

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN: )  
)  
SARAH HARJEE, EVAN )  
KRAAYENBRINK, HIBAH AOUN, ) *Sayeh Hassan, Henna Parmar, and Jorge*  
SARAH LAMB, SAM SABOURIN, ) *Pineda* for the Applicants  
JACKIE RAMNAUTH, MARK )  
MCDONOUGH and LINDA )  
MCDONOUGH )  
Applicants )  
)  
- and - )  
)  
HIS MAJESTY THE KING IN RIGHT )  
OF THE PROVINCE OF ONTARIO ) *Sean Hanley, David Tortell, and Emily*  
) *Owens* for the Respondent  
)  
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* ) **HEARD:** November 21 and 22, 2022  
*Civil Procedure*, RRO 1990, Reg. 194. )  
)  
)

PERELL, J.

REASONS FOR DECISION

**A. Introduction**

[1] In the fall of 2021, during the COVID-19 pandemic, the Government of Ontario (“Ontario”) enacted Ont. Reg. 364/20. It was an emergency regulation that included a requirement that for a person to enter a restaurant, bar, sporting arena, movie theatre, fitness facility, and certain other businesses, the person had to verify that he or she had been vaccinated for COVID-19. The regulation required the person responsible for the business to require each patron to provide at the point of entry to the business premises, proof of being fully vaccinated against COVID-19. The regulation was revoked in the winter of 2022.

[2] Before the regulation was revoked, in October 2021, the Applicants, Hibah Aoun, Sarah Harjee, Evan Kraayenbrink, Sarah Lamb, Linda McDonough, Mark McDonough, Jackie Ramnauth, and Sam Sabourin, brought an application to strike down the proof of vaccination, sometimes described as a vaccine passport, requirement of Ont. Reg. 364/20.

[3] The Applicants submitted that the regulation contravened the *Canadian Charter of Rights and Freedoms*.<sup>1</sup> They submitted that Ont. Reg. 364/20 was contrary to: s. 2(a) (freedom of religion); s. 2(b) (freedom of expression); s. 7 (life, liberty, and security of the person); s. 8 (unreasonable search and seizure); and s. 15 (equality). They claimed declarations pursuant to s. 24 (1) of the *Charter* and s. 52 of the *Constitution Act, 1982*,<sup>2</sup> and an entitlement to *Charter* damages.

[4] In the fall of 2022, after the regulation had been revoked, the Application came on for a hearing, and the Applicants abandoned the allegations that Ont. Reg. 364/20 contravened s. 2 (b) (freedom of expression) or s. 8 (unreasonable search and seizure).

[5] At the hearing, Ontario submitted that there were no contraventions of the *Charter*. In the alternative, Ontario submitted that if there were contraventions, Ont. Reg. 364/20 was a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society, *i.e.*, Ontario relied on s. 1 of the *Charter* to negate the *Charter* challenge. In the further alternative, Ontario submitted that if Ont. Reg. 364/20 was not demonstrably justified under s. 1 of the *Charter*, then the appropriate remedy was a declaration pursuant to s. 52 of the *Constitution Act, 1982* and there should be no award of *Charter* damages.

[6] For the reasons that follow, the Application is dismissed. I agree with Ontario's argument that there have been no contraventions of the *Charter*. In these circumstances, it is not necessary to address Ontario's alternative arguments.

[7] The Applicants' personal experiences, which are undoubtedly sad and serious, do not demonstrate a contravention of freedom of religion, the right to life, liberty, and the security of the person, or discrimination based on religion or disability. Having arrived at those conclusions, it is not necessary to opine about Ontario's management of the health care system before or during the pandemic or to opine about the factual and scientific issues associated with what both sides agree was a serious unprecedented public health crisis.

## **B. The Pandemic and Ont. Reg. 364/20**

[8] For present purposes, to describe the factual background to Ont. Reg. 364/20, it is sufficient to make only rudimentary findings about the background science of the disease and about vaccines. It is not necessary to determine whether Ont. Reg. 364/20 was good or bad policy choice, whether Ont. Reg. 364/20 was based on credible or discreditable scientific evidence, whether there were better policy choices, whether Ont. Reg. 364/20 was an unnecessary overreach in state power, or whether Ont. Reg. 364/20 failed or succeeded as a public health policy choice. It is necessary only to determine whether the Applicants have met the onus of showing that their *Charter* rights have been violated by Ontario.

---

<sup>1</sup> Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c 11.

<sup>2</sup> Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

[9] COVID-19 is caused by the Sars-CoV-2 virus and its variants. The virus spreads between people via respiratory particles of varying sizes, mainly when an infected person is in close contact with another person. Transmission risk is highest prior to symptoms appearing, meaning that most infected people will unknowingly infect others before they themselves have symptoms. Many people infected with COVID-19 show no symptoms (asymptomatic) or experience several days between when they are infected and when they develop symptoms (pre-symptomatic). The transmissibility, infection rate, and the virulence of the COVID-19 virus, and the effectiveness of pharmaceuticals including vaccines varies depending on the variants.

[10] COVID-19 infection causes symptoms of upper respiratory tract infection including cough, fever, and sore throat. There is a loss of taste and smell for many infected people. Complications include respiratory failure, acute respiratory distress syndrome, sepsis, and septic shock, thromboembolism, and/or multiorgan failure, including injury of the heart, liver, or kidneys. COVID-19 can kill.

[11] On **March 11, 2020**, the World Health Organization declared the COVID-19 outbreak a pandemic.

[12] On **March 17, 2020**, Ontario declared an emergency pursuant to the provisions of section 7.0.1 of the *Emergency Management and Civil Protection Act*.<sup>3</sup> An “emergency” under the Act is defined as a “situation or an impending situation that constitutes a danger of major proportions that could result in serious harm to persons or substantial damage to property and that is caused by the forces of nature, a disease or other health risk, an accident or an act whether intentional or otherwise.”

[13] During the emergency, Ontario issued various orders under the *Emergency Management and Civil Protection Act*, many of which were continued under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*<sup>4</sup> when that Act came into force on **July 24, 2020**. These regulations provided for a variety of public health measures to address the pandemic, such as quarantines, restrictions on public gatherings, stay at home orders, remote education, and the temporary closure of businesses or places.

[14] At the outset of the pandemic, there were no vaccines for COVID-19 nor treatment medicines. In the second year of the pandemic, vaccines became available. The vaccines were approved for use in Canada by Health Canada. The vaccines were acquired by the federal and provincial governments, and then distributed as a part of Ontario’s public health response to the pandemic. Being unvaccinated increases one’s chances of hospitalization due to COVID-19 for all age groups. Being unvaccinated substantially increases the likelihood of very serious adverse medical outcomes. Conversely, being vaccinated decreased hospitalizations and decreased the likelihood of dire medical outcomes, including death.

[15] There are two types of vaccines: viral vector vaccines; and mRNA vaccines, a recent medical miracle, for which Nobel prizes have been awarded. COVID-19 vaccines, including mRNA vaccines are regarded as safe. There are no longer regarded as experimental. They have been proven effective in reducing infections and reducing transmission of the disease, but vaccine effectiveness varies by: (a) outcome measure (higher effectiveness against severe outcomes than infection); (b) vaccine type (higher for mRNA vaccines than viral vector vaccines); (c) number of

---

<sup>3</sup> R.S.O. 1990, c. E.9.

<sup>4</sup> S.O. 2020, c 17.

doses received; (d) time since receipt of the most recent dose; (e) variant of concern; and (f) host factors (lower for immunosuppressed individuals than immunocompetent individuals).

[16] On **May 20, 2021**, the Office of the Premier published a news release titled “Ontario Releases Three-Step Roadmap to Safely Reopen the Province”, and a backgrounder titled “Roadmap to Reopen” to announce a staged plan to end the province-wide Stay-At-Home Order. One of those indicators for proceeding to the next step was the level of vaccinations. Step 1 of the Reopening Plan would be taken when 60% of adults were vaccinated with one dose. Step 2 would be taken when 70% of adults were vaccinated with one dose and 20% vaccinated with two doses. Step 3 would be taken when 70% to 80% of adults were vaccinated with one dose and 25% vaccinated with two doses.

[17] In the **fall of 2021**, the province entered into the fourth wave of the pandemic. This wave was associated with the Delta variant of the virus. The scientific modelling predicted a substantial wave of infections with the potential of exceeding hospital ICU capacity. Ontario decided that public health measures had to be implemented or re-implemented. Ontario decided that vaccination uptake had to accelerate substantially. Ontario decided to implement policies to accelerate vaccination uptake.

[18] On **September 1, 2021**, Ontario announced that starting September 22, 2021 it would require people to be fully vaccinated (two doses) and provide proof of their vaccination status to access certain businesses and organizations. Based on the advice provided by Ontario’s Chief Medical Officer of Health (“OCMOH”), the government decided that the COVID-19 proof of vaccination requirement would provide the best chance to slow the spread of the virus while helping to avoid lockdowns and protect the province’s hospital capacity.

[19] The proof of vaccination requirement would be applied to higher-risk indoor public settings where face coverings cannot always be worn, including restaurants, bars, banquet halls, casinos, theatres, and gyms. The proof of vaccination requirements did not apply to outdoor settings or settings where people receive medical care, food from grocery stores, and medical supplies.

[20] The proof of vaccination requirement was established by sections 2 (2.1) and 2.1 of Schedule 1 of Ont. Reg 364/20 and came into effect on **September 22, 2021**. For present purposes, the pertinent parts of Ont. Reg 364/20 are set out below:

*Terms of Order*

1. The terms of this Order are set out in Schedules 1 to 5.

[...]

*References to this Order*

3.3 (1) In Schedules 1 to 3, a reference to “this Order” is a reference to Schedules 1 to 3.

[...]

STEP 3

SCHEDULE 1

GENERAL RULES AT STEP 3

*Closures*

[...]

(2) Each person responsible for a business or place, or part of a business or place, that Schedule 2 describes as being permitted to open if certain conditions set out in that Schedule are met shall ensure that the business or place, or part of the business or place, either meets those conditions or is closed.

[...]

*General compliance*

2. (1) The person responsible for a business or organization that is open shall ensure that the business or organization operates in accordance with all applicable laws, including the *Occupational Health and Safety Act* and the regulations made under it.

(2) The person responsible for a business or organization that is open shall operate the business or organization in compliance with the advice, recommendations and instructions of public health officials, including any advice, recommendations or instructions on physical distancing, cleaning or disinfecting.

(2.1) The person responsible for a business or organization that is open shall operate the business or organization in compliance with any advice, recommendations and instructions issued by the Office of the Chief Medical Officer of Health, or by a medical officer of health after consultation with the Office of the Chief Medical Officer of Health,

(a) requiring the business or organization to establish, implement and ensure compliance with a COVID-19 vaccination policy; or

(b) setting out the precautions and procedures that the business or organization must include in its COVID-19 vaccination policy.

(2.2) In subsection (2.1),

“medical officer of health” means a medical officer of health as defined in subsection 1 (1) of the *Health Protection and Promotion Act*.

(3) The person responsible for a business or organization that is open shall operate the business or organization in compliance with any advice, recommendations and instructions issued by the Office of the Chief Medical Officer of Health, or another public health official, on screening individuals by, among other things,

(a) posting signs at all entrances to the premises of the business or organization, in a conspicuous location visible to the public, that inform individuals on how to screen themselves for COVID-19 prior to entering the premises; and

(b) actively screening every person who works at the business or organization before they enter the premises of the business or organization.

[...]

*Proof of vaccination*

2.1 (1) The person responsible for a business or an organization described in subsection (2) that is open shall require each patron who enters an area of the premises of the business or organization that is described in that subsection to provide, at the point of entry, proof of identification and of being fully vaccinated against COVID-19.

(2) Subsection (1) applies with respect to the following areas of the premises of the following businesses and organizations:

1. The indoor areas of restaurants, bars and other food or drink establishments where dance facilities are not provided, but not with respect to takeout and delivery service.
2. The indoor and outdoor areas of food or drink establishments where dance facilities are provided, including nightclubs, restoclubs and other similar establishments, but not with respect to takeout and delivery service.
3. The indoor areas of meeting and event spaces, including conference centres or convention centres, but not including places described in subsection 4 (2) of this Schedule.
4. The indoor areas of facilities used for sports and recreational fitness activities, including waterparks and personal physical fitness trainers, including, for greater certainty, the indoor areas of facilities where spectators watch events, but not including places described in subsection 16 (4) of Schedule 2.
5. The indoor areas of casinos, bingo halls and other gaming establishments.
6. The indoor areas of concert venues, theatres and cinemas.
7. The indoor areas of bathhouses, sex clubs and strip clubs.
8. The indoor areas of horse racing tracks, car racing tracks and other similar venues.
9. The indoor areas of places where commercial film and television production takes place, where there is a studio audience. For the purposes of this paragraph, a member of the studio audience is considered to be a patron of the production.

(3) Subsection (1) does not apply where a patron is entering an indoor area solely,

- (a) to use a washroom;
- (b) to access an outdoor area that can only be accessed through an indoor route;
- (c) to make a retail purchase;
- (d) while placing or picking up an order, including placing a bet or picking up winnings in the case of a horse racing track;
- (e) while paying for an order;
- (f) to purchase admission; or
- (g) as may be necessary for the purposes of health and safety.

(3.1) Despite subsection (1), if a quick service restaurant or other establishment at which food or drink is sold requires all dine-in patrons to order or select their food or drink at a counter, food bar or cafeteria line and pay before receiving their order, the person responsible for the restaurant or establishment may require dine-in patrons to provide the information described in that subsection at the counter, food bar or cafeteria line.

(3.2) Subsection (3.1) does not apply to bars, nightclubs, restoclubs or other similar establishments.

(4) The person responsible for a business or an organization to which this section applies shall comply with guidance published by the Ministry of Health on its website specifying,

(a) what constitutes proof of identification and of being fully vaccinated against COVID-19; and

(b) the manner of confirming proof of vaccination.

(5) For the purpose of this section, a person is fully vaccinated against COVID-19 if,

(a) they have received,

(i) the full series of a COVID-19 vaccine authorized by Health Canada, or any combination of such vaccines,

(ii) one or two doses of a COVID-19 vaccine not authorized by Health Canada, followed by one dose of a COVID-19 mRNA vaccine authorized by Health Canada, or

(iii) three doses of a COVID-19 vaccine not authorized by Health Canada; and

(b) they received their final dose of the COVID-19 vaccine at least 14 days before providing the proof of being fully vaccinated.

(6) A business or an organization is exempt from the requirement under subsection (1) in respect of patrons,

(a) who are under 12 years of age;

(b) who are under 18 years of age, and who are entering the indoor premises of a facility used for sports and recreational fitness activities solely for the purpose of actively participating in an organized sport, in accordance with guidance published by the Ministry of Health on its website for the purposes of this provision;

(c) who provide a written document, completed and supplied by a physician or registered nurse in the extended class, that sets out, in accordance with the Ministry's guidance mentioned in subsection (4),

(i) a documented medical reason for not being fully vaccinated against COVID-19, and

(ii) the effective time-period for the medical reason;

(d) who are entering the indoor premises of a meeting or event space, including a conference centre or convention centre, solely for the purposes of attending a wedding service, rite or ceremony or a funeral service, rite or ceremony, but not an associated social gathering;

(e) who are entering the indoor premises of a meeting or event space that is located in a place of worship or in a funeral establishment, cemetery, crematorium or similar establishment that provides funeral, cemetery or cremation services and that is operated by a person licensed under the *Funeral, Burial and Cremation Services Act, 2002*, for the purposes of attending a social gathering associated with a funeral service, rite or ceremony; or

(f) who are entering the indoor premises of a meeting or event space other than a place described in clause (e), including a conference centre or convention centre, for the purposes of attending a social gathering associated with a wedding service, rite or ceremony or a social gathering associated with a funeral service, rite or ceremony, on or after September 22, 2021, but before October 13, 2021, as long as the patron produces the results of an

antigen test administered within the previous 48 hours establishing that the person is negative for COVID-19 to the person responsible for the establishment.

(7) A person who is a patron shall not enter an area described in subsection (2) without providing the information required by subsection (1) except,

(a) for a purpose specified in subsection (3); or

(b) in the circumstances described in subsection (6).

(8) A person who provides any information to a business or an organization to satisfy a requirement under this section shall ensure that their information is complete and accurate.

(9) A business or an organization shall not retain any information provided pursuant to this section.

[...]

[21] On **October 4, 2021**, the Lieutenant Governor of Ontario explained in the Speech from the Throne that the “[v]accine certificates are a temporary policy that will be lifted when it is safe to do so, in consultation with the Chief Medical Officer of Health.

[22] Effective **March 1, 2022**, businesses and organizations that were previously required to comply with the proof of vaccination requirements were no longer required to confirm proof of vaccination prior to admitting patrons. On **April 27, 2022**, Ont. Reg. 364/20, and all the other orders made under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020* were revoked.<sup>5</sup>

### **C. Is the Application Moot?**

[23] As of March 1, 2022, the proof of vaccination requirement of Ont. Reg. 364/20 was no longer being enforced, and the regulation itself was repealed on April 27, 2022. Thus, the Application, strictly speaking, is moot, because as a general rule, courts should grant relief only if it will have a practical effect.<sup>6</sup>

[24] The court, however, has a discretion to determine a case notwithstanding its mootness.<sup>7</sup> In the immediate case, this Court has had the benefit of a full evidentiary record, including expert evidence, that has been subject to intense cross-examination. Ontario did not move to have the Application quashed for mootness, and Ontario was prepared to argue the motion on its merits.

[25] In these circumstances, I choose to exercise my discretion to hear the Application. Given the ongoing risk posed by COVID-19 outbreaks and the possibility that the proof of vaccination orders will be reintroduced, the necessary adversarial context exists to allow the court to make a fully considered decision that may have practical consequences.

<sup>5</sup> *Revoking Various Regulations*, Ont. Reg. 346/22.

<sup>6</sup> *Tamil Co-operative Homes Inc v. Arulappah* (2000), 49 O.R. (3d) 566 (C.A.); *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46; *Phillips v Nova Scotia (Commissioner of Inquiry into the Westray Mine Tragedy)*, [1995] 2 S.C.R. 97; *Borowski v Canada (Attorney General)*, [1989] 1 S.C.R. 342.

<sup>7</sup> *Thompson v. Ontario (Attorney General)*, 2011 ONSC 2023 at paras. 11-12; *Legroulx v. Pitre*, [2008] O.J. No. 443 (S.C.J.); *Maystar General Contractors Inc. v. International Union of Painters and Allied Trades, Local 1819* (2008), 90 O.R. (3d) 451 (C.A.); *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342.



## **D. The Applicants' Evidence**

### **1. The Experts' Evidence**

[26] On October 15, 2021, the Applicants commenced this Application. The Application was supported by the testimony of the Applicants and of Dr. Bryam W. Bridle, Dr. Joel Kettner, and Dr. Steven Pelech.

[27] Dr. Bridle delivered affidavits dated January 18, 2022 and April 7, 2022. He was cross-examined. Dr. Bridle is an Associate Professor of Viral Immunology in the Department of Pathobiology at the University of Guelph. He has an MSc and PhD in immunology and completed a post-doctoral fellowship in viral immunology. Because of my conclusion that there were no *Charter* contraventions, it is not necessary to discuss Dr. Bridle's expert evidence.

[28] Dr. Kettner delivered affidavits dated January 21, 2022 and April 7, 2022. He was cross-examined. Dr. Kettner is an epidemiologist and former Chief Medical Officer of Health of Manitoba. He currently is an associate professor in the Department of Community Health Sciences at the College of Medicine at the University of Manitoba. He holds Canadian Royal College Fellowship certifications in Public Health and Preventative Medicine as well as General Surgery. He obtained a MSc from the London School of Hygiene and Tropical Medicine at the University of London. Because of my conclusion that there were no *Charter* contraventions, it is not necessary to discuss Dr. Kettner's expert evidence.

[29] Dr. Pelech delivered affidavits dated January 30, 2022 and April 6, 2022. He was cross-examined. Dr. Pelech is a Professor in the Department of Medicine and Division of Neurology and a founder scientist of the Biomedical Research Centre at the University of British Columbia, which studies immunology. He has B.Sc and Ph.D. degrees in biochemistry from the University. Because of my conclusion that there were no *Charter* contraventions, it is not necessary to discuss Dr. Pelech's expert evidence.

### **2. Hibah Aoun**

[30] Hibah Aoun of Windsor, Ontario is a 27-year-old who has worked as a fitness trainer. She has not been vaccinated. She has a B.A. in forensics and psychology from the University of Windsor. She is qualified as a personal trainer, with an International Fitness Association (IFA) Personal Training Certificate. Between 2018 and November 2021, she was employed by LaSalle Fitness in Windsor and was its gym manager, until her employment was terminated in November 2021 because she refused to ask patrons of the gym for proof of vaccination. In October 2021, she began work at Lend City Mortgages and she has discontinued her activities as a personal trainer.

[31] Ms. Aoun is an adherent to wholistic and naturopathic practices of natural approaches to health and treating illnesses. She submitted that the vaccine passport wrongfully pressured her to submit to a medical intervention that violates her religious, spiritual, and conscientious beliefs. She submits that her rights under sections 2(a), 7, and 15 of the *Charter* have been contravened. She submits that she has a moral and legal right to weigh the efficacy and safety of vaccines and to make her decision on the basis of informed consent and in the absence of coercion or duress from Ontario. She deposed that the proof of vaccination requirement caused her to be separated from friends and family leading to feelings of social exile.

### **3. David Cohen**

[32] David Cohen of Toronto, Ontario is a 46-year-old entrepreneur. He is married with two children aged eight and ten. He is of the Jewish faith and is the child of Holocaust survivors. Before his family immigrated to Canada, he lived in South Africa and witnessed apartheid. As a Jew with family history of discrimination, segregation, and persecution, he was concerned that the vaccine passport was discrimination and segregation based on personal medical decisions. He regarded the vaccine passports as a form of discrimination against the unvaccinated and he refused to participate in this government scheme.

[33] Mr. Cohen has not been vaccinated, but he has developed a natural immunity against COVID-19. In October 2020, he became ill with COVID-19 symptoms. Several months later in May of 2021, he had a blood test done to see if he had developed natural antibodies against the virus. His test results showed that his antibody level was 391 U/ml. In September of 2021, he tested his antibodies once again, and he discovered that he was positive but asymptomatic with COVID-19. After recovering, he had a second blood test done to test for natural antibodies against the virus. His results showed that his level of antibodies had gone up to 502 U/ml. He deposed that he does not understand why Ontario wants to coerce him into getting the COVID-19 vaccine when he has natural immunity.

[34] Mr. Cohen deposed that the vaccine passport requirement of Ont. Reg. 364/20 deteriorated the quality of his life by segregating him from society and by preventing him from his everyday activities such as working out at a gym, which he regularly did, or taking his family out for dinner. He found the regulation punitive and designed to coerce him to be vaccinated despite his beliefs and concerns. He believes that his privacy rights have been violated and is concerned about Ontario having access to the private medical information that he has not been vaccinated. He is shocked and deeply disappointed in the federal and provincial governments by the segregation and discrimination that is an incident of the regulation.

### **4. Sarah Harjee**

[35] Ms. Harjee of Kitchener, Ontario is a 34-year-old nurse. She has not been vaccinated. At the time of introduction of Ont. Reg. 364/20, she had a 14-month-old son, and she was pregnant. Ms. Harjee was concerned about the possible adverse effects from the vaccine on herself and her unborn child, and she decided to wait until more data and studies were available before determining whether to take a COVID-19 vaccine. She objected to taking the COVID-19 vaccine based on her religious beliefs. Ms. Harjee has suffered mental distress, anger, and anxiety, due to social isolation and because she was unable to enroll her toddler in normal activities such as swimming and skating due to her vaccine status.

[36] Ms. Harjee submits that her rights under sections 2(a), 7, and 15 of the *Charter* have been contravened and that she has a moral and legal right to weigh the efficacy and safety of vaccines and to make her decision on the basis of informed consent and in the absence of coercion or duress from Ontario.

### **5. Evan Kraayenbrink**

[37] Evan Kraayenbrink of Moorefield, Ontario is a 30-year-old paramedic who chose not to be

vaccinated because he believes he is not yet fully informed of the potential side effects of COVID-19 vaccines. Mr. Kraayenbrink is a devout Christian, and sincerely believes that he is accountable to God for what he allows to be done to his body, including with respect to drugs such as the COVID-19 vaccine. He believes that he has been discriminated against or punished for choosing not to be vaccinated. He submits that his rights under sections 2(a), 7, and 15 of the *Charter* have been contravened. He submits that he has a moral and legal right to weigh the efficacy and safety of vaccines and to make his decision on the basis of informed consent and in the absence of coercion or duress from Ontario.

## **6. Sarah Lamb**

[38] Sarah Lamb of Kitchener, Ontario is 41 years old, married with a five-year-old son. She owns and operates a dog-walking business. In May 2021, without being given any oral advice but having received a one-page information sheet, she was vaccinated for COVID-19. She had been scheduled to receive the Astra-Zeneca vaccine, but due to concerns about blood clots, it was no longer being administered.

[39] Ms. Lamb had adverse reactions to the vaccination that continue to this day. She has lost feeling from her waist down, is unable to differentiate between cold and hot water, has impaired vision, dizziness, confusion, migraines, joint pain, throbbing legs, red spots and marks on her upper legs, tinnitus, throbbing pain in her legs and skin discoloration. She has had numerous doctor's appointments, attendances at hospital emergency departments, and she has seen a neurologist. She has completed CT scans, EMGs, and has had many blood tests. Despite her neurological health problems that started the day after she received her first dose, she was not granted an exemption for proof of vaccine requirements, and she was told to get her second dose by a medical officer of health who had not examined her personally.

[40] Ms. Lamb submits that her rights under sections 7 and 15 of the *Charter* have been contravened. She submits that she has a moral and legal right to weigh the efficacy and safety of vaccines and to make her decision about further doses of the vaccine on the basis of informed consent and in the absence of coercion or duress from Ontario.

## **7. Linda McDonough**

[41] Linda McDonough of Simcoe, Ontario is 66 years old. She is a devout Christian, and she believes that she is accountable to God for what she allows to be done to her body, including with respect to drugs and vaccines.

[42] In 2011, Ms. McDonough was diagnosed with Complex Regional Pain Syndrome (CRPS), a very painful condition that has no known cure. Ms. McDonough also suffers from Acoustic Neuroma, Diverticula, and Horner's Syndrome. She decided not to take COVID-19 vaccine as she is concerned about its adverse effects and the possibility it may aggravate her medical conditions. In 2021, her doctor advised her that she could become very sick after taking the COVID-19 vaccine since any reactions to the vaccine would be greatly amplified. However, she was unable to obtain a medical exemption letter from her treating pain clinic physician.

[43] Ms. McDonough submits that her rights under sections 2(a), 7, and 15 of the *Charter* have been contravened. She submits that she has a moral and legal right to weigh the efficacy and safety of vaccines and to make her decision on the basis of informed consent and in the absence of

coercion or duress from Ontario.

### **8. Mark McDonough**

[44] Mark McDonough of Simcoe, Ontario is Mrs. McDonough's spouse. He is not vaccinated. He is 66 years old and has been battling basal cell cancer since 2017. He suffers from Pancytopenia which causes low red and white blood cell counts. He has suffered from blood clots since 2014 for which he takes "Eliquis." He has a medical history of respiratory problems and other ailments such as diverticula. He has a history of adverse health reactions to antibiotics and flu vaccines. Mr. McDonough is afraid of how his body will react to the COVID-19 vaccine, considering his underlying health condition.

[45] Mr. McDonough is devout Christian, and he believes that he is accountable to God for what he allows to be done to his body, including with respect to drugs and vaccines. 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 and the impact on his natural immune system and his medical condition.

[46] Mr. McDonough submits that his rights under sections 2(a), 7, and 15 of the *Charter* have been contravened. He submits that he has a moral and legal right to weigh the efficacy and safety of vaccines and to make his decision on the basis of informed consent and in the absence of coercion or duress from Ontario.

### **9. Jackie Ramnauth**

[47] Jackie Ramnauth of Markham, Ontario is a 46-year-old, single mother of a 13-year-old. She has been struggling with a blood clot disorder since 2007. In November 2020, she collapsed and was rushed to an emergency department because of an iron deficiency that caused her organs to shut down. She is concerned about the COVID-19 vaccine due to her own underlying medical condition and her proneness to blood clots. She is concerned about the possible adverse effects of the vaccine on herself and on her son.

[48] Ms. Ramnauth has not been vaccinated, and she submits that the proof of vaccination requirement interfered with her everyday activities such as going to restaurants, the zoo, sports facilities or the bowling alley, activities she previously regularly enjoyed with her son.

[49] Ms. Ramnauth submits that her rights under sections 7 and 15 of the *Charter* have been contravened. She submits that she has a moral and legal right to weigh the efficacy and safety of vaccines and to make her decision about further doses of the vaccine on the basis of informed consent and in the absence of coercion or duress from Ontario.

### **10. Sam Sabourin**

[50] Sam Sabourin of Ottawa, Ontario is 29 years old. He is the owner of "Between the Bumpers Gym". He is not vaccinated. He is concerned about myocarditis and the potential long-term impact of COVID-19 vaccines.

[51] He chose not to follow the proof of vaccination requirement with his business' patrons, because he believed the regulation was discriminatory. As a result of the proof of vaccination requirement, he was unable to book a wedding venue for a reception with his fiancé. He deposed

that these were deeply personal decisions. He submits that his rights under sections 7 and 15 of the *Charter* have been contravened.

## **E. Ontario's Evidence**

### **1. Ontario's Expert Evidence**

[52] Dr. Matthew Hodge delivered an affidavit dated March 21, 2022. He was cross-examined. Dr. Hodge is a certified specialist in public health and preventative medicine and an emergency physician at Scarborough General Hospital. He has a Ph.D. in epidemiology and biostatistics from McGill University and a Master's degree in Health Care Management from Harvard University. Because of my conclusion that there were no *Charter* contraventions, it is not necessary to discuss Dr. Hodge's expert evidence.

[53] Dr. Jeff Kwong delivered an affidavit dated March 21, 2022. He was cross-examined. Dr. Kwong is an epidemiologist, public health and preventative medicine specialist and practising physician. He is a Professor in the University of Toronto Faculty of Medicine and Dalla Lana School of Public Health. Because of my conclusion that there were no *Charter* contraventions, it is not necessary to discuss Dr. Kwong's expert evidence.

### **2. Richard Stubbings**

[54] Richard Stubbings delivered an affidavit dated March 21, 2022. Mr. Stubbings is the Assistant Deputy Minister of the Public Safety Division within the Ministry of the Solicitor General. The Solicitor General is responsible for the administration of the *Emergency Management and Civil Protection Act* of the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*. He was cross-examined.

## **F. Does the Proof of Vaccination Requirement Contravene s. 2(a) of the Charter?**

[55] Pursuant to sections 1 and 2(a) of the *Canadian Charter of Rights and Freedoms*, everyone is guaranteed freedom of conscience and religion subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[56] In *Syndicat Northcrest v. Amselem*,<sup>8</sup> for the purposes of a *Charter* analysis of freedom of religion, Justice Iacobucci defined the nature of religion as follows:

39. In order to define religious freedom, we must first ask ourselves what we mean by "religion". While it is perhaps not possible to define religion precisely, some outer definition is useful since only beliefs, convictions and practices rooted in religion, as opposed to those that are secular, socially based or conscientiously held, are protected by the guarantee of freedom of religion. Defined broadly, religion typically involves a particular and comprehensive system of faith and worship. Religion also tends to involve the belief in a divine, superhuman or controlling power. In essence, religion is about freely and deeply held personal convictions or beliefs connected to an individual's spiritual faith and integrally linked to one's self-definition and spiritual fulfilment, the practices of which allow individuals to foster a connection with the divine or with the subject or object of that spiritual faith.

[57] Freedom of conscience and religion receives constitutional protection because it ensures

---

<sup>8</sup> 2004 SCC 47.

that society does not interfere with profoundly personal beliefs that govern one's conduct and practice and one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being.<sup>9</sup> Central to freedom of religion is individual conscience and the inappropriateness of government intervention to compel or constrain its manifestation.<sup>10</sup> Freedom of religion entails that unless justified in a free and democratic society, the state (a) not interfere in religion and beliefs and (b) neither favour nor hinder any particular belief or non-belief.<sup>11</sup> Whether the state interferes with religious freedom must be considered in the context of a multicultural, multi-religious society where the duty of state authorities to legislate for the general good inevitably produces conflicts with individual beliefs.<sup>12</sup>

[58] Freedom of religion is infringed if: (1) a person sincerely believes in a practice or belief that has a nexus with religion; and (2) the impugned conduct of the state interferes with that person's ability to act in accordance with the practice or belief and the manner of the interference is more than trivial or insubstantial.<sup>13</sup> Invoking the freedom of religion guarantee depends on the individual demonstrating that he or she sincerely undertakes the practice that has been infringed to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or is in conformity with the position of religious officials.<sup>14</sup> Trivial or insubstantial interference is interference that does not threaten actual religious beliefs or conduct.<sup>15</sup> Legislative or administrative action that increases the cost of practising or otherwise manifesting religious beliefs is not prohibited if the burden is trivial or insubstantial.<sup>16</sup> From an evidentiary perspective, an infringement of the right to religious freedom cannot be established without objective proof of an interference with the observance of the practice or belief in a more than trivial or insubstantial way.<sup>17</sup>

[59] The court must ensure that an asserted religious belief is sincerely asserted in good faith, is neither fictitious nor capricious, and is not an artifice.<sup>18</sup> The assessment of sincerity requires a precise understanding of the belief or practice at issue.<sup>19</sup> To determine whether the impugned conduct is capable of interfering with freedom of religion, the court objectively examines the

---

<sup>9</sup> *McKitty (Litigation guardian of) v. Hayani*, 2019 ONCA 805; *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713.

<sup>10</sup> *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295.

<sup>11</sup> *Mouvement laïque québécois v. Saguenay (City)*, 2015 SCC 16; *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7.

<sup>12</sup> *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32; *Loyola High School v. Québec (Attorney General)*, 2015 SCC 12; *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37.

<sup>13</sup> *McKitty (Litigation guardian of) v. Hayani*, 2019 ONCA 805; *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32; *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37; *Multani v. Commission scolaire Marguerite-Bourgeois*, 2006 SCC 6; *Syndicat Northcrest v. Amselem*, 2004 SCC 47; *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54.

<sup>14</sup> *Syndicat Northcrest v. Amselem*, 2004 SCC 47.

<sup>15</sup> *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37; *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713.

<sup>16</sup> *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37; *R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713; *R. v. Jones*, [1986] 2 S.C.R. 284.

<sup>17</sup> *E.T. v. Hamilton-Wentworth District School Board*, 2017 ONCA 893; *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7; *Syndicat Northcrest v. Amselem*, 2004 SCC 47.

<sup>18</sup> *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32; *Multani v. Commission scolaire Marguerite-Bourgeois*, 2006 SCC 6; *Syndicat Northcrest v. Amselem*, 2004 SCC 47.

<sup>19</sup> *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32.

impact on the claimants rather than the impact on the beliefs and practices of others.<sup>20</sup> To determine whether a particular claim to freedom of religion is entitled to protection, a court must take into account the particular religion, the particular religious right, and the particular personal and public consequences, including the religious consequences, of enforcing that right.<sup>21</sup> Once the court takes jurisdiction over a case with a religious component, the court must try to come to the best understanding possible of the applicable tradition and custom.<sup>22</sup>

[60] Freedom of religion is not absolute and may be subject to such limitations as are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.<sup>23</sup> Religious freedom can be limited where an individual's religious beliefs or practices injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own.<sup>24</sup> In *Christian Education South Africa v. Minister of Education*, where the South African Constitutional Court upheld a law prohibiting corporal punishment in schools, Justice Sachs observed freedom of religion was not absolute and freedom of religion had to be balanced with other rights and social values that were also worthy of protection. In a passage approved by the Supreme Court, Justice Sachs, stated:<sup>25</sup>

The underlying problem in any open and democratic society based on human dignity, equality and freedom in which conscientiousness and religious freedom has to be regarded with appropriate seriousness, is how far such democracy can and must go in allowing members of religious communities to define for themselves which laws they will obey and which not. Such a society can cohere only if all its participants accept that certain basic norms and standards are binding. Accordingly, believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land. At the same time, the state should, wherever reasonably possible, seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or else respectful of the law.

[61] In the immediate case, the impugned provisions of Ont. Reg. 364/20 did not engage the Applicants' *Charter* s. 2(a) right to freedom of religion. While the proof of vaccination requirement imposes the consequence of not attending the specified businesses or organizations as a result of adherence to a religious objection to vaccination, it in no way constraints the Applicants' ability to hold or observe their religious beliefs.

[62] Accepting the Applicants' assertions of sincerely held religious objections to COVID-19 vaccination, there is no legislative or administrative action that could reasonably be said to have interfered with their beliefs. The Applicants are not being compelled to be vaccinated, which would be contrary to their religious belief. What the proof of vaccination requirement did is that it required operators of specified businesses or organizations to deny entry to those who could not

---

<sup>20</sup> *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32. 74; *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54; *S.L. v. Commission scolaire des Chênes*, 2012 SCC 7; *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37; *R. v. Edwards Books and Art Ltd.* [1986] 2 S.C.R. 713.

<sup>21</sup> *Bruker v. Marcovitz*, 2007 SCC 54.

<sup>22</sup> *Bruker v. Marcovitz* 2007 SCC 54; *Lakeside Colony of Hutterian Brethren v. Hofer*, [1992] 3 S.C.R. 165.

<sup>23</sup> *Bruker v. Marcovitz*, 2007 SCC 54; *Trinity Western University v. British Columbia College of Teachers* 2001 SCC 31; *B.(R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315; *P. (D.) v. S. (C.)*, [1993] 4 S.C.R. 141; *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295.

<sup>24</sup> *Multani v. Commission scolaire Marguerite-Bourgeois*, 2006 SCC 6; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295.

<sup>25</sup> *Christian Education South Africa v. Minister of Education*, [2000] ZACC 11, 2000 (4) S.A. 757, quoted by Justice Abella in *Bruker v. Marcovitz*, 2007 SCC 54.

provide proof of COVID-19 vaccination. This denial of entry does not interfere with the Applicants' religious beliefs or practices.

[63] In *Banas v. HMTQ*,<sup>58</sup> Justice Hurley upheld the constitutionality of masking and proof of vaccination requirements, and he ruled that those requirements did not infringe freedom of conscience because they did not limit the applicant's ability to "hold whatever thoughts, beliefs and opinions she has about COVID-19."<sup>26</sup> In the immediate case, I would add there is no interference with the Applicants' religious beliefs about vaccination. As in *Banas v. HMTQ*, the proof of vaccination requirement does not interfere with the Applicants' religious belief or practice.

[64] In *Alberta v. Hutterian Brethren of Wilson Colony*,<sup>27</sup> a photo identification requirement for a driver's licence creating a "financial cost" was found not to "seriously affect the claimants' right to pursue their religion." In the immediate case, the Applicants' inability to attend a restaurant or other venue governed by the proof of vaccination requirement does not substantially interfere with their religious observance. I mean no disrespect to the applicants but from an evidentiary perspective, their alleged infringement of the right to religious freedom has not been established with objective proof of an interference with an observance, practice, or belief that is other than trivial or insubstantial.

### **G. Does the Proof of Vaccination Requirement Contravene s. 7 of the Charter?**

[65] Pursuant to sections 1 and 7 of the *Canadian Charter of Rights and Freedoms*, everyone is guaranteed the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice, subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. Section 7 protects a sphere of personal autonomy involving inherently private choices that implicate basic choices going to the core of what it means to enjoy individual dignity and independence.<sup>28</sup>

[66] To demonstrate an interference with security of the person, the plaintiff must show either interference with bodily integrity and autonomy, including deprivation of control over one's body, or serious state-imposed psychological stress.<sup>29</sup> Government action deprives or infringes the security of the person when it seriously impairs one's physical or mental health or causes severe psychological harm.<sup>30</sup> To constitute an infringement to a person's security of the person, the impact of the government action on psychological integrity need not rise to the level of nervous shock or psychiatric illness, but it must be greater than ordinary stress or anxiety.<sup>31</sup>

[67] To demonstrate that government action has infringed s. 7 of the *Charter*, a plaintiff must demonstrate that: (a) the action interferes with or deprives individuals of life, liberty, or security of the person; and (b) the deprivation is not in accordance with the principles of fundamental

---

<sup>26</sup> 2022 ONSC 999.

<sup>27</sup> 2009 SCC 37.

<sup>28</sup> *Association of Justice Counsel Appellant; v. Attorney General of Canada Respondent*, 2017 SCC 55; *R. v. Malmo-Levine*, 2003 SCC 74; *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44; *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844.

<sup>29</sup> *Ontario (Attorney General) v. Bogaerts*, 2019 ONCA 876.

<sup>30</sup> *Carter v. Canada (Attorney General)*, 2015 SCC 5.

<sup>31</sup> *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46.



justice.<sup>32</sup> To demonstrate that government action has infringed s. 7 of the *Charter*, a plaintiff must identify and define the relevant principles of fundamental justice that apply, and then show that the infringement or deprivation of rights does not accord with the identified principles.<sup>33</sup>

[68] Principles of fundamental justice are basic tenets of the Canadian legal system.<sup>34</sup> Whether a principle is a principle of fundamental justice rests upon an analysis of the nature, sources, rationale and essential role of that principle within the judicial process and in the legal system as it develops.<sup>35</sup> The scope of the principles of fundamental justice will vary with the context and the interests at stake.<sup>36</sup> The principles of fundamental justice are concerned not only with the interests of the person who claims that his or her liberty has been limited but with the protection of society; fundamental justice requires a fair balance, both procedurally and substantively, between these interests.<sup>37</sup> Governments have the right to impose many types of restraints on individual behaviour, and not all limitations will attract *Charter* scrutiny.<sup>38</sup>

[69] Principles of fundamental justice include the principles that laws infringing on life, liberty or security of the person must not be arbitrary, overbroad, or grossly disproportional, which is to say that there is no rational connection between the purpose of the impugned provisions and some of its impacts.<sup>39</sup> Prohibitions against arbitrariness, overbreadth, and gross disproportionality are three distinct principles that are failures of instrumental rationality where the law is inadequately connected to its purpose (arbitrariness) or overreaches (overbreadth and disproportionality) in achieving its purpose.<sup>40</sup>

[70] In the immediate case, there is no interference with the Applicants' right to life, liberty, or security of the person. Ont. Reg. 364/20 did not require the Applicants to undergo any form of medical procedure, and they remained at all times in control of their bodily integrity, free from state interference, as a result of their choice to remain unvaccinated.

[71] In *R. v. Morgentaler*,<sup>41</sup> *Chaoulli v. Canada*,<sup>42</sup> *Canada (AG) v. PHS Community Services Society*,<sup>43</sup> and *Carter v. Canada (Attorney General)*,<sup>44</sup> which all involved state interference to access to medical treatment, the Supreme Court held that a risk of harm is sufficient to engage the right to security of the person and that state interference with a woman's access to medical treatment constituted a deprivation of security of the person. In the immediate case, there is no state interference with access to medical treatment. The impugned restriction in Ont. Reg. 364/20

---

<sup>32</sup> *Blencoe v. B.C. (Human Rights Commission)*, 2000 SCC 44.

<sup>33</sup> *R. v. Malmö-Levine*, 2003 SCC 74; *R. v. White*, [1999] 2 S.C.R. 417.

<sup>34</sup> *Reference re Section 94(2) of the Motor Vehicle Act*, [1985] S.C.R. 486.

<sup>35</sup> *Reference re Section 94(2) of the Motor Vehicle Act*, [1985] S.C.R. 486.

<sup>36</sup> *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 S.C.R. 315; *Chiarelli v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 711; *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869; *R. v. Lyons*, [1987] 2 S.C.R. 309.

<sup>37</sup> *Cunningham v. Canada*, [1993] 2 S.C.R. 143; *Pearlman v. Manitoba Law Society Judicial Committee*, [1991] 2 S.C.R. 869; *Reference re Section 94(2) of the Motor Vehicle Act*, [1985] S.C.R. 486; *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 177.

<sup>38</sup> *B. (R.) v. Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315.

<sup>39</sup> *Carter v. Canada (Attorney General)*, 2015 SCC 5; *Canada (Attorney General) v. Bedford*, 2013 SCC 72.

<sup>40</sup> *Ewart v. Canada*, 2018 SCC 30; *Canada (Attorney General) v. Bedford*, 2013 SCC 72.

<sup>41</sup> [1988] 1 S.C.R. 30.

<sup>42</sup> 2005 SCC 35.

<sup>43</sup> 2011 SCC 44.

<sup>44</sup> 2015 SCC 5.

restricts access to restaurants and entertainment venues which obviously are not medical facilities.

[72] Further, the proof of vaccination requirement did not engage any right to privacy protected by s. 7 of the *Charter*. Privacy is not absolute and must be balanced against legitimate societal needs.<sup>45</sup> The proof of vaccination requirement did not compel the Applicants to share personal information beyond whether they had proof of vaccination. While the operators of certain businesses and organizations were required to check vaccination status, they were prohibited from retaining information regarding vaccination status. Moreover, the Applicants were under no obligation to attend these venues; the presentation of the vaccination certificate is analogous to requiring proof of age eligibility to purchase alcohol or tobacco or a valid licence to purchase a firearm.

[73] Further still, there is no evidence that the emotional or psychiatric harm of the proof of vaccination requirement reached the high threshold of severe physical or psychological suffering needed to engage security of the person. This aspect of s. 7 does not protect one from “the ordinary stresses and anxieties that a person of reasonable sensibility would suffer as a result of government action.”<sup>46</sup> The section 7 liberty interest does not encompass restrictions on a citizen’s choice to dine in at a restaurant, drink in a bar, or attend at businesses or organizations subject to the proof of vaccination requirement.

[74] The immediate case is similar to *Maddock v. British Columbia*.<sup>47</sup> In that case, Mr. Maddock challenged an order made by British Columbia’s Public Health Officer. The order required restaurant patrons seeking entry to the restaurant to provide proof of vaccination by way of a QR code (a vaccination card) or proof of an exemption from vaccination. Mr. Maddock was a paralegal, and he argued that the order contravened his right to liberty under s. 7 of the *Charter* because it interfered with his ability to carry on his business of meeting clients and providing legal services.

[75] Chief Justice Hinkson concluded, however, that the order did not engage Mr. Maddock’s liberty interest and therefore it was not necessary to consider whether the order was justified in accordance with *Charter* values. The restrictions on Mr. Maddock’s access to privately owned establishments that are open to the public did not amount to an infringement of his liberty; the Public Health Officer’s order focused on access to private establishments to which there was no unqualified right of access, and the order did not compel or prohibit any form of medical treatment. Mr. Maddock was not compelled to make any decision, and he was free to carry on his paralegal business elsewhere. There was no infringement of his s. 7 rights.

[76] In the immediate case, I respectfully conclude that the Applicants have not demonstrated that their rights under s. 7 of the *Charter* have been infringed.

#### **H. Does the Proof of Vaccination Requirement Contravene s. 15 of the *Charter*?**

[77] Pursuant to sections 1 and 15 of the *Charter*, every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability, subject to such reasonable limits prescribed by law as can

<sup>45</sup> *R v. O’Connor*, 1995 CanLII 51 (SCC), [1995] 4 SCR 411.

<sup>46</sup> *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 S.C.R. 46.

<sup>47</sup> 2022 BCSC 1605.

be demonstrably justified in a free and democratic society.

[78] The protection provided by s.15 is also extended to analogous grounds, which can be identified as distinctions that serve as the basis for stereotypical decisions made not on the basis of merit but on the basis of a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity or decisions that impact a discrete and insular minority or a group that has been historically discriminated against.<sup>48</sup> Analogous grounds to race, national or ethnic origin, colour, religion, sex, age or mental or physical disability are: adopted status;<sup>49</sup> citizenship;<sup>50</sup> Indian status;<sup>51</sup> marital status,<sup>52</sup> parental status;<sup>53</sup> sexual orientation;<sup>54</sup> and welfare status.<sup>55</sup> Once a ground is found to be analogous, it becomes an enumerated ground for other cases.<sup>56</sup>

[79] Section 15 prohibits discriminatory state action, where discrimination is an intentional or unintentional distinction based on the personal characteristics of the individual or group, which has the effect of imposing burdens, obligations, or disadvantages on such individual or group not imposed upon others, or which withholds or limits access to opportunities, benefits, and advantages available to other members of society.<sup>57</sup> The presence of discrimination can be examined in terms of four contextual factors: (1) pre-existing disadvantage, if any, of the claimant group; (2) degree of correspondence between the differential treatment and the claimant group's reality; (3) whether the law or program has an ameliorative purpose or effect; and (4) the nature of the interest affected.<sup>58</sup>

[80] To determine whether a government enactment or action contravenes substantive equality, there is a two-step test for applying s. 15 (1) of the *Charter*: (a) Does the law or government action in its purpose or effect impose differential treatment based on an enumerated or analogous ground?; and (b) Does the differential treatment perpetuate arbitrary disadvantage on the claimant because of his or her membership in an enumerated or analogous group?<sup>59</sup>

[81] In some cases, the two steps are broken down into the three steps of: (a) determining whether there is differential treatment; (b) determining whether the differential treatment is on the basis of an enumerated or analogous ground; and (c) determining whether the differential treatment is discriminatory, having the effect on the claimant of imposing a burden, obligation or disadvantage not imposed upon others or of withholding or limiting access to benefits or

<sup>48</sup> *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203.

<sup>49</sup> *Re Marshall Estate*, [2009] N.S.J. No. 103 (N.S.C.A.).

<sup>50</sup> *Lavoie v. Canada*, 2002 SCC 23; *Chiarelli v. Canada (Minister of Employment and Immigration)*, [1992] 1 S.C.R. 71; *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

<sup>51</sup> *Baier v. Alberta*, 2007 SCC 31; *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203.

<sup>52</sup> *Nova Scotia (Attorney General) v. Walsh*, [2002] 4 S.C.R. 325; *Miron v. Trudel* [1995] 2 S.C.R. 418.

<sup>53</sup> *Dartmouth/Halifax County Regional Housing Authority v. Sparks*, [1993] N.S.J. No. 97 (N.S.C.A.).

<sup>54</sup> *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*, 2000 SCC 69; *M. v. H.*, [1999] 2 S.C.R. 3; *Vriend v. Alberta* [1998] 1 S.C.R. 493; *Egan v. Canada* [1995] 2 S.C.R. 513.

<sup>55</sup> *Falkiner v. Ontario (Ministry of Community and Social Services)* (2002), 59 O.R. (3d) 481 (C.A.).

<sup>56</sup> *Lavoie v. Canada*, 2002 SCC 23; *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203.

<sup>57</sup> *R. v. Kapp*, 2008 SCC 41; *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

<sup>58</sup> *R. v. Kapp*, 2008 SCC 41; *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497.

<sup>59</sup> *Fraser v. Canada (Attorney General)*, 2020 SCC 28; *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30; *Withler v. Canada (Attorney General)*, 2011 SCC 12; *R. v. Kapp*, 2008 SCC 41; *R. v. Turpin*, [1989] 1 S.C.R. 1296; *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143; *Egan v. Canada* [1995] 2 S.C.R. 513.

advantages which are available to others.<sup>60</sup>

[82] To determine whether government action violates the *Charter's* guarantee of equality the matter must be considered in the full context of the case, including how the government's conduct, acts and omissions, affects the claimants and the members of the group to which they belong.<sup>61</sup> The court must examine the larger context to determine whether differential treatment results in inequality or whether, contrariwise, it would be identical treatment that would foster inequality or disadvantage.<sup>62</sup> Substantive equality combats disadvantage and discrimination and aims at improving the situation of members of subordinated and disadvantaged groups.<sup>63</sup>

[83] The *Charter* protects against laws that are explicitly discriminatory based on an enumerated or analogous ground but also laws that manifest systemic or adverse impact discrimination. Adverse impact discrimination occurs when a seemingly neutral law has a disproportionate impact on members of groups protected on the basis of an enumerated or analogous ground. Instead of explicitly singling out those who are in the protected groups for differential treatment, the law indirectly places them at a disadvantage.<sup>64</sup>

[84] In the argument of this Application, the Applicants did not rely on analogous grounds of discrimination. Rather, they submitted that Ont. Reg. 364/20 discriminated against their group based on religion and mental and physical disability. The evidence, however, did not substantiate any such discrimination. The proof of vaccination requirement to enter a restaurant *etc.* was not coercive and it did not impose undue hardships or marginalize the Applicants. While it is sometimes difficult to differentiate, there is a difference between incentives that award and disincentives that punish, but in the immediate case, the Applicants could make their own medical decisions about vaccination. The proof of vaccination requirement of Ont. Reg. 364/20 did not marginalize or impose differential treatment based on religion or disability. Its non-differential treatment did not perpetuate arbitrary disadvantage on the Applicants because of their religious beliefs, which as noted above, were not being interfered with, or because of their disabilities, for which their access to medical treatment remained unimpaired. The Applicants retained their autonomy to make their own decisions about their personal health and welfare. In the immediate case, I respectfully conclude that the Applicants have not demonstrated that their rights under s. 15 of the *Charter* have been infringed.

### **I. Other COVID-19 and Charter Caselaw**

[85] The following cases about government measures taken in response to the COVID-19 pandemic support my conclusions in the immediate case. Strictly speaking, it is arguable that each and every one of these cases can be distinguished based on different facts and different approaches to the legal analysis. Strictly speaking, it is arguable that none of these cases are necessarily applicable in whole or in part to the Applicants' arguments made in the immediate case, some of which are original and designed precisely to respond to the noted weaknesses of the *Charter*

---

<sup>60</sup> *Lavoie v. Canada*, 2002 SCC 23, *Lovelace v. Ontario*, [2000] 1 S.C.R. 950; *Law v. Canada (Minister of Employment & Immigration)*, [1999] 1 S.C.R. 497.

<sup>61</sup> *Withler v. Canada (Attorney General)*, 2011 SCC 12.

<sup>62</sup> *R. v. Turpin* [1989] 1 S.C.R. 1296.

<sup>63</sup> *Andrews v. Law Society of British Columbia*, [1989] 1 S.C.R. 143.

<sup>64</sup> *Fraser v. Canada (Attorney General)*, 2020 SCC 28; *Withler v. Canada (Attorney General)*, 2011 SCC 12; *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30.

challenges made by others in other cases. That all said, the cases described below do support my conclusions in the immediate case.

[86] All of the cases involve *Charter* challenges to regulations introduced by the federal or provincial governments to respond to the COVID-19 pandemic. Most of the cases concern restrictions that are far more draconian than the alleged infringements in the immediate case. All of the cases uphold the challenged orders of the provincial and federal government, and these cases support an *a fortiori* argument in the immediate case that involves less draconian requirements.

[87] Visualize, if the judgment in *Lewis v. Alberta Health Services*<sup>65</sup> is correct that a restriction on access to medical treatment, which required an applicant for a life-saving transplant to be vaccinated for COVID-19 to be eligible to receive the treatment, does not contravene sections 2(a), 7, and 15 of the *Charter*, then *a fortiori* a requirement that a person seeking to enter a restaurant, bar, sporting arena, movie theatre, fitness facility, and certain other businesses must show proof of vaccination does not offend the *Charter*.

### **1. *Canadian Society for the Advancement of Science in Public Policy v. British Columbia (Provincial Health Officer)***

[88] In *Canadian Society for the Advancement of Science in Public Policy v. British Columbia (Provincial Health Officer)*,<sup>66</sup> the petitioners challenged two orders made by British Columbia's Provincial Health Officer as contrary to sections 2(a), 2(b), 7, and 15 of the *Charter*. The impugned orders introduced a vaccine passport regime providing for proof of vaccination by way of a QR code or proof of an exemption from vaccination, as well as various other requirements for attending various venues such as maximum capacity limits, seating requirements, and staffing requirements. Individuals who lacked a vaccine passport could not access a variety of businesses or activities including restaurants, cafes, indoor ticketed sporting events, indoor concerts, indoor theatre/dance/symphony events, night clubs; casinos; movie theatres; and fitness centres and gyms.

[89] Chief Justice Hinkson was not prepared to make a finding of a breach sections 2(a), 2(b), and 15 of the *Charter* in the absence of an adequate evidentiary record. With respect to s. 7, he concluded that the Orders did not breach section 7 because the restrictions only applied to restrict access to private establishments, to which there was no right to unfettered access.

### **2. *Taylor v. Newfoundland and Labrador***

[90] In *Taylor v. Newfoundland and Labrador*,<sup>67</sup> during the COVID-19 pandemic, Ms. Taylor, who lived in Halifax, Nova Scotia, sought an exemption to Newfoundland and Labrador's public health order limiting entry into the province. She sought the exemption because her mother, who lived in Newfoundland, had suddenly died and she wished to attend the funeral. Ms. Taylor challenged the COVID-19 order on a variety of *Charter* grounds, including the challenge that the order contravened her right to life, liberty, and security of the person.

[91] Justice Burrage held that the infringement of Ms. Taylor's right to liberty was not engaged. Justice Burrage stated at paragraphs 384 – 390:

---

<sup>65</sup> 2022 ABCA 359.

<sup>66</sup> 2022 BCSC 1606.

<sup>67</sup> 2020 NLSC 125.

384. [...] With the greatest respect to Ms. Taylor, and while not discounting the importance to her of attending her mother's funeral, her decision to do so does not rise to the level of a "fundamental personal choice", as defined in the case law, so as to attract constitutional protection.

385. Underlying both liberty and security of the person is a concern for the protection of individual autonomy and dignity. Liberty protects "the right to make fundamental personal choices free from state interference" (*Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 at para. 54), as quoted with approval in *Carter v. Canada (Attorney General)*, 2015 SCC 5, at para. 64.

386. [...] The fundamental personal choices that have to date attracted Charter protection are qualitatively different than Ms. Taylor's decision in this case. While the Supreme Court of Canada has yet to define a test for what constitutes a "fundamental personal choice", the test cannot be a subjective one. Were it otherwise, all personal choices would be protected under the *Charter*. This interpretation was expressly rejected by the Supreme Court of Canada in *R. v. Marmo-Levine*, 2003 SCC 74. [...]

[...]

388. In *R. v. Videoflicks Ltd.*, [1986] 2 S.C.R. 713 the Respondent argued that the statutory obligation to close his business on Sunday deprived him of "liberty". Chief Justice Dickson concluded that "whatever the precise contours of liberty within the meaning of s. 7, I cannot accept that it extends to an unconstrained freedom to transact business whenever one wishes" (at para. 154).

[...]

390. Fundamental personal choices sufficient to engage s. 7 thus far include deciding whether one's child should receive a blood transfusion (*B. (R.)*), abortion (*Morgentaler*, per Justice Wilson), the decision to end one's life when facing a chronic incurable disease (*Carter*), and a restriction on the use of medical marijuana (*Smith*). Without discounting the importance to Ms. Taylor of attending her mother's funeral this decision is qualitatively different than the fundamental personal choices engaged by s. 7.

### **3. Ontario (Attorney General) v. Trinity Bible Chapel**

[92] In *Ontario (Attorney General) v. Trinity Bible Chapel*,<sup>68</sup> the applicants sought to set aside orders made under Ontario's *Emergency Management and Civil Protection Act* and continued under the *Reopening Ontario (A Flexible Response to Covid-19) Act, 2020* that set limits on persons gathering together in places of worship during the pandemic. The orders were challenged as contrary to s. 2(a) of the *Charter* (freedom of religion).

[93] Justice Pomerance held that the gathering limits were contrary to freedom of religion. However, she held that the limits were justifiable in a free and democratic society. There was never a complete ban on religious gathering or activities, and the deleterious effects of the gathering limits were mitigated by the fact that other means of religious expression were available. The burden placed on the worshipers had to be understood within the broader context of the pandemic and the burdens experienced by all residents of Ontario. Full accommodation of religious freedom would not have resulted in "legitimate inconvenience" for government; it would have represented an abdication of government responsibility to act in the public interest. The infringement of the claimant's rights was outweighed by the restrictions imposed for greater public good.

---

<sup>68</sup> 2022 ONSC 1344.

#### **4. Grandel v. Saskatchewan**

[94] In *Grandel v. Saskatchewan*,<sup>69</sup> the applicants challenged the orders made by Saskatchewan's Chief Medical Officer during the COVID-19 pandemic that limited public gatherings during the period between December 2020 and May 2021. The applicants submitted that the orders contravened sections 2 (b), 2 (c), and 2 (d) of the *Charter*.

[95] The province conceded that the rights provided for in sections 2 (b) had been infringed. Justice Konkin concluded that with this concession it was not necessary to determine whether sections 2 (c) and 2 (d) constituted separate contraventions. Justice Konkin then went on to decide that Saskatchewan had demonstrated that the infringements were justified under s. 1 of the *Charter*.

#### **5. Beaudoin v. British Columbia**

[96] In *Beaudoin v. British Columbia*,<sup>70</sup> the British Columbia Public Health Officer made orders that prohibited in-person religious gatherings for worship services. The orders provided certain exceptions and some prescribed alternatives. The religious petitioners moved to have the orders declared *ultra vires*. The petitioners asserted that their section 2(a), (b), (c), and (d), 7 and 15 *Charter* rights were infringed by the orders. They contended that the orders disregarded the need for minimal impairment of the *Charter* rights, and were overbroad, arbitrary and disproportionate.

[97] The British Columbia Government conceded the infringements and Chief Justice Hinkson found that the petitioners' section 2 rights had been infringed. Because of the government's concession with respect to the petitioners' rights to freedom of religion, Chief Justice Hinkson concluded that it was unnecessary to consider the petitioners' sections 7 and 15 arguments.

[98] In the result, the Chief Justice concluded that Mr. Beaudoin's rights under section 2 (c) and (d) of the *Charter* had been infringed by certain orders and that the infringement could not be justified under section 1 of the *Charter*. However, he was not satisfied that the religious petitioners were entitled to challenge the orders by way of judicial review, but if they were so entitled the infringement of their section 2 *Charter* rights was justified under s. 1 of the *Charter*.

#### **6. Gateway Bible Baptist Church v. Manitoba**

[99] In *Gateway Bible Baptist Church v. Manitoba* during a particular virulent period of the COVID-19 pandemic, the Manitoba government passed public health orders that restricted public gatherings in private residences and temporarily closed places of worship. Several churches challenged the laws. The Province conceded that the orders restricted freedom of religion, expression, and peaceful assembly. The Province denied that the orders restricted the applicants' rights and freedoms under sections 7 and 15.

[100] Chief Justice Joyal held that the restrictions on religion, expression, and peaceful assembly were justified under s. 1 of the *Charter*. He held that the order did not limit liberty or security of the person and did not discriminate on the basis of religion contrary to s. 15 of the *Charter*. Chief Justice Joyal stated at paragraphs 247 – 252:

---

<sup>69</sup> 2022 SKKB 209.

<sup>70</sup> 2021 BCSC 512

247. It is clear that the right to liberty protects the freedom from physical restraint and the autonomy to make fundamental personal choices. [...]

248. Accordingly, if the right to liberty protects the freedom from physical restraint and the autonomy to make fundamental choices, and as explained above, it is necessary to remain mindful of the need to not conflate liberty or security with dignity, self-worth and emotional well-being, it is also instructive to note what must be demonstrated to establish a breach of security of the person. In that regard, in order to establish a breach of security of the person, the claimant must provide evidence of serious psychological harm caused by the state that goes beyond the ordinary stress and anxiety that a person might suffer as a result of state action (see *Blencoe*, at paragraphs 81-86).

249. At its core, the applicants in the present case argue that the impugned PHOs restrict the liberty and security of the person in two ways. First, they say that the measures restrict the liberty of religious officials to hold religious services. Second, the applicants say that the restrictions regulate "access to and from homes treating Manitobans as though they are criminals and under house arrest".

250. [...] Although the impugned PHOs did limit gatherings inside homes while these orders were in effect, it was still possible for persons to visit outside of a residence as long as they complied with gathering size limits. While Manitoba acknowledges that no one would question the emotional and psychological benefit of meeting in person compared to a more remote contact, Manitoba also submits (and I agree) that there is no evidence of the kind of serious psychological harm or suffering as set out in *Blencoe*, at paragraph 80. [...]

251 I note as well that the PHOs did not preclude a person from entering another private residence for the purposes of providing health care (which Manitoba emphasizes was not limited to physical care), personal care, tutoring, or other educational instruction or to respond in cases of emergency. Accordingly, a minister from a religious institution was still able to attend to an adherent's home for any of those identified purposes -- including one-on-one counselling for a mental health purpose or personal care purpose or, to provide religious education. I further note that there was an exception provided in Orders 15 and 16, which permitted a place of worship to continue to be used for the delivery of health care, child care or social services.

252 For the reasons provided, the impugned provisions do not limit liberty or security of the person as those rights have been explained in the jurisprudence. [...]

### **7. *Spencer v. Canada (Minister of Health)***

[101] The issue in *Spencer v. Canada (Minister of Health)*,<sup>71</sup> was whether the measures imposed by the federal government on returning international travellers requiring them to undergo COVID-19 testing and then to stay at government approved accommodation or a quarantine facility while waiting for the test results contravened the *Charter*. Chief Justice Crampton concluded that with two limited exceptions concerning sections 9 (detention and imprisonment) and 10 (b) (right to counsel) of the *Charter*, the impugned measures did not contravene the *Charter*.

### **8. *Canadian Constitution Foundation v. Canada (Attorney General)***

[102] In *Canadian Constitution Foundation v. Canada (Attorney General)*,<sup>72</sup> the Applicants challenged the federal government's Order in Council PC No. 2021-0075, dated February 14, 2021, entitled *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Quarantine,*

---

<sup>71</sup> 2021 FC 621.

<sup>72</sup> 2021 ONSC 2117 and 2021 ONSC 4744.



*Isolation and Other Obligations*) as violating the *Charter*. The objection to the Order in Council was the provision requiring air travellers entering Canada to quarantine in a hotel at their own expense while waiting for the results of a COVID-19 test. Adopting *Spencer v. Canada (Minister of Health)*, *supra*, Justice Myers ruled that there was no *Charter* violation.

### **9. *Costa v. Seneca College of Applied Arts and Technology***

[103] In *Costa v. Seneca College of Applied Arts and Technology*,<sup>73</sup> two students of Seneca College of Applied Arts and Technology applied for an interlocutory injunction to restrain the college from enforcing its policy that students attending the campus be fully vaccinated for COVID-19. The students were unvaccinated, and they objected to the policy, which they viewed as coercing them to take the vaccine. The students asserted that the policy violated their rights under section 2(a) of the *Charter* based on their conscientious objection and belief that the vaccine could cause them more harm than good.

[104] Justice Black accepted that refusal to take medical treatments could be genuinely grounded in conscientious beliefs; however, a conscientious belief was not supported by the evidentiary record, and he concluded that there was no violation of the students' s. 2(a) rights.

[105] The students asserted that the college's vaccination policy contravened their rights under s. 7 of the *Charter* because the Policy "holds hostage their ability to complete their programs as a means of coercing them into accepting a medical treatment to which they otherwise would not have consented". Justice Black, once again, found no violation of the students' rights. The policy did not require mandatory vaccination and it did not mandate a medical procedure or seek to impose one without consent.

[106] The students asserted that the college's vaccination policy was discriminatory contrary to s. 15 of the *Charter*. They argued that vaccination status is a ground analogous to enumerated grounds and the policy discriminated because it caused disadvantage by segregating the unvaccinated students for other students on Seneca's campus. Justice Black again found no *Charter* violation. Vaccination status was not an analogous ground and the students had not shown that the policy imposed an unacceptable cost to their personal identity. Justice Black said that while people are entitled to make choices, seeking injunctive protection for putative *Charter* rights on the basis of minimally informed views stemming from a superficial investigation of complex medical issues, did not rise to the level of rigor and gravity required for the Court to intervene.

### **10. *Lewis v. Alberta Health Services***

[107] In *Lewis v. Alberta Health Services*,<sup>74</sup> Ms. Lewis was at risk of dying if she did not receive an organ transplant. She was disqualified from being a participant in an organ transplant program because it was a pre-condition that she be vaccinated against COVID-19. She sought a declaration that the vaccine requirement violated her rights to freedom of conscience under s. 2(a) of the *Charter*, her right to life, liberty, and security of the person under s. 7 of the *Charter* and the right to equality under s. 15 of the *Charter*.

[108] The motions judge and the Manitoba Court of Appeal concluded that the respondent

---

<sup>73</sup> 2022 ONSC 5111.

<sup>74</sup> 2022 ABCA 359.

Alberta Health Services was not a government actor and, therefore, the *Charter* did not apply. The Manitoba Court of Appeal, however, took the opportunity to opine as to whether Ms. Lewis's *Charter* rights had been breached assuming, for the sake of argument, that the *Charter* applied.

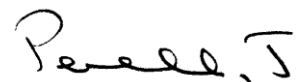
[109] The Court of Appeal concluded that there was no contravention of Ms. Lewis's rights to freedom of conscience. The Court characterized her beliefs in bodily autonomy, the safety of the vaccines, and being coerced into violating those beliefs were better addressed under s. 7 of the *Charter*.<sup>75</sup> However, the court concluded that the COVID-19 vaccine requirement did not engage any of life, liberty, or security of the person and thus the section 7 analysis was stillborn.

[110] In the opinion of the Manitoba Court of Appeal, there was no interference with Ms. Lewis's receiving life-saving treatment; the vaccine requirement was a part of that treatment. There was no deprivation of her right to refuse to be vaccinated with COVID-19 and as an aspect of medical self-determination, it was understood that a patient's decisions can result in serious risks or consequences. There was no deprivation of her right to liberty because it was not coercive to impose a vaccination requirement as a precondition to medical treatment, and the precondition did not interfere with the right to make choices about one's own body, as protected under s. 7 of the *Charter*. The Court was not persuaded that the COVID-19 vaccine requirement, deemed medically necessary to protect her and other transplant applicants, amounted to serious state-imposed psychological stress that violated her security of the person. Ms. Lewis's s. 15 claim failed because any distinction created by the vaccine requirement was not based on an enumerated or analogous ground in s. 15 (1).

## **J. Conclusion**

[111] For the above reasons, the Application is dismissed.

[112] If the parties cannot agree about the matter of costs, they may make submissions in writing beginning with Ontario's submissions within twenty days of the release of these Reasons for Decision followed by the Applicants' submissions within a further twenty days.



Perell, J.

Released: December 13, 2022

---

<sup>75</sup> See also *Costa, Love, Badowich and Mandekic v. Seneca College*, 2022 ONSC 5111.

**CITATION:** Harjee v. Ontario, 2022 ONSC 7033  
**COURT FILE NO.:** CV-21-00670360-0000  
**DATE:** 20221213

**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 -

**HIS MAJESTY THE KING IN RIGHT OF THE  
PROVINCE OF ONTARIO**

Respondent

---

**REASONS FOR DECISION**

---

PERELL J.

**Released:** December 13, 2022