

Form 3-9
(Rule 3-9)

COURT FILE NUMBER Q.B. No. 608 of 2022

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

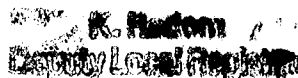
JUDICIAL CENTRE SASKATOON

PLAINTIFF DR. FRANCIS CHRISTIAN

DEFENDANTS SASKATCHEWAN HEALTH AUTHORITY, THE UNIVERSITY OF SASKATCHEWAN COLLEGE OF MEDICINE, SCOTT LIVINGSTONE and DR. PRESTON SMITH

NOTICE TO DEFENDANT

1. The plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to *The Queen's Bench Rules* unless, in accordance with paragraph 2, you:
 - (a) serve a Statement of Defence on the plaintiff; and
 - (b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.
2. The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):
 - (a) 20 days if you were served in Saskatchewan;
 - (b) 30 days if you were served elsewhere in Canada or in the United States of America;
 - (c) 40 days if you were served outside Canada and the United States of America.
3. In many cases a defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every defendant should consult a lawyer as to his or her rights.
4. This Statement of Claim is to be served within 6 months from the date on which it is issued.
5. This Statement of Claim is issued at the above named judicial centre on the 22nd day of June, 2022 .



Local Registrar

(Seal)

STATEMENT OF CLAIM

1. The Plaintiff, Dr. Francis Christian ("Dr. Christian"), was at all material times a surgeon and clinical professor of general surgery who resides in Saskatoon, in the Province of Saskatchewan.
2. The Defendant, Saskatchewan Health Authority (the "SHA"), is the amalgamated health authority responsible for the administration of health services for the Province of Saskatchewan's Ministry of Health pursuant to *The Provincial Health Authority Act*. The SHA employs and contracts physicians, nurses and other healthcare personnel.
3. The Defendant, University of Saskatchewan College of Medicine (the "College") is a professional college at the University of Saskatchewan pursuant to the *University of Saskatchewan Act*, which provides clinical and educational services at the Royal University Hospital in Saskatoon, Saskatchewan. The College employs and contracts physicians, nurses and other healthcare personnel, for the provision of clinical health and education services.
4. The Defendant, Scott Livingstone, is an individual residing in the City of Regina, Saskatchewan and at all material times served as the Chief Executive Officer of the SHA.
5. The Defendant, Dr. Preston Smith (hereinafter as, "Dean Smith") is a family medicine doctor duly licensed and authorized by the College of Physicians and Surgeons of Saskatchewan and at all material times served as the Dean of the College in Saskatoon, Saskatchewan.
6. Dr. Christian initially commenced providing surgical and academic services in Saskatchewan in 2007. He commenced providing contractual surgical and academic services for the Defendants, SHA, and the College on December 1, 2018, and such contractual services were routinely renewed following annual performance reviews ("ACFP Annual Review").
7. On December 1, 2018, Dr. Christian became the Director of Quality Improvement and Patient Safety and Director of Surgical Humanities at the College ("QIPSD"), as part of his academic responsibilities. In such capacity, Dr. Christian had a professional responsibility for patient safety.
8. On December 1, 2018, Dr. Christian entered into an Agreement for Services (the "Agreement") with the Defendants SHA and the College. As set out in the Agreement, Dr. Christian was to provide teaching, academic, administrative and research services for the College and to provide general surgery services for each of the Defendants SHA and the College until November 30, 2021, at which time the Agreement would be up for renewal.
9. On June 8, 2020 and again on March 19, 2021, Dr. Christian completed his ACFP Annual Reviews and his clinical and academic performance was rated as excellent. Dr. Brian Ulmer, the Provincial Head of the Department of Surgery at the College, commented in the March 19, 2021 ACFP Annual Review: "Dr. Christian continues his leadership role in Dept. of Surgery Quality Improvement. No issues with his academic and clinical performance."

10. On June 17, 2021, Dr. Christian attended a press conference alongside other physicians, where he read from a prepared press statement advocating for the hallmark medical ethical principle of informed consent and the precautionary principle (the "Statement"). Before providing several medical and scientific facts, Dr. Christian clarified that parents and children must know the risks of m-RNA vaccines to children, any benefit to children and any alternatives to vaccines, while making it clear that he was not representing the Defendants, SHA, the College or any other group.
11. Prior to making the Statement, Dr. Christian carefully considered then current and relevant scientific literature, including but not limited to the World Health Organization's publicly released position on Covid-19 vaccination for minors at the time which provided that, "Children should not be vaccinated for the moment." He also considered that the risk to children posed by Covid-19 was statistically zero.
12. On 17 June 2021, Dr. Christian was asked to attend a meeting with Dr. Brian Ulmer and Dr. Ivar Mendez. At that meeting, Dr. Christian was asked to explain his appearance in a video released on June 4, 2021 (the "Video"), in which he appeared on a panel of five Canadian physicians discussing the Covid-19 pandemic. In the video, Dr. Christian expressed concerns about the censorship of scientific facts and opinions during the pandemic and the deplatforming, intimidation, and persecution of eminent scientists and physicians around the world. At the meeting with Dr. Ulmer, Dr. Christian was cautioned about his appearance in the Video and told that he should be prepared for "the consequences".
13. On June 23, 2021 Dr. Christian was asked to attend a meeting with Dr. Susan Shaw, Dr. Brian Ulmer, and Dean Smith. At this meeting, Dr. Christian was suspended from academic and faculty responsibilities and told that he would no longer be permitted to interact with medical students and residents.
14. Concurrently on June 23, 2021, Dr. Christian received a letter (the "Suspension Letter") from the College which included the SHA on its letterhead falsely alleging that Dr. Christian, "actively participated in a recent demonstration at a Saskatoon high school and that this demonstration was designed to persuade youths to decline vaccination". This false statement (the "False Statement") was used as justification by the College to "seriously question" whether Dr. Christian had engaged in unprofessional conduct, while notifying him that his academic responsibilities would be temporarily and immediately suspended, including suspension of his position as QIPSD, pending an investigation.
15. Dr. Christian categorically denies being present at a "demonstration designed to persuade youths to decline vaccination". Rather, he attended a press conference at which Dr. Christian presented his professional opinion regarding the relative risk of vaccinating children. It was not a demonstration and he did not speak to any children.
16. Further on June 23, 2021, Dr. Christian received a separate letter from the SHA (the "Termination Letter") which advised Dr. Christian that it was terminating the Agreement without cause, effective 90 days from the date of the letter.

17. On August 18, 2021, Dr. Christian formally submitted a written appeal of the decision to suspend his academic responsibilities, including his responsibilities as QIPSD, in addition to a complaint of the violation of his academic freedom to the Academic Clinical Relations Committee (ACRC) at the College. No response was subsequently provided by the ACRC to Dr. Christian.
18. The College thereafter retained legal counsel to act as an investigator into "whether there was a breach of professional/ethical standards and/or whether the evidence indicates that [Dr. Christian] acted contrary to the safety of individuals and the public".
19. The College refused to release the investigator's report to Dr. Christian but rather, submitted a letter to Dr. Christian on April 12, 2022 indicating that the investigator concluded that Dr. Christian's statements were made in a civil manner, in good faith and that he did not engage in unprofessional conduct or act contrary to the safety of individuals and the public.

Violation of the University's Position on Academic Freedom

20. *The University of Saskatchewan Act* emphasizes the paramount role of academic freedom within its pronouncement of the university's primary role. It states:

Primary role of university

4(1) The primary role of the university is to provide post-secondary instruction and research in the humanities, sciences, social sciences and other areas of human intellectual, cultural, social, and physical development.

(2) The board, senate and council are responsible for determining the manner in which the university shall fulfil its primary role having regard to:

(a) this Act; and

(b) the recognized principles of academic freedom, 1995, c. U-6.1, s.4.

21. According to the University of Saskatchewan's Medical Faculty Policy and page 3 of the Procedures Manual for Medical Faculty:

Academic Freedom

Academic freedom is defined as the freedom to examine, question, teach and learn, and the right to investigate, speculate and comment without reference to prescribed doctrine, as well as the right to criticize the University and society at large. Academic freedom does not require neutrality on the part of the individual but makes commitment possible. Academic freedom carries with it the duty to use that freedom in a manner consistent with the scholarly obligation to base teaching and research on an honest search for knowledge.

Policy

This policy confirms that medical faculty appointees in good standing have a right to academic freedom. Without limiting the previous definition, the university's fundamental role in protecting the academic freedom of medical faculty when issues of academic freedom arise in the academic/clinical

setting. The Dean or his/her delegate(s), as described in procedures associated with this policy, will promptly investigate all allegations of breach of academic freedom.

22. Both the Medical Faculty Policy and the Procedures Manual for Medical Faculty state that those in the medical faculty have academic freedom, subject to applicable ethical and clinical standards, guidelines, laws, regulations, rules, and procedures governing the practice of medicine.
23. Dr. Christian is keenly aware of his ethical obligation to uphold the precautionary principle and to advocate for the basic medical ethical principle of ensuring that patients can provide informed consent to medical procedures. Dr. Christian has not breached any ethical principles, guidelines, laws, regulations, rules or procedures governing the practice of medicine. He has conducted himself in accordance with the high ethical standards by which he practiced medicine and advocated for informed consent.
24. The College has contradicted the University's official position on academic freedom for clinical faculty through its own conduct and has failed to investigate its own breach as required. Dr. Christian was in fact questioning, examining, investigating, and participating in an honest search for knowledge.
25. According to the policy, Dr. Christian was entitled to criticize society in a non-neutral manner, and he expected that pursuant to the policy the Dean and the Department Heads of the College would protect him in his exercise of that freedom.

Charter Breaches

26. The College's conduct by suspending Dr. Christian's academic responsibilities and his position as QIPSD for expressing the Statement is contrary to the fundamental freedoms protected under section 2(a) freedom of conscience and 2(b) freedom of thought, belief, opinion, and expression of the *Canadian Charter of Rights and Freedoms*. Dr. Christian states that he was bound by his conscience with due regard for the principles of exemplary medical care.
27. Although the SHA was contractually permitted to terminate its contractual relationship upon notice pursuant to the Agreement with Dr. Christian, its decision to terminate the Agreement with Dr. Christian immediately following the Statement and in concert with the College's suspension, was a punitive response contrary to the fundamental freedoms protected under section 2(a) freedom of conscience and 2(b) freedom of thought, belief, opinion, and expression of the *Canadian Charter of Rights and Freedoms*. Dr. Christian reiterates that he was bound by his conscience with due regard for the principles of exemplary medical care.
28. The Defendants SHA's and the College's conduct as discussed above was unreasonable, punitive, and failed to respect Dr. Christian's fundamental freedoms of conscience and expression, which rights are guaranteed at common law and by the *Charter*.

Defamation – Saskatchewan Health Authority

29. In referring to Dr. Christian and the Video, the SHA submitted an email containing the following defamatory statements for publication to the media outlet, "The Star Phoenix", resulting in the publication of an article titled, "*U of S surgery professor questions COVID-19, vaccines in online video*" on June 11, 2021:
- a. "This kind of communication feeds conspiracy theories and misinformation, as well as sends the false message that our health care workers at the front line are somehow faking or making up the loss of life and trauma occurring as a result of COVID. This is not only offensive, but dangerous. It publicly downplays the significant risk of harm and death created by community transmission of this virus."
 - b. The email encourages people to read "valid sources of information," like the provincial government's COVID-19 website or the Public Health Agency of Canada.
30. In referring to Dr. Christian and the Video, the SHA submitted a statement containing the following defamatory statement for publication to the media outlet, "CTV News" resulting in the publication of an article titled, "*U of S surgery professor questions severity of COVID-19 pandemic and safety of vaccines in online video*" on June 11, 2021:
- a. "This kind of communication feeds conspiracy theories and misinformation, as well as sends the false message that our health care workers at the front line are somehow faking or making up the loss of life and trauma occurring as a result of COVID. This is not only offensive, but dangerous. It publicly downplays the significant risk of harm and death created by community transmission of this virus."
31. In referring to Dr. Christian and the matter of his suspension and termination, the SHA submitted an email containing the following defamatory statements for publication to the Star Phoenix, resulting in the publication of an article titled, "*Saskatoon surgery professor suspended, terminated from key roles*" on June 23, 2021:
- a. "While we respect that residents of Saskatchewan have a right to free speech, health system leaders are expected to be committed to fact-based, scientifically driven public messaging," the SHA message says. "Given the risks of COVID, leaders who depart from this commitment in favour of conspiracy theories put lives at risk by potentially discouraging uptake on life-saving vaccines."
 - b. "In light of this situation, the SHA would like to reaffirm that it does not support or endorse spreading misinformation that casts doubt on the seriousness of COVID-19, the validity of the science of this pandemic, and the effectiveness of COVID vaccinations," the SHA message says.

Defamation – Scott Livingstone

32. In referring to Dr. Christian, Scott Livingstone uttered the following defamatory statements in an interview thereafter published by the Star Phoenix in an article titled, "*SHA's leader blasts messaging from Saskatoon surgeon as 'dangerous' on June 22, 2021*":
- a. "I think what he has done publicly is dangerous," Livingstone said of Christian. "I don't condone it at all. Very disappointed."
 - b. "I would say from my perspective, what's most disrespectful is his comments relative to pandemic vaccination and the response from this province," Livingstone said. "And how disrespectful that is to the thousands of people across this province, the health-care people on his team at the university and across this province who've worked so hard over 15 months to keep people in this province safe. I find his comments absurd."

Defamation – Dean Smith

33. In referring to Dr. Christian and the Video, Dean Smith released the following defamatory statements in a blog statement on his "U of S Preston's Blog Page" in an article titled, "*Confronting COVID misinformation*" released on June 11, 2021":
- a. "I categorically state that I and the College of Medicine do not endorse the content of the video that questions the very existence and severity of this pandemic and the safety and effectiveness of the vaccines, as well as the many conspiracy theories and assertions cast at many incredible people and valued institutions in our country and around the world,"
 - b. "On behalf of the College of Medicine I sincerely apologize to all those people who have suffered the ravages of this awful disease and those who continue to suffer. I apologize to the families of over 500 people in Saskatchewan who have died from COVID-19."
 - c. "I know how disheartening the promotion of false information about COVID-19 must be."
 - d. "I am also thinking of all the front-line health care workers including our medical students and residents, our medical faculty and our partners at the Saskatchewan Health Authority (SHA) and regret the promulgation of these views by a person associated with the College of Medicine."
 - e. "Another area of expertise for which Saskatchewan is increasingly recognized is physician leadership and nearly all of the great physician leaders at the SHA that have led us through this pandemic also have medical faculty appointments in the College of Medicine. I know how disheartening the promotion of false information about COVID-19 must be."
 - f. "I would like to point out the amazing work on public education by Drs. Cory Neudorf, Nazeem Muhajarine, Alex Wong, Joseph Blondeau and Hassan Masri in endless interviews, public presentations and social media posts. I also acknowledge the amazing work done by the team at Morning Star

Lodge, led by Dr. Carrie Bourassa, that has been working since the very beginning of the pandemic to serve Indigenous communities to address misinformation. They and many others at the College of Medicine have consistently provided accurate, reliable, evidence-based information on the pandemic and the vaccines for the public.”

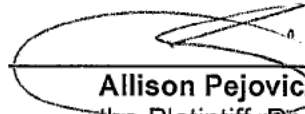
34. Part of the above defamatory statements were also published by the Star Phoenix in an article titled, “*U of S dean of medicine denounces video with prof questioning pandemic*” on June 11, 2021.
35. The above defamatory statements by the SHA, Scott Livingstone and Dean Smith (collectively, the “Defamatory Statements”) were intended to convey to the public, and did so convey, that Dr. Christian intentionally communicates false, misleading and dangerous information, and that consequently Dr. Christian is an untrustworthy doctor. The Defamatory Statements were calculated to damage Dr. Christian’s reputation and caused substantial and quantifiable damage to Dr. Christian as intended.
36. Dr. Christian has suffered damage to his professional and personal reputation, financial interests and career as a result of the manner in which he was treated by the Defendants including but not limited to the infringement of his *Charter* protected rights of freedom of expression and conscience.
37. The compounding impact of the conduct of the Defendants upon Dr. Christian including but not limited to the Defamatory Statements made by the Defendants, all contributed to Dr. Christian’s decision to retire and cease to provide professional medical services in the province of Saskatchewan.
38. The Defendants’ conducted themselves in bad faith, malice and their failure to act fairly and honestly, merits denunciation and an award of punitive damages.

Remedy Sought

39. A Declaration that the Defendants, SHA and the College have violated the Plaintiff’s Academic Freedom under the University of Saskatchewan’s Medical Faculty Policy, the Procedures Manual for Medical Faculty and *The University of Saskatchewan Act, 1995*;
40. A Declaration that the Defendants, SHA and the College have violated the Plaintiff’s rights under sections 2(a) and 2(b) of the *Charter* and granting an appropriate s. 24(1) *Charter* remedy;
41. *Charter* damages in an amount to be determined by this Honourable Court;
42. Judgment for damages in favour of the Plaintiff for defamation as against the Defendants: SHA, Scott Livingstone and Dean Smith in an amount to be set by this Honourable Court;
43. Punitive damages against all Defendants;
44. The costs of this action; and

45. Such further and other relief as this Honourable Court may deem just and appropriate having regard to all the circumstances.

DATED at Saskatoon, Saskatchewan, this 22nd day of June, 2022.


Allison Pejovic/Andre Memaury for
the Plaintiff, Dr. Francis Christian

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