

COURT FILE NUMBER **2112-00433**

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE WETASKIWIN

PLAINTIFFS **DR. BLAINE ACHEN, DR. GERT GROBLER,
DR. NADR JOMHA and DR. TYLER MAY**

DEFENDANT **ALBERTA HEALTH SERVICES**

DOCUMENT **STATEMENT OF DEFENCE**

Clerk's Stamp

March 11, 2022

ADDRESS FOR SERVICE AND
CONTACT INFORMATION
OF PARTY FILING THIS
DOCUMENT

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[REDACTED]

File No. 038874.000029

Statement of facts relied on:

1. Except as expressly admitted herein, the Defendant, Alberta Health Services (“AHS”), denies each and every allegation contained in the Amended Statement of Claim (the “**Claim**”), and puts the Plaintiffs to the strict proof thereof.
2. In response to paragraph 85 of the Claim, AHS denies that Wetaskiwin is the Judicial District that is the most convenient for the hearing of this matter, as alleged, or at all.
3. AHS adopts the capitalized terms as defined in the Claim, unless specifically stated otherwise.
4. In specific response to paragraph 1 of the Claim, AHS admits that it is a regional health authority, constituted under Alberta’s *Regional Health Authorities Act*, RSA 2000, c R-10.
5. AHS is a province-wide, fully integrated health authority, which is responsible for administering and delivering health services to more than 4.4 million Alberta residents.

6. AHS has more than 108,000 direct employees including 10,000 physicians practicing in Alberta. AHS is also supported by more than 12,000 volunteers.
7. The mission of AHS is to provide a patient-focused, quality health system that is accessible to and sustainable for, all Albertans.
8. In response to the entirety of the Claim, AHS stands behind the rationale governing the development of the Policy, the Policy itself and its implementation by AHS.
9. In further response to the whole of the Claim, at no time have the Plaintiffs, or any of them, been forced or coerced to receive vaccination against COVID-19, as alleged or at all. At all times, the Plaintiffs, or any of them, have chosen not to receive the COVID-19 vaccine and have chosen not to comply with the Policy.

The COVID-19 Pandemic

10. In late 2019, a novel respiratory disease was first identified in Wuhan, China, caused by the Severe Acute Respiratory Syndrome Coronavirus 2, or “SARS-CoV-2” virus (“**COVID-19**”). COVID-19 is a type of coronavirus which infects and is transmitted between humans.
11. On March 11, 2022, the World Health Organization declared a global pandemic as a result of COVID-19, the first such pandemic to be caused by a coronavirus. Since that declaration, COVID-19 has spread across the globe, infecting hundreds of millions of people, causing millions of deaths, and significantly straining health care systems the world over.
12. In addition to causing illness and death, COVID-19 has been found to cause some infected people to experience symptoms for many months following their infection, even if such infection was initially mild. Such persistent symptoms have, in some cases, been life-altering. This condition is referred to as “Long COVID”.
13. The COVID-19 virus is understood to primarily spread when close-range droplets from an infected person containing sufficient amounts of virus come into contact with another person’s mucous membranes or are inhaled. The virus can also spread by touching surfaces contaminated with the virus and then touching one’s eyes, nose, or mouth.

14. As indoor settings where individuals often remain for prolonged periods of time, hospitals, long term care facilities, and other health service sites are universally considered locations that are particularly susceptible to the transmission of COVID-19.
15. Over time, the COVID-19 virus has evolved and mutated, which has led to the detection of new variants. As of the date of the filing of this Statement of Defence, five “Variants of Concern” have been identified globally, all of which have been identified in Alberta. These are the Alpha variant B.1.1.7, the Beta variant B.1.351, the Gamma variant P.1, the Delta variant B.1.617.2, and the Omicron variant B.1.1.529. It is anticipated that further variants will develop.
16. Each variant spreads more easily than the original SARS-CoV-2 strain. The highly-transmissible Omicron variant is currently the dominant strain in Alberta.

AHS Response to COVID-19 Pandemic

17. As with all health systems worldwide, the COVID-19 has had a significant effect on AHS and the delivery of healthcare throughout the Province of Alberta.
18. The first positive case of COVID-19 in Alberta was reported on March 5, 2020.
19. On March 17, 2020, the Lieutenant Governor-in-Council declared a state of public health emergency in Alberta following advice of the Chief Medical Officer of Health that COVID-19 presented a serious threat to public health in Alberta. Further public health emergencies were declared on November 24, 2020 and September 15, 2021.
20. Since the first case of COVID-19 was reported in Alberta, there have been approximately 526,000 diagnosed cases of the virus in the province, and over 3,939 deaths. The rapid spread of COVID-19 has been associated with a corresponding increase in hospitalizations, including ICU admissions and deaths, in the province. COVID-19 has led to outbreaks among staff and patients within the health system throughout the pandemic. All of this has placed a significant strain on the Alberta health system since early 2020. For extended periods of time, COVID-19 has driven the demand for critical care services within the AHS system beyond baseline capacity, even as AHS has reduced the demand elsewhere on the health system by, for example, postponing non-urgent scheduled surgeries.

21. As part of its mandate, AHS has, throughout the pandemic, studied, learned and adjusted to the best available evidence to allow Alberta's health system to most effectively minimize the risks of COVID-19.
22. In early 2020, AHS created the Scientific Advisory Group ("SAG") to assist AHS and the AHS Executive Leadership Team ("ELT") with development of AHS policies to best respond to the strains COVID-19 was placing on the system. SAG's membership consists of subject matter experts and representatives from a number of health care disciplines.
23. SAG's work and recommendations informed AHS' development of its COVID-19 operational policies, programs, and activities, including the development and implementation of the AHS COVID-19 Immunization Policy (as hereinafter defined).

Development and Distribution of Approved Vaccines Against COVID-19

24. Since the outset of the COVID-19 pandemic, with the support of national governments, pharmaceutical manufacturers, and research facilities around the world have developed vaccines to combat the SARS-CoV-2 virus.
25. To accommodate the introduction of COVID-19 vaccines and reduce the impact of the virus on the Canadian public, on September 16, 2020, the federal Minister of Health signed an *Interim Order Respecting the Importation, Sale and Advertising of Drugs for Use in Relation to COVID-19* (the "**Interim Order**"). This Order required Health Canada to accept new submissions from manufacturers, committed the agency to a 14-day turnaround for responding to submissions for new COVID-19 vaccines, and established other measures to allow for responses to urgent public health needs.
26. Subsequently, Health Canada authorized four vaccines for use in Canada. Vaccines manufactured by Pfizer/BioNTech, Moderna, and Johnson and Johnson/Janssen have been authorized under the federal *Food and Drug Regulations*, while a vaccine manufactured by Oxford/AstraZeneca has received approval under the Interim Order. In Alberta, the mRNA Pfizer/BioNTech and Moderna vaccines are the most-commonly administered vaccines, while Oxford/AstraZeneca is made available for those who are unable to receive an mRNA vaccine (collectively, the "**Approved Vaccines**").

27. Worldwide, more than 9.9 billion doses of COVID-19 vaccines have been administered. In Canada and Alberta, respectively, approximately 81.3 million and 8.5 million doses have been administered, as of March 2, 2022.
28. The Approved Vaccines have proven to be safe and effective. Vaccination lowers the incidence and severity of infection and, therefore, transmissibility of COVID-19, and is widely considered by the mainstream medical community as the most effective method to prevent serious disease and death from COVID-19.
29. AHS and other public health authorities are constantly recording and analyzing data from the administration of Approved Vaccines to guide the public health response to the COVID-19 pandemic.
30. Vaccination against COVID-19 provides the most effective means of reducing the incidence of serious illness and death from the SARS-CoV-2 virus, and the corresponding strain on the Alberta health care system.

Development of AHS Immunization Policy

31. Following the extensive rollout of COVID-19 vaccines in Alberta, in or around August 2021, the ELT approved the creation of an AHS policy requiring COVID-19 vaccination among the AHS workforce.
32. The Immunization Policy (as defined below) was created as a result of, *inter alia*:
 - (a) AHS' commitment to provide safe, quality patient care including protecting patients and health care workers from transmission of vaccine-preventable communicable diseases;
 - (b) The elevated risk of transmission of COVID-19 within AHS facilities;
 - (c) The ability of the Approved Vaccines to mitigate potential harm to patients, health care workers, and the health system as a whole by providing the best-available protection against the SARS-CoV-2 virus;
 - (d) Ensuring the capacity and protecting the integrity of the Alberta health care system;
 - (e) Health care workers' ethical and professional responsibility to protect others;

- (f) Support from a broad swath of governments, health organizations and providers, and public agencies including, for example, the Canadian Medical Association and Canadian Nurses Association, for mandatory vaccination programs among health care workers to mitigate the devastating impact of the pandemic and prevent negative operational impacts on health care systems; and
 - (g) The fact that unvaccinated workers are more likely to contract COVID-19, transmit the virus to others, including colleagues and patients, and be restricted from work as a result.
33. Consistent with other jurisdictions, the unvaccinated segment of the population in Alberta has experienced more severe outcomes from COVID-19, including critical illness and death, at higher rates than those members of the population who are vaccinated against COVID-19. As a result of this higher rate of adverse impacts from COVID-19 infection, the unvaccinated segment of the population has contributed to hospital overcrowding and the associated need to increase capacity across the AHS system.
34. In response to paragraphs 37, 40, and 56 of the Claim, AHS states unequivocally that the Immunization Policy was developed in accordance with the best available scientific evidence. Following the ELT's direction, a cross-disciplinary working group was formed to craft the AHS immunization policy, with representatives from the SAG, human resources, labour relations, policy services, legal, communications, and workplace health and safety departments within AHS. Key health care stakeholders were also consulted and involved in the development of the Immunization Policy.
35. In response to paragraphs 41, 46, and 48 of the Claim, "natural immunity" has not been recognized by the leading science in the field of immunology as providing equivalent protection against the contraction, impact, or transmission of COVID-19 as immunization with the Approved Vaccines, as alleged, or at all.
36. In response to paragraph 42 of the Claim, the Plaintiffs' allegation that their "natural immunity" provides them with "equal or greater protection" than the Approved Vaccines is without scientific merit.
37. In specific response to paragraph 3 of the Claim, on August 31, 2021, AHS announced that it would require all employees and contracted health care providers to take steps to protect themselves and other users of AHS facilities from COVID-19. On September 14, 2021, AHS

issued Policy 1189 – Immunization of Workers for COVID-19 (the “**Immunization Policy**”). The Immunization Policy applies to all AHS facilities and sites, Alberta Precision Laboratories, Carewest, CapitalCare, and Covenant Health employees, members of the medical and midwifery staffs, students, and volunteers, and other persons acting on their behalf.

38. The Immunization Policy requires all employees and all members of the Medical Staff to comply with it. A component of this compliance included immunization with one or a combination of the Approved Vaccines. However, the Immunization Policy also included an exception process through which members of the Medical Staff could request an exception from the policy for medical reasons or other protected grounds.
39. The Immunization Policy initially contemplated a compliance deadline for workers of October 31, 2021. In response to the pressures of responding to the fourth wave of the pandemic arising in fall 2021, especially at the front lines of the AHS health care-delivery system, on October 22, 2021, the implementation of the Immunization Policy was delayed to November 30, 2021.
40. On November 29, 2021, the Government of Alberta issued a Ministerial Directive to AHS requiring that AHS include a testing alternative be incorporated into the Immunization Policy (the “**First Directive**”). Specifically, the First Directive and resulting amendment to the Immunization Policy permitted workers working in facilities identified as being at high risk for service disruption due to elevated levels of non-compliance with the Immunization Policy to undergo regular rapid testing in lieu of vaccination (the “**Targeted Testing**”). The First Directive deferred the immunization compliance date to December 13, 2021, and contemplated Targeted Testing commencing on December 14, 2021.
41. On December 23, 2021, in response to the significant pressures put on AHS by the highly-transmissible Omicron variant, the Government of Alberta issued a further Ministerial Directive requiring AHS to further revise the Immunization Policy such that all individuals subject to the Immunization Policy who had not yet submitted proof of full immunization be provided with a testing option, to avoid significant risks of service disruption within the healthcare system (the “**Second Directive**”). In accordance with the Second Directive, the Immunization Policy was revised by AHS on January 10, 2022, to allow for unvaccinated workers to undergo regular rapid testing at their own expense (the “**January Revision**”). Compliance with the rapid testing option allows workers who have not been fully vaccinated to continue working at AHS facilities.

42. The Immunization Policy does not force anyone, including Medical Staff, to receive a COVID-19 vaccine. From inception of the Immunization Policy to date, it has been entirely the decision of the individual worker, including Medical Staff, whether to receive an Approved Vaccine or to otherwise comply with the Immunization Policy. In conjunction with the AHS Medical Staff Bylaws (the “**AHS Bylaws**”), the Immunization Policy sets out a process to be undertaken within AHS for any members of the Medical Staff who choose not to comply with the Immunization Policy, and for whom an exception is not granted.
43. Prior to the Immunization Policy coming into effect, reporting of vaccination status was not mandatory. As at October 7, 2021, the vaccination rate among AHS staff was reported at 62.01%. As at October 22, 2021, on the date the Immunization Policy was originally to come into effect, 94% of AHS employees and physicians had submitted proof of being fully vaccinated.
44. As at November 26, 2021, 96.19% of AHS employees, 93.9% of midwives, 98.9% of physicians, and 99.06% of AHS ICU staff were confirmed as being fully vaccinated.

Plaintiffs’ Status with AHS

45. The Plaintiffs are not employees of AHS, as alleged in paragraphs 4, 5, 6, 7, 8, 9, 10, and 11 of the Claim, or at all. The Plaintiffs are all physicians who have been granted clinical privileges to practice pursuant to the AHS Bylaws. They are, in essence, contractors to AHS who are remunerated on a fee per service model.
46. Each Plaintiff has received their Appointment with AHS pursuant to the AHS Bylaws and AHS Medical Staff Rules (the “**AHS Rules**”), under which they are designated as “Medical Staff”.

The AHS Bylaws and Rules

47. The Bylaws and Rules govern the organization and conduct of Medical Staff within AHS facilities in the province. All practitioners who hold an AHS Medical Staff appointment are bound by the AHS Bylaws, which are voted on by Medical Staff members and approved by the Minister of Health for the Government of Alberta.
48. Appointments to the Medical Staff within AHS are a privilege and not a right. Appointments are only to be granted to those practitioners who initially and continually meet the qualifications, standards, and requirements set forth in the AHS Bylaws and AHS Rules. Pursuant to the AHS

Bylaws, members of the Medical Staff share joint responsibility and accountability with AHS for the provision of patient-centred health services to Albertans.

49. In response to paragraph 12 of the Claim, Medical Staff members have the duty to jointly participate with AHS in activities that promote and support patient, practitioner, and AHS staff safety, evidence-based decision-making, and the effective and efficient use of AHS resources.
50. In further response to paragraph 12 of the Claim, AHS Bylaws require Medical Staff to comply with AHS policies and their professional code of conduct, and to follow reasonable direction on matters pertaining to practitioner responsibilities and accountability from those with authority under the AHS Bylaws and AHS Rules to issue such direction, provided the direction does not supersede their professional code of ethics.

The Immediate Action Process under the AHS Bylaws

51. Each of the Plaintiffs has failed to provide AHS with evidence of being fully vaccinated against COVID-19. The Plaintiffs sought exceptions under the Immunization Policy as follows:
 - (a) On October 7, 2021, Dr. Achen submitted a request for an exception from the Immunization Policy on medical and religious grounds. On October 15, 2021, Dr. Achen's request for an exception under the Immunization Policy was denied by the Exemption Review Panel;
 - (b) On November 8, 2021, Dr. Jomha submitted a request for an exception from the Immunization Policy on religious grounds. On November 18, 2021, Dr. Jomha's request for an exception under the Immunization Policy was denied by the Exemption Review Panel;
 - (c) On October 15, 2021, Dr. May submitted a request for an exception from the Immunization Policy on religious grounds. On October 18, 2021, Dr. May's request for an exception under the Immunization Policy was denied by the Exemption Review Panel.
52. Dr. Grobler has not submitted a request for an exception from the Immunization Policy, despite his claims of having a "robust natural immunity".
53. In response to paragraph 50 of the Claim, AHS specifically denies that the Exemption Review Panel was "illusory", as alleged, or at all. The Plaintiffs who submitted requests for exemptions

were denied same based upon a determination by the Exemption Review Panel that such requests were without merit.

54. As a result of their initial failure to comply with the Immunization Policy, AHS presented each of the Plaintiffs with four options: i) submit proof of full vaccination prior to the Immunization Policy deadline; ii) submit a Change Request by which the Plaintiff's appointment status within AHS would be changed to "Community Appointment without Clinical Privileges"; iii) go on a voluntary leave of absence; or, iv) remain non-fully vaccinated and become subject to the Immediate Action process pursuant to the AHS Bylaws immediately following the Immunization Policy deadline.
55. In response to these options, Drs. Achen and Jomha took no action and thus became subject to the Immediate Action process, which commenced on December 13, 2021.
56. Dr. May continued to remain unvaccinated, but as of December 13, 2021, he became eligible for the Targeted Testing option and chose to accept that accommodation provided under the Immunization Policy.
57. On December 1, 2021, Dr. Grobler submitted a Change Request to AHS by which his appointment status was changed to "Community Appointment without Clinical Privileges".
58. Through the Immediate Action process, Drs. Achen and Jomha had their clinical privileges suspended as of December 13, 2021, pending a determination pursuant to the AHS Bylaw Part 6 Dispute Resolution Process, through which their privileges were subject to reinstatement, sanction, temporary alteration, or termination.
59. Following the January Revision, all of the Plaintiffs have returned to work at AHS sites so long as they remain in compliance with the rapid testing option.
60. On January 10, 2022, Dr. Achen and Dr. Jomha agreed to the adjournment (not conclusion) of the Immediate Action process under Part 6 of the AHS Bylaw process. This process is the proper forum for the resolution of the Plaintiff's complaints and, as a result of this agreement, this Honourable Court does not have jurisdiction to hear their portions of this Action.

Any matters that defeat the claim of the Plaintiffs:

61. AHS' development and implementation of the Immunization Policy falls squarely within its statutory mandate. In light of the COVID-19 pandemic, AHS validly and legitimately

implemented the Immunization Policy to reduce the impacts of the COVID-19 pandemic on AHS workers, Alberta residents, and the Alberta health care system.

62. In specific response to paragraphs 15 and 19 of the Claim, AHS denies that the Approved Vaccines are “experimental” or that they have not been rigorously tested, as alleged, or at all. The fact that the Approved Vaccines were developed and approved more quickly in response to the global pandemic does not equate to them being less safe than would otherwise be the case.
63. In specific response to paragraphs 16, 17, 25, 26, 27, and 44 of the Claim, all vaccines have risks of side effects. AHS has never represented that the Approved Vaccines carried no risk of any side effects. However, consistent with the position of Health Canada, the Approved Vaccines are very safe for use by the vast majority of the population.
64. In specific response to paragraphs 18, 30, and 31 of the Statement of Claim, at no time have the Plaintiffs requested the ingredients of the Approved Vaccines from AHS. Furthermore, the components of the Approved Vaccines are, and have at all material times been, readily available to the public through multiple sources including the Approved Vaccine manufacturers, Health Canada, and the Centers for Disease Control and Prevention in the United States.
65. In specific response to paragraph 20 and 32 of the Claim, at no time has AHS represented that the Approved Vaccines provide “full immunity”, as alleged, or at all.
66. In specific response to paragraphs 23, 24, and 45 of the Claim, at no time has AHS represented that persons who are in compliance with the Immunization Policy cannot be infected or transmit COVID-19, as alleged, or at all. Adherence to the Immunization Policy reduces the likelihood of infection with COVID-19, the impact of COVID-19 on the person infected and the likelihood of transmission of same.
67. In response to paragraph 33 of the Claim, at no time has AHS issued any “vaccine passport” or otherwise directed or dictated public attendance at public events, as alleged, or at all. The Immunization Policy is specific AHS facilities.
68. In response to the whole of the Claim, at no time has AHS forced or coerced the Plaintiffs, or any of them, to receive vaccination against COVID-19. At all times, through the application of the Immunization Policy and otherwise, AHS has presented the Plaintiffs with choices. Each Plaintiff has freely exercised their right to choose not to receive immunization against COVID-19.

69. In response to paragraph 54 of the Claim, the Immunization Policy does not breach any informed consent obligations, as alleged, or at all. The constituent ingredients of the Approved Vaccines are publically available. The Plaintiffs have decided to not be vaccinated, which is their right.
70. In response to paragraph 59 of the Claim, at no time has AHS represented that the Plaintiffs' refusal to comply with the Immunization Policy made them "sub-human and deserving of restricted rights in society", as alleged, or at all. These claims represent an abuse of process.
71. In response to paragraph 60 of the Claim, at no time has AHS held the Plaintiffs "up to public opprobrium, ridicule, hatred, maltreatment, discrimination, detestation, contempt, enmity, extreme ill will, denigration, abuse of delegitimization [sic]", as alleged, or at all. To the extent the Plaintiffs feel that they have been subjected to any of these, which is not admitted, it is the Plaintiffs' own actions that have caused same. These claims represent an abuse of process.
72. In response to paragraph 61 of the Claim, AHS' authority to make policies, including the Immunization Policy, is founded in the *Hospitals Act*, RSA 2000, c. H-12, as well as the AHS Bylaws and AHS Rules.
73. In response to paragraph 62 of the Claim, the Immunization Policy was developed with the knowledge and involvement of Alberta Health. In addition, the Immunization Policy was modified by AHS in accordance with the First Directive and Second Directive.

The Charter Does Not Apply

74. AHS denies that the *Canadian Charter of Rights and Freedoms* (the "**Charter**") applies to the Immunization Policy.
75. In the alternative, if the *Charter* does apply to AHS and its implementation of the Immunization Policy, which is not admitted, AHS denies that the Plaintiffs' rights under ss. 2(a), 7, or 15 have been violated or infringed under the *Charter*, as alleged in the Claim, or at all, and puts the Plaintiffs to the strict proof thereof.
76. Further, or in the alternative, if any of the Plaintiffs' rights were violated or infringed under the *Charter*, which is not admitted, AHS states that such violations were justifiable under s. 1 of the *Charter*, particularly in light of the ongoing public health crisis.

77. Further, or in the alternative, if any of the Plaintiffs' rights were violated or infringed under the *Charter*, which is not admitted, such violations or infringements did not result in considerable harm to the Plaintiffs as alleged, or at all.

There Has Been No "Assault"

78. AHS has not performed any medical procedure on the Plaintiffs, or any of them. At all times, AHS has provided the Plaintiffs with a choice, and each of the Plaintiffs has chosen not to receive vaccination against COVID-19.
79. Existence of the Immunization Policy does not amount to a threat of imminent harm. Accordingly, there can be no liability for assault, attempted assault, or conspiracy to commit assault against AHS pursuant to the *Criminal Code* or the application of tort law.
80. Moreover, and in response to paragraph 63 of the Claim, the *Criminal Code* has no application to the within matter. This claim represents an abuse of process.

No Breach of the *Occupational Health and Safety Act*

81. At all times during the COVID-19 pandemic, AHS has acted consistently with the purposes of the *Occupational Health and Safety Act*, SA 2020, c O-2.2, including the prevention of work site illness and disease and the protection of workers from factors and conditions adverse to their health and safety. The development and implementation of the Immunization Policy is consistent with AHS fulfilling these and other statutory purposes of the *Act*.
82. Further, and in response to paragraph 66 of the Claim, this Honourable Court does not have jurisdiction to determine the Plaintiffs' claims made pursuant to the *Occupational Health and Safety Act*. This claim represents an abuse of process.

No Coercion to Consent to an Experimental Medical Procedure

83. In response to paragraph 67 of the Claim, the Approved Vaccines available in Alberta have been approved for use by Health Canada, and are safe and effective. At no time has AHS sought any of the Plaintiffs' consent to participate in medical research.
84. In further response to paragraph 67 of the Claim, the Plaintiffs have no cause of action for alleged breaches of the Nuremberg Code, Geneva Convention, or World Medical Association Declaration of Helsinki, as alleged, or at all. These claims represent an abuse of process.

Alberta Bill of Rights Does Not Apply

85. In response to paragraphs 69 and 75 of the Claim, the Immunization Policy is neither a “law of Alberta”, nor a matter coming within the legislative authority of the Legislature of Alberta. As such, the *Alberta Bill of Rights*, RSA 2000, c A-14 does not apply to the implementation of the Immunization Policy.
86. In the alternative, if the *Alberta Bill of Rights* does apply to the Immunization Policy, which is not admitted, AHS states that the policy does not violate ss 1(a) or 2, as alleged in the Claim, or at all, and puts the Plaintiffs to the strict proof thereof.
87. Further, or in the alternative, if any of the Plaintiffs’ rights were violated or infringed under the *Alberta Bill of Rights*, which is not admitted, such violations or infringements did not result in considerable harm to the Plaintiffs, as alleged or at all.

Alberta Human Rights Act Does Not Apply

88. In response to paragraph 70 of the Claim, the *Alberta Human Rights Act*, RSA 2000, c A-25.5 does not apply to the relationship between a physician with clinical privileges and a regional health authority, as alleged, or at all. The Plaintiffs are not employees of AHS, and as such, the *Alberta Human Rights Act* does not apply to them.
89. Further, this Honourable Court does not have jurisdiction to determine the Plaintiffs’ claims made pursuant to the *Alberta Human Rights Act*.
90. In the alternative, if the *Alberta Human Rights Act* does apply to the Plaintiffs’ claims and this Honourable Court has jurisdiction, which is not admitted, AHS has not committed any breaches under the *Act*.
91. In the further alternative, if the *Alberta Human Rights Act* does apply to the Plaintiffs’ claims and this Honourable Court has jurisdiction, which is not admitted, AHS has, under the Immunization Policy, fulfilled any duty to accommodate the Plaintiffs that may exist.

No Breach of Contract

92. In response to paragraph 76 of the Claim, AHS has not breached the terms of any contracts, express or implied, with the Plaintiffs. At all times, AHS has acted in accordance with its statutory mandate and in compliance with the AHS Bylaws and AHS Rules.

93. In fulfilling its statutory mandate and acting pursuant to the AHS Bylaws and AHS Rules, AHS has at all times acted consistently with the duty of good faith.

AHS Has Not Constructively Dismissed the Plaintiffs

94. In response to paragraph 77 of the Claim, there is no employment relationship between AHS and the Plaintiffs such that there can be no liability for constructive dismissal.
95. In any event, the Plaintiffs have not been constructively dismissed from their Medical Staff Appointments, as they have all chosen to accept a rapid testing option provided to them as part of the Immunization Policy

No Breach of FOIP

96. In response to paragraph 81 of the Claim, the Immunization Policy clearly states the statutory authority for collection of proof of immunization records, being s 33(c) of the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25, and the associated AHS policy regarding collection, use, and disclosure of such information.
97. Further, AHS has not disclosed the personal health information of the Plaintiffs, or any of them, in relation to COVID-19 immunization status or otherwise.

No Damages

98. AHS denies that the Plaintiffs have suffered losses or damages, as set out in their Claim, or at all, and puts the Plaintiffs to the strict proof thereof.
99. In the alternative, if the Plaintiffs have suffered damages, which is not admitted, the damages claimed are remote and not recoverable at law against AHS, and the Plaintiffs have failed to mitigate their damages.
100. Further, or in the alternative, AHS has protection from liability under s 66.1 of the *Public Health Act*, RSA 2000, c P-37, as amended, and as such, the Claim should be dismissed as against AHS.

Remedy sought:

101. AHS requests that the Plaintiffs' claims be dismissed as against it with costs on a solicitor-and-his-own-client full indemnity basis or otherwise in an increased amount.