and seizure contrary to section 8 of the *Charter*; and

- e. infringe the right to equal protection and benefit of the law by creating a disadvantaged class - the unvaccinated – and discriminating against the class, contrary to section 15 of the *Charter*.
70. The Government of Ontario has further unlawfully interfered with the ability of the Applicants to provide informed consent without coercion by:
- a. making proof of COVID-19 vaccination a prerequisite for fully participating in society;
 - b. threatening the Applicants with a loss of full participation in society in the event they refuse fully vaccinated.
 - c. jeopardizing the Applicants’ freedom of movement and ability to earn a livelihood for themselves and their families; and
 - d. threatening and coercing the Applicants and causing duress in order to pressure them to take the COVID 19 vaccine.

Lack of Statutory Authority

71. Sections 2 and 2(2.1) of Stage 3 Regulation are *ultra vires* the authority of the Lieutenant Governor-in-Council as they were created by amendments to the Stage 3 Regulation that would not have been authorized under Section 7.0.2 of the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E. 9, contrary to Section 4 of the ROA.
72. Further, Section 2(2.1) of the Stage 3 Regulation is an improper delegation of authority to the Chief Medical Officer of Health and regional Medical Officers of Health insofar as it is arbitrary and overbroad.
73. Alternatively, Section 4(2)(b) of the ROA is an improper delegation of authority to the Lieutenant Governor-in-Council insofar as it is arbitrary and overbroad.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

74. Affidavit of Sarah Harjee, to be sworn or affirmed on a future date;
75. Affidavit of Evan Kraayenbrink, to be sworn or affirmed on a future date;
76. Affidavit of Hibah Aoun, to be sworn or affirmed on a future date;
77. Affidavit of Sarah Lamb, to be sworn or affirmed on a future date;
78. Affidavit of Sam Sabourin, to be sworn or affirmed on a future date;
79. Affidavit of Jackie Ramnauth, to be sworn or affirmed on a future date;

80. Affidavit of Mark McDonough, to be sworn or affirmed on a future date;
81. Affidavit of Linda McDonough, to be sworn or affirmed on a future date;
82. Such further and other documentary evidence as counsel may advise and the Honourable Court may permit

October 15, 2021

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RCP-E 14E (September 1, 2020)

**HER MAJESTY THE QUEEN IN RIGHT
OF THE PROVINCE OF ONTARIO**

Applicants

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

NOTICE OF APPLICATION

**JUSTICE CENTRE FOR
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