

COURT OF APPEAL FOR ONTARIO
(APPEAL IN AN APPLICATION)

B E T W E E N :

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

Appellants

and

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO

Respondent

APPLICATION UNDER the *Canadian Charter of Rights and Freedoms*, s. 24(1) and 52(1), Part 1 of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982 (UK)*, 1982, c. 11 and Rule 14.05 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.

NOTICE OF APPEAL

THE APPELLANTS APPEAL to the Court of Appeal from the judgment of Perell J. dated the 13th day of December, 2022 made at Toronto, Ontario (the “Decision”). The Decision dismissed the Application for a declaration that sections 2(2.1) and 2.1 of Schedule 1 of O. Reg 364/20 of the *Reopening Ontario Act*, S.O. 2020, c. 17 (“the Regulation”) were unconstitutional. The Regulation created requirements for patrons of certain businesses to show proof of having received a COVID-19 vaccine. The Decision also dismissed relief sought under section 24(1) of the *Canadian Charter of Rights and Freedoms* (“*Charter*”) for damages in the amount of \$1000 per Applicant.

THE APPELLANTS ASK that the Judgement be set aside and a judgment be granted as follows:

1. A declaration pursuant to section 52(1) of the *Constitution Act, 1982*, being Schedule B of the *Canada Act, 1982 (UK)*, 1982, c. 11 that sections 2(2.1) and 2.1 of Schedule 1 of O. Reg 364/20 made pursuant to the *Re-Opening Ontario Act (A flexible response to COVID-19)*, 2020, S.O. 2020, c 17 are of no force or effect as it infringes upon sections 2(a), 7 and 15 of the *Charter* and is not justified under section 1 of the *Charter*.
2. A declaration pursuant to section 24(1) of the *Charter* that sections 2(2.1) and 2.1 of Schedule 1 of O. Reg 364/20 made pursuant to the *Re-Opening Ontario Act (A flexible response to COVID-19)*, 2020, S.O. 2020, c 17 are unconstitutional as it infringes upon sections 2(a), 7 and 15 of the *Charter* and is not justified under section 1 of the *Charter*.
3. An award of \$1000 per Applicant, pursuant to section 24(1) of the *Charter* against Ontario for damages suffered because of a breach of their *Charter* rights.
4. Granting such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS OF APPEAL are as follows:

5. The Honourable Application Judge Perell J. erred in fact and law by finding:

- i. the Appellants' religious freedoms under section 2(a) of the *Charter* were not infringed by the Regulations;
- ii. the Appellants' rights to liberty and security of person under section 7 of the *Charter* were not infringed by the Regulations;
 - a. failing to consider relevant expert evidence in making his determination that the Regulations did not infringe on section 7 security of the person;
- iii. the Appellants' right to equal protection and benefit under the law without discrimination under section 15 of the *Charter* were not infringed by the Regulations, and that the appellants were not discriminated on the basis of religion and disability; and
- iv. taking impermissible judicial notice of certain facts which were either incorrect, not in the record or were points of controversy between the parties.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

6. Pursuant to section 6(1)(b) of the *Courts of Justice Act*, RSO 1990, c. 43, an appeal of a final order of the Superior Court of Justice lies in the Court of Appeal.

7. Leave is not required to appeal a final order from the Superior Court of Justice.

January 11, 2023

[Redacted]
[Redacted]

Sayeh Hassan

[Redacted]
[Redacted]
[Redacted]
[Redacted]

Henna Parmar

[Redacted]

Jorge Pineda

[Redacted]

Counsel for the Appellants

TO:
THE ATTORNEY GENERAL OF ONTARIO
Constitutional Law Branch McMurtry – Scott Building
720 Bay Street, 4th Floor
Toronto, ON M7A 2S9

[Redacted]
[Redacted]

Counsel for the Respondent

M

and

APPELLANTS'

RESPONDENT

ONTARIO
COURT OF APPEAL

Proceeding commenced at TORONTO

NOTICE OF APPEAL

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