CA49934
Tatlock et al. vs. Attorney General for the Province of British Columbia et al.
Appeal Record

COURT OF APPEAL

ON APPEAL FROM the Order of The Honourable Justice Coval of the Supreme Court B.C. pronounced on May 10, 2024

BETWEEN:

Phyllis Janet Tatlock, Laura Koop, Monika Bielecki, Scott Macdonald, Ana Lucia Mateus, Darold Sturgeon, Lori Jane Nelson, Ingeborg Keyser, Lynda June Hamley, Melinda Joy Parenteau and Dr. Joshua Nordine

APPELLANTS
(Petitioners)

AND:

Attorney General for the Province of British Columbia and Dr. Bonnie Henry in her capacity as Provincial Health Officer for the Province of British Columbia

RESPONDENTS
(Respondents)

Publication Ban or Anonymity Order (if any) : NIL

Sealing Order (if any): NIL

AMENDED APPEAL RECORD
Filed by the Appellants

Phyllis Janet Tatlock, Laura Koop, Monika Bielecki, Scott Macdonald, Ana Lucia Mateus, Darold Sturgeon, Lori Jane Nelson, Ingeborg Keyser, Lynda June Hamley, Melinda Joy Parenteau and Dr. Joshua Nordine	Attorney General for the Province of British Columbia and Dr. Bonnie Henry in her capacity as Provincial Health Officer for the Province of British Columbia
Allison Pejovic	Julie K. Gibson, Alexander C. Bjornson, and Christine Bant

Pejovic Law
[redacted]

Telephone: [redacted]

E-Mail: [redacted]

Counsel for the Appellants

Ministry of Attorney General
Legal Services Branch
[redacted]

Telephone: [redacted]

Email: [redacted]

Counsel for the Respondents

INDEX

S-222427

Court File No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners

and

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

PETITION TO THE COURT

ON NOTICE TO:

Deputy Attorney General
Ministry of Attorney General
[redacted]

Dr. Bonnie Henry, Provincial Health Officer
[redacted]

This proceeding is brought for the relief set out in Part 1 below, by

[X] the persons named as petitioners in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioners

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: The Law Courts, 800 Smith Street, Vancouver, B.C.
(2)	The ADDRESS FOR SERVICE of the petitioners is: Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers Begbie Square [redacted] Office Phone: [redacted] Email: [redacted]
(3)	The name and office address of the petitioners' lawyers are: Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers [redacted]

[redacted]

Charlene E. Le Beau
Justice Centre for Constitutional Freedoms
[redacted]

Claim of the Petitioners

Part 1: ORDERS SOUGHT

Pursuant to section 2(1), (2), 7, 5, and 17 of the *Judicial Review Procedure Act,* RSBC 1996, c.241 the Petitioners seek:

1. Declarations pursuant to sections 24(1) and 52(1) of the *Constitution Act,* 1982, Schedule B to the Canada Act 1982 (UK) c.11, that:

   (a) The Order entitled "Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventive Measures – November 18, 2021" (Hospital and Community Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act*, S.B.C. 2008, c.28, is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11, specifically,

      a. *Charter* section 2(a) (freedom of conscience and religion)
      b. *Charter* section 7 (right to life, liberty and security of the person)
      c. *Charter* section 15(1) (equality rights)

(b) The Order entitled "Residential Care Covid-19 Preventive Measures – October 21, 2021" (Residential Care Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act,* is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Charter*, specifically,

a. *Charter* section 2(a) (freedom of conscience and religion)
b. *Charter* section 7 (right to life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(c) The "Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders" (the Guidelines), that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, which stipulate the process that must be employed in determining a healthcare worker's application for exemption from the Hospital and Community Order and/or from the Residential Care Order, are of no force or effect, as they unjustifiably infringe the rights and freedoms of the Petitioners guaranteed by the *Charter*, specifically,

a. *Charter section 2(a)* (freedom of conscience and religion)
b. *Charter* section 7 (life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(d) The Order entitled "Health Professionals Covid-19 Vaccination Status Information and Preventive Measures – March 7, 2022(the Health Professionals Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39, 53, 54, 56, 57, 67 (2) and 69 of the *Public Health Act,* which mandates the collection, disclosure and reporting of personal information and vaccination status for persons regulated under the *Health Professions Act*, RSBC 1996 c.183 (the "*Health Professions Act*"), is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Charter,* specifically,

a. *Charter section 2(a)* (freedom of conscience and religion)
b. *Charter* section 7 (life, liberty and security of the person)

c. *Charter* section 15(1) (equality rights)

1. In the alternative, an Order under sections 2(2) and 7 of the *Judicial Review Procedure Act,* in certiorari, quashing and setting aside the entire scheme of the Hospital and Community Order, the Residential Care Order, and the Guidelines, as being unreasonable;

2. A Declaration that the Hospital and Community Order, the Residential Care Order and the Guidelines issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, improperly fettered her discretion by failing to provide a meaningful process for exemptions and reconsideration;

3. In the further alternative, an Order pursuant to section 5(1) of the *Judicial Review Procedure Act,* directing Dr. Bonnie Henry, in her capacity as Public Health Officer for British Columbia, to provide a meaningful process for exemptions and reconsideration for the Petitioners on the basis of religion, conscience and on an expanded medical basis, and/or to allow for accommodation of those workers affected by the Hospital and Community Order, the Residential Care Order and the Guidelines;

4. An Order prohibiting the Respondents from issuing subsequent public health orders of a substantially similar or identical nature;

5. An Order pursuant to section 17 of the *Judicial Review Procedure Act,* that the entire record upon which the Hospital and Community Order, the Residential Care Order and Guidelines and the Health Profession Order were based on, and are continued, be filed on this proceeding;

6. A Declaration that the Health Professionals Order exceeds the statutory authority and jurisdiction of the Respondents, as it trenches on the common-law and statutory authority of self-governing professions, granted by the *Health Professions Act* to govern themselves in the public interest in accordance with the legislation, rules and regulations of their respective colleges

7. A Declaration that vaccination against Covid-19 as a condition of employment for the Petitioners, as set out in the Hospital and Community Order and the Residential Care Order, is a coercive tactic levelled against the Petitioners by the Respondents, and thus deprives the Petitioners of their right to informed

consent to vaccination, as required by section 6 (a) to (f) of the *Health Care (Consent) and Care Facility (Admission) Act* RSBC 1996, c.181 (the "*Health Care (Consent) Act*");

8. A Declaration that the collection of the Petitioners' personally-identifying and Covid-19 vaccination status by employers, contractors and colleges, as authorized by Orders issued by Dr. Bonnie Henry between September 27, 2021 and March 7, 2022, violates section 26(d) of the *Freedom of Information and Protection of Privacy Act,* RSBC 1996, c.165 ("FIPPA") and section 1(1) of the *Privacy Act,* RSBC 1996, c.373 (the "*Privacy Act*");

9. A Declaration that the Hospital and Community Order, the Residential Care Order and the Health Professionals Order offends section 13(1) of the *Human Rights Code*, RSBC 1996 c.210

10. An extension of time to file supporting materials, including expert affidavits;

11. Costs of this Petition; and,

12. Such further and other relief as the Petitioners may seek and as this Honourable Court deems just and equitable.

Part 2: FACTUAL BASIS

A. The Public Health Orders and Guidelines

1. In the Fall of 2021, B.C. workers in the health care sector became subject to Covid-19 vaccine mandates: those affected workers who refused to take a Covid-19 vaccine were fired from their jobs unless they could prove entitlement to a very narrow medical exemption.

2. The Respondent Dr. Bonnie Henry is British Columbia's Provincial Health Officer, appointed pursuant to Part 6 of the *Public Health Act* and is empowered to issue public health orders to promote and protect public health.

3. Orders were issued by Dr. Bonnie Henry between August 20, 2021 and February 28, 2022 that provided a mechanism to enable employers, operators and contractors to obtain personal information from healthcare practitioners and staff, including his or her personal health number, together with the Covid-19 vaccination status of those individuals, and to compel healthcare practitioners and staff to provide their personal information, including their personal health

numbers, as well as their Covid-19 vaccination status, to their employers. The orders also compelled employers and contractors to report the healthcare practitioners' and staff members' personal information and personal health numbers to Dr. Bonnie Henry through an electronic government data base. The first order was issued on August 20, 2021 (Ex. A to affidavit 1 of Anneke Pingo). The second order was issued on August 31, 2021 (Ex. B to affidavit 1 of Anneke Pingo). The third order was issued on September 9, 2021 (Ex. C to affidavit 1 of Anneke Pingo). The fourth order was issued on September 27, 2021 (Ex D to affidavit 1 of Anneke Pingo), then replaced with the order of October 6, 2021 (Ex. E to affidavit 1 of Anneke Pingo), which was then replaced with the order of February 28, 2022 (Ex. P to affidavit 1 of Anneke Pingo).

4. The initial vaccine mandates were contained in a series of public health orders issued by Dr. Bonnie Henry between September 2, 2021, and November 18, 2021.

5. The vaccine mandate issued under the Residential Care Order was first issued on September 2, 2021 (Ex. F to affidavit 1 of Anneke Pingo), then replaced with the order of October 4, 2021 (Ex. G to affidavit 1 of Anneke Pingo), then replaced with the order of October 8, 2021 (Ex. H to affidavit 1 of Anneke Pingo), and finally replaced with the order of October 21, 2021 (Ex. I to affidavit 1 of Anneke Pingo).

6. The vaccine mandate issued under the Hospital and Community Order was first issued on October 14, 2021 (Ex. J to affidavit 1 of Anneke Pingo), then replaced with the order of October 21, 2021 (Ex. K to affidavit 1 of Anneke Pingo), then replaced with the order of November 9, 2021 (Ex. L to affidavit 1 of Anneke Pingo), and finally replaced with the order of November 18, 2021 (Ex. M to affidavit 1 of Anneke Pingo).

7. On November 9, 2021, the vaccine mandates under the Hospital and Community Order were expanded to include administrative staff employed by a regional health authority, the Provincial Health Services Authority, British Columbia Emergency Health Services, and the Providence Health Care Society.

8. On November 18, 2021, the vaccine mandates under the Hospital and Community Order were further expanded to include all staff members of Community Living British Columbia.

9. The Health Professionals Order (Ex. Q to affidavit of Anneke Pingo) compels colleges, as defined by the *Health Professions Act,* to provide personally-identifying information about each of their registrants. The Order further compels the Minister of Health to verify the Covid-19 vaccination status of each registrant, and to disclose that information to the relevant college. The Order compels each

registrant, upon request from the college, to provide proof of vaccination, or of an exemption, to the college. The college must record each registrant's vaccination status by March 31, 2022. The college must also disclose to Dr. Henry, upon request, the aggregate information respecting the vaccination status of registrants of their college. The Health Professionals Order does not mandate the Covid-19 vaccination for healthcare professionals regulated under the *Health Professions Act* and working in private practice. As such, healthcare professionals regulated under the *Health Professions Act* and working in private practice are treated differently than healthcare professionals regulated under the *Health Professions Act* who were employed by a provincial health authority or were working in a residential care facility.

10. Section 43 of the *Public Health Act* provides a meaningful process for persons affected by public health orders to apply for reconsideration, but that process is effectively eviscerated by these orders.

11. The orders provide that the only exemption that can be applied for under s. 43 for reconsideration is a medical exemption. There is no provision in the orders for exemptions based on religion or conscience. The allowable medical exemption is extremely narrow: "a request for reconsideration…must be made on the basis that the health of the person would be seriously jeopardized…and must follow the guidelines posted on the Provincial Health Officer's website".

12. The guidelines for exemption from both the Hospital and Community Order and the Residential Care Order are set out in a document entitled "COVID-19 Vaccination Requirements - Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders", dated October 8, 2021 (Ex. Oto affidavit 1 of Anneke Pingo). An affected person is not able to submit a request for reconsideration even if he or she has additional relevant information that was not reasonably available to the health officer when the orders were issued or varied. Nor is he or she able to submit a request for exemption if he or she has information or a proposal that was not presented to the health officer when the Public Health Orders were issued or varied, that, if implemented, would meet the objective of the Public Health Orders. Nor is an affected person able to request more time to comply with the orders.

13. The above orders will hereinafter be referred to as the "Public Health Orders" except where it is necessary to be specific about which order is being referred to. The Guidelines will hereinafter be referred to as "The Guidelines."

B. The Petitioners' Evidence

Phyllis Janet Tatlock

14. The Petitioner Phyllis Janet Tatlock graduated with a nursing diploma from the University of Alberta, School of Nursing in 1992. She completed her nursing degree from the University of Northern British Columbia in 1998 and completed a Masters of Community Health from the University of British Columbia in 2006.

15. Ms. Tatlock lives in Prince George, British Columbia. Ms. Tatlock was a Director of Operations, BC Cancer, under the Provincial Health Services Authority (PHSA) and was employed in that position from March 8, 2021. Other positions Ms. Tatlock has held are:

    a. Manager, Alberta Health Services (January 2021—March 2021)
    b. Executive Director, Alberta Health Services (July 2019-January 2020)
    c. Director, Public Health, April 2011-July 2019 Island Health,
    d. Director, Maternal/Child Services, Quinte Health Care (Ontario) April 2008-April 2011
    e. Manager Research and Community Health Services, Carrier Sekani Family Services (May 2006-April 2008
    f. Manager, Home and Community Health Services Northern Health (October 2003--May 2006)
    g. Manager Community Health Services Carrier Sekani Family Services (September 1999-October 2003)
    h. various nursing positions in the Emergency Department in Northern Health as well as in California, Texas, Washington states from 1993 until 1999.

16. Ms. Tatlock was terminated by her employer due to her refusal to take a Covid-19 vaccine.

17. Ms. Tatlock is a Christian. She objects to taking a Covid-19 vaccine on the basis of religion. Ms. Tatlock submitted a request for a religious exemption to the Occupational Health department of PHSA on October 22, 2021, and it was denied.

18. Ms. Tatlock objects to state coercion that would have her take a vaccine which recent studies show is ineffective at stopping infection or transmission, and whose adverse reaction profile is significant.

Laura Koop

19. The Petitioner, Laura Koop, lives in Canyon, British Columbia. Ms. Koop is a Primary Care (Family) Nurse Practitioner, with a focus on high risk and at-risk populations, such as drug and alcohol abuse, and mental health. She was employed by the Interior Health Authority and held this position from September 2014. Prior to her employment with Interior Health, Ms. Koop was employed in

the following capacities:

a. Nurse Practitioner (family) in remote clinics;
b. Clinical Coordinator for remote nursing clinics;
c. Remote Nurse with Certified Remote Nursing Practice;
d. Nurse Manager in long-term Care;
e. Instructor (both Care Aide and LPN program) in community college; and,
f. Staff nurse in long-term care.

20. Ms. Koop was terminated by her employer due to her refusal to take a Covid-19 vaccine.

21. Ms. Koop objects to taking a Covid-19 vaccine on the basis of conscience. She has serious concerns about the safety of the Covid-19 vaccines, mRNA technology and use of fetal tissue in vaccine development. She is concerned about the lack of informed consent, the lack of transparency from pharmaceutical corporations and all levels of Canadian (and international) governments, and the continued changing goals and directives regarding the Covid-19 vaccines.

Monika Bielecki

22. The Petitioner, Monika Bielecki, resides in Kelowna, British Columbia. Ms. Bielecki is an Employee Health and Wellness Advisor with BC Interior Health. She held this position from October 2015.

23. Ms. Bielecki holds Bachelor of Arts degree in Psychology. She is also qualified as a Certified Vocational Rehabilitation Professional. She has extensive experience, since 2001, in claims adjudication, rehabilitation services, disability management, and workplace accommodation process.

24. In her role as an Employee Health and Wellness Advisor with Interior Health, Ms. Bielecki worked remotely from February 10, 2016. Since that day, she did not have a designated workspace in any of the Interior Health sites and has worked entirely from home via phone and email up to the time of termination of employment. A Flexible Work Location Participation Agreement and Safety Checklist was formally signed by Ms. Bielecki's manager on September 30, 2019.

25. Between 2016 and 2019, Ms. Bielecki attended the occasional team meeting in the office, but as members of their team were from various cities in the Interior Health region, there always was an option to attend by teleconference and some of Ms. Bielecki's teammates did so. As the pandemic began, they started using Zoom meetings and in-person meetings were not organized by her department.

26. Ms. Bielecki was terminated by her employer due to her refusal to take a Covid-

19 vaccine.

27. Ms. Bielecki objects to taking the Covid-19 vaccine on the basis of conscience. She states that acceptance of any medical intervention is her personal choice, based on her health status and risk factors. She objects to state coercion that overrides her personal autonomy, especially where recent studies show the vaccine is ineffective at stopping infection or transmission, and where the vaccine is known to have serious adverse reactions.

Scott Macdonald

28. The Petitioner, Scott Macdonald, resides in Vancouver, BC, and was a Registered Art Therapist at the Dr. Peter Centre in Vancouver. He was employed in this position for 11 years. Mr. Macdonald holds a Bachelor of Physical Education from the University of British Columbia, as well as a Diploma from the Vancouver Art Therapy Institute.

29. Mr. Macdonald was terminated by his employer due to his refusal to take a Covid-19 vaccine.

30. Mr. MacDonald is also not able to fulfill his duties with Teddy's Homes, where he had been working for the last four years as a casual respite support worker with foster children, because the Hospital and Community Order applies to residential facilities licensed under the *Community Care and Assisted Living Act*. All unvaccinated workers are not permitted to enter any of the resources.

31. Mr. Macdonald objects to taking a Covid-19 vaccine on the basis of conscience, and for medical reasons. He believes he is not in a demographic of high risk for Covid-19, nor is the prevalence of severe symptoms/death of Covid-19 (alone) statistically significant. Mr. Macdonald is concerned that the vaccines were rushed to market by the pharmaceutical companies, and that they raced against each other to be the first to offer the vaccine. Mr. Macdonald has also had adverse reactions to the flu vaccine in the past.

32. Mr. Macdonald does not trust the BC Coastal Health Authority to have its workers' best interests in mind. He states the health authority has already been known to implement policies that are punitive to healthcare workers, and that are injurious to the patients they are supposed to be caring for.

Ana Lucia Mateus

33. The Petitioner, Ana Lucia Mateus, resides in Burnaby, British Columbia, and was employed by Vancouver Coastal Health (VCH). She worked as an Administrative Assistant for the Health Authority Medical Advisory Committee. This committee

has approximately 50 members of all senior levels in the organization and reports to the Board. Ms. Mateus also provided credentialing and privileging support to all the sites throughout VCH, in the department of Physician Relations and Compensation. She had always worked in the corporate areas of administration for VCH.

34. Ms. Mateus has a Legal Assistant diploma from Capilano College in North Vancouver, BC. Ms. Mateus worked for VCH for over 16 years (since May 2005). She first started as a Legal Assistant in VCH's legal department before moving to Physician Relations and Compensation.

35. Ms. Mateus had worked full time from home since March 13, 2020, due to the Covid-19 pandemic and the consequential public health protocols implemented by her employer.

36. Ms. Mateus was terminated by her employer due to her refusal to take a Covid-19 vaccine.

37. Ms. Mateus objects to taking the Covid-19 vaccine on the basis of conscience. She believes there are too many unanswered questions regarding the Covid-19 vaccines, and that they were rushed to market. She is also concerned that the pharmaceutical companies have no liability in relation to the Covid-19 vaccines. She objects to state coercion and believes in freedom of choice.

Darold Sturgeon

38. The Petitioner, Darold Sturgeon, resides in West Kelowna and was an Executive Director, Medical Affairs for Interior Health. He held senior director positions with Interior Health for 14.5 years. Mr. Sturgeon did not work in a health care setting and is not a health care worker.

39. Previous positions held by Mr. Sturgeon are Corporate Director Financial Services for Interior Health BC, VP Finance, Chief Financial Officer (Cypress Health Region – Saskatchewan), Chief Financial Officer (Regional Municipality of Wood Buffalo - Alberta), and VP Finance & Administration (East Central Health District – Saskatchewan).

40. Mr. Sturgeon holds a Bachelor of Administration (Distinction), from the University of Regina. He is also a Chartered Professional Accountant in British Columbia.

41. Mr. Sturgeon was terminated by his employer due to his refusal to take a Covid-19 vaccine.

42. Mr. Sturgeon is a Christian. He objects taking a Covid-19 vaccine on the basis of religion. Mr. Sturgeon submitted a request for a religious exemption, but it was

denied.

43. Mr. Sturgeon also objects to taking a Covid-19 vaccine on medical grounds. Mr. Sturgeon was given a vaccine during childhood to which he had a severe reaction.

44. In addition, on August 17, 2021, Mr. Sturgeon was diagnosed with the Covid-19 virus. He now has natural immunity to Covid-19 and has undergone an antibody test which shows that he has antibodies to Covid-19.

45. Coupled with his sincerely held religious beliefs that prevent him from taking a Covid-19 vaccine, Mr. Sturgeon has grave concerns about the Covid-19 vaccine's safety, both in relation to short and long-term impacts.

46. Mr. Sturgeon is also opposed to a policy that makes vaccination against Covid-19 mandatory, as it denies his rights and freedoms to make a free choice.

Lori Jane Nelson

47. The petitioner, Lori Jane Nelson, resides in Surrey, BC, and was a Provider Engagement Lead, Clinical Informatics, for the British Columbia Provincial Health Services Authority (PHSA) in Vancouver, BC. Ms. Nelson holds a Bachelor of Science in Nursing (UBC, 1996), as well as a Master of Science in Nursing (UBC, 2005). She is also a Certified Health Executive (CHE) with the Canadian College of Health Leaders and has held this certification for over 15 years.

48. Ms. Nelson has worked for the PHSA for 25 years. Other positions she has held with the PHSA are General Duty Nurse, Clinical Nurse Coordinator, Program Manager, Senior Director, Patient Care Services, and a Clinical Transformation Leader, Redevelopment Project.

49. Ms. Nelson was terminated by her employer due to her refusal to take a Covid-19 vaccine.

50. Ms. Nelson worked solely from home and had a Work from Home Agreement. She did not have contact with patients or public while working and had no need to be within a facility to do her work.

51. Ms. Nelson objects to taking a Covid-19 vaccine on medical grounds. Ms. Nelson has severe allergies and has had multiple systemic and anaphylactic reactions in the past. She had reactions to the flu shot in past years.

51. Ms. Nelson also objects to being coerced by the state to take a vaccine where there is significant anecdotal evidence of individuals having suffered various adverse reactions.

Ingeborg Keyser

52. The petitioner, Ingeborg Keyser, resides in Kelowna, BC, and is a Communications Advisor for Interior Health. Ms. Keyser has held this position since April 2017. Ms. Keyser graduated from the Tshwane University of Technology in Pretoria, South Africa in 2007, with an International Diploma (three-year course) in Public Relations. Ms. Keyser also completed a bridging course at the University of South Africa to complete all 4th year degree subjects in Communications.

53. Ms. Keyser is not a healthcare worker and does not work in a health care setting.

54. Ms. Keyser was terminated by her employer due to her refusal to take a Covid-19 vaccine.

55. Ms. Keyser worked entirely from home in her position with Interior Health.

56. Ms. Keyser objects to taking a Covid-19 vaccine on medical grounds. Ms. Keyser is pregnant. She states she is unable to know what is right for herself and her unborn baby, given the lack of long-term data regarding the Covid-19 vaccines on pregnancy. She objects to state coercion that would have her take a vaccine that is proving to cause serious adverse reactions in some people.

57. Ms. Keyser suffered a miscarriage in the spring of 2021, at nine weeks' gestation.

Lynda June Hamley

58. Ms. Hamley resides in Nelson, British Columbia. She was employed by Kootenay Society of Community Living ("KCLS") as a residential support worker. KCLS provides care to young men and women with developmental disabilities, living in a group home setting. Ms. Hamley was hired by KCLS in December 2020. She started as a casual support worker and obtained a full-time position with KCLS in November 2021. Ms. Hamley is also a certified Classroom and Community Support Worker. She has worked supporting children with disabilities and challenging behaviours in the school system for 13 years.

59. Until December 9, 2021, Ms. Hamley was supporting three young men and a young woman in their homes as a residential support worker for KCLS.

60. On December 10, 2021, Ms. Hamley was placed on unpaid leave for failing to provide proof of vaccination against Covid-19. She had until January 13, 2022 to become fully vaccinated against Covid-19, otherwise she was advised her employment would be terminated. Ms. Hamley has not had a Covid-19 vaccine. Ms. Hamley has not yet received official notice that her position at KCLS was terminated.

61. Ms. Hamley is a Christian. She objects to taking a Covid-19 vaccine on the basis of religion. Ms. Hamley submitted a request for a religious exemption, but it was denied.

62. Ms. Hamley objects to state coercion that has put her in the profoundly bewildering position of being forced to choose between providing for her family, which would force her to submit to a vaccine that goes against her sincerely held religious beliefs, and potentially being unable to provide for her family.

Melinda Joy Parenteau

63. The Petitioner, Melinda Joy Parenteau is a registered midwife, and previously worked as a private contractor for Apple Tree Maternity ("Apple Tree") in Nelson, BC. She worked for Apple Tree between July 1, 2020, and October 25, 2021.

64. Mrs. Parenteau holds an associate degree in the Science of Midwifery, which she obtained through the National College of Midwives in Taos, New Mexico, USA. In addition, Mrs. Parenteau has completed the International Midwifery Pre-Registration Bridging Program at Ryerson University in Toronto, to enable her to be a registered midwife in Canada

65. Mrs. Parenteau's hospital privileges were removed on October 26, 2021, because she failed to show proof of vaccination for Covid-19 as required by the Hospital and Community Order. She has never had a complaint or disciplinary action taken against her, neither by her College, health authority, or hospital. She has been registered as a midwife in both Manitoba and B.C.

66. Mrs. Parenteau is opposed to the Covid-19 vaccine mandate. She says it violates a fundamental right to make an informed choice, without coercion, to a medical treatment. She has not taken the Covid-19 vaccine. She will not take it under the current mandate which puts her in a position of duress, coercion by the state, and under threat.

67. Mrs. Parenteau is not opposed to vaccines in general and has received many throughout her life. She recognizes there are benefits to vaccines that have been thoroughly tested and proven safe. These Covid-19 vaccines have not completed their testing and clinical trials and not expected to until the end of 2022 and into 2023. This qualifies these vaccines as being in the experimental category. She will not be coerced by the state into taking an experimental vaccine.

68. Mrs. Parenteau is no longer able to practice midwifery, as her license depends on having hospital privileges. Mrs. Parenteau is experiencing financial hardship because she has lost her hospital privileges, and thus her ability to work in her chosen field.

Dr. Joshua Nordine

69. Dr. Nordine resides in Kelowna, BC. He is a family physician, most recently practicing at Rutland Medical Associates, a private clinic in Kelowna. He has practiced there since 2016.

70. Dr. Nordine was also a clinic physician at the Bridge Detox Centre in Kelowna from 2017 until October 2021. Bridge Detox Centre is a clinic operated by Interior Health. He was initially placed on unpaid leave from the Bridge Clinic on October 26, 2021, because he failed to show proof of having taken the Covid-19 vaccines. He also lost his hospital privileges at that time for the same reason.

71. On November 16, 2021, Dr. Nordine's employment with the Bridge Detox Centre was terminated by Interior Health for not having taken the Covid-19 vaccines, as mandated by the Hospital and Community Care Order. His hospital privileges were revoked for the same reason.

72. Between 2013 and 2016, Dr. Nordine was a family physician at Edmonton Imagine Health in Edmonton, AB.

73. Dr. Nordine obtained his medical degree from Jagiellonian University Medical College in Poland. Dr. Nordine is also a licentiate of the Medical Council of Canada

74. Dr. Nordine is a Christian. He objects to taking a Covid-19 vaccine, including Novavax, on religious grounds. Dr. Nordine also objects to taking a Covid-19 vaccine on medical grounds. He submitted a request for an exemption to the vaccine mandate, but it was denied.

75. In addition, in January 2022, Dr. Nordine was diagnosed with the Covid-19 virus. He now has natural immunity to Covid-19. Dr. Nordine points out that the BC Covid therapeutics Committee states natural immunity is the same as having had two doses of a Covid-19 vaccine.

76. While working as a family physician, Dr. Nordine observed many patients suffer adverse reactions to the Covid-19 vaccines. When requested by his patients to do so, Dr. Nordine has reported those adverse reactions to the Canadian Adverse Events Following Immunization office.

77. Dr. Nordine notes there is a general doctor shortage in BC, and this has been the case since before the pandemic. Similarly, he states that hospitals were short-staffed and operating at over-capacity limits prior to Covid-19.

C. Additional Facts

Elizabeth Ringrose

78. Elizabeth Ringrose resides in Vancouver, BC. She is a Registered Nurse in the Day Health Program at the Dr. Peter Centre in Vancouver, BC.

79. Ms. Ringrose has taken two doses of the Pfizer Covid-19 vaccine.

80. Ms. Ringrose took the first dose of the Covid-19 vaccine on or about January 6, 2021. She took the second dose on or about February 19, 2021. Ms. Ringrose suffered a severe allergic reaction after the second dose of the Covid-19 vaccine in that within 72 hours after that injection, she could not stand up for a period of six hours and had to crawl to the bathroom. She has experienced dizzy spells on and off since this time.

81. As a result of the adverse reactions Ms. Ringrose has suffered after receiving the second dose of the Covid-19 vaccine, she has had to take a medical leave from her position with the Dr. Peter Centre.

82. While still employed, Ms. Ringrose tried to send an adverse reaction form for a person in her care, but the office listed on the BCCDC website did not seem to receive it after 10 facsimile attempts, and then would not confirm the report would go to the appropriate person. Ms. Ringrose's manager told her to stop asking the office if it got to the right place.

Jennifer Koh

83. Jennifer Koh was an Organization Development & Change Management Consultant for the Interior Health Authority ("Interior Health"). She held this position for two years. Prior to this position, Ms. Koh was an Organizational Development Consultant for the Northern Health Authority for approximately 3.5 years.

84. Ms. Koh has a Bachelor of Arts degree, with a major in psychology. She is also a certified Professional Coach (ICF-accredited), a certified Resilience@Work Practitioner, a certified Human Systems Dynamics Practitioner, and a certified Yoga, meditation & breathwork Instructor. She also has multiple other leadership development certifications.

85. From March 2020, Ms. Koh's work for Interior Health was 100% remote. She had no contact with any patients or co-workers.

86. Ms. Koh was terminated by her employer due to her refusal to take a Covid-19 vaccine.

87. Ms. Koh objects to taking the Covid-19 vaccine on the basis of religion. She was

raised with the teachings of the Catholic faith. As an adult, since undergoing extensive training in various Vedic meditation and yoga practices, she has followed the Vedic scriptures very closely, and as a result, has a strong spiritual faith. She submitted a request for religious exemption, but it was denied.

88. Ms. Koh believes in bodily sovereignty and the right to choose what goes into her body. She has not been made aware of all the contents of the injections and is concerned. In addition, she is aware of multiple studies which have shown the adverse effects of the experimental injection, including death, disability, and stillborn births. She is also aware of the number of deaths and adverse reactions reported by the Vaccine Adverse Event Reporting System (VAERS) in the United States. She is also aware that the vaccine companies assume no liability for adverse reactions, and that she will solely bear the burden of any adverse reactions if she takes the injection.

89. On or about November 26, 2021, after being terminated from her job on November 15, 2021, Ms. Koh received a call from a recruiter with a job proposal for two of the other BC health authorities for a remote contract Change Management Consultant position, which is essentially a part of the role she performed as a full-time employee. When Ms. Koh asked about their policy related to remote workers and the vaccine mandate, she was told that the vaccine mandate did not apply to contract workers who work remotely. She also learned that these same contract workers who are not subject to the vaccine mandate are permitted to enter a healthcare facility, provided they do not enter more than once per month.

D. Expert Evidence

90. Vaccinated and unvaccinated persons can be infected with Covid-19.

91. There is no significant difference in the rates at which vaccinated and unvaccinated persons transmit Covid-19.

92. Certain persons suffer serious health consequences as a result of Covid-19 vaccines.

93. Persons under 60 without co-morbidities have an approximately 99.997% chance of recovering from Covid-19.

94. Natural immunity provides protection against infection with Covid-19.

Part 3: LEGAL BASIS

1. This action is for review of Public Health Orders and Guidelines issued by an administrative decision-maker, Dr. Bonnie Henry, Public Health Officer for the Province of British Columbia, who is appointed by the Lieutenant Governor in Council pursuant to section 65 of the *Public Health Act*. The Public Health Orders and Guidelines have the force of law and are government action, and, as such, the *Charter* applies.

2. The Public Health Orders and Guidelines infringe the Petitioners' sections 2(a), 7 and 15 *Charter* rights and the infringements are not justified by section 1 of the *Charter*. Section 24(1) of the *Charter* provides that anyone whose rights or freedoms have been infringed may obtain a remedy the court considers just and appropriate. Section 52(1) of the *Constitution Act, 1982* provides that to the extent the impugned law is inconsistent with the *Charter,* it is of no force and effect.

1. Infringement of section 7 of the Charter

3. Ordering vaccination as a condition of employment for the petitioners interferes with and infringes their rights to medical self-determination. Section 7 *Charter* rights to life, liberty and security of the person encompass the right of medical self-determination: *Carter v. Canada (Attorney General)* 2015 1 SCR 5 at paras. 64-69; *AC v. Manitoba (Director of Child and Family Services,* 2009 SCC 30; *B(R) v. Children's Aid Society of Metropolitan Toronto,* [1995] 1 SCR 315. Section 7 is also engaged by state interference with an individual's physical or psychological integrity: *Chaoulli v. Quebec (Attorney General)* 2005 SCC 35 at para. 116; *New Brunswick (Minister of Health and Community Services) v. G.(J.)* [1999] 3 S.C.R. 46 at para. 58;

4. Section 7 does not promise that the state will not interfere with life, liberty and security of the person, but that it will not do so except in accordance with the principles of fundamental justice: "While the Court has recognised a number of principles of fundamental justice, three have emerged as central in the recent s. 7 jurisprudence: laws that impinge on life, liberty or security of the person must not be arbitrary, overbroad, or have consequences that are grossly disproportionate to their object": *Carter v. Canada (Attorney General), supra* at paras. 71-72.

5. In assessing whether an impugned law violates the principles of fundamental justice, the object of the law must be given a precise and narrow definition: *Carter v. Canada (Attorney-General), supra* at paras. 73-78. The Petitioners say that the object of the Public Health Orders and the Guidelines is to reduce transmission of Covid-19 to vulnerable persons.

6. The Public Health Orders and Guidelines are over-broad, arbitrary, and

disproportionate. The Public Health Orders and Guidelines require vaccination of persons who work remotely, or in an administrative capacity, or with persons that are not vulnerable to the deleterious effects of Covid-19. For those workers who are in contact with vulnerable persons, the orders do not provide for other options to mandatory vaccination, such as re-assignment of workers to work-places not dealing with vulnerable persons, and/or masking or rapid testing prior to attending the workplace. Finally, the Public Health Orders and Guidelines permit third-party contractors doing work similar to the work of the Petitioners to remain unvaccinated.

2. Infringement of section 2(a) of the *Charter*

7. Vaccine mandates that fail to provide religious and conscientious exemptions infringe section 2(a) *Charter* rights. Section 2(a) of the *Charter* protects the right to freedom of conscience and religion. "Freedom, in a broad sense, embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others, no-one is forced to act in a way contrary to his beliefs or his conscience": *R v. Big M Drug Mart Ltd,* 1985 CanLII 69 (SCC) at para. 95. Freedom of religion includes the right to ascribe to sincerely held beliefs or conduct that "are not objectively recognised by religious experts as being obligatory tenets or precepts of a particular religion": *Syndicat Northcrest v. Amselem*, 2004 SCC 47, at paras. 43-51.

8. Freedom of conscience includes the right to act in accordance with a coherent set of beliefs but does not require that the individual asserting freedom of conscience ascribe to an organised religion: *R. v. Morgenthaler,* [1988] 1 SCR 30 at p. 37; *Carter v. Canada (Attorney-General)*, *supra* at para. 132.

9. The unavailability of exemptions on the basis of religion or conscience from the vaccine mandates contained in the Public Health Orders and Guidelines is more than a trivial or insubstantial interference with the petitioners' section 2(a) *Charter* rights, and consequently, is an infringement of *Charter* section 2(a).

3. Infringement of section 15(1) of the Charter

10. The Public Health Orders and Guidelines treat the Petitioners differently than those workers who have chosen to comply with the orders and accept vaccination as a condition of employment. Section 15(1) of the *Charter* protects equality rights. In *Quebec (Attorney General) v. A,* 2013 SCC 5 at para.169 the LaBel J. stated, after reviewing the s. 15(1) jurisprudence, that a comparator group analysis would not always sufficiently identify instances of infringements of section 15(1) of the *Charter.* LaBel, J. distilled the section 15(1) test down to two

questions at paras. 171:

> "(1) Does the law create a distinction based on an enumerated or analogous ground?
>
> (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?"

11. The Petitioners are discriminated against based on their medical status, that is, as unvaccinated persons. Medical status is a ground analogous to mental or physical disability or citizenship status: *Andrews v. Law Society of British Columbia,* [1989] 1 S.C.R. 143 at p. 164, 183; *Quebec (Attorney General) v. A, supra* at 173-184; *Attorney General of Ontario v. G,* 2020 SCC 38, at para. 43.

12. The Petitioners are not required to establish that unvaccinated persons are historically disadvantaged to make out a claim under s.15(1) of the *Charter*: *Trociuk v. British Columbia (Attorney General)* 2003 SCC 34. However, the Petitioners are, in any case, able to establish that discrimination on the basis of medical status does have historical antecedents.

13. The Petitioners can point to prejudice and stereotyping to make out their claim for infringement. Pervasive prejudice and stereotyping against those not vaccinated for Covid-19 exists in Canada and around the world. Examples of this include: the inflammatory comments made by the Prime Minister of Canada about the unvaccinated as being "misogynists" and "racists"; comments made by the President of France that he wanted to "piss off" the unvaccinated with recent legislation; a recent poll showing that approximately ¼ of the Canadian population supports short jail sentences for the unvaccinatedand Quebec Premier Legault's initial proposal to impose a medical tax on the unvaccinated.

4. Infringements not justified under Section 1 of the *Charter*

14. Because the Public Health Orders have the effect of laws of general application, rather than administrative decisions pertaining specifically to the interests of a particular individual, whether the Public Health Orders are justified under section 1 of the *Charter* is determined by the test set out in *R. v. Oakes*, [1986] 1 SCR 103: *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario,* 2018 ONSC 579, paras. 51-69; ONCA 393 at paras. 58-60; *Carter v. Canada (Attorney General), supra; Doré v. Barreau du Québec,* 2012 SCC 12.

15. In *Doré v. Barreau du Québec, supra,* at para. 36, the Justice Abella stated: "As explained by Chief Justice McLachlin in *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37... the approach used when reviewing the constitutionality

of a law should be distinguished from the approach used for reviewing an administrative decision that is said to violate the rights of a particular individual. When *Charter* values are applied to an individual administrative decision, they are being applied in relation to a particular set of facts. *Dunsmuir* tells us this should attract deference (para. 53; see also *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1...at para.39). When a particular "law" is being assessed for *Charter* compliance, on the other hand, we are dealing with principles of general application."

16. The onus is on the Respondents to prove that the infringements of section 7, 2(a) and 15 of the *Charter* are justified: *R v. Oakes*, *supra.* The Respondents must "show that the law has a pressing and substantial object and that the means chosen are proportional to that object. A law is proportionate if (1) the means adopted are rationally connected to that objective; (2) it is minimally impairing of the rights in question; (3) there is proportionality between the deleterious and salutary effects of the law": *R v. Oakes, supra*; *Carter v. Canada (Attorney General) supra* at para. 94.

17. The object of the Public Health Orders and Guidelines, to prevent transmission of Covid-19 to vulnerable persons, has a pressing and substantial objective, but the means chosen are not proportionate.

18. While a measure of deference is accorded to laws enacted by the legislature to address complex social issues (*Carter v. Attorney General, supra* at paras. 96-99) the Petitioners assert that such deference is not properly applied to the Public Health Orders and Guidelines, which were issued by an unelected official.

19. Some of the Petitioners have experienced serious health consequences because of vaccines or reasonably anticipate experiencing serious health consequences from the Covid-19 vaccine. The Public Health Orders and Guidelines provide no religious or conscientious exemptions at all. The Public Health Orders and Guidelines apply to persons employed in workplaces where no vulnerable persons are at risk. For those workers who are in contact with vulnerable persons, other options are and were available to Public Health Officer Dr. Bonnie Henry, such as re-assignment of unvaccinated workers to a different workplace, and/or providing for rapid testing when unvaccinated workers attend a workplace where vulnerable persons are present. Finally, the Public Health Orders and Guidelines do not consider the impact of natural immunity on rates of infection or transmission.

5. The violations of sections 2(a), 7 and 15 *Charter* rights are not reasonable

20. In the alternative, the Petitioners submit that the Public Health Orders and

Guidelines are decisions by an administrative body that engage section 2(a), section 7 and section 15(1) *Charter* rights and are thus subject to a review by the court to determine if the decisions were reasonable, employing the *Doré/Loyola* framework: *Beaudoin v. British Columbia,* 2021 BCSC 512 paras. 119-126; *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817.

21. Delegated authority must be exercised "in light of constitutional guarantees and the values they reflect" (*Doré,* at para. 35). In *Loyola,* this Court explained..."*Charter* values help determine the extent of any given infringement in the particular administrative context, and, correlatively, when limitations on that right are proportionate in light of the applicable statutory objectives": *Law Society of British Columbia v. Trinity Western University,* 2018 SCC 32 at para. 57; *Loyola High School v. Quebec (Attorney General)* 2015 SCC 12 at para. 38; *Doré v. Barreau du Québec*, *supra* at para. 35.

22. Comparing the test applied in *R. v. Oakes, supra,* to the review as to whether a decision of an administrative body is reasonable, the Supreme Court of Canada said "In assessing whether an adjudicated decision violates the *Charter,* however, we are engaged in balancing somewhat different but related considerations, namely, has the decision-maker disproportionately, and therefore unreasonably, limited a *Charter* right. In both cases, we are looking for whether there is an appropriate balance between rights and objectives, and the purpose of both exercises is to ensure that the rights at issue are not unreasonably limited": *Doré v. Barreau du Québec*, *supra* at para.6.

23. The Public Health Orders and the Guidelines are unreasonable. The objectives of the Public Health Orders and Guidelines could be met with measures that do not disproportionally limit the Petitioners' *Charter* rights.

24. The Petitioners are unable to seek review under section 43 of the *Public Health Act* or apply for any exemptions other than the narrow medical exemption provided for by the Public Health Orders and Guidelines. Some of the Petitioners work remotely, others in an administrative capacity, or not even in a health-care setting. No provision was made for Petitioners that do not work with persons who are vulnerable to the deleterious effects of the virus. For Petitioners who do attend facilities where vulnerable persons are present, there is no consideration of whether use of additional personal protective equipment and rapid testing prior to attending the workplace would meet the objectives of the Public Health Orders, not even where the Petitioners attend the workplace occasionally or rarely. No provision for alternate employment was made for those Petitioners who chose not to be vaccinated for religious reasons or reasons of conscience, or other medical reasons, and who do work with

vulnerable persons. The Public Health Orders and Guidelines do not consider the impact of natural immunity on infections with, and transmissibility of, Covid-19. Finally, some third-party contractors doing similar work to the Petitioners are not required to be vaccinated.

25. The effect of the Public Health Orders and Guidelines is to coercively require vaccination, not to protect the health of vulnerable persons.

6. The Health Professionals Order impinges on the statutory powers of the British Columbia College of Physicians and Surgeons, and the British Columbia College of Nurses and Midwives to license and govern their members

26. The British Columbia College of Physicians and Surgeons of B.C. (CPSBC) and the College of Nurses and Midwives (BCCNM) are constituted in accordance with the *Health Professions Act*and makes by-laws for self-governance, which are subject to approval by the Minister of Health. Regulation of members of the CPSBC and BCCNM is by a self-governing body, known as a "College" and an appointed Government licensing board. Section 16 of the *Health Professions Act* provides that the duty and objects of a College governed by the legislation are as follows:

> **Duty and objects of a college**
> 16 (1) It is the duty of a college at all times
> (a) to serve and protect the public, and
> (b) to exercise its powers and discharge its responsibilities under all enactments in the public interest.
> (2) A college has the following objects:
>
> (a) to superintend the practice of the profession;
> (b) to govern its registrants according to this Act, the regulations and the bylaws of the college;
> (c) to establish the conditions or requirements for registration of a person as a member of the college;
> (d) to establish, monitor and enforce standards of practice to enhance the quality of practice and reduce incompetent, impaired or unethical practice amongst registrants;
> (e) to establish and maintain a continuing competency program to promote high practice standards amongst registrants;
> (f) to establish, for a college designated under section 12 (2) (h), a patient relations program to seek to prevent professional misconduct of a sexual nature;

(g) to establish, monitor and enforce standards of professional ethics amongst registrants;
(h) to require registrants to provide to an individual access to the individual's health care records in appropriate circumstances;
(i) to inform individuals of their rights under this Act and the *Freedom of Information and Protection of Privacy Act*;
(i.1) to establish and employ registration, inquiry and discipline procedures that are transparent, objective, impartial and fair;
(j) to administer the affairs of the college and perform its duties and exercise its powers under this Act or other enactments;
(k) in the course of performing its duties and exercising its powers under this Act or other enactments, to promote and enhance the following:
    i. collaborative relations with other colleges, regional health boards designated under the *Health Authorities Act* and other entities in the Provincial health system, post-secondary education institutions and the government;
    ii. interprofessional collaborative practice between its registrants and persons practising another health profession;
    iii. the ability of its registrants to respond and adapt to changes in practice environments, advances in technology and other emerging issues.

27. The privilege of self-regulation is granted to a profession in exchange for the profession's commitment to protecting the public interest; *Law Society of New Brunswick v. Ryan,* 2003 SCC 20. The justification for granting self-governing status to a profession is that the members of the profession are best qualified to ensure proper standards and ethics are maintained: The Privatization of Regulation: Five Models of Self-Regulation, Margot Priest, 1998 Ottawa Law Review 233, 1998 CanLIIDocs 19; Canada's Legal Profession: Self-Regulating in the Public Interest?, John Pearson, Canadian Bar Review, 2015 92-3 2015 CanLIIDocs 230.

28. The decision to grant a profession self-regulating status is one that is made after extensive consideration with all levels of government and representatives of the profession: *College of Midwives of British Columbia v. Mary Moon*, 2019 BCSC 1670. The granted statutory scope of authority over its members of the self-governing profession is meant to protect the public and maintain the independence of professionals from government interference: By Her Own Authority: The Scope of Midwifery Practice under the Ontario Midwifery Act, 1991, 1993 CanLIIDocs 199; What is a "Profession", Peter Wright, Canadian Bar

Review 1951 29-7, 1951 CanLIIDocs 230.

29. In the Western world the roots of physician self-governance date back to Hellenic Greek and the Hippocratic Oath; "Self-Regulation was originally instituted at the request of the medical profession because the body of knowledge in the profession was esoteric and unknown to the average citizen, and it would be difficult for external regulation to be as effective": Professionalism: the historical contract, Roger Collier, Canadian Medical Association Journal (CMAJ), August 9 2012. Professional societies of began formally regulating medical practice in or about 1760 in the Western world and by the early 1800, medical societies oversaw establishing regulations, standards of practice and certification of doctors. Professional self-regulation allows the government to have some control over the professional group without maintaining the special expertise that would be needed to regulate the profession. One of the central principles of self-governing professions is a climate of open debate and collegial exchange regarding the issues facing the profession: Professionalism, Governance and Self-Regulation of Medicine, Howard Bauchner, M.D., Phil B. Fontanarosa, M.D. MBA, Amy E. Thompsn, MD, Editorial, May 12, 2015, Journal of the American Medical Association (JAMA) 2015; 313(18).

30. Nursing has been a regulated health profession under British Columbia legislation since 1918. Before designation under the *Health Professions Act*, the profession was regulated under the *Nurses (Registered) Act,* [R.S.B.C. 1996] Chapter 335 (repealed). Practical nursing has been a designated health profession under the *Health Professions Act* since 1996. Midwifery became a designated health profession under the *Health Professions Act* in 1998, although midwifery was practiced in Canada throughout human history in all cultures. In September 2020, the BCCNM was established to govern all three professions.

31. The Health Professionals Order trenches on the common-law and statutorily granted powers of the Colleges to make rules for the admission, licensing, standards of practice, professional ethics, self-governance, and comportment of its members as set out in the *Health Professions Act.* The Health Professionals Order, issued by an unelected official, Dr. Bonnie Henry as Public Health Officer for British Columbia, is neither in the public interest nor consistent with the aims reflected in the legislative and regulatory history of the development of the CPSBC and BCCNM and the as self-governing professions.

7. The Orders and Guidelines Fetter the Discretion of the Public Health Officer

32. It is an abuse of discretion for a statutory decision-maker to fetter its discretion by policy, as the Public Health Officer did when she issued the Public Health Orders and Guidelines restricting available exemptions and the ambit of review under section 43 of the *Public Health Act*.

8. Violation of the right to informed consent

33. The Public Health Orders and Guidelines deprive the Petitioners of their right to informed consent, as required by section 6(a) and (f) of the *Health Care Consent Act*.

9. Violation of privacy

34. The collection of the Petitioners' personally-identifying and Covid-19 vaccination status by employers, contractors and colleges, as authorized by Dr. Henry's Orders are an unjustified violation of the Petitioners' privacy.

9. Violation of the Human Rights Code

35. The Public Health Orders offend section 13(1) of the *Human Rights Code,* RSBC 1996 c.210

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Anneke Pingo, to be filed;
2. Affidavit #1 of Phyllis Janet Tatlock, to be filed;
3. Affidavit #1 of Laura Koop, to be filed;
4. Affidavit #1 of Monika Bielecki, to be filed;
5. Affidavit #1 of Scott Macdonald, to be filed;
6. Affidavit #1 of Ana Lucia Mateus, to be filed;
7. Affidavit #1 of Darold Sturgeon, to be filed;
8. Affidavit #1 of Lori Jane Nelson to be filed;
9. Affidavit #1 of Ingeborg Keyser, to be filed;
10. Affidavit #1 of Lynda June Hamley, to be filed;
11. Affidavit #1 of Melinda Joy Parenteau, to be filed;
12. Affidavit #1 of Dr. Joshua Nordine, to be filed;
13. Affidavit #1 of Elizabeth Ringrose, to be filed;
14. Affidavit #1 of Jennifer Koh, to be filed;

15. Affidavit #1 of Dr. Joel Kettner, to be filed; and,

16. Such further materials this Honourable Court may permit.

The Petitioners estimate that the hearing of the petition will take 10 days

Date: March 16 2022 .....

KAREN BASTOW

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs ..... of Part 1 of this petition

[ ] with the following variations and additional terms:

.....

.....

.....

Date: .....[dd/mmm/yyyy].....

.....

Signature of [ ] Judge [ ] Master

ORIGINALLY FILED MARCH 16, 2022

Court File No.: S-222427
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners

and

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

AMENDED PETITION TO THE COURT

ON NOTICE TO:

Deputy Attorney General
Ministry of Attorney General
[redacted]

Dr. Bonnie Henry, Provincial Health Officer
[redacted]

This proceeding is brought for the relief set out in Part 1 below, by

[X] the persons named as petitioners in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
(b) serve on the petitioners
(i) 2 copies of the filed response to petition, and
(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.
Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.
Time for response to petition
A response to petition must be filed and served on the petitioners,
(a) if you were served with the petition anywhere in Canada, within 21 days after that service,
(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
(c) if you were served with the petition anywhere else, within 49 days after that service, or
(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: The Law Courts, 800 Smith Street, Vancouver, B.C.
(2)	The ADDRESS FOR SERVICE of the petitioners is: Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers [redacted]
(3)	The name and office address of the petitioners' lawyers are: Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers [redacted]

[redacted]

Charlene E. Le Beau
Charlene E. Le Beau Law Office
[redacted]

Claim of the Petitioners

Part 1: ORDERS SOUGHT

Pursuant to section 2(1), (2), 7, 5, and 17 of the *Judicial Review Procedure Act,* RSBC 1996, c.241 the Petitioners seek:

1. Declarations pursuant to sections 24(1) and 52(1) of the *Constitution Act,* 1982, Schedule B to the Canada Act 1982 (UK) c.11, that:

   (a) The Order entitled “Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventive Measures – November 18, 2021” (Hospital and Community Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act*, S.B.C. 2008, c.28, is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11, specifically,

a. *Charter* section 2(a) (freedom of conscience and religion)
b. *Charter* section 7 (right to life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(b) The Order entitled "Residential Care Covid-19 Preventive Measures – October 21, 2021" (Residential Care Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act,* is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Charter*, specifically,

a. *Charter* section 2(a) (freedom of conscience and religion)
b. *Charter* section 7 (right to life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(c) The "Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders" (the Guidelines), that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, which stipulate the process that must be employed in determining a healthcare worker's application for exemption from the Hospital and Community Order and/or from the Residential Care Order, are of no force or effect, as they unjustifiably infringe the rights and freedoms of the Petitioners guaranteed by the *Charter*, specifically,

a. *Charter section 2(a)* (freedom of conscience and religion*)*
b. *Charter* section 7 (life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(d) The Order entitled "Health Professionals Covid-19 Vaccination Status Information and Preventive Measures – ~~March 7, 2022~~ June 10, 2022 (the Health Professionals Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39, 53, 54, 56, 57, 67 (2) and 69 of the *Public Health Act,* which mandates the collection, disclosure and reporting of personal information and vaccination status for persons regulated under the *Health Professions Act*, RSBC 1996 c.183 (the "*Health Professions Act"*), is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Charter,* specifically,

a. *Charter section 2(a)* (freedom of conscience and religion*)*
b. *Charter* section 7 (life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

2. In the alternative, an Order under sections 2(2) and 7 of the *Judicial Review Procedure Act,* in the nature of mandamus or certiorari, quashing and setting aside the entire scheme of the Hospital and Community Order, the Residential Care Order, the Health Professionals Order, and the Guidelines, as being unreasonable;

3. A Declaration that the Hospital and Community Order, the Residential Care Order and the Guidelines issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, improperly fettered her discretion by failing to provide a meaningful process for exemptions and reconsideration;

4. In the further alternative, an Order pursuant to section 5(1) of the *Judicial Review Procedure Act,* directing Dr. Bonnie Henry, in her capacity as Public Health Officer for British Columbia, to provide a meaningful process for exemptions and reconsideration for the Petitioners on the basis of religion, conscience and on an expanded medical basis, and/or to allow for accommodation of those workers affected by the Hospital and Community Order, the Residential Care Order and the Guidelines;

5. An Order prohibiting the Respondents from issuing subsequent public health orders of a substantially similar or identical nature;

6. An Order pursuant to section 17 of the *Judicial Review Procedure Act,* that the entire record upon which the Hospital and Community Order, the Residential Care Order, the ~~and~~ Guidelines, and the Health Profession Order were based on, and are continued, be filed on this proceeding;

7. A Declaration that the Health Professionals Order exceeds the statutory authority and jurisdiction of the Respondents, as it trenches on the common-law and statutory authority of self-governing professions, granted by the *Health Professions Act* to govern themselves in the public interest in accordance with the legislation, rules and regulations of their respective colleges.

8. A Declaration that vaccination against Covid-19 as a condition of employment for

the Petitioners, as set out in the Hospital and Community Order and the Residential Care Order, is a coercive tactic levelled against the Petitioners by the Respondents, and thus deprives the Petitioners of their right to informed consent to vaccination, as required by section 6 (a) to (f) of the *Health Care (Consent) and Care Facility (Admission) Act* RSBC 1996, c.181 (the "*Health Care (Consent) Act*");

9. A Declaration that the collection of the Petitioners' personally-identifying and Covid-19 vaccination status by employers, contractors and colleges, as authorized by ~~Orders~~ the "Covid-19 Vaccination Status Information and Preventative Measures" Orders (the "Vaccine Status Orders") issued by Dr. Bonnie Henry between ~~September 27, 2021~~ August 20, 2021 and ~~March 7, 2022~~ February 28, 2022, and authorized by the Health Professionals Orders first issued on March 7, 2022, and replaced by the Order of June 10, 2022, violates section 26(d) of the *Freedom of Information and Protection of Privacy Act,* RSBC 1996, c.165 ("FIPPA") and section 1(1) of the *Privacy Act,* RSBC 1996, c.373 (the "*Privacy Act*");

10. A Declaration that the Hospital and Community Order, the Residential Care Order and the Health Professionals Order offends section 13(1) of the *Human Rights Code,* RSBC 1996 c.210;

11. Damages pursuant to s. 24(1) of the *Charter* as is found to be appropriate and just in the circumstances of each Petitioner;

12. An extension of time to file supporting materials, including expert affidavits;

13. Costs of this Petition; and,

14. Such further and other relief as the Petitioners may seek and as this Honourable Court deems just and equitable.

Part 2: FACTUAL BASIS

A. The Public Health Orders and Guidelines

1. In the Fall of 2021, B.C. workers in the health care sector became subject to Covid-19 vaccine mandates: those affected workers who refused to take a Covid-19 vaccine were fired from their jobs unless they could prove entitlement to a very

narrow medical exemption.

2. The Respondent Dr. Bonnie Henry is British Columbia's Provincial Health Officer, appointed pursuant to Part 6 of the *Public Health Act* and is empowered to issue public health orders to promote and protect public health.

3. The Vaccine Status Orders were issued by Dr. Bonnie Henry between August 20, 2021 and February 28, 2022, and they ~~that~~ provided a mechanism to enable employers, operators and contractors to obtain personal information from healthcare practitioners and staff, including his or her personal health number, together with the Covid-19 vaccination status of those individuals, and to compel healthcare practitioners and staff to provide their personal information, including their personal health numbers, as well as their Covid-19 vaccination status, to their employers. The orders also compelled employers and contractors to report the healthcare practitioners' and staff members' personal information and personal health numbers to Dr. Bonnie Henry through an electronic government data base. The first order was issued on August 20, 2021 (Ex. A to affidavit 1 of Anneke Pingo). The second order was issued on August 31, 2021 (Ex. B to affidavit 1 of Anneke Pingo). The third order was issued on September 9, 2021 (Ex. C to affidavit 1 of Anneke Pingo). The fourth order was issued on September 27, 2021 (Ex. D to affidavit 1 of Anneke Pingo), then replaced with the order of October 6, 2021 (Ex. E to affidavit 1 of Anneke Pingo), which was then replaced with the order of February 28, 2022 (Ex. P to affidavit 1 of Anneke Pingo).

4. The initial vaccine mandates were contained in a series of public health orders issued by Dr. Bonnie Henry between September 2, 2021, and November 18, 2021.

5. The vaccine mandate issued under the Residential Care Order was first issued on September 2, 2021 (Ex. F to affidavit 1 of Anneke Pingo), then replaced with the order of October 4, 2021 (Ex. G to affidavit 1 of Anneke Pingo), then replaced with the order of October 8, 2021 (Ex. H to affidavit 1 of Anneke Pingo), and finally replaced with the order of October 21, 2021 (Ex. I to affidavit 1 of Anneke Pingo).

6. The vaccine mandate issued under the Hospital and Community Order was first issued on October 14, 2021 (Ex. J to affidavit 1 of Anneke Pingo), then replaced with the order of October 21, 2021 (Ex. K to affidavit 1 of Anneke Pingo), then replaced with the order of November 9, 2021 (Ex. L to affidavit 1 of Anneke Pingo), and finally replaced with the order of November 18, 2021 (Ex. M to affidavit 1 of Anneke Pingo).

7. On November 9, 2021, the vaccine mandates under the Hospital and Community Order were expanded to include administrative staff employed by a regional

health authority, the Provincial Health Services Authority, British Columbia Emergency Health Services, and the Providence Health Care Society.

8. On November 18, 2021, the vaccine mandates under the Hospital and Community Order were further expanded to include all staff members of Community Living British Columbia.

9. The Health Professionals Order, initially issued on March 7, 2022 (Ex. Q to affidavit 1 of Anneke Pingo) and replaced by the Order issued on June 10, 2022 (Ex. R to affidavit 1 of Anneke Pingo), compels colleges, as defined by the *Health Professions Act,* to provide personally-identifying information about each of their registrants. The Order further compels the Minister of Health to verify the Covid-19 vaccination status of each registrant, and to disclose that information to the relevant college. The Order compels each registrant, upon request from the college, to provide proof of vaccination, or of an exemption, to the college. The college must record each registrant's vaccination status by March 31, 2022. The college must also disclose to Dr. Henry, upon request, the aggregate information respecting the vaccination status of registrants of their college. The Health Professionals Order does not mandate the Covid-19 vaccination for healthcare professionals regulated under the *Health Professions Act* and working in private practice. As such, healthcare professionals regulated under the *Health Professions Act* and working in private practice are treated differently than healthcare professionals regulated under the *Health Professions Act* who were employed by a provincial health authority or were working in a residential care facility.

10. Section 43 of the *Public Health Act* provides a meaningful process for persons affected by public health orders to apply for reconsideration, but that process is effectively eviscerated by these orders.

11. The orders provide that the only exemption that can be applied for under s. 43 for reconsideration is a medical exemption. There is no provision in the orders for exemptions based on religion or conscience. The allowable medical exemption is extremely narrow: "a request for reconsideration…must be made on the basis that the health of the person would be seriously jeopardized…and must follow the guidelines posted on the Provincial Health Officer's website".

12. The guidelines for exemption from both the Hospital and Community Order and the Residential Care Order are set out in a document entitled "COVID-19 Vaccination Requirements - Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders", dated October 8, 2021 (Ex. O to affidavit 1 of Anneke Pingo). An affected person is not able to submit a request for reconsideration even if he or she has additional relevant information that was not reasonably available to the

health officer when the orders were issued or varied. Nor is he or she able to submit a request for exemption if he or she has information or a proposal that was not presented to the health officer when the Public Health Orders were issued or varied, that, if implemented, would meet the objective of the Public Health Orders. Nor is an affected person able to request more time to comply with the orders.

13. The above orders will hereinafter be referred to as the "Public Health Orders" except where it is necessary to be specific about which order is being referred to. The Guidelines will hereinafter be referred to as "The Guidelines."

B. The Petitioners' Evidence

Phyllis Janet Tatlock

14. The Petitioner Phyllis Janet Tatlock graduated with a nursing diploma from the University of Alberta, School of Nursing in 1992. She completed her nursing degree from the University of Northern British Columbia in 1998 and completed a Masters of Community Health from the University of British Columbia in 2006.

15. Ms. Tatlock lives in Prince George, British Columbia. Ms. Tatlock was a Director of Operations, BC Cancer, under the Provincial Health Services Authority (PHSA) and was employed in that position from March 8, 2021. Other positions Ms. Tatlock has held are:

    a. Manager, Alberta Health Services (January 2021—March 2021)
    b. Executive Director, Alberta Health Services (July 2019-January 2020)
    c. Director, Public Health, April 2011-July 2019 Island Health,
    d. Director, Maternal/Child Services, Quinte Health Care (Ontario) April 2008-April 2011
    e. Manager Research and Community Health Services, Carrier Sekani Family Services (May 2006-April 2008
    f. Manager, Home and Community Health Services Northern Health (October 2003--May 2006)
    g. Manager Community Health Services Carrier Sekani Family Services (September 1999-October 2003)
    h. various nursing positions in the Emergency Department in Northern Health as well as in California, Texas, Washington states from 1993 until 1999.

16. Ms. Tatlock was terminated by her employer due to her refusal to take a Covid-19 vaccine.

17. Ms. Tatlock is a Christian. She objects to taking a Covid-19 vaccine on the basis of religion. Ms. Tatlock submitted a request for a religious exemption to the

Occupational Health department of PHSA on October 22, 2021, and it was denied.

18. Ms. Tatlock objects to state coercion that would have her take a vaccine which recent studies show is ineffective at stopping infection or transmission, and whose adverse reaction profile is significant.

Laura Koop

19. The Petitioner, Laura Koop, lives in Canyon, British Columbia. Ms. Koop is a Primary Care (Family) Nurse Practitioner, with a focus on high risk and at-risk populations, such as drug and alcohol abuse, and mental health. She was employed by the Interior Health Authority and held this position from September 2014. Prior to her employment with Interior Health, Ms. Koop was employed in the following capacities:

    a. Nurse Practitioner (family) in remote clinics;
    b. Clinical Coordinator for remote nursing clinics;
    c. Remote Nurse with Certified Remote Nursing Practice;
    d. Nurse Manager in long-term Care;
    e. Instructor (both Care Aide and LPN program) in community college; and,
    f. Staff nurse in long-term care.

20. Ms. Koop was terminated by her employer due to her refusal to take a Covid-19 vaccine.

21. Ms. Koop objects to taking a Covid-19 vaccine on the basis of conscience. She has serious concerns about the safety of the Covid-19 vaccines, mRNA technology and use of fetal tissue in vaccine development. She is concerned about the lack of informed consent, the lack of transparency from pharmaceutical corporations and all levels of Canadian (and international) governments, and the continued changing goals and directives regarding the Covid-19 vaccines.

Monika Bielecki

22. The Petitioner, Monika Bielecki, resides in Kelowna, British Columbia. Ms. Bielecki is an Employee Health and Wellness Advisor with BC Interior Health. She held this position from October 2015.

23. Ms. Bielecki holds Bachelor of Arts degree in Psychology. She is also qualified as a Certified Vocational Rehabilitation Professional. She has extensive experience, since 2001, in claims adjudication, rehabilitation services, disability management, and workplace accommodation process.

24. In her role as an Employee Health and Wellness Advisor with Interior Health, Ms. Bielecki worked remotely from February 10, 2016. Since that day, she did not have a designated workspace in any of the Interior Health sites and has worked entirely from home via phone and email up to the time of termination of employment. A Flexible Work Location Participation Agreement and Safety Checklist was formally signed by Ms. Bielecki's manager on September 30, 2019.

25. Between 2016 and 2019, Ms. Bielecki attended the occasional team meeting in the office, but as members of their team were from various cities in the Interior Health region, there always was an option to attend by teleconference and some of Ms. Bielecki's teammates did so. As the pandemic began, they started using Zoom meetings and in-person meetings were not organized by her department.

26. Ms. Bielecki was terminated by her employer due to her refusal to take a Covid-19 vaccine.

27. Ms. Bielecki objects to taking the Covid-19 vaccine on the basis of conscience. She states that acceptance of any medical intervention is her personal choice, based on her health status and risk factors. She objects to state coercion that overrides her personal autonomy, especially where recent studies show the vaccine is ineffective at stopping infection or transmission, and where the vaccine is known to have serious adverse reactions.

Scott Macdonald

28. The Petitioner, Scott Macdonald, resides in Vancouver, BC, and was a Registered Art Therapist at the Dr. Peter Centre in Vancouver. He was employed in this position for 11 years. Mr. Macdonald holds a Bachelor of Physical Education from the University of British Columbia, as well as a Diploma from the Vancouver Art Therapy Institute.

29. Mr. Macdonald was terminated by his employer due to his refusal to take a Covid-19 vaccine.

30. Mr. MacDonald is also not able to fulfill his duties with Teddy's Homes, where he had been working for the last four years as a casual respite support worker with foster children, because the Hospital and Community Order applies to residential facilities licensed under the *Community Care and Assisted Living Act.* All unvaccinated workers are not permitted to enter any of the resources.

31. Mr. Macdonald objects to taking a Covid-19 vaccine on the basis of conscience, and for medical reasons. He believes he is not in a demographic of high risk for Covid-19, nor is the prevalence of severe symptoms/death of Covid-19 (alone)

statistically significant. Mr. Macdonald is concerned that the vaccines were rushed to market by the pharmaceutical companies, and that they raced against each other to be the first to offer the vaccine. Mr. Macdonald has also had adverse reactions to the flu vaccine in the past.

32. Mr. Macdonald does not trust the BC Coastal Health Authority to have its workers' best interests in mind. He states the health authority has already been known to implement policies that are punitive to healthcare workers, and that are injurious to the patients they are supposed to be caring for.

Ana Lucia Mateus

33. The Petitioner, Ana Lucia Mateus, resides in Burnaby, British Columbia, and was employed by Vancouver Coastal Health (VCH). She worked as an Administrative Assistant for the Health Authority Medical Advisory Committee. This committee has approximately 50 members of all senior levels in the organization and reports to the Board. Ms. Mateus also provided credentialing and privileging support to all the sites throughout VCH, in the department of Physician Relations and Compensation. She had always worked in the corporate areas of administration for VCH.

34. Ms. Mateus has a Legal Assistant diploma from Capilano College in North Vancouver, BC. Ms. Mateus worked for VCH for over 16 years (since May 2005). She first started as a Legal Assistant in VCH's legal department before moving to Physician Relations and Compensation.

35. Ms. Mateus had worked full time from home since March 13, 2020, due to the Covid-19 pandemic and the consequential public health protocols implemented by her employer.

36. Ms. Mateus was terminated by her employer due to her refusal to take a Covid-19 vaccine.

37. Ms. Mateus objects to taking the Covid-19 vaccine on the basis of conscience. She believes there are too many unanswered questions regarding the Covid-19 vaccines, and that they were rushed to market. She is also concerned that the pharmaceutical companies have no liability in relation to the Covid-19 vaccines. She objects to state coercion and believes in freedom of choice.

Darold Sturgeon

38. The Petitioner, Darold Sturgeon, resides in West Kelowna and was an Executive Director, Medical Affairs for Interior Health. He held senior director positions with Interior Health for 14.5 years. Mr. Sturgeon did not work in a health care setting and is not a health care worker.

39. Previous positions held by Mr. Sturgeon are Corporate Director Financial Services for Interior Health BC, VP Finance, Chief Financial Officer (Cypress Health Region – Saskatchewan), Chief Financial Officer (Regional Municipality of Wood Buffalo - Alberta), and VP Finance & Administration (East Central Health District – Saskatchewan).

40. Mr. Sturgeon holds a Bachelor of Administration (Distinction), from the University of Regina. He is also a Chartered Professional Accountant in British Columbia.

41. Mr. Sturgeon was terminated by his employer due to his refusal to take a Covid-19 vaccine.

42. Mr. Sturgeon is a Christian. He objects taking a Covid-19 vaccine on the basis of religion. Mr. Sturgeon submitted a request for a religious exemption, but it was denied.

43. Mr. Sturgeon also objects to taking a Covid-19 vaccine on medical grounds. Mr. Sturgeon was given a vaccine during childhood to which he had a severe reaction.

44. In addition, on August 17, 2021, Mr. Sturgeon was diagnosed with the Covid-19 virus. He now has natural immunity to Covid-19 and has undergone an antibody test which shows that he has antibodies to Covid-19.

45. Coupled with his sincerely held religious beliefs that prevent him from taking a Covid-19 vaccine, Mr. Sturgeon has grave concerns about the Covid-19 vaccine's safety, both in relation to short and long-term impacts.

46. Mr. Sturgeon is also opposed to a policy that makes vaccination against Covid-19 mandatory, as it denies his rights and freedoms to make a free choice.

Lori Jane Nelson

47. The petitioner, Lori Jane Nelson, resides in Surrey, BC, and was a Provider Engagement Lead, Clinical Informatics, for the British Columbia Provincial Health Services Authority (PHSA) in Vancouver, BC. Ms. Nelson holds a Bachelor of Science in Nursing (UBC, 1996), as well as a Master of Science in Nursing (UBC, 2005). She is also a Certified Health Executive (CHE) with the Canadian College of Health Leaders and has held this certification for over 15 years.

48. Ms. Nelson has worked for the PHSA for 25 years. Other positions she has held with the PHSA are General Duty Nurse, Clinical Nurse Coordinator, Program Manager, Senior Director, Patient Care Services, and a Clinical Transformation Leader, Redevelopment Project.

49. Ms. Nelson was terminated by her employer due to her refusal to take a Covid-19 vaccine.

50. Ms. Nelson worked solely from home and had a Work from Home Agreement. She did not have contact with patients or public while working and had no need to be within a facility to do her work.

51. Ms. Nelson objects to taking a Covid-19 vaccine on medical grounds. Ms. Nelson has severe allergies and has had multiple systemic and anaphylactic reactions in the past. She had reactions to the flu shot in past years.

51. Ms. Nelson also objects to being coerced by the state to take a vaccine where there is significant anecdotal evidence of individuals having suffered various adverse reactions.

Ingeborg Keyser

52. The petitioner, Ingeborg Keyser, resides in Kelowna, BC, and is a Communications Advisor for Interior Health. Ms. Keyser has held this position since April 2017. Ms. Keyser graduated from the Tshwane University of Technology in Pretoria, South Africa in 2007, with an International Diploma (three-year course) in Public Relations. Ms. Keyser also completed a bridging course at the University of South Africa to complete all 4th year degree subjects in Communications.

53. Ms. Keyser is not a healthcare worker and does not work in a health care setting.

54. Ms. Keyser was terminated by her employer due to her refusal to take a Covid-19 vaccine.

55. Ms. Keyser worked entirely from home in her position with Interior Health.

56. Ms. Keyser objects to taking a Covid-19 vaccine on medical grounds. Ms. Keyser is pregnant. She states she is unable to know what is right for herself and her unborn baby, given the lack of long-term data regarding the Covid-19 vaccines on pregnancy. She objects to state coercion that would have her take a vaccine that is proving to cause serious adverse reactions in some people.

57. Ms. Keyser suffered a miscarriage in the spring of 2021, at nine weeks' gestation.

Lynda June Hamley

58. Ms. Hamley resides in Nelson, British Columbia. She was employed by Kootenay Society of Community Living ("KCLS") as a residential support worker. KCLS provides care to young men and women with developmental disabilities, living in

a group home setting. Ms. Hamley was hired by KCLS in December 2020. She started as a casual support worker and obtained a full-time position with KCLS in November 2021. Ms. Hamley is also a certified Classroom and Community Support Worker. She has worked supporting children with disabilities and challenging behaviours in the school system for 13 years.

59. Until December 9, 2021, Ms. Hamley was supporting three young men and a young woman in their homes as a residential support worker for KCLS.

60. On December 10, 2021, Ms. Hamley was placed on unpaid leave for failing to provide proof of vaccination against Covid-19. She had until January 13, 2022 to become fully vaccinated against Covid-19, otherwise she was advised her employment would be terminated. Ms. Hamley has not had a Covid-19 vaccine. Ms. Hamley has not yet received official notice that her position at KCLS was terminated.

61. Ms. Hamley is a Christian. She objects to taking a Covid-19 vaccine on the basis of religion. Ms. Hamley submitted a request for a religious exemption, but it was denied.

62. Ms. Hamley objects to state coercion that has put her in the profoundly bewildering position of being forced to choose between providing for her family, which would force her to submit to a vaccine that goes against her sincerely held religious beliefs, and potentially being unable to provide for her family.

Melinda Joy Parenteau

63. The Petitioner, Melinda Joy Parenteau is a registered midwife, and previously worked as a private contractor for Apple Tree Maternity (“Apple Tree”) in Nelson, BC. She worked for Apple Tree between July 1, 2020, and October 25, 2021.

64. Mrs. Parenteau holds an associate degree in the Science of Midwifery, which she obtained through the National College of Midwives in Taos, New Mexico, USA. In addition, Mrs. Parenteau has completed the International Midwifery Pre-Registration Bridging Program at Ryerson University in Toronto, to enable her to be a registered midwife in Canada

65. Mrs. Parenteau’s hospital privileges were removed on October 26, 2021, because she failed to show proof of vaccination for Covid-19 as required by the Hospital and Community Order. She has never had a complaint or disciplinary action taken against her, neither by her College, health authority, or hospital. She has been registered as a midwife in both Manitoba and B.C.

66. Mrs. Parenteau is opposed to the Covid-19 vaccine mandate. She says it violates a fundamental right to make an informed choice, without coercion, to a

medical treatment. She has not taken the Covid-19 vaccine. She will not take it under the current mandate which puts her in a position of duress, coercion by the state, and under threat.

67. Mrs. Parenteau is not opposed to vaccines in general and has received many throughout her life. She recognizes there are benefits to vaccines that have been thoroughly tested and proven safe. These Covid-19 vaccines have not completed their testing and clinical trials and not expected to until the end of 2022 and into 2023. This qualifies these vaccines as being in the experimental category. She will not be coerced by the state into taking an experimental vaccine.

68. Mrs. Parenteau is no longer able to practice midwifery, as her license depends on having hospital privileges. Mrs. Parenteau is experiencing financial hardship because she has lost her hospital privileges, and thus her ability to work in her chosen field.

Dr. Joshua Nordine

69. Dr. Nordine resides in Kelowna, BC. He is a family physician, most recently practicing at Rutland Medical Associates, a private clinic in Kelowna. He has practiced there since 2016.

70. Dr. Nordine was also a clinic physician at the Bridge Detox Centre in Kelowna from 2017 until October 2021. Bridge Detox Centre is a clinic operated by Interior Health. He was initially placed on unpaid leave from the Bridge Clinic on October 26, 2021, because he failed to show proof of having taken the Covid-19 vaccines. He also lost his hospital privileges at that time for the same reason.

71. On November 16, 2021, Dr. Nordine's employment with the Bridge Detox Centre was terminated by Interior Health for not having taken the Covid-19 vaccines, as mandated by the Hospital and Community Care Order. His hospital privileges were revoked for the same reason.

72. Between 2013 and 2016, Dr. Nordine was a family physician at Edmonton Imagine Health in Edmonton, AB.

73. Dr. Nordine obtained his medical degree from Jagiellonian University Medical College in Poland. Dr. Nordine is also a licentiate of the Medical Council of Canada

74. Dr. Nordine is a Christian. He objects to taking a Covid-19 vaccine, including Novavax, on religious grounds. Dr. Nordine also objects to taking a Covid-19 vaccine on medical grounds. He submitted a request for an exemption to the vaccine mandate, but it was denied.

75. In addition, in January 2022, Dr. Nordine was diagnosed with the Covid-19 virus. He now has natural immunity to Covid-19. Dr. Nordine points out that the BC Covid therapeutics Committee states natural immunity is the same as having had two doses of a Covid-19 vaccine.

76. While working as a family physician, Dr. Nordine observed many patients suffer adverse reactions to the Covid-19 vaccines. When requested by his patients to do so, Dr. Nordine has reported those adverse reactions to the Canadian Adverse Events Following Immunization office.

77. Dr. Nordine notes there is a general doctor shortage in BC, and this has been the case since before the pandemic. Similarly, he states that hospitals were short-staffed and operating at over-capacity limits prior to Covid-19.

C. Additional Facts

Elizabeth Ringrose

78. Elizabeth Ringrose resides in Vancouver, BC. She is a Registered Nurse in the Day Health Program at the Dr. Peter Centre in Vancouver, BC.

79. Ms. Ringrose has taken two doses of the Pfizer Covid-19 vaccine.

80. Ms. Ringrose took the first dose of the Covid-19 vaccine on or about January 6, 2021. She took the second dose on or about February 19, 2021. Ms. Ringrose suffered a severe allergic reaction after the second dose of the Covid-19 vaccine in that within 72 hours after that injection, she could not stand up for a period of six hours and had to crawl to the bathroom. She has experienced dizzy spells on and off since this time.

81. As a result of the adverse reactions Ms. Ringrose has suffered after receiving the second dose of the Covid-19 vaccine, she has had to take a medical leave from her position with the Dr. Peter Centre.

82. While still employed, Ms. Ringrose tried to send an adverse reaction form for a person in her care, but the office listed on the BCCDC website did not seem to receive it after 10 facsimile attempts, and then would not confirm the report would go to the appropriate person. Ms. Ringrose's manager told her to stop asking the office if it got to the right place.

Jennifer Koh

83. Jennifer Koh was an Organization Development & Change Management Consultant for the Interior Health Authority ("Interior Health"). She held this position for two years. Prior to this position, Ms. Koh was an Organizational

Development Consultant for the Northern Health Authority for approximately 3.5 years.

84. Ms. Koh has a Bachelor of Arts degree, with a major in psychology. She is also a certified Professional Coach (ICF-accredited), a certified Resilience@Work Practitioner, a certified Human Systems Dynamics Practitioner, and a certified Yoga, meditation & breathwork Instructor. She also has multiple other leadership development certifications.

85. From March 2020, Ms. Koh's work for Interior Health was 100% remote. She had no contact with any patients or co-workers.

86. Ms. Koh was terminated by her employer due to her refusal to take a Covid-19 vaccine.

87. Ms. Koh objects to taking the Covid-19 vaccine on the basis of religion. She was raised with the teachings of the Catholic faith. As an adult, since undergoing extensive training in various Vedic meditation and yoga practices, she has followed the Vedic scriptures very closely, and as a result, has a strong spiritual faith. She submitted a request for religious exemption, but it was denied.

88. Ms. Koh believes in bodily sovereignty and the right to choose what goes into her body. She has not been made aware of all the contents of the injections and is concerned. In addition, she is aware of multiple studies which have shown the adverse effects of the experimental injection, including death, disability, and stillborn births. She is also aware of the number of deaths and adverse reactions reported by the Vaccine Adverse Event Reporting System (VAERS) in the United States. She is also aware that the vaccine companies assume no liability for adverse reactions, and that she will solely bear the burden of any adverse reactions if she takes the injection.

89. On or about November 26, 2021, after being terminated from her job on November 15, 2021, Ms. Koh received a call from a recruiter with a job proposal for two of the other BC health authorities for a remote contract Change Management Consultant position, which is essentially a part of the role she performed as a full-time employee. When Ms. Koh asked about their policy related to remote workers and the vaccine mandate, she was told that the vaccine mandate did not apply to contract workers who work remotely. She also learned that these same contract workers who are not subject to the vaccine mandate are permitted to enter a healthcare facility, provided they do not enter more than once per month.

D. Expert Evidence

90. Vaccinated and unvaccinated persons can be infected with Covid-19.

91. There is no significant difference in the rates at which vaccinated and unvaccinated persons transmit Covid-19.

92. Certain persons suffer serious health consequences as a result of Covid-19 vaccines.

93. Persons under 60 without co-morbidities have an approximately 99.997% chance of recovering from Covid-19.

94. Natural immunity provides protection against infection with Covid-19.

Part 3: LEGAL BASIS

1. This action is for review of Public Health Orders and Guidelines issued by an administrative decision-maker, Dr. Bonnie Henry, Public Health Officer for the Province of British Columbia, who is appointed by the Lieutenant Governor in Council pursuant to section 65 of the *Public Health Act.* The Public Health Orders and Guidelines have the force of law and are government action, and, as such, the *Charter* applies.

2. The Public Health Orders and Guidelines infringe the Petitioners' sections 2(a), 7 and 15 *Charter* rights and the infringements are not justified by section 1 of the *Charter*. Section 24(1) of the *Charter* provides that anyone whose rights or freedoms have been infringed may obtain a remedy the court considers just and appropriate. Section 52(1) of the *Constitution Act,1982* provides that to the extent the impugned law is inconsistent with the *Charter,* it is of no force and effect.

3. The Petitioners submit that the Public Health Officer has an ongoing legal obligation to access whether the above orders are still required to protect public health. The Public Health Officer's failure to review, rescind or alter the orders is an ongoing decision by the Public Health Officer that the orders are required to protect public health, and must be justified as proportionate. If the government has failed to even consider whether to change the orders in light of the new evidence regarding transmission and vaccination, then mandamus is available.

1. Infringement of section 7 of the Charter

4. Ordering vaccination as a condition of employment for the petitioners interferes with and infringes their rights to medical self-determination. Section 7 *Charter* rights to life, liberty and security of the person encompass the right of medical

self-determination: *Carter v. Canada (Attorney General)* 2015 1 SCR 5 at paras. 64-69; *AC v. Manitoba (Director of Child and Family Services,* 2009 SCC 30; *B(R) v. Children's Aid Society of Metropolitan Toronto,* [1995] 1 SCR 315. Section 7 is also engaged by state interference with an individual's physical or psychological integrity: *Chaoulli v. Quebec (Attorney General)* 2005 SCC 35 at para. 116; *New Brunswick (Minister of Health and Community Services) v. G.(J.)* [1999] 3 S.C.R. 46 at para. 58;

5. Section 7 does not promise that the state will not interfere with life, liberty and security of the person, but that it will not do so except in accordance with the principles of fundamental justice: "While the Court has recognised a number of principles of fundamental justice, three have emerged as central in the recent s. 7 jurisprudence: laws that impinge on life, liberty or security of the person must not be arbitrary, overbroad, or have consequences that are grossly disproportionate to their object": *Carter v. Canada (Attorney General), supra* at paras. 71-72.

6. In assessing whether an impugned law violates the principles of fundamental justice, the object of the law must be given a precise and narrow definition: *Carter v. Canada (Attorney-General), supra* at paras. 73-78. The Petitioners say that the object of the Public Health Orders and the Guidelines is to reduce transmission of Covid-19 to vulnerable persons.

7. The Public Health Orders and Guidelines are over-broad, arbitrary, and disproportionate. The Public Health Orders and Guidelines require vaccination of persons who work remotely, or in an administrative capacity, or with persons that are not vulnerable to the deleterious effects of Covid-19. For those workers who are in contact with vulnerable persons, the orders do not provide for other options to mandatory vaccination, such as re-assignment of workers to work-places not dealing with vulnerable persons, and/or masking or rapid testing prior to attending the workplace. Finally, the Public Health Orders and Guidelines permit third-party contractors doing work similar to the work of the Petitioners to remain unvaccinated.

2. Infringement of section 2(a) of the *Charter*

8. Vaccine mandates that fail to provide religious and conscientious exemptions infringe section 2(a) *Charter* rights. Section 2(a) of the *Charter* protects the right to freedom of conscience and religion. "Freedom, in a broad sense, embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others, no-one is forced to act in a way contrary to his beliefs or his conscience": *R v. Big M Drug Mart Ltd,* 1985 CanLII 69 (SCC) at para. 95.

Freedom of religion includes the right to ascribe to sincerely held beliefs or conduct that "are not objectively recognised by religious experts as being obligatory tenets or precepts of a particular religion": *Syndicat Northcrest v. Amselem*, 2004 SCC 47, at paras. 43-51.

9. Freedom of conscience includes the right to act in accordance with a coherent set of beliefs but does not require that the individual asserting freedom of conscience ascribe to an organised religion: *R. v. Morgenthaler,* [1988] 1 SCR 30 at p. 37; *Carter v. Canada (Attorney-General)*, *supra* at para. 132.

10. The unavailability of exemptions on the basis of religion or conscience from the vaccine mandates contained in the Public Health Orders and Guidelines is more than a trivial or insubstantial interference with the petitioners' section 2(a) *Charter* rights, and consequently, is an infringement of *Charter* section 2(a).

3. Infringement of section 15(1) of the Charter

11. The Public Health Orders and Guidelines treat the Petitioners differently than those workers who have chosen to comply with the orders and accept vaccination as a condition of employment. Section 15(1) of the *Charter* protects equality rights. In *Quebec (Attorney General) v. A,* 2013 SCC 5 at para.169 the LaBel J. stated, after reviewing the s. 15(1) jurisprudence, that a comparator group analysis would not always sufficiently identify instances of infringements of section 15(1) of the *Charter.* LaBel, J. distilled the section 15(1) test down to two questions at paras. 171:

> "(1) Does the law create a distinction based on an enumerated or analogous ground?
>
> (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?"

12. The Petitioners are discriminated against based on their medical status, that is, as unvaccinated persons. Medical status is a ground analogous to mental or physical disability or citizenship status: *Andrews v. Law Society of British Columbia,* [1989] 1 S.C.R. 143 at p. 164, 183; *Quebec (Attorney General) v. A, supra* at 173-184; *Attorney General of Ontario v. G,* 2020 SCC 38, at para. 43.

13. The Petitioners are not required to establish that unvaccinated persons are historically disadvantaged to make out a claim under s.15(1) of the *Charter*: *Trociuk v. British Columbia (Attorney General)* 2003 SCC 34. However, the Petitioners are, in any case, able to establish that discrimination on the basis of medical status does have historical antecedents.

14. The Petitioners can point to prejudice and stereotyping to make out their claim

for infringement. Pervasive prejudice and stereotyping against those not vaccinated for Covid-19 exists in Canada and around the world. Examples of this include: the inflammatory comments made by the Prime Minister of Canada about the unvaccinated as being “misogynists” and “racists”; comments made by the President of France that he wanted to “piss off” the unvaccinated with recent legislation; a recent poll showing that approximately ¼ of the Canadian population supports short jail sentences for the unvaccinatedand Quebec Premier Legault’s initial proposal to impose a medical tax on the unvaccinated.

4. Infringements not justified under Section 1 of the *Charter*

15. Because the Public Health Orders have the effect of laws of general application, rather than administrative decisions pertaining specifically to the interests of a particular individual, whether the Public Health Orders are justified under section 1 of the *Charter* is determined by the test set out in *R. v. Oakes*, [1986] 1 SCR 103: *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario,* 2018 ONSC 579, paras. 51-69; ONCA 393 at paras. 58-60; *Carter v. Canada (Attorney General), supra; Doré v. Barreau du Québec,* 2012 SCC 12.

16. In *Doré v. Barreau du Québec, supra,* at para. 36, the Justice Abella stated: “As explained by Chief Justice McLachlin in *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37… the approach used when reviewing the constitutionality of a law should be distinguished from the approach used for reviewing an administrative decision that is said to violate the rights of a particular individual. When *Charter* values are applied to an individual administrative decision, they are being applied in relation to a particular set of facts. *Dunsmuir* tells us this should attract deference (para. 53; see also *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1…at para.39). When a particular “law” is being assessed for *Charter* compliance, on the other hand, we are dealing with principles of general application.”

17. The onus is on the Respondents to prove that the infringements of section 7, 2(a) and 15 of the *Charter* are justified: *R v. Oakes*, *supra.* The Respondents must “show that the law has a pressing and substantial object and that the means chosen are proportional to that object. A law is proportionate if (1) the means adopted are rationally connected to that objective; (2) it is minimally impairing of the rights in question; (3) there is proportionality between the deleterious and salutary effects of the law”: *R v. Oakes, supra*; *Carter v. Canada (Attorney General) supra* at para. 94.

18. The object of the Public Health Orders and Guidelines, to prevent transmission of Covid-19 to vulnerable persons, has a pressing and substantial objective, but the means chosen are not proportionate.

19. While a measure of deference is accorded to laws enacted by the legislature to address complex social issues (*Carter v. Attorney General, supra* at paras. 96-99) the Petitioners assert that such deference is not properly applied to the Public Health Orders and Guidelines, which were issued by an unelected official.

20. Some of the Petitioners have experienced serious health consequences because of vaccines or reasonably anticipate experiencing serious health consequences from the Covid-19 vaccine. The Public Health Orders and Guidelines provide no religious or conscientious exemptions at all. The Public Health Orders and Guidelines apply to persons employed in workplaces where no vulnerable persons are at risk. For those workers who are in contact with vulnerable persons, other options are and were available to Public Health Officer Dr. Bonnie Henry, such as re-assignment of unvaccinated workers to a different workplace, and/or providing for rapid testing when unvaccinated workers attend a workplace where vulnerable persons are present. Finally, the Public Health Orders and Guidelines do not consider the impact of natural immunity on rates of infection or transmission.

5. The violations of sections 2(a), 7 and 15 *Charter* rights are not reasonable

21. In the alternative, the Petitioners submit that the Public Health Orders and Guidelines are decisions by an administrative body that engage section 2(a), section 7 and section 15(1) *Charter* rights and are thus subject to a review by the court to determine if the decisions were reasonable, employing the *Doré/Loyola* framework: *Beaudoin v. British Columbia,* 2021 BCSC 512 paras. 119-126; *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817.

22. Delegated authority must be exercised “in light of constitutional guarantees and the values they reflect” (*Doré,* at para. 35). In *Loyola,* this Court explained…”*Charter* values help determine the extent of any given infringement in the particular administrative context, and, correlatively, when limitations on that right are proportionate in light of the applicable statutory objectives”: *Law Society of British Columbia v. Trinity Western University,* 2018 SCC 32 at para. 57; *Loyola High School v. Quebec (Attorney General)* 2015 SCC 12 at para. 38; *Doré v. Barreau du Québec*, *supra* at para. 35.

23. Comparing the test applied in *R. v. Oakes, supra,* to the review as to whether a decision of an administrative body is reasonable, the Supreme Court of Canada said “In assessing whether an adjudicated decision violates the *Charter,* however, we are engaged in balancing somewhat different but related considerations, namely, has the decision-maker disproportionately, and therefore unreasonably, limited a *Charter* right. In both cases, we are looking

for whether there is an appropriate balance between rights and objectives, and the purpose of both exercises is to ensure that the rights at issue are not unreasonably limited": *Doré v. Barreau du Québec*, *supra* at para.6.

24. The Public Health Orders and the Guidelines are unreasonable. The objectives of the Public Health Orders and Guidelines could be met with measures that do not disproportionally limit the Petitioners' *Charter* rights.

25. The Petitioners are unable to seek review under section 43 of the *Public Health Act* or apply for any exemptions other than the narrow medical exemption provided for by the Public Health Orders and Guidelines. Some of the Petitioners work remotely, others in an administrative capacity, or not even in a health-care setting. No provision was made for Petitioners that do not work with persons who are vulnerable to the deleterious effects of the virus. For Petitioners who do attend facilities where vulnerable persons are present, there is no consideration of whether use of additional personal protective equipment and rapid testing prior to attending the workplace would meet the objectives of the Public Health Orders, not even where the Petitioners attend the workplace occasionally or rarely. No provision for alternate employment was made for those Petitioners who chose not to be vaccinated for religious reasons or reasons of conscience, or other medical reasons, and who do work with vulnerable persons. The Public Health Orders and Guidelines do not consider the impact of natural immunity on infections with, and transmissibility of, Covid-19. Finally, some third-party contractors doing similar work to the Petitioners are not required to be vaccinated.

26. The effect of the Public Health Orders and Guidelines is to coercively require vaccination, not to protect the health of vulnerable persons.

6. The Health Professionals Order impinges on the statutory powers of the British Columbia College of Physicians and Surgeons, and the British Columbia College of Nurses and Midwives to license and govern their members

27. The British Columbia College of Physicians and Surgeons of B.C. (CPSBC) and the College of Nurses and Midwives (BCCNM) are constituted in accordance with the *Health Professions Act*and makes by-laws for self-governance, which are subject to approval by the Minister of Health. Regulation of members of the CPSBC and BCCNM is by a self-governing body, known as a "College" and an appointed Government licensing board. Section 16 of the *Health Professions Act* provides that the duty and objects of a College governed by the legislation are as follows:

Duty and objects of a college

16 (1) It is the duty of a college at all times

(a) to serve and protect the public, and

(b) to exercise its powers and discharge its responsibilities under all enactments in the public interest.

(2) A college has the following objects:

(a) to superintend the practice of the profession;

(b) to govern its registrants according to this Act, the regulations and the bylaws of the college;

(c) to establish the conditions or requirements for registration of a person as a member of the college;

(d) to establish, monitor and enforce standards of practice to enhance the quality of practice and reduce incompetent, impaired or unethical practice amongst registrants;

(e) to establish and maintain a continuing competency program to promote high practice standards amongst registrants;

(f) to establish, for a college designated under section 12 (2) (h), a patient relations program to seek to prevent professional misconduct of a sexual nature;

(g) to establish, monitor and enforce standards of professional ethics amongst registrants;

(h) to require registrants to provide to an individual access to the individual's health care records in appropriate circumstances;

(i) to inform individuals of their rights under this Act and the *Freedom of Information and Protection of Privacy Act*;

(i.1) to establish and employ registration, inquiry and discipline procedures that are transparent, objective, impartial and fair;

(j) to administer the affairs of the college and perform its duties and exercise its powers under this Act or other enactments;

(k) in the course of performing its duties and exercising its powers under this Act or other enactments, to promote and enhance the following:

i. collaborative relations with other colleges, regional health boards designated under the *Health Authorities Act* and other entities in the Provincial health system, post-secondary education institutions and the government;

ii. interprofessional collaborative practice between its registrants and persons practising another health profession;

iii. the ability of its registrants to respond and adapt to changes in practice environments, advances in technology and other emerging issues.

28. The privilege of self-regulation is granted to a profession in exchange for the profession's commitment to protecting the public interest; *Law Society of New Brunswick v. Ryan,* 2003 SCC 20. The justification for granting self-governing status to a profession is that the members of the profession are best qualified to ensure proper standards and ethics are maintained: The Privatization of Regulation: Five Models of Self-Regulation, Margot Priest, 1998 Ottawa Law Review 233, 1998 CanLIIDocs 19; Canada's Legal Profession: Self-Regulating in the Public Interest?, John Pearson, Canadian Bar Review, 2015 92-3 2015 CanLIIDocs 230.

29. The decision to grant a profession self-regulating status is one that is made after extensive consideration with all levels of government and representatives of the profession: *College of Midwives of British Columbia v. Mary Moon*, 2019 BCSC 1670. The granted statutory scope of authority over its members of the self-governing profession is meant to protect the public and maintain the independence of professionals from government interference: By Her Own Authority: The Scope of Midwifery Practice under the Ontario Midwifery Act, 1991, 1993 CanLIIDocs 199; What is a "Profession", Peter Wright, Canadian Bar Review 1951 29-7, 1951 CanLIIDocs 230.

30. In the Western world the roots of physician self-governance date back to Hellenic Greek and the Hippocratic Oath; "Self-Regulation was originally instituted at the request of the medical profession because the body of knowledge in the profession was esoteric and unknown to the average citizen, and it would be difficult for external regulation to be as effective": Professionalism: the historical contract, Roger Collier, Canadian Medical Association Journal (CMAJ), August 9 2012. Professional societies of began formally regulating medical practice in or about 1760 in the Western world and by the early 1800, medical societies oversaw establishing regulations, standards of practice and certification of doctors. Professional self-regulation allows the government to have some control over the professional group without maintaining the special expertise that would be needed to regulate the profession. One of the central principles of self-governing professions is a climate of open debate and collegial exchange regarding the issues facing the profession: Professionalism, Governance and Self-Regulation of Medicine, Howard Bauchner, M.D., Phil B. Fontanarosa, M.D. MBA, Amy E. Thompsn, MD, Editorial, May 12, 2015, Journal of the American Medical Association (JAMA) 2015; 313(18).

31. Nursing has been a regulated health profession under British Columbia legislation since 1918. Before designation under the *Health Professions Act*, the profession was regulated under the *Nurses (Registered) Act,* [R.S.B.C. 1996] Chapter 335

(repealed). Practical nursing has been a designated health profession under the *Health Professions Act* since 1996. Midwifery became a designated health profession under the *Health Professions Act* in 1998, although midwifery was practiced in Canada throughout human history in all cultures. In September 2020, the BCCNM was established to govern all three professions.

32. The Health Professionals Order trenches on the common-law and statutorily granted powers of the Colleges to make rules for the admission, licensing, standards of practice, professional ethics, self-governance, and comportment of its members as set out in the *Health Professions Act.* The Health Professionals Order, issued by an unelected official, Dr. Bonnie Henry as Public Health Officer for British Columbia, is neither in the public interest nor consistent with the aims reflected in the legislative and regulatory history of the development of the CPSBC and BCCNM and the as self-governing professions.

7. The Orders and Guidelines Fetter the Discretion of the Public Health Officer

33. It is an abuse of discretion for a statutory decision-maker to fetter its discretion by policy, as the Public Health Officer did when she issued the Public Health Orders and Guidelines restricting available exemptions and the ambit of review under section 43 of the *Public Health Act*.

8. Violation of the right to informed consent

34. The Public Health Orders and Guidelines deprive the Petitioners of their right to informed consent, as required by section 6(a) and (f) of the *Health Care Consent Act.*

9. Violation of privacy

35. The collection of the Petitioners' personally-identifying and Covid-19 vaccination status by employers, contractors and colleges, as authorized by Dr. Henry's Orders are an unjustified violation of the Petitioners' privacy.

9. Violation of the Human Rights Code

36. The Public Health Orders offend section 13(1) of the *Human Rights Code,* RSBC 1996 c.210

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Anneke Pingo, sworn August 22, 2022, to be filed;

2. Affidavit #1 of Phyllis Janet Tatlock, ~~to be filed~~ filed June 6, 2022;

3. Affidavit #1 of Laura Koop, ~~to be filed~~ filed May 5, 2022;

4. Affidavit #1 of Monika Bielecki, ~~to be filed~~ filed June 6, 2022;

5. Affidavit #1 of Scott Macdonald, ~~to be filed~~ filed May 5, 2022;

6. Affidavit #1 of Ana Lucia Mateus, ~~to be filed~~ filed May 13, 2022;

7. Affidavit #1 of Darold Sturgeon, ~~to be filed~~ filed May 3, 2022;

8. Affidavit #1 of Lori Jane Nelson ~~to be filed~~ filed May 12, 2022;

9. Affidavit #1 of Ingeborg Keyser, ~~to be filed~~ filed June 6, 2022;

10. Affidavit #1 of Lynda June Hamley, ~~to be filed~~ filed June 6, 2022;

11. Affidavit #1 of Melinda Joy Parenteau, ~~to be filed~~ filed June 9, 2022;

12. Affidavit #1 of Dr. Joshua Nordine, to be filed;

13. Affidavit #1 of Elizabeth Ringrose, ~~to be filed~~ filed June 2, 2022;

14. Affidavit #1 of Jennifer Koh, ~~to be filed~~ filed May 20, 2022;

15. Affidavit #1 of Benneth Johnson, to be filed; and,

~~16. Affidavit #1 of Dr. Joel Kettner, to be filed; and,~~

17. Such further materials this Honourable Court may permit.

The Petitioners estimate that the hearing of the petition will take 10 days .

Date: August 22, 2022 .....

KAREN BASTOW

To be completed by the court only:

Order made [ ] in the terms requested in paragraphs ..... of Part 1 of this petition [ ] with the following variations and additional terms:	
Date: .....[dd/mmm/yyyy].....	..... Signature of [ ] Judge [ ] Master

ORIGINALLY FILED MARCH 16, 2022 and AMENDED FILED AUGUST 23, 2022

Court File No.: S-222427
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners

and

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

FURTHER AMENDED PETITION TO THE COURT

ON NOTICE TO:

Deputy Attorney General
Ministry of Attorney General
[redacted]

Dr. Bonnie Henry, Provincial Health Officer
[redacted]

This proceeding is brought for the relief set out in Part 1 below, by

[X] the persons named as petitioners in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioners

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: The Law Courts, 800 Smith Street, Vancouver, B.C.
(2)	The ADDRESS FOR SERVICE of the petitioners is: Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers [redacted]
(3)	The name and office address of the petitioners' lawyers are: Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers [redacted]

[redacted]

Charlene E. Le Beau
Charlene E. Le Beau Law Office
[redacted]

Claim of the Petitioners

Part 1: ORDERS SOUGHT

Pursuant to section 2(1), (2), 7, 5, and 17 of the *Judicial Review Procedure Act,* RSBC 1996, c.241 the Petitioners seek:

1. Declarations pursuant to sections 24(1) and 52(1) of the *Constitution Act,* 1982, Schedule B to the Canada Act 1982 (UK) c.11, that:

   (a) The Order entitled “Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventive Measures – ~~November 18, 2021~~ September 12, 2022” (Hospital and Community Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act*, S.B.C. 2008, c.28, is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11, specifically,

a. *Charter* section 2(a) (freedom of conscience and religion)
b. *Charter* section 7 (right to life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(b) The Order entitled "Residential Care Covid-19 Preventive Measures – ~~October 21, 2021~~ September 12, 2022" (Residential Care Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act,* is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Charter*, specifically,

a. *Charter* section 2(a) (freedom of conscience and religion)
b. *Charter* section 7 (right to life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(c) The "Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders" (the Guidelines), that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, which stipulate the process that must be employed in determining a healthcare worker's application for exemption from the Hospital and Community Order and/or from the Residential Care Order, are of no force or effect, as they unjustifiably infringe the rights and freedoms of the Petitioners guaranteed by the *Charter*, specifically,

a. *Charter section 2(a)* (freedom of conscience and religion*)*
b. *Charter* section 7 (life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(d) The Order entitled "Health Professionals Covid-19 Vaccination Status Information and Preventive Measures – June 10, 2022 (the Health Professionals Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39, 53, 54, 56, 57, 67 (2) and 69 of the *Public Health Act,* which mandates the collection, disclosure and reporting of personal information and vaccination status for persons regulated under the *Health Professions Act*, RSBC 1996 c.183 (the "*Health Professions Act"*), is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners

guaranteed by the *Charter,* specifically,

a. *Charter section 2(a)* (freedom of conscience and religion*)*
b. *Charter* section 7 (life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

2. In the alternative, an Order under sections 2(2) and 7 of the *Judicial Review Procedure Act,* in the nature of mandamus or certiorari, quashing and setting aside the entire scheme of the Hospital and Community Order, the Residential Care Order, the Health Professionals Order, and the Guidelines, as being unreasonable;

3. A Declaration that the Hospital and Community Order, the Residential Care Order and the Guidelines issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, improperly fettered her discretion and breached the principles of natural justice by failing to provide a meaningful process for exemptions and reconsideration;

4. A Declaration that the inclusion of the Petitioners as persons covered by the Orders was unreasonable under administrative law principles because of the Orders' improper impact on persons in the position of the Petitioners;

5. In the further alternative, an Order pursuant to section 5(1) of the *Judicial Review Procedure Act,* directing Dr. Bonnie Henry, in her capacity as Public Health Officer for British Columbia, to provide a meaningful process for exemptions and reconsideration for the Petitioners on the basis of religion, conscience and on an expanded medical basis, and/or to allow for accommodation of those workers affected by the Hospital and Community Order, the Residential Care Order and the Guidelines;

6. An Order prohibiting the Respondents from issuing subsequent public health orders of a substantially similar or identical nature;

7. An Order pursuant to section 17 of the *Judicial Review Procedure Act,* that the entire record upon which the Hospital and Community Order, the Residential Care Order, the Guidelines, and the Health Profession Order were based on, and are continued, be filed on this proceeding;

8. A Declaration that the Health Professionals Order exceeds the statutory authority and jurisdiction of the Respondents, as it trenches on the common-law and statutory authority of self-governing professions, granted by the *Health Professions Act* to govern themselves in the public interest in accordance with the legislation, rules and regulations of their respective colleges.

9. A Declaration that vaccination against Covid-19 as a condition of employment for the Petitioners, as set out in the Hospital and Community Order and the Residential Care Order, is a coercive tactic levelled against the Petitioners by the Respondents, and thus deprives the Petitioners of their right to informed consent to vaccination, as required by section 6 (a) to (f) of the *Health Care (Consent) and Care Facility (Admission) Act* RSBC 1996, c.181 (the "*Health Care (Consent) Act*");

10. An Order that the Petitioners are exempt from the vaccination requirements under the Orders issued by Dr. Bonnie Henry on religious, conscience, and medical grounds, as applicable to each Petitioner;

11. A Declaration that the collection of the Petitioners' personally-identifying and Covid-19 vaccination status by employers, contractors and colleges, as authorized by the "Covid-19 Vaccination Status Information and Preventative Measures" Orders (the "Vaccine Status Orders") issued by Dr. Bonnie Henry between August 20, 2021 and February 28, 2022, and authorized by the Health Professionals Orders first issued on March 7, 2022, and replaced by the Order of June 10, 2022, violates section 26(d) of the *Freedom of Information and Protection of Privacy Act,* RSBC 1996, c.165 ("FIPPA") and section 1(1) of the *Privacy Act,* RSBC 1996, c.373 (the "*Privacy Act*");

12. A Declaration that the Hospital and Community Order, the Residential Care Order and the Health Professionals Order offends section 13(1) of the *Human Rights Code,* RSBC 1996 c.210;

13. Damages pursuant to s. 24(1) of the *Charter* as is found to be appropriate and just in the circumstances of each Petitioner;

14. An extension of time to file supporting materials, including expert affidavits;

15. Costs of this Petition; and,

16. Such further and other relief as the Petitioners may seek and as this Honourable Court deems just and equitable.

Part 2: FACTUAL BASIS

A. The Public Health Orders and Guidelines

1. In the Fall of 2021, B.C. workers in the health care sector became subject to Covid-19 vaccine mandates: those affected workers who refused to take a Covid-19 vaccine were fired from their jobs unless they could prove entitlement to a very narrow medical exemption.

2. The Respondent Dr. Bonnie Henry is British Columbia's Provincial Health Officer, appointed pursuant to Part 6 of the *Public Health Act* and is empowered to issue public health orders to promote and protect public health.

3. The Vaccine Status Orders were issued by Dr. Bonnie Henry between August 20, 2021 and February 28, 2022, and they provided a mechanism to enable employers, operators and contractors to obtain personal information from healthcare practitioners and staff, including his or her personal health number, together with the Covid-19 vaccination status of those individuals, and to compel healthcare practitioners and staff to provide their personal information, including their personal health numbers, as well as their Covid-19 vaccination status, to their employers. The orders also compelled employers and contractors to report the healthcare practitioners' and staff members' personal information and personal health numbers to Dr. Bonnie Henry through an electronic government data base. The first order was issued on August 20, 2021 (Ex. A to affidavit 1 of Anneke Pingo). The second order was issued on August 31, 2021 (Ex. B to affidavit 1 of Anneke Pingo). The third order was issued on September 9, 2021 (Ex. C to affidavit 1 of Anneke Pingo). The fourth order was issued on September 27, 2021 (Ex. D to affidavit 1 of Anneke Pingo), then replaced with the order of October 6, 2021 (Ex. E to affidavit 1 of Anneke Pingo), which was then replaced with the order of February 28, 2022 (Ex. P to affidavit 1 of Anneke Pingo).

4. The initial vaccine mandates were contained in a series of public health orders issued by Dr. Bonnie Henry between September 2, 2021, and November 18, 2021.

5. The vaccine mandate issued under the Residential Care Order was first issued on September 2, 2021 (Ex. F to affidavit 1 of Anneke Pingo), then replaced with the order of October 4, 2021 (Ex. G to affidavit 1 of Anneke Pingo), then replaced with the order of October 8, 2021 (Ex. H to affidavit 1 of Anneke Pingo), ~~and finally~~ then replaced with the order of October 21, 2021 (Ex. I to affidavit 1 of

Anneke Pingo), and finally replaced with the Order of September 12, 2022.

6. The vaccine mandate issued under the Hospital and Community Order was first issued on October 14, 2021 (Ex. J to affidavit 1 of Anneke Pingo), then replaced with the order of October 21, 2021 (Ex. K to affidavit 1 of Anneke Pingo), then replaced with the order of November 9, 2021 (Ex. L to affidavit 1 of Anneke Pingo), ~~and finally~~ then replaced with the order of November 18, 2021 (Ex. M to affidavit 1 of Anneke Pingo)), and finally replaced with the Order of September 12, 2022.

7. On November 9, 2021, the vaccine mandates under the Hospital and Community Order were expanded to include administrative staff employed by a regional health authority, the Provincial Health Services Authority, British Columbia Emergency Health Services, and the Providence Health Care Society.

8. On November 18, 2021, the vaccine mandates under the Hospital and Community Order were further expanded to include all staff members of Community Living British Columbia.

9. The Health Professionals Order, initially issued on March 7, 2022 (Ex. Q to affidavit 1 of Anneke Pingo) and replaced by the Order issued on June 10, 2022 (Ex. R to affidavit 1 of Anneke Pingo), compels colleges, as defined by the *Health Professions Act,* to provide personally-identifying information about each of their registrants. The Order further compels the Minister of Health to verify the Covid-19 vaccination status of each registrant, and to disclose that information to the relevant college. The Order compels each registrant, upon request from the college, to provide proof of vaccination, or of an exemption, to the college. The college must record each registrant's vaccination status by March 31, 2022. The college must also disclose to Dr. Henry, upon request, the aggregate information respecting the vaccination status of registrants of their college. The Health Professionals Order was expanded on June 10, 2022 to include post-secondary institutions in relation to registrants applying for admission into health science programs and residency programs and other postgraduate medical education programs, for the purpose of determining the registrants' eligibility to attend at places subject to the Orders. The Health Professionals Order does not mandate the Covid-19 vaccination for healthcare professionals regulated under the *Health Professions Act* and working in private practice. As such, healthcare professionals regulated under the *Health Professions Act* and working in private practice are treated differently than healthcare professionals regulated under the *Health Professions Act* who were employed by a provincial health authority or were working in a residential care facility.

10. Section 43 of the *Public Health Act* provides a meaningful process for persons affected by public health orders to apply for reconsideration, but that process is

effectively eviscerated by these orders.

11. The orders provide that the only exemption that can be applied for under s. 43 for reconsideration is a medical exemption. There is no provision in the orders for exemptions based on religion or conscience. The allowable medical exemption is extremely narrow: “a request for reconsideration…must be made on the basis that the health of the person would be seriously jeopardized…and must follow the guidelines posted on the Provincial Health Officer’s website”.

12. The guidelines for exemption from both the Hospital and Community Order and the Residential Care Order are set out in a document entitled “COVID-19 Vaccination Requirements - Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders”, dated October 8, 2021 (Ex. O to affidavit 1 of Anneke Pingo). An affected person is not able to submit a request for reconsideration even if he or she has additional relevant information that was not reasonably available to the health officer when the orders were issued or varied. Nor is he or she able to submit a request for exemption if he or she has information or a proposal that was not presented to the health officer when the Public Health Orders were issued or varied, that, if implemented, would meet the objective of the Public Health Orders. Nor is an affected person able to request more time to comply with the orders.

13. The above orders will hereinafter be referred to as the “Public Health Orders” except where it is necessary to be specific about which order is being referred to. The Guidelines will hereinafter be referred to as “The Guidelines.”

B. The Petitioners’ Evidence

Phyllis Janet Tatlock

14. The Petitioner Phyllis Janet Tatlock graduated with a nursing diploma from the University of Alberta, School of Nursing in 1992. She completed her nursing degree from the University of Northern British Columbia in 1998 and completed a Masters of Community Health from the University of British Columbia in 2006.

15. Ms. Tatlock lives in Prince George, British Columbia. Ms. Tatlock was a Director of Operations, BC Cancer, under the Provincial Health Services Authority (PHSA) and was employed in that position from March 8, 2021. Other positions Ms. Tatlock has held are:

    a. Manager, Alberta Health Services (January 2021—March 2021)
    b. Executive Director, Alberta Health Services (July 2019-January 2020)
    c. Director, Public Health, April 2011-July 2019 Island Health,
    d. Director, Maternal/Child Services, Quinte Health Care (Ontario) April

2008-April 2011

e. Manager Research and Community Health Services, Carrier Sekani Family Services (May 2006-April 2008
f. Manager, Home and Community Health Services Northern Health (October 2003--May 2006)
g. Manager Community Health Services Carrier Sekani Family Services (September 1999-October 2003)
h. various nursing positions in the Emergency Department in Northern Health as well as in California, Texas, Washington states from 1993 until 1999.

16. Ms. Tatlock was terminated by her employer due to her refusal to take a Covid-19 vaccine.

17. Ms. Tatlock is a Christian. She objects to taking a Covid-19 vaccine on the basis of religion. Ms. Tatlock submitted a request for a religious exemption to the Occupational Health department of PHSA on October 22, 2021, and it was denied.

18. Ms. Tatlock objects to state coercion that would have her take a vaccine which recent studies show is ineffective at stopping infection or transmission, and whose adverse reaction profile is significant.

Laura Koop

19. The Petitioner, Laura Koop, lives in Canyon, British Columbia. Ms. Koop is a Primary Care (Family) Nurse Practitioner, with a focus on high risk and at-risk populations, such as drug and alcohol abuse, and mental health. She was employed by the Interior Health Authority and held this position from September 2014. Prior to her employment with Interior Health, Ms. Koop was employed in the following capacities:

    a. Nurse Practitioner (family) in remote clinics;
    b. Clinical Coordinator for remote nursing clinics;
    c. Remote Nurse with Certified Remote Nursing Practice;
    d. Nurse Manager in long-term Care;
    e. Instructor (both Care Aide and LPN program) in community college; and,
    f. Staff nurse in long-term care.

20. Ms. Koop was terminated by her employer due to her refusal to take a Covid-19 vaccine.

21. Ms. Koop objects to taking a Covid-19 vaccine on the basis of conscience. She

has serious concerns about the safety of the Covid-19 vaccines, mRNA technology and use of fetal tissue in vaccine development. She is concerned about the lack of informed consent, the lack of transparency from pharmaceutical corporations and all levels of Canadian (and international) governments, and the continued changing goals and directives regarding the Covid-19 vaccines.

Monika Bielecki

22. The Petitioner, Monika Bielecki, resides in Kelowna, British Columbia. Ms. Bielecki is an Employee Health and Wellness Advisor with BC Interior Health. She held this position from October 2015.

23. Ms. Bielecki holds Bachelor of Arts degree in Psychology. She is also qualified as a Certified Vocational Rehabilitation Professional. She has extensive experience, since 2001, in claims adjudication, rehabilitation services, disability management, and workplace accommodation process.

24. In her role as an Employee Health and Wellness Advisor with Interior Health, Ms. Bielecki worked remotely from February 10, 2016. Since that day, she did not have a designated workspace in any of the Interior Health sites and has worked entirely from home via phone and email up to the time of termination of employment. A Flexible Work Location Participation Agreement and Safety Checklist was formally signed by Ms. Bielecki's manager on September 30, 2019.

25. Between 2016 and 2019, Ms. Bielecki attended the occasional team meeting in the office, but as members of their team were from various cities in the Interior Health region, there always was an option to attend by teleconference and some of Ms. Bielecki's teammates did so. As the pandemic began, they started using Zoom meetings and in-person meetings were not organized by her department.

26. Ms. Bielecki was terminated by her employer due to her refusal to take a Covid-19 vaccine.

27. Ms. Bielecki objects to taking the Covid-19 vaccine on the basis of conscience. She states that acceptance of any medical intervention is her personal choice, based on her health status and risk factors. She objects to state coercion that overrides her personal autonomy, especially where recent studies show the vaccine is ineffective at stopping infection or transmission, and where the vaccine is known to have serious adverse reactions.

Scott Macdonald

28. The Petitioner, Scott Macdonald, resides in Vancouver, BC, and was a Registered Art Therapist at the Dr. Peter Centre in Vancouver. He was employed

in this position for 11 years. Mr. Macdonald holds a Bachelor of Physical Education from the University of British Columbia, as well as a Diploma from the Vancouver Art Therapy Institute.

29. Mr. Macdonald was terminated by his employer due to his refusal to take a Covid-19 vaccine.

30. Mr. MacDonald is also not able to fulfill his duties with Teddy's Homes, where he had been working for the last four years as a casual respite support worker with foster children, because the Hospital and Community Order applies to residential facilities licensed under the *Community Care and Assisted Living Act.* All unvaccinated workers are not permitted to enter any of the resources.

31. Mr. Macdonald objects to taking a Covid-19 vaccine on the basis of conscience, and for medical reasons. He believes he is not in a demographic of high risk for Covid-19, nor is the prevalence of severe symptoms/death of Covid-19 (alone) statistically significant. Mr. Macdonald is concerned that the vaccines were rushed to market by the pharmaceutical companies, and that they raced against each other to be the first to offer the vaccine. Mr. Macdonald has also had adverse reactions to the flu vaccine in the past.

32. Mr. Macdonald does not trust the BC Coastal Health Authority to have its workers' best interests in mind. He states the health authority has already been known to implement policies that are punitive to healthcare workers, and that are injurious to the patients they are supposed to be caring for.

Ana Lucia Mateus

33. The Petitioner, Ana Lucia Mateus, resides in Burnaby, British Columbia, and was employed by Vancouver Coastal Health (VCH). She worked as an Administrative Assistant for the Health Authority Medical Advisory Committee. This committee has approximately 50 members of all senior levels in the organization and reports to the Board. Ms. Mateus also provided credentialing and privileging support to all the sites throughout VCH, in the department of Physician Relations and Compensation. She had always worked in the corporate areas of administration for VCH.

34. Ms. Mateus has a Legal Assistant diploma from Capilano College in North Vancouver, BC. Ms. Mateus worked for VCH for over 16 years (since May 2005). She first started as a Legal Assistant in VCH's legal department before moving to Physician Relations and Compensation.

35. Ms. Mateus had worked full time from home since March 13, 2020, due to the Covid-19 pandemic and the consequential public health protocols implemented

by her employer.

36. Ms. Mateus was terminated by her employer due to her refusal to take a Covid-19 vaccine.

37. Ms. Mateus objects to taking the Covid-19 vaccine on the basis of conscience. She believes there are too many unanswered questions regarding the Covid-19 vaccines, and that they were rushed to market. She is also concerned that the pharmaceutical companies have no liability in relation to the Covid-19 vaccines. She objects to state coercion and believes in freedom of choice.

Darold Sturgeon

38. The Petitioner, Darold Sturgeon, resides in West Kelowna and was an Executive Director, Medical Affairs for Interior Health. He held senior director positions with Interior Health for 14.5 years. Mr. Sturgeon did not work in a health care setting and is not a health care worker.

39. Previous positions held by Mr. Sturgeon are Corporate Director Financial Services for Interior Health BC, VP Finance, Chief Financial Officer (Cypress Health Region – Saskatchewan), Chief Financial Officer (Regional Municipality of Wood Buffalo - Alberta), and VP Finance & Administration (East Central Health District – Saskatchewan).

40. Mr. Sturgeon holds a Bachelor of Administration (Distinction), from the University of Regina. He is also a Chartered Professional Accountant in British Columbia.

41. Mr. Sturgeon was terminated by his employer due to his refusal to take a Covid-19 vaccine.

42. Mr. Sturgeon is a Christian. He objects taking a Covid-19 vaccine on the basis of religion. Mr. Sturgeon submitted a request for a religious exemption, but it was denied.

43. Mr. Sturgeon also objects to taking a Covid-19 vaccine on medical grounds. Mr. Sturgeon was given a vaccine during childhood to which he had a severe reaction.

44. In addition, on August 17, 2021, Mr. Sturgeon was diagnosed with the Covid-19 virus. He now has natural immunity to Covid-19 and has undergone an antibody test which shows that he has antibodies to Covid-19.

45. Coupled with his sincerely held religious beliefs that prevent him from taking a Covid-19 vaccine, Mr. Sturgeon has grave concerns about the Covid-19 vaccine's safety, both in relation to short and long-term impacts.

46. Mr. Sturgeon is also opposed to a policy that makes vaccination against Covid-19 mandatory, as it denies his rights and freedoms to make a free choice.

Lori Jane Nelson

47. The petitioner, Lori Jane Nelson, resides in Surrey, BC, and was a Provider Engagement Lead, Clinical Informatics, for the British Columbia Provincial Health Services Authority (PHSA) in Vancouver, BC. Ms. Nelson holds a Bachelor of Science in Nursing (UBC, 1996), as well as a Master of Science in Nursing (UBC, 2005). She is also a Certified Health Executive (CHE) with the Canadian College of Health Leaders and has held this certification for over 15 years.

48. Ms. Nelson has worked for the PHSA for 25 years. Other positions she has held with the PHSA are General Duty Nurse, Clinical Nurse Coordinator, Program Manager, Senior Director, Patient Care Services, and a Clinical Transformation Leader, Redevelopment Project.

49. Ms. Nelson was terminated by her employer due to her refusal to take a Covid-19 vaccine.

50. Ms. Nelson worked solely from home and had a Work from Home Agreement. She did not have contact with patients or public while working and had no need to be within a facility to do her work.

51. Ms. Nelson objects to taking a Covid-19 vaccine on the basis of religious, medical and conscience grounds. Ms. Nelson has severe allergies and has had multiple systemic and anaphylactic reactions in the past. She had reactions to the flu shot in past years. She applied for a medical exemption but was denied. Ms. Nelson is a practicing Christian, and has been all her life. She has sincerely held religious beliefs that prevent her from taking the Covid-19 vaccine. She applied for a religious exemption but it was not granted.

52. Ms. Nelson also objects to being coerced by the state to take a vaccine where there is significant anecdotal evidence of individuals having suffered various adverse reactions.

Ingeborg Keyser

53. The petitioner, Ingeborg Keyser, resides in Kelowna, BC, and is a Communications Advisor for Interior Health. Ms. Keyser has held this position since April 2017. Ms. Keyser graduated from the Tshwane University of Technology in Pretoria, South Africa in 2007, with an International Diploma (three-year course) in Public Relations. Ms. Keyser also completed a bridging course at the University of South Africa to complete all 4th year degree subjects in Communications.

54. Ms. Keyser is not a healthcare worker and does not work in a health care setting.

55. Ms. Keyser was terminated by her employer due to her refusal to take a Covid-19 vaccine.

56. Ms. Keyser worked entirely from home in her position with Interior Health.

57. Ms. Keyser objects to taking a Covid-19 vaccine on medical grounds. Ms. Keyser is pregnant. She states she is unable to know what is right for herself and her unborn baby, given the lack of long-term data regarding the Covid-19 vaccines on pregnancy. She objects to state coercion that would have her take a vaccine that is proving to cause serious adverse reactions in some people.

58. Ms. Keyser suffered a miscarriage in the spring of 2021, at nine weeks' gestation.

Lynda June Hamley

59. Ms. Hamley resides in Nelson, British Columbia. She was employed by Kootenay Society of Community Living ("KCLS") as a residential support worker. KCLS provides care to young men and women with developmental disabilities, living in a group home setting. Ms. Hamley was hired by KCLS in December 2020. She started as a casual support worker and obtained a full-time position with KCLS in November 2021. Ms. Hamley is also a certified Classroom and Community Support Worker. She has worked supporting children with disabilities and challenging behaviours in the school system for 13 years.

60. Until December 9, 2021, Ms. Hamley was supporting three young men and a young woman in their homes as a residential support worker for KCLS.

61. On December 10, 2021, Ms. Hamley was placed on unpaid leave for failing to provide proof of vaccination against Covid-19. She had until January 13, 2022 to become fully vaccinated against Covid-19, otherwise she was advised her employment would be terminated. Ms. Hamley has not had a Covid-19 vaccine. Ms. Hamley has not yet received official notice that her position at KCLS was terminated.

62. Ms. Hamley is a Christian. She objects to taking a Covid-19 vaccine on the basis of religion. Ms. Hamley submitted a request for a religious exemption, but it was denied.

63. Ms. Hamley objects to state coercion that has put her in the profoundly bewildering position of being forced to choose between providing for her family, which would force her to submit to a vaccine that goes against her sincerely held religious beliefs, and potentially being unable to provide for her family.

Melinda Joy Parenteau

64. The Petitioner, Melinda Joy Parenteau is a registered midwife, and previously worked as a private contractor for Apple Tree Maternity ("Apple Tree") in Nelson, BC. She worked for Apple Tree between July 1, 2020, and October 25, 2021.

65. Mrs. Parenteau holds an associate degree in the Science of Midwifery, which she obtained through the National College of Midwives in Taos, New Mexico, USA. In addition, Mrs. Parenteau has completed the International Midwifery Pre-Registration Bridging Program at Ryerson University in Toronto, to enable her to be a registered midwife in Canada

66. Mrs. Parenteau's hospital privileges were removed on October 26, 2021, because she failed to show proof of vaccination for Covid-19 as required by the Hospital and Community Order. She has never had a complaint or disciplinary action taken against her, neither by her College, health authority, or hospital. She has been registered as a midwife in both Manitoba and B.C.

67. Mrs. Parenteau is opposed to the Covid-19 vaccine mandate. She says it violates a fundamental right to make an informed choice, without coercion, to a medical treatment. She has not taken the Covid-19 vaccine. She will not take it under the current mandate which puts her in a position of duress, coercion by the state, and under threat.

68. Mrs. Parenteau is not opposed to vaccines in general and has received many throughout her life. She recognizes there are benefits to vaccines that have been thoroughly tested and proven safe. These Covid-19 vaccines have not completed their testing and clinical trials and not expected to until the end of 2022 and into 2023. This qualifies these vaccines as being in the experimental category. She will not be coerced by the state into taking an experimental vaccine.

69. Mrs. Parenteau is no longer able to practice midwifery, as her license depends on having hospital privileges. Mrs. Parenteau is experiencing financial hardship because she has lost her hospital privileges, and thus her ability to work in her chosen field.

Dr. Joshua Nordine

70. Dr. Nordine resides in Kelowna, BC. He is a family physician, most recently practicing at Rutland Medical Associates, a private clinic in Kelowna. He has practiced there since 2016.

71. Dr. Nordine was also a clinic physician at the Bridge Detox Centre in Kelowna from 2017 until October 2021. Bridge Detox Centre is a clinic operated by Interior Health. He was initially placed on unpaid leave from the Bridge Clinic on October

26, 2021, because he failed to show proof of having taken the Covid-19 vaccines. He also lost his hospital privileges at that time for the same reason.

72. On November 16, 2021, Dr. Nordine's employment with the Bridge Detox Centre was terminated by Interior Health for not having taken the Covid-19 vaccines, as mandated by the Hospital and Community Care Order. His hospital privileges were revoked for the same reason.

73. Between 2013 and 2016, Dr. Nordine was a family physician at Edmonton Imagine Health in Edmonton, AB.

74. Dr. Nordine obtained his medical degree from Jagiellonian University Medical College in Poland. Dr. Nordine is also a licentiate of the Medical Council of Canada

75. Dr. Nordine is a Christian. He objects to taking a Covid-19 vaccine, including Novavax, on religious grounds. Dr. Nordine also objects to taking a Covid-19 vaccine on medical grounds. He submitted a request for an exemption to the vaccine mandate, but it was denied.

76. In addition, in January 2022, Dr. Nordine was diagnosed with the Covid-19 virus. He now has natural immunity to Covid-19. Dr. Nordine points out that the BC Covid therapeutics Committee states natural immunity is the same as having had two doses of a Covid-19 vaccine.

77. While working as a family physician, Dr. Nordine observed many patients suffer adverse reactions to the Covid-19 vaccines. When requested by his patients to do so, Dr. Nordine has reported those adverse reactions to the Canadian Adverse Events Following Immunization office.

78. Dr. Nordine notes there is a general doctor shortage in BC, and this has been the case since before the pandemic. Similarly, he states that hospitals were short-staffed and operating at over-capacity limits prior to Covid-19.

C. Additional Facts

Elizabeth Ringrose

79. Elizabeth Ringrose resides in Vancouver, BC. She is a Registered Nurse in the Day Health Program at the Dr. Peter Centre in Vancouver, BC.

80. Ms. Ringrose has taken two doses of the Pfizer Covid-19 vaccine.

81. Ms. Ringrose took the first dose of the Covid-19 vaccine on or about January 6, 2021. She took the second dose on or about February 19, 2021. Ms. Ringrose

suffered a severe allergic reaction after the second dose of the Covid-19 vaccine in that within 72 hours after that injection, she could not stand up for a period of six hours and had to crawl to the bathroom. She has experienced dizzy spells on and off since this time.

82. As a result of the adverse reactions Ms. Ringrose has suffered after receiving the second dose of the Covid-19 vaccine, she has had to take a medical leave from her position with the Dr. Peter Centre.

83. While still employed, Ms. Ringrose tried to send an adverse reaction form for a person in her care, but the office listed on the BCCDC website did not seem to receive it after 10 facsimile attempts, and then would not confirm the report would go to the appropriate person. Ms. Ringrose's manager told her to stop asking the office if it got to the right place.

Jennifer Koh

84. Jennifer Koh was an Organization Development & Change Management Consultant for the Interior Health Authority ("Interior Health"). She held this position for two years. Prior to this position, Ms. Koh was an Organizational Development Consultant for the Northern Health Authority for approximately 3.5 years.

85. Ms. Koh has a Bachelor of Arts degree, with a major in psychology. She is also a certified Professional Coach (ICF-accredited), a certified Resilience@Work Practitioner, a certified Human Systems Dynamics Practitioner, and a certified Yoga, meditation & breathwork Instructor. She also has multiple other leadership development certifications.

86. From March 2020, Ms. Koh's work for Interior Health was 100% remote. She had no contact with any patients or co-workers.

87. Ms. Koh was terminated by her employer due to her refusal to take a Covid-19 vaccine.

88. Ms. Koh objects to taking the Covid-19 vaccine on the basis of religion. She was raised with the teachings of the Catholic faith. As an adult, since undergoing extensive training in various Vedic meditation and yoga practices, she has followed the Vedic scriptures very closely, and as a result, has a strong spiritual faith. She submitted a request for religious exemption, but it was denied.

89. Ms. Koh believes in bodily sovereignty and the right to choose what goes into her body. She has not been made aware of all the contents of the injections and is concerned. In addition, she is aware of multiple studies which have shown the adverse effects of the experimental injection, including death, disability, and

stillborn births. She is also aware of the number of deaths and adverse reactions reported by the Vaccine Adverse Event Reporting System (VAERS) in the United States. She is also aware that the vaccine companies assume no liability for adverse reactions, and that she will solely bear the burden of any adverse reactions if she takes the injection.

90. On or about November 26, 2021, after being terminated from her job on November 15, 2021, Ms. Koh received a call from a recruiter with a job proposal for two of the other BC health authorities for a remote contract Change Management Consultant position, which is essentially a part of the role she performed as a full-time employee. When Ms. Koh asked about their policy related to remote workers and the vaccine mandate, she was told that the vaccine mandate did not apply to contract workers who work remotely. She also learned that these same contract workers who are not subject to the vaccine mandate are permitted to enter a healthcare facility, provided they do not enter more than once per month.

D. Expert Evidence

91. Vaccinated and unvaccinated persons can be infected with Covid-19.

92. There is no significant difference in the rates at which vaccinated and unvaccinated persons transmit Covid-19.

93. Certain persons suffer serious health consequences as a result of Covid-19 vaccines.

94. Persons under 60 without co-morbidities have an approximately 99.997% chance of recovering from Covid-19.

95. Natural immunity provides protection against infection with Covid-19.

Part 3: LEGAL BASIS

1. This action is for review of Public Health Orders and Guidelines issued by an administrative decision-maker, Dr. Bonnie Henry, Public Health Officer for the Province of British Columbia, who is appointed by the Lieutenant Governor in Council pursuant to section 65 of the *Public Health Act.* The Public Health Orders and Guidelines have the force of law and are government action, and, as such, the *Charter* applies.

2. The Public Health Orders and Guidelines infringe the Petitioners' sections 2(a), 7 and 15 *Charter* rights and the infringements are not justified by section 1 of the

Charter. Section 24(1) of the *Charter* provides that anyone whose rights or freedoms have been infringed may obtain a remedy the court considers just and appropriate. Section 52(1) of the *Constitution Act,1982* provides that to the extent the impugned law is inconsistent with the *Charter,* it is of no force and effect.

3. The Petitioners submit that the Public Health Officer has an ongoing legal obligation to access whether the above orders are still required to protect public health. The Public Health Officer's failure to review, rescind or alter the orders is an ongoing decision by the Public Health Officer that the orders are required to protect public health, and must be justified as proportionate. If the government has failed to even consider whether to change the orders in light of the new evidence regarding transmission and vaccination, then mandamus is available.

1. Infringement of section 7 of the Charter

4. Ordering vaccination as a condition of employment for the petitioners interferes with and infringes their rights to medical self-determination. Section 7 *Charter* rights to life, liberty and security of the person encompass the right of medical self-determination: *Carter v. Canada (Attorney General)* 2015 1 SCR 5 at paras. 64-69; *AC v. Manitoba (Director of Child and Family Services,* 2009 SCC 30; *B(R) v. Children's Aid Society of Metropolitan Toronto,* [1995] 1 SCR 315. Section 7 is also engaged by state interference with an individual's physical or psychological integrity: *Chaoulli v. Quebec (Attorney General)* 2005 SCC 35 at para. 116; *New Brunswick (Minister of Health and Community Services) v. G.(J.)* [1999] 3 S.C.R. 46 at para. 58;

5. Section 7 does not promise that the state will not interfere with life, liberty and security of the person, but that it will not do so except in accordance with the principles of fundamental justice: "While the Court has recognised a number of principles of fundamental justice, three have emerged as central in the recent s. 7 jurisprudence: laws that impinge on life, liberty or security of the person must not be arbitrary, overbroad, or have consequences that are grossly disproportionate to their object": *Carter v. Canada (Attorney General), supra* at paras. 71-72.

6. In assessing whether an impugned law violates the principles of fundamental justice, the object of the law must be given a precise and narrow definition: *Carter v. Canada (Attorney-General), supra* at paras. 73-78. The Petitioners say that the object of the Public Health Orders and the Guidelines is to reduce transmission of Covid-19 to vulnerable persons.

7. The Public Health Orders and Guidelines are over-broad, arbitrary, and disproportionate. The Public Health Orders and Guidelines require vaccination

of persons who work remotely, or in an administrative capacity, or with persons that are not vulnerable to the deleterious effects of Covid-19. For those workers who are in contact with vulnerable persons, the orders do not provide for other options to mandatory vaccination, such as re-assignment of workers to work-places not dealing with vulnerable persons, and/or masking or rapid testing prior to attending the workplace. Finally, the Public Health Orders and Guidelines permit third-party contractors doing work similar to the work of the Petitioners to remain unvaccinated.

2. Infringement of section 2(a) of the *Charter*

8. Vaccine mandates that fail to provide religious and conscientious exemptions infringe section 2(a) *Charter* rights. Section 2(a) of the *Charter* protects the right to freedom of conscience and religion. “Freedom, in a broad sense, embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others, no-one is forced to act in a way contrary to his beliefs or his conscience”: *R v. Big M Drug Mart Ltd,* 1985 CanLII 69 (SCC) at para. 95. Freedom of religion includes the right to ascribe to sincerely held beliefs or conduct that “are not objectively recognised by religious experts as being obligatory tenets or precepts of a particular religion”: *Syndicat Northcrest v. Amselem*, 2004 SCC 47, at paras. 43-51.

9. Freedom of conscience includes the right to act in accordance with a coherent set of beliefs but does not require that the individual asserting freedom of conscience ascribe to an organised religion: *R. v. Morgenthaler,* [1988] 1 SCR 30 at p. 37; *Carter v. Canada (Attorney-General)*, *supra* at para. 132.

10. The unavailability of exemptions on the basis of religion or conscience from the vaccine mandates contained in the Public Health Orders and Guidelines is more than a trivial or insubstantial interference with the petitioners’ section 2(a) *Charter* rights, and consequently, is an infringement of *Charter* section 2(a).

11. Suspension of the right to apply for exemptions is a breach of procedural fairness.

3. Infringement of section 15(1) of the Charter

12. The Public Health Orders and Guidelines treat the Petitioners differently than those workers who have chosen to comply with the orders and accept vaccination as a condition of employment. Section 15(1) of the *Charter* protects equality rights. In *Quebec (Attorney General) v. A,* 2013 SCC 5 at para.169 the LaBel J. stated, after reviewing the s. 15(1) jurisprudence, that a comparator group

analysis would not always sufficiently identify instances of infringements of section 15(1) of the *Charter.* LaBel, J. distilled the section 15(1) test down to two questions at paras. 171:

> "(1) Does the law create a distinction based on an enumerated or analogous ground?
>
> (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?"

13. The Petitioners are discriminated against based on their medical status, that is, as unvaccinated persons. Medical status is a ground analogous to mental or physical disability or citizenship status: *Andrews v. Law Society of British Columbia,* [1989] 1 S.C.R. 143 at p. 164, 183; *Quebec (Attorney General) v. A, supra* at 173-184; *Attorney General of Ontario v. G,* 2020 SCC 38, at para. 43.

14. The Petitioners are not required to establish that unvaccinated persons are historically disadvantaged to make out a claim under s.15(1) of the *Charter*: *Trociuk v. British Columbia (Attorney General)* 2003 SCC 34. However, the Petitioners are, in any case, able to establish that discrimination on the basis of medical status does have historical antecedents.

15. The Petitioners can point to prejudice and stereotyping to make out their claim for infringement. Pervasive prejudice and stereotyping against those not vaccinated for Covid-19 exists in Canada and around the world. Examples of this include: the inflammatory comments made by the Prime Minister of Canada about the unvaccinated as being "misogynists" and "racists"; comments made by the President of France that he wanted to "piss off" the unvaccinated with recent legislation; a recent poll showing that approximately ¼ of the Canadian population supports short jail sentences for the unvaccinatedand Quebec Premier Legault's initial proposal to impose a medical tax on the unvaccinated.

4. Infringements not justified under Section 1 of the *Charter*

16. Because the Public Health Orders have the effect of laws of general application, rather than administrative decisions pertaining specifically to the interests of a particular individual, whether the Public Health Orders are justified under section 1 of the *Charter* is determined by the test set out in *R. v. Oakes*, [1986] 1 SCR 103: *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario,* 2018 ONSC 579, paras. 51-69; ONCA 393 at paras. 58-60; *Carter v. Canada (Attorney General), supra; Doré v. Barreau du Québec,* 2012 SCC 12.

17. In *Doré v. Barreau du Québec, supra,* at para. 36, the Justice Abella stated: "As

explained by Chief Justice McLachlin in *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37… the approach used when reviewing the constitutionality of a law should be distinguished from the approach used for reviewing an administrative decision that is said to violate the rights of a particular individual. When *Charter* values are applied to an individual administrative decision, they are being applied in relation to a particular set of facts. *Dunsmuir* tells us this should attract deference (para. 53; see also *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1…at para.39). When a particular "law" is being assessed for *Charter* compliance, on the other hand, we are dealing with principles of general application."

18. The onus is on the Respondents to prove that the infringements of section 7, 2(a) and 15 of the *Charter* are justified: *R v. Oakes*, *supra.* The Respondents must "show that the law has a pressing and substantial object and that the means chosen are proportional to that object. A law is proportionate if (1) the means adopted are rationally connected to that objective; (2) it is minimally impairing of the rights in question; (3) there is proportionality between the deleterious and salutary effects of the law": *R v. Oakes, supra*; *Carter v. Canada (Attorney General) supra* at para. 94.

19. The object of the Public Health Orders and Guidelines, to prevent transmission of Covid-19 to vulnerable persons, has a pressing and substantial objective, but the means chosen are not proportionate.

20. While a measure of deference is accorded to laws enacted by the legislature to address complex social issues (*Carter v. Attorney General, supra* at paras. 96-99) the Petitioners assert that such deference is not properly applied to the Public Health Orders and Guidelines, which were issued by an unelected official.

21. Some of the Petitioners have experienced serious health consequences because of vaccines or reasonably anticipate experiencing serious health consequences from the Covid-19 vaccine. The Public Health Orders and Guidelines provide no religious or conscientious exemptions at all. The Public Health Orders and Guidelines apply to persons employed in workplaces where no vulnerable persons are at risk. For those workers who are in contact with vulnerable persons, other options are and were available to Public Health Officer Dr. Bonnie Henry, such as re-assignment of unvaccinated workers to a different workplace, and/or providing for rapid testing when unvaccinated workers attend a workplace where vulnerable persons are present. Finally, the Public Health Orders and Guidelines do not consider the impact of natural immunity on rates of infection or transmission.

5. The violations of sections 2(a), 7 and 15 *Charter* rights are not reasonable

22. In the alternative, the Petitioners submit that the Public Health Orders and Guidelines are decisions by an administrative body that engage section 2(a), section 7 and section 15(1) *Charter* rights and are thus subject to a review by the court to determine if the decisions were reasonable, employing the *Doré/Loyola* framework: *Beaudoin v. British Columbia,* 2021 BCSC 512 paras. 119-126; *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817.

23. Delegated authority must be exercised "in light of constitutional guarantees and the values they reflect" (*Doré,* at para. 35). In *Loyola,* this Court explained…"*Charter* values help determine the extent of any given infringement in the particular administrative context, and, correlatively, when limitations on that right are proportionate in light of the applicable statutory objectives": *Law Society of British Columbia v. Trinity Western University,* 2018 SCC 32 at para. 57; *Loyola High School v. Quebec (Attorney General)* 2015 SCC 12 at para. 38; *Doré v. Barreau du Québec*, *supra* at para. 35.

24. Comparing the test applied in *R. v. Oakes, supra,* to the review as to whether a decision of an administrative body is reasonable, the Supreme Court of Canada said "In assessing whether an adjudicated decision violates the *Charter,* however, we are engaged in balancing somewhat different but related considerations, namely, has the decision-maker disproportionately, and therefore unreasonably, limited a *Charter* right. In both cases, we are looking for whether there is an appropriate balance between rights and objectives, and the purpose of both exercises is to ensure that the rights at issue are not unreasonably limited": *Doré v. Barreau du Québec*, *supra* at para.6.

25. The Public Health Orders and the Guidelines are unreasonable. The objectives of the Public Health Orders and Guidelines could be met with measures that do not disproportionally limit the Petitioners' *Charter* rights.

26. The Petitioners are unable to seek review under section 43 of the *Public Health Act* or apply for any exemptions other than the narrow medical exemption provided for by the Public Health Orders and Guidelines. Some of the Petitioners work remotely, others in an administrative capacity, or not even in a health-care setting. No provision was made for Petitioners that do not work with persons who are vulnerable to the deleterious effects of the virus. For Petitioners who do attend facilities where vulnerable persons are present, there is no consideration of whether use of additional personal protective equipment and rapid testing prior to attending the workplace would meet the objectives of the Public Health Orders, not even where the Petitioners attend the workplace occasionally or rarely. No provision for alternate employment was made for those Petitioners who chose not to be vaccinated for religious reasons or

reasons of conscience, or other medical reasons, and who do work with vulnerable persons. The Public Health Orders and Guidelines do not consider the impact of natural immunity on infections with, and transmissibility of, Covid-19. Finally, some third-party contractors doing similar work to the Petitioners are not required to be vaccinated.

27. The effect of the Public Health Orders and Guidelines is to coercively require vaccination, not to protect the health of vulnerable persons.

6. Unreasonable in Accordance with Administrative Law Principles as set out in *Canada (Minister of Citizenship and Immigration)* v. *Vavilov* 2019 SCC 56

28. The Orders are unreasonable and not justified on the factual and legal constraints that bear on the decision.

7. The Health Professionals Order impinges on the statutory powers of the British Columbia College of Physicians and Surgeons, and the British Columbia College of Nurses and Midwives to license and govern their members

29. The British Columbia College of Physicians and Surgeons of B.C. (CPSBC) and the College of Nurses and Midwives (BCCNM) are constituted in accordance with the *Health Professions Act* and makes by-laws for self-governance, which are subject to approval by the Minister of Health. Regulation of members of the CPSBC and BCCNM is by a self-governing body, known as a "College" and an appointed Government licensing board. Section 16 of the *Health Professions Act* provides that the duty and objects of a College governed by the legislation are as follows:

> **Duty and objects of a college**
>
> 16 (1) It is the duty of a college at all times
>
> (a) to serve and protect the public, and
>
> (b) to exercise its powers and discharge its responsibilities under all enactments in the public interest.
>
> (2) A college has the following objects:
>
> (a) to superintend the practice of the profession;
>
> (b) to govern its registrants according to this Act, the regulations and the bylaws of the college;
>
> (c) to establish the conditions or requirements for registration of a person as a member of the college;

(d) to establish, monitor and enforce standards of practice to enhance the quality of practice and reduce incompetent, impaired or unethical practice amongst registrants;
(e) to establish and maintain a continuing competency program to promote high practice standards amongst registrants;
(f) to establish, for a college designated under section 12 (2) (h), a patient relations program to seek to prevent professional misconduct of a sexual nature;
(g) to establish, monitor and enforce standards of professional ethics amongst registrants;
(h) to require registrants to provide to an individual access to the individual's health care records in appropriate circumstances;
(i) to inform individuals of their rights under this Act and the *Freedom of Information and Protection of Privacy Act*;
(i.1) to establish and employ registration, inquiry and discipline procedures that are transparent, objective, impartial and fair;
(j) to administer the affairs of the college and perform its duties and exercise its powers under this Act or other enactments;
(k) in the course of performing its duties and exercising its powers under this Act or other enactments, to promote and enhance the following:
    i. collaborative relations with other colleges, regional health boards designated under the *Health Authorities Act* and other entities in the Provincial health system, post-secondary education institutions and the government;
    ii. interprofessional collaborative practice between its registrants and persons practising another health profession;
    iii. the ability of its registrants to respond and adapt to changes in practice environments, advances in technology and other emerging issues.

30. The privilege of self-regulation is granted to a profession in exchange for the profession's commitment to protecting the public interest; *Law Society of New Brunswick v. Ryan,* 2003 SCC 20. The justification for granting self-governing status to a profession is that the members of the profession are best qualified to ensure proper standards and ethics are maintained: The Privatization of Regulation: Five Models of Self-Regulation, Margot Priest, 1998 Ottawa Law Review 233, 1998 CanLIIDocs 19; Canada's Legal Profession: Self-Regulating in the Public Interest?, John Pearson, Canadian Bar Review, 2015 92-3 2015 CanLIIDocs 230.

31. The decision to grant a profession self-regulating status is one that is made after extensive consideration with all levels of government and representatives of the profession: *College of Midwives of British Columbia v. Mary Moon*, 2019 BCSC 1670. The granted statutory scope of authority over its members of the self-governing profession is meant to protect the public and maintain the independence of professionals from government interference: By Her Own Authority: The Scope of Midwifery Practice under the Ontario Midwifery Act, 1991, 1993 CanLIIDocs 199; What is a "Profession", Peter Wright, Canadian Bar Review 1951 29-7, 1951 CanLIIDocs 230.

32. In the Western world the roots of physician self-governance date back to Hellenic Greek and the Hippocratic Oath; "Self-Regulation was originally instituted at the request of the medical profession because the body of knowledge in the profession was esoteric and unknown to the average citizen, and it would be difficult for external regulation to be as effective": Professionalism: the historical contract, Roger Collier, Canadian Medical Association Journal (CMAJ), August 9 2012. Professional societies of began formally regulating medical practice in or about 1760 in the Western world and by the early 1800, medical societies oversaw establishing regulations, standards of practice and certification of doctors. Professional self-regulation allows the government to have some control over the professional group without maintaining the special expertise that would be needed to regulate the profession. One of the central principles of self-governing professions is a climate of open debate and collegial exchange regarding the issues facing the profession: Professionalism, Governance and Self-Regulation of Medicine, Howard Bauchner, M.D., Phil B. Fontanarosa, M.D. MBA, Amy E. Thompsn, MD, Editorial, May 12, 2015, Journal of the American Medical Association (JAMA) 2015; 313(18).

33. Nursing has been a regulated health profession under British Columbia legislation since 1918. Before designation under the *Health Professions Act*, the profession was regulated under the *Nurses (Registered) Act,* [R.S.B.C. 1996] Chapter 335 (repealed). Practical nursing has been a designated health profession under the *Health Professions Act* since 1996. Midwifery became a designated health profession under the *Health Professions Act* in 1998, although midwifery was practiced in Canada throughout human history in all cultures. In September 2020, the BCCNM was established to govern all three professions.

34. The Health Professionals Order trenches on the common-law and statutorily granted powers of the Colleges to make rules for the admission, licensing, standards of practice, professional ethics, self-governance, and comportment of its members as set out in the *Health Professions Act.* The Health Professionals Order, issued by an unelected official, Dr. Bonnie Henry as Public Health Officer for British Columbia, is neither in the public interest nor consistent with the aims reflected in the legislative and regulatory history of the development of the

CPSBC and BCCNM and the as self-governing professions.

8. The Orders and Guidelines Fetter the Discretion of the Public Health Officer and breach the principles of natural justice

35. It is an abuse of discretion for a statutory decision-maker to fetter its discretion by policy, as the Public Health Officer did when she issued the Public Health Orders and Guidelines restricting available exemptions and the ambit of review under section 43 of the *Public Health Act*, and in doing so, she breached the principles of natural justice.

9. Violation of the right to informed consent

36. The Public Health Orders and Guidelines deprive the Petitioners of their right to informed consent, as required by section 6(a) and (f) of the *Health Care Consent Act.*

10. Violation of privacy

37. The collection of the Petitioners' personally-identifying and Covid-19 vaccination status by employers, contractors and colleges, as authorized by Dr. Henry's Orders are an unjustified violation of the Petitioners' privacy.

~~**11. Violation of the Human Rights Code**~~

~~38. The Public Health Orders offend section 13(1) of the *Human Rights Code*, RSBC 1996 c.210~~

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Anneke Pingo, ~~sworn August 22, 2022,~~ filed September 7, 2022;
2. Affidavit #1 of Phyllis Janet Tatlock, filed June 6, 2022;
3. Affidavit #1 of Laura Koop, filed May 5, 2022;
4. Affidavit #1 of Monika Bielecki, filed June 6, 2022;
5. Affidavit #1 of Scott Macdonald, filed May 5, 2022;
6. Affidavit #1 of Ana Lucia Mateus, filed May 13, 2022;
7. Affidavit #1 of Darold Sturgeon, filed May 3, 2022;
8. Affidavit #1 of Lori Jane Nelson filed May 12, 2022;

9. Affidavit #1 of Ingeborg Keyser, filed June 6, 2022;

10. Affidavit #1 of Lynda June Hamley, filed June 6, 2022;

11. Affidavit #1 of Melinda Joy Parenteau, filed June 9, 2022;

12. Affidavit #1 of Dr. Joshua Nordine, filed September 20, 2022;

13. Affidavit #1 of Elizabeth Ringrose, filed June 2, 2022;

14. Affidavit #1 of Jennifer Koh, filed May 20, 2022;

15. Affidavit #1 of Benneth Johnson, filed August 26, 2022; and,

16. Such further materials this Honourable Court may permit.

The Petitioners estimate that the hearing of the petition will take 10 days .

Date: October 17 , 2022 .....

KAREN BASTOW

To be completed by the court only: Order made [ ] in the terms requested in paragraphs ..... of Part 1 of this petition [ ] with the following variations and additional terms:	
Date: .....[dd/mmm/yyyy].....	..... Signature of [ ] Judge [ ] Master

ORIGINALLY FILED MARCH 16, 2022, AMENDED AUGUST 23, 2022, and FURTHER AMENDED OCTOBER 24, 2022

Court File No.: S-222427
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners

and

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

2ND FURTHER AMENDED PETITION TO THE COURT

ON NOTICE TO:

Deputy Attorney General
Ministry of Attorney General
[redacted]

Dr. Bonnie Henry, Provincial Health Officer
[redacted]

This proceeding is brought for the relief set out in Part 1 below, by

[X] the persons named as petitioners in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioners

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: The Law Courts, 800 Smith Street, Vancouver, B.C.
(2)	The ADDRESS FOR SERVICE of the petitioners is: Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers [redacted]
(3)	The name and office address of the petitioners' lawyers are: Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers [redacted]

[redacted]

Charlene E. Le Beau
Charlene E. Le Beau Law Office
[redacted]

Claim of the Petitioners

Part 1: ORDERS SOUGHT

Pursuant to section 2(1), (2), 7, 5, and 17 of the *Judicial Review Procedure Act,* RSBC 1996, c.241 the Petitioners seek:

1. Declarations pursuant to sections 24(1) and 52(1) of the *Constitution Act,* 1982, Schedule B to the Canada Act 1982 (UK) c.11, that:

   (a) The Order entitled “Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventive Measures – ~~November 18, 2021~~ ~~September 12, 2022~~, April 6, 2023” (Hospital and Community Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act*, S.B.C. 2008, c.28, is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11, specifically,

a. *Charter* section 2(a) (freedom of conscience and religion)
b. *Charter* section 7 (right to life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(b) The Order entitled "Residential Care Covid-19 Preventive Measures – ~~October 21, 2021~~ ~~September 12, 2022~~ April 6, 2023" (Residential Care Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act,* is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Charter*, specifically,

a. *Charter* section 2(a) (freedom of conscience and religion)
b. *Charter* section 7 (right to life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(c) The "Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders" (the Guidelines), that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, which stipulate the process that must be employed in determining a healthcare worker's application for exemption from the Hospital and Community Order and/or from the Residential Care Order, are of no force or effect, as they unjustifiably infringe the rights and freedoms of the Petitioners guaranteed by the *Charter*, specifically,

a. *Charter section 2(a)* (freedom of conscience and religion*)*
b. *Charter* section 7 (life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(d) The Order entitled "Health Professionals Covid-19 Vaccination Status Information and Preventive Measures – June 10, 2022 (the Health Professionals Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39, 53, 54, 56, 57, 67 (2) and 69 of the *Public Health Act,* which mandates the collection, disclosure and reporting of personal information and vaccination status for persons regulated under the *Health Professions Act*, RSBC 1996 c.183 (the "*Health Professions Act"*), is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners

guaranteed by the *Charter,* specifically,

a. *Charter section 2(a)* (freedom of conscience and religion*)*
b. *Charter* section 7 (life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

2. In the alternative, an Order under sections 2(2) and 7 of the *Judicial Review Procedure Act,* in the nature of mandamus or certiorari, quashing and setting aside the entire scheme of the Hospital and Community Order, the Residential Care Order, the Health Professionals Order, and the Guidelines, as being unreasonable;

3. A Declaration that the Hospital and Community Order, the Residential Care Order and the Guidelines issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, improperly fettered her discretion and breached the principles of natural justice by failing to provide a meaningful process for exemptions and reconsideration;

4. A Declaration that the inclusion of the Petitioners as persons covered by the Orders was unreasonable under administrative law principles because of the Orders' improper impact on persons in the position of the Petitioners;

5. In the further alternative, an Order pursuant to section 5(1) of the *Judicial Review Procedure Act,* directing Dr. Bonnie Henry, in her capacity as Public Health Officer for British Columbia, to provide a meaningful process for exemptions and reconsideration for the Petitioners on the basis of religion, conscience and on an expanded medical basis, and/or to allow for accommodation of those workers affected by the Hospital and Community Order, the Residential Care Order and the Guidelines;

6. An Order prohibiting the Respondents from issuing subsequent public health orders of a substantially similar or identical nature;

7. An Order pursuant to section 17 of the *Judicial Review Procedure Act,* that the entire record upon which the Hospital and Community Order, the Residential Care Order, the Guidelines, and the Health Profession Order were based on, and are continued, be filed on this proceeding;

8. A Declaration that the Health Professionals Order exceeds the statutory authority and jurisdiction of the Respondents, as it trenches on the common-law and statutory authority of self-governing professions, granted by the *Health Professions Act* to govern themselves in the public interest in accordance with the legislation, rules and regulations of their respective colleges.

9. A Declaration that vaccination against Covid-19 as a condition of employment for the Petitioners, as set out in the Hospital and Community Order and the Residential Care Order, is a coercive tactic levelled against the Petitioners by the Respondents, and thus deprives the Petitioners of their right to informed consent to vaccination, as required by section 6 (a) to (f) of the *Health Care (Consent) and Care Facility (Admission) Act* RSBC 1996, c.181 (the "*Health Care (Consent) Act*");

10. An Order that the Petitioners are exempt from the vaccination requirements under the Orders issued by Dr. Bonnie Henry on religious, conscience, and medical grounds, as applicable to each Petitioner;

11. A Declaration that the collection of the Petitioners' personally-identifying and Covid-19 vaccination status by employers, contractors and colleges, as authorized by the ‘‘Covid-19 Vaccination Status Information and Preventative Measures" Orders (the "Vaccine Status Orders") issued by Dr. Bonnie Henry between August 20, 2021 and February 28, 2022, and authorized by the Health Professionals Orders first issued on March 7, 2022, and replaced by the Order of June 10, 2022, violates section 26(d) of the *Freedom of Information and Protection of Privacy Act,* RSBC 1996, c.165 ("FIPPA") and section 1(1) of the *Privacy Act,* RSBC 1996, c.373 (the "*Privacy Act*");

12. A Declaration that the Hospital and Community Order, the Residential Care Order and the Health Professionals Order offends section 13(1) of the *Human Rights Code,* RSBC 1996 c.210;

13. Damages pursuant to s. 24(1) of the *Charter* as is found to be appropriate and just in the circumstances of each Petitioner;

14. An extension of time to file supporting materials, including expert affidavits;

15. Costs of this Petition; and,

16. Such further and other relief as the Petitioners may seek and as this Honourable Court deems just and equitable.

Part 2: FACTUAL BASIS

A. The Public Health Orders and Guidelines

1. In the Fall of 2021, B.C. workers in the health care sector became subject to Covid-19 vaccine mandates: those affected workers who refused to take a Covid-19 vaccine were fired from their jobs unless they could prove entitlement to a very narrow medical exemption.

2. The Respondent Dr. Bonnie Henry is British Columbia's Provincial Health Officer, appointed pursuant to Part 6 of the *Public Health Act* and is empowered to issue public health orders to promote and protect public health.

3. The Vaccine Status Orders were issued by Dr. Bonnie Henry between August 20, 2021 and February 28, 2022, and they provided a mechanism to enable employers, operators and contractors to obtain personal information from healthcare practitioners and staff, including his or her personal health number, together with the Covid-19 vaccination status of those individuals, and to compel healthcare practitioners and staff to provide their personal information, including their personal health numbers, as well as their Covid-19 vaccination status, to their employers. The orders also compelled employers and contractors to report the healthcare practitioners' and staff members' personal information and personal health numbers to Dr. Bonnie Henry through an electronic government data base. The first order was issued on August 20, 2021 (Ex. A to affidavit 1 of Anneke Pingo). The second order was issued on August 31, 2021 (Ex. B to affidavit 1 of Anneke Pingo). The third order was issued on September 9, 2021 (Ex. C to affidavit 1 of Anneke Pingo). The fourth order was issued on September 27, 2021 (Ex. D to affidavit 1 of Anneke Pingo), then replaced with the order of October 6, 2021 (Ex. E to affidavit 1 of Anneke Pingo), which was then replaced with the order of February 28, 2022 (Ex. P to affidavit 1 of Anneke Pingo).

4. The initial vaccine mandates were contained in a series of public health orders issued by Dr. Bonnie Henry between September 2, 2021, and November 18, 2021.

5. The vaccine mandate issued under the Residential Care Order was first issued on September 2, 2021 (Ex. F to affidavit 1 of Anneke Pingo), then replaced with the order of October 4, 2021 (Ex. G to affidavit 1 of Anneke Pingo), then replaced with the order of October 8, 2021 (Ex. H to affidavit 1 of Anneke Pingo), ~~and finally~~ then replaced with the order of October 21, 2021 (Ex. I to affidavit 1 of

Anneke Pingo), and finally replaced with the Order of ~~September 12, 2022~~. April 6, 2023.

6. The vaccine mandate issued under the Hospital and Community Order was first issued on October 14, 2021 (Ex. J to affidavit 1 of Anneke Pingo), then replaced with the order of October 21, 2021 (Ex. K to affidavit 1 of Anneke Pingo), then replaced with the order of November 9, 2021 (Ex. L to affidavit 1 of Anneke Pingo), then replaced with the order of November 18, 2021 (Ex. M to affidavit 1 of Anneke Pingo)), and finally replaced with the Order of ~~September 12, 2022~~ April 6, 2023.

7. On November 9, 2021, the vaccine mandates under the Hospital and Community Order were expanded to include administrative staff employed by a regional health authority, the Provincial Health Services Authority, British Columbia Emergency Health Services, and the Providence Health Care Society.

8. On November 18, 2021, the vaccine mandates under the Hospital and Community Order were further expanded to include all staff members of Community Living British Columbia.

9. The Health Professionals Order, initially issued on March 7, 2022 (Ex. Q to affidavit 1 of Anneke Pingo) and replaced by the Order issued on June 10, 2022 (Ex. R to affidavit 1 of Anneke Pingo), compels colleges, as defined by the *Health Professions Act,* to provide personally-identifying information about each of their registrants. The Order further compels the Minister of Health to verify the Covid-19 vaccination status of each registrant, and to disclose that information to the relevant college. The Order compels each registrant, upon request from the college, to provide proof of vaccination, or of an exemption, to the college. The college must record each registrant's vaccination status by March 31, 2022. The college must also disclose to Dr. Henry, upon request, the aggregate information respecting the vaccination status of registrants of their college. The Health Professionals Order was expanded on June 10, 2022 to include post-secondary institutions in relation to registrants applying for admission into health science programs and residency programs and other postgraduate medical education programs, for the purpose of determining the registrants' eligibility to attend at places subject to the Orders. The Health Professionals Order does not mandate the Covid-19 vaccination for healthcare professionals regulated under the *Health Professions Act* and working in private practice. As such, healthcare professionals regulated under the *Health Professions Act* and working in private practice are treated differently than healthcare professionals regulated under the *Health Professions Act* who were employed by a provincial health authority or were working in a residential care facility.

10. Section 43 of the *Public Health Act* provides a meaningful process for persons

affected by public health orders to apply for reconsideration, but that process is effectively eviscerated by these orders.

11. The orders provide that the only exemption that can be applied for under s. 43 for reconsideration is a medical exemption. There is no provision in the orders for exemptions based on religion or conscience. The allowable medical exemption is extremely narrow: “a request for reconsideration…must be made on the basis that the health of the person would be seriously jeopardized…and must follow the guidelines posted on the Provincial Health Officer’s website”.

12. The guidelines for exemption from both the Hospital and Community Order and the Residential Care Order are set out in a document entitled “COVID-19 Vaccination Requirements - Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders”, dated October 8, 2021 (Ex. O to affidavit 1 of Anneke Pingo). An affected person is not able to submit a request for reconsideration even if he or she has additional relevant information that was not reasonably available to the health officer when the orders were issued or varied. Nor is he or she able to submit a request for exemption if he or she has information or a proposal that was not presented to the health officer when the Public Health Orders were issued or varied, that, if implemented, would meet the objective of the Public Health Orders. Nor is an affected person able to request more time to comply with the orders.

13. The above orders will hereinafter be referred to as the “Public Health Orders” except where it is necessary to be specific about which order is being referred to. The Guidelines will hereinafter be referred to as “The Guidelines.”

B. The Petitioners’ Evidence

Phyllis Janet Tatlock

14. The Petitioner Phyllis Janet Tatlock graduated with a nursing diploma from the University of Alberta, School of Nursing in 1992. She completed her nursing degree from the University of Northern British Columbia in 1998 and completed a Masters of Community Health from the University of British Columbia in 2006.

15. Ms. Tatlock lives in Prince George, British Columbia. Ms. Tatlock was a Director of Operations, BC Cancer, under the Provincial Health Services Authority (PHSA) and was employed in that position from March 8, 2021. She worked in an administrative capacity and did not have contact with patients. Other positions Ms. Tatlock has held are:

    a. Manager, Alberta Health Services (January 2021—March 2021)
    b. Executive Director, Alberta Health Services (July 2019-January 2020)

c. Director, Public Health, April 2011-July 2019 Island Health,
d. Director, Maternal/Child Services, Quinte Health Care (Ontario) April 2008-April 2011
e. Manager Research and Community Health Services, Carrier Sekani Family Services (May 2006-April 2008
f. Manager, Home and Community Health Services Northern Health (October 2003--May 2006)
g. Manager Community Health Services Carrier Sekani Family Services (September 1999-October 2003)
h. various nursing positions in the Emergency Department in Northern Health as well as in California, Texas, Washington states from 1993 until 1999.

16. Ms. Tatlock was terminated by her employer due to her refusal to take a Covid-19 vaccine.

17. Ms. Tatlock is a Christian. She objects to taking a Covid-19 vaccine on the basis of religion. Ms. Tatlock submitted a request for a religious exemption to the Occupational Health department of PHSA on October 22, 2021, and it was denied.

18. Ms. Tatlock objects to state coercion that would have her take a vaccine which recent studies show is ineffective at stopping infection or transmission, and whose adverse reaction profile is significant.

Laura Koop

19. The Petitioner, Laura Koop, lives in Canyon, British Columbia. Ms. Koop is a Primary Care (Family) Nurse Practitioner, with a focus on high risk and at-risk populations, such as drug and alcohol abuse, and mental health. She was employed by the Interior Health Authority and held this position from September 2014. Prior to her employment with Interior Health, Ms. Koop was employed in the following capacities:

    a. Nurse Practitioner (family) in remote clinics;
    b. Clinical Coordinator for remote nursing clinics;
    c. Remote Nurse with Certified Remote Nursing Practice;
    d. Nurse Manager in long-term Care;
    e. Instructor (both Care Aide and LPN program) in community college; and,
    f. Staff nurse in long-term care.

20. Ms. Koop was terminated by her employer due to her refusal to take a Covid-19 vaccine.

21. Ms. Koop objects to taking a Covid-19 vaccine on the basis of conscience. She has serious concerns about the safety of the Covid-19 vaccines, mRNA technology and use of fetal tissue in vaccine development. She is concerned about the lack of informed consent, the lack of transparency from pharmaceutical corporations and all levels of Canadian (and international) governments, and the continued changing goals and directives regarding the Covid-19 vaccines.

Monika Bielecki

22. The Petitioner, Monika Bielecki, resides in Kelowna, British Columbia. Ms. Bielecki is an Employee Health and Wellness Advisor with BC Interior Health. She held this position from October 2015.

23. Ms. Bielecki holds Bachelor of Arts degree in Psychology. She is also qualified as a Certified Vocational Rehabilitation Professional. She has extensive experience, since 2001, in claims adjudication, rehabilitation services, disability management, and workplace accommodation process.

24. In her role as an Employee Health and Wellness Advisor with Interior Health, Ms. Bielecki worked remotely from February 10, 2016. Since that day, she did not have a designated workspace in any of the Interior Health sites and has worked entirely from home via phone and email up to the time of termination of employment. A Flexible Work Location Participation Agreement and Safety Checklist was formally signed by Ms. Bielecki's manager on September 30, 2019.

25. Between 2016 and 2019, Ms. Bielecki attended the occasional team meeting in the office, but as members of their team were from various cities in the Interior Health region, there always was an option to attend by teleconference and some of Ms. Bielecki's teammates did so. As the pandemic began, they started using Zoom meetings and in-person meetings were not organized by her department.

26. Ms. Bielecki was terminated by her employer due to her refusal to take a Covid-19 vaccine.

27. Ms. Bielecki objects to taking the Covid-19 vaccine on the basis of conscience. She states that acceptance of any medical intervention is her personal choice, based on her health status and risk factors. She objects to state coercion that overrides her personal autonomy, especially where recent studies show the vaccine is ineffective at stopping infection or transmission, and where the vaccine is known to have serious adverse reactions.

Scott Macdonald

28. The Petitioner, Scott Macdonald, resides in Vancouver, BC, and was a

Registered Art Therapist at the Dr. Peter Centre in Vancouver. He was employed in this position for 11 years. Mr. Macdonald holds a Bachelor of Physical Education from the University of British Columbia, as well as a Diploma from the Vancouver Art Therapy Institute.

29. Mr. Macdonald was terminated by his employer due to his refusal to take a Covid-19 vaccine.

30. Mr. MacDonald is also not able to fulfill his duties with Teddy's Homes, where he had been working for the last four years as a casual respite support worker with foster children, because the Hospital and Community Order applies to residential facilities licensed under the *Community Care and Assisted Living Act.* All unvaccinated workers are not permitted to enter any of the resources.

31. Mr. Macdonald objects to taking a Covid-19 vaccine on the basis of conscience, and for medical reasons. He believes he is not in a demographic of high risk for Covid-19, nor is the prevalence of severe symptoms/death of Covid-19 (alone) statistically significant. Mr. Macdonald is concerned that the vaccines were rushed to market by the pharmaceutical companies, and that they raced against each other to be the first to offer the vaccine. Mr. Macdonald has also had adverse reactions to the flu vaccine in the past.

32. Mr. Macdonald does not trust the BC Coastal Health Authority to have its workers' best interests in mind. He states the health authority has already been known to implement policies that are punitive to healthcare workers, and that are injurious to the patients they are supposed to be caring for.

Ana Lucia Mateus

33. The Petitioner, Ana Lucia Mateus, resides in Burnaby, British Columbia, and was employed by Vancouver Coastal Health (VCH). She worked as an Administrative Assistant for the Health Authority Medical Advisory Committee. This committee has approximately 50 members of all senior levels in the organization and reports to the Board. Ms. Mateus also provided credentialing and privileging support to all the sites throughout VCH, in the department of Physician Relations and Compensation. She had always worked in the corporate areas of administration for VCH.

34. Ms. Mateus has a Legal Assistant diploma from Capilano College in North Vancouver, BC. Ms. Mateus worked for VCH for over 16 years (since May 2005). She first started as a Legal Assistant in VCH's legal department before moving to Physician Relations and Compensation.

35. Ms. Mateus had worked full time from home since March 13, 2020, due to the

Covid-19 pandemic and the consequential public health protocols implemented by her employer.

36. Ms. Mateus was terminated by her employer due to her refusal to take a Covid-19 vaccine.

37. Ms. Mateus objects to taking the Covid-19 vaccine on the basis of conscience. She believes there are too many unanswered questions regarding the Covid-19 vaccines, and that they were rushed to market. She is also concerned that the pharmaceutical companies have no liability in relation to the Covid-19 vaccines. She objects to state coercion and believes in freedom of choice.

Darold Sturgeon

38. The Petitioner, Darold Sturgeon, resides in West Kelowna and was an Executive Director, Medical Affairs for Interior Health. He held senior director positions with Interior Health for 14.5 years. Mr. Sturgeon did not work in a health care setting and is not a health care worker.

39. Previous positions held by Mr. Sturgeon are Corporate Director Financial Services for Interior Health BC, VP Finance, Chief Financial Officer (Cypress Health Region – Saskatchewan), Chief Financial Officer (Regional Municipality of Wood Buffalo - Alberta), and VP Finance & Administration (East Central Health District – Saskatchewan).

40. Mr. Sturgeon holds a Bachelor of Administration (Distinction), from the University of Regina. He is also a Chartered Professional Accountant in British Columbia.

41. Mr. Sturgeon was terminated by his employer due to his refusal to take a Covid-19 vaccine.

42. Mr. Sturgeon is a Christian. He objects taking a Covid-19 vaccine on the basis of religion. Mr. Sturgeon submitted a request for a religious exemption, but it was denied.

43. Mr. Sturgeon also objects to taking a Covid-19 vaccine on medical grounds. Mr. Sturgeon was given a vaccine during childhood to which he had a severe reaction.

44. In addition, on August 17, 2021, Mr. Sturgeon was diagnosed with the Covid-19 virus. He now has natural immunity to Covid-19 and has undergone an antibody test which shows that he has antibodies to Covid-19.

45. Coupled with his sincerely held religious beliefs that prevent him from taking a Covid-19 vaccine, Mr. Sturgeon has grave concerns about the Covid-19 vaccine’s

safety, both in relation to short and long-term impacts.

46. Mr. Sturgeon is also opposed to a policy that makes vaccination against Covid-19 mandatory, as it denies his rights and freedoms to make a free choice.

Lori Jane Nelson

47. The petitioner, Lori Jane Nelson, resides in Surrey, BC, and was a Provider Engagement Lead, Clinical Informatics, for the British Columbia Provincial Health Services Authority (PHSA) in Vancouver, BC. Ms. Nelson holds a Bachelor of Science in Nursing (UBC, 1996), as well as a Master of Science in Nursing (UBC, 2005). She is also a Certified Health Executive (CHE) with the Canadian College of Health Leaders and has held this certification for over 15 years.

48. Ms. Nelson has worked for the PHSA for 25 years. Other positions she has held with the PHSA are General Duty Nurse, Clinical Nurse Coordinator, Program Manager, Senior Director, Patient Care Services, and a Clinical Transformation Leader, Redevelopment Project.

49. Ms. Nelson was terminated by her employer due to her refusal to take a Covid-19 vaccine.

50. Ms. Nelson worked solely from home and had a Work from Home Agreement. She did not have contact with patients or public while working and had no need to be within a facility to do her work.

51. Ms. Nelson objects to taking a Covid-19 vaccine on the basis of religious, medical and conscience grounds. Ms. Nelson has severe allergies and has had multiple systemic and anaphylactic reactions in the past. She had reactions to the flu shot in past years. She applied for a medical exemption but was denied. Ms. Nelson is a practicing Christian, and has been all her life. She has sincerely held religious beliefs that prevent her from taking the Covid-19 vaccine. She applied for a religious exemption but it was not granted.

52. Ms. Nelson also objects to being coerced by the state to take a vaccine where there is significant anecdotal evidence of individuals having suffered various adverse reactions.

Ingeborg Keyser

53. The petitioner, Ingeborg Keyser, resides in Kelowna, BC, and is a Communications Advisor for Interior Health. Ms. Keyser has held this position since April 2017. Ms. Keyser graduated from the Tshwane University of Technology in Pretoria, South Africa in 2007, with an International Diploma (three-year course) in Public Relations. Ms. Keyser also completed a bridging

course at the University of South Africa to complete all 4th year degree subjects in Communications.

54. Ms. Keyser is not a healthcare worker and does not work in a health care setting.

55. Ms. Keyser was terminated by her employer due to her refusal to take a Covid-19 vaccine.

56. Ms. Keyser worked entirely from home in her position with Interior Health.

57. Ms. Keyser objects to taking a Covid-19 vaccine on medical grounds. Ms. Keyser is pregnant. She states she is unable to know what is right for herself and her unborn baby, given the lack of long-term data regarding the Covid-19 vaccines on pregnancy. She objects to state coercion that would have her take a vaccine that is proving to cause serious adverse reactions in some people.

58. Ms. Keyser suffered a miscarriage in the spring of 2021, at nine weeks' gestation.

Lynda June Hamley

59. Ms. Hamley resides in Nelson, British Columbia. She was employed by Kootenay Society of Community Living ("KCLS") as a residential support worker. KCLS provides care to young men and women with developmental disabilities, living in a group home setting. Ms. Hamley was hired by KCLS in December 2020. She started as a casual support worker and obtained a full-time position with KCLS in November 2021. Ms. Hamley is also a certified Classroom and Community Support Worker. She has worked supporting children with disabilities and challenging behaviours in the school system for 13 years.

60. Until December 9, 2021, Ms. Hamley was supporting three young men and a young woman in their homes as a residential support worker for KCLS.

61. On December 10, 2021, Ms. Hamley was placed on unpaid leave for failing to provide proof of vaccination against Covid-19. She had until January 13, 2022 to become fully vaccinated against Covid-19, otherwise she was advised her employment would be terminated. Ms. Hamley has not had a Covid-19 vaccine. Ms. Hamley has not yet received official notice that her position at KCLS was terminated.

62. Ms. Hamley is a Christian. She objects to taking a Covid-19 vaccine on the basis of religion. Ms. Hamley submitted a request for a religious exemption, but it was denied.

63. Ms. Hamley objects to state coercion that has put her in the profoundly bewildering position of being forced to choose between providing for her family,

which would force her to submit to a vaccine that goes against her sincerely held religious beliefs, and potentially being unable to provide for her family.

Melinda Joy Parenteau

64. The Petitioner, Melinda Joy Parenteau is a registered midwife, and previously worked as a private contractor for Apple Tree Maternity ("Apple Tree") in Nelson, BC. She worked for Apple Tree between July 1, 2020, and October 25, 2021.

65. Mrs. Parenteau holds an associate degree in the Science of Midwifery, which she obtained through the National College of Midwives in Taos, New Mexico, USA. In addition, Mrs. Parenteau has completed the International Midwifery Pre-Registration Bridging Program at Ryerson University in Toronto, to enable her to be a registered midwife in Canada

66. Mrs. Parenteau's hospital privileges were removed on October 26, 2021, because she failed to show proof of vaccination for Covid-19 as required by the Hospital and Community Order. She has never had a complaint or disciplinary action taken against her, neither by her College, health authority, or hospital. She has been registered as a midwife in both Manitoba and B.C.

67. Mrs. Parenteau is opposed to the Covid-19 vaccine mandate. She says it violates a fundamental right to make an informed choice, without coercion, to a medical treatment. She has not taken the Covid-19 vaccine. She will not take it under the current mandate which puts her in a position of duress, coercion by the state, and under threat.

68. Mrs. Parenteau is not opposed to vaccines in general and has received many throughout her life. She recognizes there are benefits to vaccines that have been thoroughly tested and proven safe. These Covid-19 vaccines have not completed their testing and clinical trials and not expected to until the end of 2022 and into 2023. This qualifies these vaccines as being in the experimental category. She will not be coerced by the state into taking an experimental vaccine.

69. Mrs. Parenteau is no longer able to practice midwifery, as her license depends on having hospital privileges. Mrs. Parenteau is experiencing financial hardship because she has lost her hospital privileges, and thus her ability to work in her chosen field.

Dr. Joshua Nordine

70. Dr. Nordine resides in Kelowna, BC. He is a family physician, most recently practicing at Rutland Medical Associates, a private clinic in Kelowna. He has practiced there since 2016.

71. Dr. Nordine was also a clinic physician at the Bridge Detox Centre in Kelowna from 2017 until October 2021. Bridge Detox Centre is a clinic operated by Interior Health. He was initially placed on unpaid leave from the Bridge Clinic on October 26, 2021, because he failed to show proof of having taken the Covid-19 vaccines. He also lost his hospital privileges at that time for the same reason.

72. On November 16, 2021, Dr. Nordine's employment with the Bridge Detox Centre was terminated by Interior Health for not having taken the Covid-19 vaccines, as mandated by the Hospital and Community Care Order. His hospital privileges were revoked for the same reason.

73. Between 2013 and 2016, Dr. Nordine was a family physician at Edmonton Imagine Health in Edmonton, AB.

74. Dr. Nordine obtained his medical degree from Jagiellonian University Medical College in Poland. Dr. Nordine is also a licentiate of the Medical Council of Canada

75. Dr. Nordine is a Christian. He objects to taking a Covid-19 vaccine, including Novavax, on religious grounds. Dr. Nordine also objects to taking a Covid-19 vaccine on medical grounds. He submitted a request for an exemption to the vaccine mandate, but it was denied.

76. In addition, in January 2022, Dr. Nordine was diagnosed with the Covid-19 virus. He now has natural immunity to Covid-19. Dr. Nordine points out that the BC Covid therapeutics Committee states natural immunity is the same as having had two doses of a Covid-19 vaccine.

77. While working as a family physician, Dr. Nordine observed many patients suffer adverse reactions to the Covid-19 vaccines. When requested by his patients to do so, Dr. Nordine has reported those adverse reactions to the Canadian Adverse Events Following Immunization office.

78. Dr. Nordine notes there is a general doctor shortage in BC, and this has been the case since before the pandemic. Similarly, he states that hospitals were short-staffed and operating at over-capacity limits prior to Covid-19.

C. Additional Facts

Elizabeth Ringrose

79. Elizabeth Ringrose resides in Vancouver, BC. She is a Registered Nurse in the Day Health Program at the Dr. Peter Centre in Vancouver, BC.

80. Ms. Ringrose has taken two doses of the Pfizer Covid-19 vaccine.

81. Ms. Ringrose took the first dose of the Covid-19 vaccine on or about January 6, 2021. She took the second dose on or about February 19, 2021. Ms. Ringrose suffered a severe allergic reaction after the second dose of the Covid-19 vaccine in that within 72 hours after that injection, she could not stand up for a period of six hours and had to crawl to the bathroom. She has experienced dizzy spells on and off since this time.

82. As a result of the adverse reactions Ms. Ringrose has suffered after receiving the second dose of the Covid-19 vaccine, she has had to take a medical leave from her position with the Dr. Peter Centre.

83. While still employed, Ms. Ringrose tried to send an adverse reaction form for a person in her care, but the office listed on the BCCDC website did not seem to receive it after 10 facsimile attempts, and then would not confirm the report would go to the appropriate person. Ms. Ringrose's manager told her to stop asking the office if it got to the right place.

Jennifer Koh

84. Jennifer Koh was an Organization Development & Change Management Consultant for the Interior Health Authority ("Interior Health"). She held this position for two years. Prior to this position, Ms. Koh was an Organizational Development Consultant for the Northern Health Authority for approximately 3.5 years.

85. Ms. Koh has a Bachelor of Arts degree, with a major in psychology. She is also a certified Professional Coach (ICF-accredited), a certified Resilience@Work Practitioner, a certified Human Systems Dynamics Practitioner, and a certified Yoga, meditation & breathwork Instructor. She also has multiple other leadership development certifications.

86. From March 2020, Ms. Koh's work for Interior Health was 100% remote. She had no contact with any patients or co-workers.

87. Ms. Koh was terminated by her employer due to her refusal to take a Covid-19 vaccine.

88. Ms. Koh objects to taking the Covid-19 vaccine on the basis of religion. She was raised with the teachings of the Catholic faith. As an adult, since undergoing extensive training in various Vedic meditation and yoga practices, she has followed the Vedic scriptures very closely, and as a result, has a strong spiritual faith. She submitted a request for religious exemption, but it was denied.

89. Ms. Koh believes in bodily sovereignty and the right to choose what goes into her body. She has not been made aware of all the contents of the injections and is

concerned. In addition, she is aware of multiple studies which have shown the adverse effects of the experimental injection, including death, disability, and stillborn births. She is also aware of the number of deaths and adverse reactions reported by the Vaccine Adverse Event Reporting System (VAERS) in the United States. She is also aware that the vaccine companies assume no liability for adverse reactions, and that she will solely bear the burden of any adverse reactions if she takes the injection.

90. On or about November 26, 2021, after being terminated from her job on November 15, 2021, Ms. Koh received a call from a recruiter with a job proposal for two of the other BC health authorities for a remote contract Change Management Consultant position, which is essentially a part of the role she performed as a full-time employee. When Ms. Koh asked about their policy related to remote workers and the vaccine mandate, she was told that the vaccine mandate did not apply to contract workers who work remotely. She also learned that these same contract workers who are not subject to the vaccine mandate are permitted to enter a healthcare facility, provided they do not enter more than once per month.

D. Expert Evidence

91. Vaccinated and unvaccinated persons can be infected with Covid-19.

92. There is no significant difference in the rates at which vaccinated and unvaccinated persons transmit Covid-19.

93. Certain persons suffer serious health consequences as a result of Covid-19 vaccines.

94. Persons under 60 without co-morbidities have an approximately 99.997% chance of recovering from Covid-19.

95. Natural immunity provides protection against infection with Covid-19.

Part 3: LEGAL BASIS

1. This action is for review of Public Health Orders and Guidelines issued by an administrative decision-maker, Dr. Bonnie Henry, Public Health Officer for the Province of British Columbia, who is appointed by the Lieutenant Governor in Council pursuant to section 65 of the *Public Health Act.* The Public Health Orders and Guidelines have the force of law and are government action, and, as such, the *Charter* applies.

2. The Public Health Orders and Guidelines infringe the Petitioners' sections 2(a), 7 and 15 *Charter* rights and the infringements are not justified by section 1 of the *Charter*. Section 24(1) of the *Charter* provides that anyone whose rights or freedoms have been infringed may obtain a remedy the court considers just and appropriate. Section 52(1) of the *Constitution Act,1982* provides that to the extent the impugned law is inconsistent with the *Charter,* it is of no force and effect.

3. The Petitioners submit that the Public Health Officer has an ongoing legal obligation to access whether the above orders are still required to protect public health. The Public Health Officer's failure to review, rescind or alter the orders is an ongoing decision by the Public Health Officer that the orders are required to protect public health, and must be justified as proportionate. If the government has failed to even consider whether to change the orders in light of the new evidence regarding transmission and vaccination, then mandamus is available.

1. Infringement of section 7 of the Charter

4. Ordering vaccination as a condition of employment for the petitioners interferes with and infringes their rights to medical self-determination. Section 7 *Charter* rights to life, liberty and security of the person encompass the right of medical self-determination: *Carter v. Canada (Attorney General)* 2015 1 SCR 5 at paras. 64-69; *AC v. Manitoba (Director of Child and Family Services,* 2009 SCC 30; *B(R) v. Children's Aid Society of Metropolitan Toronto,* [1995] 1 SCR 315. Section 7 is also engaged by state interference with an individual's physical or psychological integrity: *Chaoulli v. Quebec (Attorney General)* 2005 SCC 35 at para. 116; *New Brunswick (Minister of Health and Community Services) v. G.(J.)* [1999] 3 S.C.R. 46 at para. 58;

5. Section 7 does not promise that the state will not interfere with life, liberty and security of the person, but that it will not do so except in accordance with the principles of fundamental justice: "While the Court has recognised a number of principles of fundamental justice, three have emerged as central in the recent s. 7 jurisprudence: laws that impinge on life, liberty or security of the person must not be arbitrary, overbroad, or have consequences that are grossly disproportionate to their object": *Carter v. Canada (Attorney General), supra* at paras. 71-72.

6. In assessing whether an impugned law violates the principles of fundamental justice, the object of the law must be given a precise and narrow definition: *Carter v. Canada (Attorney-General), supra* at paras. 73-78. The Petitioners say that the object of the Public Health Orders and the Guidelines is to reduce transmission of Covid-19 to vulnerable persons.

7. The Public Health Orders and Guidelines are over-broad, arbitrary, and disproportionate. The Public Health Orders and Guidelines require vaccination of persons who work remotely, or in an administrative capacity, or with persons that are not vulnerable to the deleterious effects of Covid-19. For those workers who are in contact with vulnerable persons, the orders do not provide for other options to mandatory vaccination, such as re-assignment of workers to work-places not dealing with vulnerable persons, and/or masking or rapid testing prior to attending the workplace. Finally, the Public Health Orders and Guidelines permit third-party contractors doing work similar to the work of the Petitioners to remain unvaccinated.

2. Infringement of section 2(a) of the *Charter*

8. Vaccine mandates that fail to provide religious and conscientious exemptions infringe section 2(a) *Charter* rights. Section 2(a) of the *Charter* protects the right to freedom of conscience and religion. “Freedom, in a broad sense, embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others, no-one is forced to act in a way contrary to his beliefs or his conscience”: *R v. Big M Drug Mart Ltd,* 1985 CanLII 69 (SCC) at para. 95. Freedom of religion includes the right to ascribe to sincerely held beliefs or conduct that “are not objectively recognised by religious experts as being obligatory tenets or precepts of a particular religion”: *Syndicat Northcrest v. Amselem*, 2004 SCC 47, at paras. 43-51.

9. Freedom of conscience includes the right to act in accordance with a coherent set of beliefs but does not require that the individual asserting freedom of conscience ascribe to an organised religion: *R. v. Morgenthaler,* [1988] 1 SCR 30 at p. 37; *Carter v. Canada (Attorney-General)*, *supra* at para. 132.

10. The unavailability of exemptions on the basis of religion or conscience from the vaccine mandates contained in the Public Health Orders and Guidelines is more than a trivial or insubstantial interference with the petitioners’ section 2(a) *Charter* rights, and consequently, is an infringement of *Charter* section 2(a).

11. Suspension of the right to apply for exemptions is a breach of procedural fairness.

3. Infringement of section 15(1) of the Charter

12. The Public Health Orders and Guidelines treat the Petitioners differently than those workers who have chosen to comply with the orders and accept vaccination as a condition of employment. Section 15(1) of the *Charter* protects equality

rights. In *Quebec (Attorney General) v. A,* 2013 SCC 5 at para.169 the LaBel J. stated, after reviewing the s. 15(1) jurisprudence, that a comparator group analysis would not always sufficiently identify instances of infringements of section 15(1) of the *Charter.* LaBel, J. distilled the section 15(1) test down to two questions at paras. 171:

> "(1) Does the law create a distinction based on an enumerated or analogous ground?
>
> (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?"

13. The Petitioners are discriminated against based on their medical status, that is, as unvaccinated persons. Medical status is a ground analogous to mental or physical disability or citizenship status: *Andrews v. Law Society of British Columbia,* [1989] 1 S.C.R. 143 at p. 164, 183; *Quebec (Attorney General) v. A, supra* at 173-184; *Attorney General of Ontario v. G,* 2020 SCC 38, at para. 43.

14. The Petitioners are not required to establish that unvaccinated persons are historically disadvantaged to make out a claim under s.15(1) of the *Charter*: *Trociuk v. British Columbia (Attorney General)* 2003 SCC 34. However, the Petitioners are, in any case, able to establish that discrimination on the basis of medical status does have historical antecedents.

15. The Petitioners can point to prejudice and stereotyping to make out their claim for infringement. Pervasive prejudice and stereotyping against those not vaccinated for Covid-19 exists in Canada and around the world. Examples of this include: the inflammatory comments made by the Prime Minister of Canada about the unvaccinated as being "misogynists" and "racists"; comments made by the President of France that he wanted to "piss off" the unvaccinated with recent legislation; a recent poll showing that approximately ¼ of the Canadian population supports short jail sentences for the unvaccinated and Quebec Premier Legault's initial proposal to impose a medical tax on the unvaccinated.

4. Infringements not justified under Section 1 of the *Charter*

16. Because the Public Health Orders have the effect of laws of general application, rather than administrative decisions pertaining specifically to the interests of a particular individual, whether the Public Health Orders are justified under section 1 of the *Charter* is determined by the test set out in *R. v. Oakes*, [1986] 1 SCR 103: *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario,* 2018 ONSC 579, paras. 51-69; ONCA 393 at paras. 58-60; *Carter v. Canada (Attorney General), supra; Doré v. Barreau du Québec,* 2012 SCC 12.

17. In *Doré v. Barreau du Québec, supra,* at para. 36, the Justice Abella stated: “As explained by Chief Justice McLachlin in *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37… the approach used when reviewing the constitutionality of a law should be distinguished from the approach used for reviewing an administrative decision that is said to violate the rights of a particular individual. When *Charter* values are applied to an individual administrative decision, they are being applied in relation to a particular set of facts. *Dunsmuir* tells us this should attract deference (para. 53; see also *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1…at para.39). When a particular “law” is being assessed for *Charter* compliance, on the other hand, we are dealing with principles of general application.”

18. The onus is on the Respondents to prove that the infringements of section 7, 2(a) and 15 of the *Charter* are justified: *R v. Oakes*, *supra.* The Respondents must “show that the law has a pressing and substantial object and that the means chosen are proportional to that object. A law is proportionate if (1) the means adopted are rationally connected to that objective; (2) it is minimally impairing of the rights in question; (3) there is proportionality between the deleterious and salutary effects of the law”: *R v. Oakes, supra*; *Carter v. Canada (Attorney General) supra* at para. 94.

19. The object of the Public Health Orders and Guidelines, to prevent transmission of Covid-19 to vulnerable persons, has a pressing and substantial objective, but the means chosen are not proportionate.

20. While a measure of deference is accorded to laws enacted by the legislature to address complex social issues (*Carter v. Attorney General, supra* at paras. 96-99) the Petitioners assert that such deference is not properly applied to the Public Health Orders and Guidelines, which were issued by an unelected official.

21. Some of the Petitioners have experienced serious health consequences because of vaccines or reasonably anticipate experiencing serious health consequences from the Covid-19 vaccine. The Public Health Orders and Guidelines provide no religious or conscientious exemptions at all. The Public Health Orders and Guidelines apply to persons employed in workplaces where no vulnerable persons are at risk. For those workers who are in contact with vulnerable persons, other options are and were available to Public Health Officer Dr. Bonnie Henry, such as re-assignment of unvaccinated workers to a different workplace, and/or providing for rapid testing when unvaccinated workers attend a workplace where vulnerable persons are present. Finally, the Public Health Orders and Guidelines do not consider the impact of natural immunity on rates of infection or transmission.

5. The violations of sections 2(a), 7 and 15 *Charter* rights are not reasonable

22. In the alternative, the Petitioners submit that the Public Health Orders and Guidelines are decisions by an administrative body that engage section 2(a), section 7 and section 15(1) *Charter* rights and are thus subject to a review by the court to determine if the decisions were reasonable, employing the *Doré/Loyola* framework: *Beaudoin v. British Columbia,* 2021 BCSC 512 paras. 119-126; *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817.

23. Delegated authority must be exercised "in light of constitutional guarantees and the values they reflect" (*Doré,* at para. 35). In *Loyola,* this Court explained…"*Charter* values help determine the extent of any given infringement in the particular administrative context, and, correlatively, when limitations on that right are proportionate in light of the applicable statutory objectives": *Law Society of British Columbia v. Trinity Western University,* 2018 SCC 32 at para. 57; *Loyola High School v. Quebec (Attorney General)* 2015 SCC 12 at para. 38; *Doré v. Barreau du Québec*, *supra* at para. 35.

24. Comparing the test applied in *R. v. Oakes, supra,* to the review as to whether a decision of an administrative body is reasonable, the Supreme Court of Canada said "In assessing whether an adjudicated decision violates the *Charter,* however, we are engaged in balancing somewhat different but related considerations, namely, has the decision-maker disproportionately, and therefore unreasonably, limited a *Charter* right. In both cases, we are looking for whether there is an appropriate balance between rights and objectives, and the purpose of both exercises is to ensure that the rights at issue are not unreasonably limited": *Doré v. Barreau du Québec*, *supra* at para.6.

25. The Public Health Orders and the Guidelines are unreasonable. The objectives of the Public Health Orders and Guidelines could be met with measures that do not disproportionally limit the Petitioners' *Charter* rights.

26. The Petitioners are unable to seek review under section 43 of the *Public Health Act* or apply for any exemptions other than the narrow medical exemption provided for by the Public Health Orders and Guidelines. Some of the Petitioners work remotely, others in an administrative capacity, or not even in a health-care setting. No provision was made for Petitioners that do not work with persons who are vulnerable to the deleterious effects of the virus. For Petitioners who do attend facilities where vulnerable persons are present, there is no consideration of whether use of additional personal protective equipment and rapid testing prior to attending the workplace would meet the objectives of the Public Health Orders, not even where the Petitioners attend the workplace occasionally or rarely. No provision for alternate employment was made for

those Petitioners who chose not to be vaccinated for religious reasons or reasons of conscience, or other medical reasons, and who do work with vulnerable persons. The Public Health Orders and Guidelines do not consider the impact of natural immunity on infections with, and transmissibility of, Covid-19. Finally, some third-party contractors doing similar work to the Petitioners are not required to be vaccinated.

27. The effect of the Public Health Orders and Guidelines is to coercively require vaccination, not to protect the health of vulnerable persons.

6. Unreasonable in Accordance with Administrative Law Principles as set out in *Canada (Minister of Citizenship and Immigration*) v. *Vavilov* 2019 SCC 56

28. The Orders are unreasonable and not justified on the factual and legal constraints that bear on the decision.

7. The Health Professionals Order impinges on the statutory powers of the British Columbia College of Physicians and Surgeons, and the British Columbia College of Nurses and Midwives to license and govern their members

29. The British Columbia College of Physicians and Surgeons of B.C. (CPSBC) and the College of Nurses and Midwives (BCCNM) are constituted in accordance with the *Health Professions Act* and makes by-laws for self-governance, which are subject to approval by the Minister of Health. Regulation of members of the CPSBC and BCCNM is by a self-governing body, known as a "College" and an appointed Government licensing board. Section 16 of the *Health Professions Act* provides that the duty and objects of a College governed by the legislation are as follows:

> **Duty and objects of a college**
> 16 (1) It is the duty of a college at all times
> (a) to serve and protect the public, and
> (b) to exercise its powers and discharge its responsibilities under all enactments in the public interest.
> (2) A college has the following objects:
>
> (a) to superintend the practice of the profession;
> (b) to govern its registrants according to this Act, the regulations and the bylaws of the college;
> (c) to establish the conditions or requirements for registration of a person as a member of the college;

(d) to establish, monitor and enforce standards of practice to enhance the quality of practice and reduce incompetent, impaired or unethical practice amongst registrants;
(e) to establish and maintain a continuing competency program to promote high practice standards amongst registrants;
(f) to establish, for a college designated under section 12 (2) (h), a patient relations program to seek to prevent professional misconduct of a sexual nature;
(g) to establish, monitor and enforce standards of professional ethics amongst registrants;
(h) to require registrants to provide to an individual access to the individual's health care records in appropriate circumstances;
(i) to inform individuals of their rights under this Act and the *Freedom of Information and Protection of Privacy Act*;
(i.1) to establish and employ registration, inquiry and discipline procedures that are transparent, objective, impartial and fair;
(j) to administer the affairs of the college and perform its duties and exercise its powers under this Act or other enactments;
(k) in the course of performing its duties and exercising its powers under this Act or other enactments, to promote and enhance the following:
    i. collaborative relations with other colleges, regional health boards designated under the *Health Authorities Act* and other entities in the Provincial health system, post-secondary education institutions and the government;
    ii. interprofessional collaborative practice between its registrants and persons practising another health profession;
    iii. the ability of its registrants to respond and adapt to changes in practice environments, advances in technology and other emerging issues.

30. The privilege of self-regulation is granted to a profession in exchange for the profession's commitment to protecting the public interest; *Law Society of New Brunswick v. Ryan,* 2003 SCC 20. The justification for granting self-governing status to a profession is that the members of the profession are best qualified to ensure proper standards and ethics are maintained: The Privatization of Regulation: Five Models of Self-Regulation, Margot Priest, 1998 Ottawa Law Review 233, 1998 CanLIIDocs 19; Canada's Legal Profession: Self-Regulating in the Public Interest?, John Pearson, Canadian Bar Review, 2015 92-3 2015 CanLIIDocs 230.

31. The decision to grant a profession self-regulating status is one that is made after extensive consideration with all levels of government and representatives of the profession: *College of Midwives of British Columbia v. Mary Moon*, 2019 BCSC 1670. The granted statutory scope of authority over its members of the self-governing profession is meant to protect the public and maintain the independence of professionals from government interference: By Her Own Authority: The Scope of Midwifery Practice under the Ontario Midwifery Act, 1991, 1993 CanLIIDocs 199; What is a "Profession", Peter Wright, Canadian Bar Review 1951 29-7, 1951 CanLIIDocs 230.

32. In the Western world the roots of physician self-governance date back to Hellenic Greek and the Hippocratic Oath; "Self-Regulation was originally instituted at the request of the medical profession because the body of knowledge in the profession was esoteric and unknown to the average citizen, and it would be difficult for external regulation to be as effective": Professionalism: the historical contract, Roger Collier, Canadian Medical Association Journal (CMAJ), August 9 2012. Professional societies of began formally regulating medical practice in or about 1760 in the Western world and by the early 1800, medical societies oversaw establishing regulations, standards of practice and certification of doctors. Professional self-regulation allows the government to have some control over the professional group without maintaining the special expertise that would be needed to regulate the profession. One of the central principles of self-governing professions is a climate of open debate and collegial exchange regarding the issues facing the profession: Professionalism, Governance and Self-Regulation of Medicine, Howard Bauchner, M.D., Phil B. Fontanarosa, M.D. MBA, Amy E. Thompson, MD, Editorial, May 12, 2015, Journal of the American Medical Association (JAMA) 2015; 313(18).

33. Nursing has been a regulated health profession under British Columbia legislation since 1918. Before designation under the *Health Professions Act*, the profession was regulated under the *Nurses (Registered) Act,* [R.S.B.C. 1996] Chapter 335 (repealed). Practical nursing has been a designated health profession under the *Health Professions Act* since 1996. Midwifery became a designated health profession under the *Health Professions Act* in 1998, although midwifery was practiced in Canada throughout human history in all cultures. In September 2020, the BCCNM was established to govern all three professions.

34. The Health Professionals Order trenches on the common-law and statutorily granted powers of the Colleges to make rules for the admission, licensing, standards of practice, professional ethics, self-governance, and comportment of its members as set out in the *Health Professions Act.* The Health Professionals Order, issued by an unelected official, Dr. Bonnie Henry as Public Health Officer for British Columbia, is neither in the public interest nor consistent with the aims reflected in the legislative and regulatory history of the development of the CPSBC and BCCNM and the as self-governing professions.

8. The Orders and Guidelines Fetter the Discretion of the Public Health Officer and breach the principles of natural justice

35. It is an abuse of discretion for a statutory decision-maker to fetter its discretion by policy, as the Public Health Officer did when she issued the Public Health Orders and Guidelines restricting available exemptions and the ambit of review under section 43 of the *Public Health Act,* and in doing so, she breached the principles of natural justice.

9. Violation of the right to informed consent

36. The Public Health Orders and Guidelines deprive the Petitioners of their right to informed consent, as required by section 6(a) and (f) of the *Health Care Consent Act.*

10. Violation of privacy

37. The collection of the Petitioners' personally-identifying and Covid-19 vaccination status by employers, contractors and colleges, as authorized by Dr. Henry's Orders are an unjustified violation of the Petitioners' privacy.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Anneke Pingo, ~~sworn August 22, 2022,~~ filed September 7, 2022;

2. Affidavit #1 of Phyllis Janet Tatlock, filed June 6, 2022;

3. Affidavit #2 of Phyllis Janet Tatlock, to be filed;

3. Affidavit #1 of Laura Koop, filed May 5, 2022;

4. Affidavit #1 of Monika Bielecki, filed June 6, 2022;

5. Affidavit #1 of Scott Macdonald, filed May 5, 2022;

6. Affidavit #1 of Ana Lucia Mateus, filed May 13, 2022;

7. Affidavit #1 of Darold Sturgeon, filed May 3, 2022;

8. Affidavit #2 of Darold Sturgeon, filed October 24, 2022;

9. Affidavit #1 of Lori Jane Nelson filed May 12, 2022;

10. Affidavit #2 of Lori Jane Nelson filed November 3, 2022;

11. Affidavit #1 of Ingeborg Keyser, filed June 6, 2022;

12. Affidavit #1 of Lynda June Hamley, filed June 6, 2022;

13. Affidavit #2 of Lynda June Hamley, filed November 8, 2022;

14. Affidavit #1 of Melinda Joy Parenteau, filed June 9, 2022;

15. Affidavit #1 of Dr. Joshua Nordine, filed September 20, 2022;

16. Paragraphs 1 - 8 of Affidavit #2 of Dr. Joshua Nordine, filed November 17, 2022;

17. Affidavit #1 of Elizabeth Ringrose, filed June 2, 2022;

18. Affidavit #1 of Jennifer Koh, filed May 20, 2022;

19. Affidavit #2 of Jennifer Koh, filed November 1, 2022;

20. Affidavit #1 of Benneth Johnson, filed August 26, 2022;

21. Affidavit #1 of Ashley Sexton, filed September 14, 2022;

22. Affidavit #2 of Ashley Sexton, filed September 21, 2022;

23. Affidavit #5 of Ashley Sexton, to be filed; and,

24. Such further materials this Honourable Court may permit.

The Petitioners estimate that the hearing of the petition will take 10 days .

Date: April 20th, 2023

KAREN BASTOW

To be completed by the court only:

Order made

[ ] in the terms requested in paragraphs ..... of Part 1 of this petition

[ ] with the following variations and additional terms:

.....

.....

.....

Date: .....[dd/mmm/yyyy].....	..... Signature of [ ] Judge [ ] Master

Court File No. S-222427
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners

And:

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

FURTHER AMENDED PETITION

Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers [redacted]	Charlene E. Le Beau Charlene E. Le Beau Law Office #[redacted]

ORIGINALLY FILED MARCH 16, 2022, AMENDED AUGUST 23, 2022, FURTHER AMENDED OCTOBER 24, 2022, AND FURTHER AMENDED APRIL 24, 2023

Court File No.: S-222427
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners

and

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

3RD FURTHER AMENDED PETITION TO THE COURT

ON NOTICE TO:

Deputy Attorney General
Ministry of Attorney General
[redacted]

Dr. Bonnie Henry, Provincial Health Officer
[redacted]

This proceeding is brought for the relief set out in Part 1 below, by

[X] the persons named as petitioners in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

(a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and

(b) serve on the petitioners

(i) 2 copies of the filed response to petition, and

(ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioners,

(a) if you were served with the petition anywhere in Canada, within 21 days after that service,

(b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the petition anywhere else, within 49 days after that service, or

(d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is: The Law Courts, 800 Smith Street, Vancouver, B.C.
(2)	The ADDRESS FOR SERVICE of the petitioners is: Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers [redacted]
(3)	The name and office address of the petitioners' lawyers are: Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers [redacted]

[redacted]

Charlene E. Le Beau
Charlene E. Le Beau Law Office
[redacted]

Claim of the Petitioners

Part 1: ORDERS SOUGHT

Pursuant to section 2(1), (2), 7, 5, and 17 of the *Judicial Review Procedure Act,* RSBC 1996, c.241 the Petitioners seek:

1. Declarations pursuant to sections 24(1) and 52(1) of the *Constitution Act,* 1982, Schedule B to the Canada Act 1982 (UK) c.11, that:

   (a) The Order entitled “Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventive Measures – ~~November 18, 2021~~ ~~September 12, 2022~~, ~~April 6, 2023~~ October 5, 2023” (Hospital and Community Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act*, S.B.C. 2008, c.28, is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11, specifically,

a. *Charter* section 2(a) (freedom of conscience and religion)
b. *Charter* section 7 (right to life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(b) The Order entitled "Residential Care Covid-19 Preventive Measures – ~~October 21, 2021~~ ~~September 12, 2022~~ ~~April 6, 2023~~ October 5, 2023" (Residential Care Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act,* is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Charter*, specifically,

a. *Charter* section 2(a) (freedom of conscience and religion)
b. *Charter* section 7 (right to life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

(c) The Orders entitled "Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventive Measures" – October 14, 2021, October 21, 2021, November 9, 2021, November 18, 2021, September 12, 2022, and April 6, 2023" (the "Hospital and Community Orders"), that were issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act*, S.B.C. 2008, c.28, unjustifiably infringe the rights and freedoms of the Petitioners guaranteed by the *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11, specifically,

d. *Charter* section 2(a) (freedom of conscience and religion)
e. *Charter* section 7 (right to life, liberty and security of the person)
f. *Charter* section 15(1) (equality rights)

(d) The Orders entitled "Residential Care Covid-19 Preventive Measures – September 2, 2021,October 4, 2021, October 8, 2021, October 21, 2021, September 12, 2022, and April 6, 2023 (the "Residential Care Orders"), that were issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39 (3), 54, 56, 57, 67 (2) and 69 of the *Public Health Act,* unjustifiably infringe the rights and freedoms of the Petitioners guaranteed by the *Charter*, specifically,

d. *Charter* section 2(a) (freedom of conscience and religion)
e. *Charter* section 7 (right to life, liberty and security of the person)
f. *Charter* section 15(1) (equality rights)

(e) The "Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders" (the Guidelines), that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, which stipulate the process that must be employed in determining a healthcare worker's application for exemption from the Hospital and Community Order and/or from the Residential Care Order, are of no force or effect, as they unjustifiably infringe the rights and freedoms of the Petitioners guaranteed by the *Charter*, specifically,

a. *Charter section 2(a)* (freedom of conscience and religion*)*
b. *Charter* section 7 (life, liberty and security of the person)
c. *Charter* section 15(1) (equality rights)

~~(f) The Order entitled "Health Professionals Covid-19 Vaccination Status Information and Preventive Measures – June 10, 2022 (the Health Professionals Order), and any variations thereto, that was issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, under the authority of sections 30, 31, 32, 39, 53, 54, 56, 57, 67 (2) and 69 of the *Public Health Act,* which mandates the collection, disclosure and reporting of personal information and vaccination status for persons regulated under the *Health Professions Act*, RSBC 1996 c.183 (the "*Health Professions Act*"), is of no force and effect, as it unjustifiably infringes the rights and freedoms of the Petitioners guaranteed by the *Charter,* specifically,~~

~~a. *Charter section 2(a)* (freedom of conscience and religion*)*~~
~~b. *Charter* section 7 (life, liberty and security of the person)~~
~~c. *Charter* section 15(1) (equality rights)~~

2. In the alternative, an Order under sections 2(2)(a) and 7 of the *Judicial Review Procedure Act,* in the nature of mandamus or certiorari, quashing and setting aside all the Hospital and Residential Care Orders and the Residential Care Orders referred to above, and the Guidelines to the extent they fail to provide religious and conscientious exemptions and reasonable accommodations in accordance with class of worker ~~the entire scheme of the Hospital and Community Order, the Residential Care Order~~, ~~the Health Professionals Order,~~

~~and the Guidelines, as being unreasonable~~;

3. A Declaration that all the Hospital and Community Orders~~,~~ and the Residential Care Orders referred to above, and the Guidelines issued by the Provincial Health Officer for British Columbia, Dr. Bonnie Henry, improperly fettered her discretion and breached the principles of natural justice by failing to provide a meaningful process for religious and conscientious exemptions, reasonable accommodations in accordance with class of worker and reconsideration;

4. A Declaration that the inclusion of the Petitioners as persons covered by the Orders was unreasonable under administrative law principles because of the Orders' improper impact on persons in the position of the Petitioners;

5. In the further alternative, an Order pursuant to section 5(1) of the *Judicial Review Procedure Act,* directing Dr. Bonnie Henry, in her capacity as ~~Public~~ Provincial Health Officer for British Columbia, to provide a meaningful process for exemptions and reconsideration for the Petitioners on the basis of religion, conscience and on an expanded medical basis, and/or to allow for accommodation of those workers affected by all the Hospital and Community Orders and~~,~~ the Residential Care Orders as referred to above, and the Guidelines on the basis of class of worker;

6. In the further alternative, an Order under section 2(2)(a) of the *Judicial Review Procedure Act,* in the nature of mandamus, ordering Dr. Bonnie Henry, in her capacity as Provincial Health Officer, to provide a meaningful process for exemptions and reconsideration for the Petitioners on the basis of religion, conscience and on an expanded medical basis, and/or to allow for accommodation of those workers affected by all the Hospital and Community Orders and the Residential Care Orders, as referred to above, and the Guidelines, on the basis of class of worker;

7. Pursuant to section 2(2)(a) of the *Judicial Review Procedure Act*, an Order prohibiting the Respondents from issuing subsequent public health orders ~~of a substantially similar or identical nature~~ that fail to provide a reasonable process for religious or conscientious exemptions, or reasonable accommodations, on the basis of class of worker.

8. An Order pursuant to section 17 of the *Judicial Review Procedure Act,* that the

entire record upon which the Hospital and Community Orders, the Residential Care Orders, and the Guidelines, ~~and the Health Profession Order~~ were based on, and are continued, be filed on this proceeding;

~~9. A Declaration that the Health Professionals Order exceeds the statutory authority and jurisdiction of the Respondents, as it trenches on the common law and statutory authority of self-governing professions, granted by the *Health Professions Act* to govern themselves in the public interest in accordance with the legislation, rules and regulations of their respective colleges.~~

~~10. A Declaration that vaccination against Covid-19 as a condition of employment for the Petitioners, as set out in the Hospital and Community Order and the Residential Care Order is a coercive tactic levelled against the Petitioners by the Respondents, and thus deprives the Petitioners of their right to informed consent to vaccination, as required by section 6 (a) to (f) of the *Health Care (Consent) and Care Facility (Admission) Act* RSBC 1996, c.181 (the "*Health Care (Consent) Act*");~~

11. An Order that the Petitioners are exempt from the vaccination requirements under the Orders issued by Dr. Bonnie Henry on religious, conscience, and medical grounds, or reasonable accommodation on the basis of class of worker, as applicable to each Petitioner;

~~12. A Declaration that the collection of the Petitioners' personally identifying and Covid-19 vaccination status by employers, contractors and colleges, as authorized by the "Covid-19 Vaccination Status Information and Preventative Measures" Orders (the "Vaccine Status Orders") issued by Dr. Bonnie Henry between August 20, 2021 and February 28, 2022, and authorized by the Health Professionals Orders first issued on March 7, 2022, and replaced by the Order of June 10, 2022, violates section 26(d) of the *Freedom of Information and Protection of Privacy Act,* RSBC 1996, c.165 ("FIPPA") and section 1(1) of the *Privacy Act,* RSBC 1996, c.373 (the "*Privacy Act*");~~

~~13. A Declaration that the Hospital and Community Order, and the Residential Care Order and the Health Professionals Order offends section 13(1) of the *Human Rights Code,* RSBC 1996 c.210;~~

14. Damages pursuant to s. 24(1) of the *Charter* as is found to be appropriate and just in the circumstances of each Petitioner, for all orders, as referred to above;

~~15. An extension of time to file supporting materials, including expert affidavits;~~

16. Costs of this Petition; and,

17. Such further and other relief as the Petitioners may seek and as this Honourable Court deems just and equitable.

Part 2: FACTUAL BASIS

A. The Public Health Orders and Guidelines

1. In the Fall of 2021, B.C. workers in the health care sector became subject to Covid-19 vaccine mandates: those affected workers who refused to take a Covid-19 vaccine were fired from their jobs unless they could prove entitlement to a very narrow medical exemption.

2. The Respondent Dr. Bonnie Henry is British Columbia's Provincial Health Officer, appointed pursuant to Part 6 of the *Public Health Act* and is empowered to issue public health orders to promote and protect public health.

~~3. The Vaccine Status Orders were issued by Dr. Bonnie Henry between August 20, 2021 and February 28, 2022, and they provided a mechanism to enable employers, operators and contractors to obtain personal information from healthcare practitioners and staff, including his or her personal health number, together with the Covid-19 vaccination status of those individuals, and to compel healthcare practitioners and staff to provide their personal information, including their personal health numbers, as well as their Covid-19 vaccination status, to their employers. The orders also compelled employers and contractors to report the healthcare practitioners' and staff members' personal information and personal health numbers to Dr. Bonnie Henry through an electronic government data base. The first order was issued on August 20, 2021 (Ex. A to affidavit 1 of Anneke Pingo). The second order was issued on August 31, 2021 (Ex. B to affidavit 1 of Anneke Pingo). The third order was issued on September 9, 2021 (Ex. C to affidavit 1 of Anneke Pingo). The fourth order was issued on September 27, 2021 (Ex. D to affidavit 1 of Anneke Pingo), then replaced with the order of October 6, 2021 (Ex. E to affidavit 1 of Anneke Pingo), which was then replaced with the order of February 28, 2022 (Ex. P to affidavit 1 of Anneke Pingo).~~

4. The initial vaccine mandates were contained in a series of public health orders issued by Dr. Bonnie Henry between September 2, 2021, and November 18, 2021.

5. The vaccine mandate issued under the Residential Care Order was first issued on September 2, 2021 (Ex. F to affidavit 1 of Anneke Pingo), then replaced with the order of October 4, 2021 (Ex. G to affidavit 1 of Anneke Pingo), then replaced with the order of October 8, 2021 (Ex. H to affidavit 1 of Anneke Pingo), ~~and finally~~ then replaced with the order of October 21, 2021 (Ex. I to affidavit 1 of Anneke Pingo), ~~and finally~~ then replaced with the Order of September 12, 2022, then replaced with the Order of April 6, 2023, and finally replaced with the Order of October 5, 2023.

6. The vaccine mandate issued under the Hospital and Community Order was first issued on October 14, 2021 (Ex. J to affidavit 1 of Anneke Pingo), then replaced with the order of October 21, 2021 (Ex. K to affidavit 1 of Anneke Pingo), then replaced with the order of November 9, 2021 (Ex. L to affidavit 1 of Anneke Pingo), then replaced with the order of November 18, 2021 (Ex. M to affidavit 1 of Anneke Pingo), ~~and finally~~ then replaced with the Order of September 12, 2022, then replaced with the Order of April 6, 2023, and finally replaced with the Order of October 5, 2023.

7. On November 9, 2021, the vaccine mandates under the Hospital and Community Order were expanded to include administrative staff employed by a regional health authority, the Provincial Health Services Authority, British Columbia Emergency Health Services, and the Providence Health Care Society.

8. On November 18, 2021, the vaccine mandates under the Hospital and Community Order were further expanded to include all staff members of Community Living British Columbia.

~~9. The Health Professionals Order, initially issued on March 7, 2022 (Ex. Q to affidavit 1 of Anneke Pingo) and replaced by the Order issued on June 10, 2022 (Ex. R to affidavit 1 of Anneke Pingo), compels colleges, as defined by the *Health Professions Act*, to provide personally-identifying information about each of their registrants. The Order further compels the Minister of Health to verify the Covid-19 vaccination status of each registrant, and to disclose that information to the relevant college. The Order compels each registrant, upon request from the college, to provide proof of vaccination, or of an exemption, to the college. The college must record each registrant's vaccination status by March 31, 2022. The college must also disclose to Dr. Henry, upon request, the aggregate information respecting the vaccination status of registrants of their college. The Health Professionals Order was expanded on June 10, 2022 to include post-secondary institutions in relation to registrants applying for admission into health science programs and residency programs and other postgraduate medical education programs, for the purpose of determining the registrants' eligibility to attend at places subject to the Orders. The Health Professionals Order does not mandate~~

~~the Covid-19 vaccination for healthcare professionals regulated under the *Health Professions Act* and working in private practice. As such, healthcare professionals regulated under the *Health Professions Act* and working in private practice are treated differently than healthcare professionals regulated under the *Health Professions Act* who were employed by a provincial health authority or were working in a residential care facility.~~

10. Section 43 of the *Public Health Act* provides a meaningful process for persons affected by public health orders to apply for reconsideration, but that process is effectively eviscerated by these orders.

11. The orders provide that the only exemption that can be applied for under s. 43 for reconsideration is a medical exemption. There is no provision in the orders for exemptions based on religion or conscience. The allowable medical exemption is extremely narrow: "a request for reconsideration…must be made on the basis that the health of the person would be seriously jeopardized…and must follow the guidelines posted on the Provincial Health Officer's website".

12. The guidelines for exemption from both the Hospital and Community Order and the Residential Care Order are set out in a document entitled "COVID-19 Vaccination Requirements - Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders", dated October 8, 2021 (Ex. O to affidavit 1 of Anneke Pingo). An affected person is not able to submit a request for reconsideration even if he or she has additional relevant information that was not reasonably available to the health officer when the orders were issued or varied. Nor is he or she able to submit a request for exemption if he or she has information or a proposal that was not presented to the health officer when the Public Health Orders were issued or varied, that, if implemented, would meet the objective of the Public Health Orders. Nor is an affected person able to request more time to comply with the orders.

13. The above orders will hereinafter be referred to as the "Public Health Orders" except where it is necessary to be specific about which order is being referred to. The Guidelines will hereinafter be referred to as "The Guidelines."

B. The Petitioners' Evidence

Phyllis Janet Tatlock

14. The Petitioner Phyllis Janet Tatlock graduated with a nursing diploma from the University of Alberta, School of Nursing in 1992. She completed her nursing degree from the University of Northern British Columbia in 1998 and completed a Masters of Community Health from the University of British Columbia in 2006.

15. Ms. Tatlock lives in Prince George, British Columbia. Ms. Tatlock was a Director of Operations, BC Cancer, under the Provincial Health Services Authority (PHSA) and was employed in that position from March 8, 2021. She worked in an administrative capacity and did not have contact with patients. Other positions Ms. Tatlock has held are:

    a. Manager, Alberta Health Services (January 2021—March 2021)
    b. Executive Director, Alberta Health Services (July 2019-January 2020)
    c. Director, Public Health, April 2011-July 2019 Island Health,
    d. Director, Maternal/Child Services, Quinte Health Care (Ontario) April 2008-April 2011
    e. Manager Research and Community Health Services, Carrier Sekani Family Services (May 2006-April 2008
    f. Manager, Home and Community Health Services Northern Health (October 2003--May 2006)
    g. Manager Community Health Services Carrier Sekani Family Services (September 1999-October 2003)
    h. various nursing positions in the Emergency Department in Northern Health as well as in California, Texas, Washington states from 1993 until 1999.

16. Ms. Tatlock was terminated by her employer due to her refusal to take a Covid-19 vaccine.

17. Ms. Tatlock is a Christian. She objects to taking a Covid-19 vaccine on the basis of religion. Ms. Tatlock submitted a request for a religious exemption to the Occupational Health department of PHSA on October 22, 2021, and it was denied.

18. Ms. Tatlock objects to state coercion that would have her take a vaccine which recent studies show is ineffective at stopping infection or transmission, and whose adverse reaction profile is significant.

19. Ms. Tatlock objects to taking the vaccine mandated in the October 5, 2023 orders. She would agree to wear a mask if entering a patient care area, provided mask-wearing was a requirement for all workers, whether vaccinated for Covid-19 or not.

Laura Koop

20. The Petitioner, Laura Koop, lives in Canyon, British Columbia. Ms. Koop is a Primary Care (Family) Nurse Practitioner, with a focus on high risk and at-risk populations, such as drug and alcohol abuse, and mental health. She was employed by the Interior Health Authority and held this position from September

2014. Prior to her employment with Interior Health, Ms. Koop was employed in the following capacities:

a. Nurse Practitioner (family) in remote clinics;
b. Clinical Coordinator for remote nursing clinics;
c. Remote Nurse with Certified Remote Nursing Practice;
d. Nurse Manager in long-term Care;
e. Instructor (both Care Aide and LPN program) in community college; and,
f. Staff nurse in long-term care.

21. Ms. Koop was terminated by her employer due to her refusal to take a Covid-19 vaccine.

22. Ms. Koop objects to taking a Covid-19 vaccine on the basis of conscience. She has serious concerns about the safety of the Covid-19 vaccines, mRNA technology and use of fetal tissue in vaccine development. She is concerned about the lack of informed consent, the lack of transparency from pharmaceutical corporations and all levels of Canadian (and international) governments, and the continued changing goals and directives regarding the Covid-19 vaccines.

23. Ms. Koop objects to taking the vaccine mandated in the October 5, 2023 orders.

Monika Bielecki

24. The Petitioner, Monika Bielecki, resides in Kelowna, British Columbia. Ms. Bielecki is an Employee Health and Wellness Advisor with BC Interior Health. She held this position from October 2015.

25. Ms. Bielecki holds Bachelor of Arts degree in Psychology. She is also qualified as a Certified Vocational Rehabilitation Professional. She has extensive experience, since 2001, in claims adjudication, rehabilitation services, disability management, and workplace accommodation process.

26. In her role as an Employee Health and Wellness Advisor with Interior Health, Ms. Bielecki worked remotely from February 10, 2016. Since that day, she did not have a designated workspace in any of the Interior Health sites and has worked entirely from home via phone and email up to the time of termination of employment. A Flexible Work Location Participation Agreement and Safety Checklist was formally signed by Ms. Bielecki's manager on September 30, 2019.

27. Between 2016 and 2019, Ms. Bielecki attended the occasional team meeting in the office, but as members of their team were from various cities in the Interior Health region, there always was an option to attend by teleconference and some of Ms. Bielecki's teammates did so. As the pandemic began, they started using

Zoom meetings and in-person meetings were not organized by her department.

28. Ms. Bielecki was terminated by her employer due to her refusal to take a Covid-19 vaccine.

29. Ms. Bielecki objects to taking the Covid-19 vaccine on the basis of conscience. She states that acceptance of any medical intervention is her personal choice, based on her health status and risk factors. She objects to state coercion that overrides her personal autonomy, especially where recent studies show the vaccine is ineffective at stopping infection or transmission, and where the vaccine is known to have serious adverse reactions.

30. Ms. Bielecki objects to taking the vaccine mandated in the October 5, 2023 orders and requests accommodation through the opportunity to mask and rapid test if entering a patient care area.

Scott Macdonald

31. The Petitioner, Scott Macdonald, resides in Vancouver, BC, and was a Registered Art Therapist at the Dr. Peter Centre in Vancouver. He was employed in this position for 11 years. Mr. Macdonald holds a Bachelor of Physical Education from the University of British Columbia, as well as a Diploma from the Vancouver Art Therapy Institute.

32. Mr. Macdonald was terminated by his employer due to his refusal to take a Covid-19 vaccine.

33. Mr. MacDonald is also not able to fulfill his duties with Teddy's Homes, where he had been working for the last four years as a casual respite support worker with foster children, because the Hospital and Community Order applies to residential facilities licensed under the *Community Care and Assisted Living Act.* All unvaccinated workers are not permitted to enter any of the resources.

34. Mr. Macdonald objects to taking a Covid-19 vaccine on the basis of conscience, and for medical reasons. He believes he is not in a demographic of high risk for Covid-19, nor is the prevalence of severe symptoms/death of Covid-19 (alone) statistically significant. Mr. Macdonald is concerned that the vaccines were rushed to market by the pharmaceutical companies, and that they raced against each other to be the first to offer the vaccine. Mr. Macdonald has also had adverse reactions to the flu vaccine in the past.

35. Mr. Macdonald does not trust the BC Coastal Health Authority to have its workers' best interests in mind. He states the health authority has already been known to implement policies that are punitive to healthcare workers, and that are injurious

to the patients they are supposed to be caring for.

36. Mr. Macdonald objects to taking the vaccine mandated in the October 5, 2023. He would be willing to consider reasonable accommodations applied to other contagious respiratory illnesses if he entered a patient care area.

Ana Lucia Mateus

37. The Petitioner, Ana Lucia Mateus, resides in Burnaby, British Columbia, and was employed by Vancouver Coastal Health (VCH). She worked as an Administrative Assistant for the Health Authority Medical Advisory Committee. This committee has approximately 50 members of all senior levels in the organization and reports to the Board. Ms. Mateus also provided credentialing and privileging support to all the sites throughout VCH, in the department of Physician Relations and Compensation. She had always worked in the corporate areas of administration for VCH.

38. Ms. Mateus has a Legal Assistant diploma from Capilano College in North Vancouver, BC. Ms. Mateus worked for VCH for over 16 years (since May 2005). She first started as a Legal Assistant in VCH's legal department before moving to Physician Relations and Compensation.

39. Ms. Mateus had worked full time from home since March 13, 2020, due to the Covid-19 pandemic and the consequential public health protocols implemented by her employer.

40. Ms. Mateus was terminated by her employer due to her refusal to take a Covid-19 vaccine.

41. Ms. Mateus objects to taking the Covid-19 vaccine on the basis of conscience. She believes there are too many unanswered questions regarding the Covid-19 vaccines, and that they were rushed to market. She is also concerned that the pharmaceutical companies have no liability in relation to the Covid-19 vaccines. She objects to state coercion and believes in freedom of choice.

42. Ms. Mateus objects to taking the vaccine mandated in the October 5, 2023 orders. She would comply with reasonable accommodations applied to other contagious respiratory illnesses.

Darold Sturgeon

43. The Petitioner, Darold Sturgeon, resides in West Kelowna and was an Executive Director, Medical Affairs for Interior Health. He held senior director positions with Interior Health for 14.5 years. Mr. Sturgeon did not work in a health care setting and is not a health care worker.

44. Previous positions held by Mr. Sturgeon are Corporate Director Financial Services for Interior Health BC, VP Finance, Chief Financial Officer (Cypress Health Region – Saskatchewan), Chief Financial Officer (Regional Municipality of Wood Buffalo - Alberta), and VP Finance & Administration (East Central Health District – Saskatchewan).

45. Mr. Sturgeon holds a Bachelor of Administration (Distinction), from the University of Regina. He is also a Chartered Professional Accountant in British Columbia.

46. Mr. Sturgeon was terminated by his employer due to his refusal to take a Covid-19 vaccine.

47. Mr. Sturgeon is a Christian. He objects taking a Covid-19 vaccine on the basis of religion. Mr. Sturgeon submitted a request for a religious exemption, but it was denied.

48. Mr. Sturgeon also objects to taking a Covid-19 vaccine on medical grounds. Mr. Sturgeon was given a vaccine during childhood to which he had a severe reaction.

49. In addition, on August 17, 2021, Mr. Sturgeon was diagnosed with the Covid-19 virus. He now has natural immunity to Covid-19 and has undergone an antibody test which shows that he has antibodies to Covid-19.

50. Coupled with his sincerely held religious beliefs that prevent him from taking a Covid-19 vaccine, Mr. Sturgeon has grave concerns about the Covid-19 vaccine's safety, both in relation to short and long-term impacts.

51. Mr. Sturgeon is also opposed to a policy that makes vaccination against Covid-19 mandatory, as it denies his rights and freedoms to make a free choice.

52. Mr. Sturgeon objects to taking the vaccine mandated in the October 5, 2023 orders and requests accommodation through the opportunity to mask and rapid test if entering a patient care area.

Lori Jane Nelson

53. The petitioner, Lori Jane Nelson, resides in Surrey, BC, and was a Provider Engagement Lead, Clinical Informatics, for the British Columbia Provincial Health Services Authority (PHSA) in Vancouver, BC. Ms. Nelson holds a Bachelor of Science in Nursing (UBC, 1996), as well as a Master of Science in Nursing (UBC, 2005). She is also a Certified Health Executive (CHE) with the Canadian College of Health Leaders and has held this certification for over 15 years.

54. Ms. Nelson has worked for the PHSA for 25 years. Other positions she has held

with the PHSA are General Duty Nurse, Clinical Nurse Coordinator, Program Manager, Senior Director, Patient Care Services, and a Clinical Transformation Leader, Redevelopment Project.

55. Ms. Nelson was terminated by her employer due to her refusal to take a Covid-19 vaccine.

56. Ms. Nelson worked solely from home and had a Work from Home Agreement. She did not have contact with patients or public while working and had no need to be within a facility to do her work.

57. Ms. Nelson objects to taking a Covid-19 vaccine on the basis of religious, medical and conscience grounds. Ms. Nelson has severe allergies and has had multiple systemic and anaphylactic reactions in the past. She had reactions to the flu shot in past years. She applied for a medical exemption but was denied. Ms. Nelson is a practicing Christian, and has been all her life. She has sincerely held religious beliefs that prevent her from taking the Covid-19 vaccine. She applied for a religious exemption but it was not granted.

58. Ms. Nelson also objects to being coerced by the state to take a vaccine where there is significant anecdotal evidence of individuals having suffered various adverse reactions.

59. Ms. Nelson objects to taking the vaccine mandated in the October 5, 2023 orders. As an accommodation for not taking the new XBB.1.5 COVID-19 vaccine, she would be willing to consider reasonable accommodations applied to other contagious respiratory illnesses if she entered a patient care area.

Ingeborg Keyser

60. The petitioner, Ingeborg Keyser, resides in Kelowna, BC, and is a Communications Advisor for Interior Health. Ms. Keyser has held this position since April 2017. Ms. Keyser graduated from the Tshwane University of Technology in Pretoria, South Africa in 2007, with an International Diploma (three-year course) in Public Relations. Ms. Keyser also completed a bridging course at the University of South Africa to complete all 4th year degree subjects in Communications.

61. Ms. Keyser is not a healthcare worker and does not work in a health care setting.

62. Ms. Keyser was terminated by her employer due to her refusal to take a Covid-19 vaccine.

63. Ms. Keyser worked entirely from home in her position with Interior Health.

64. Ms. Keyser objects to taking a Covid-19 vaccine on medical grounds. Ms. Keyser is pregnant. She states she is unable to know what is right for herself and her unborn baby, given the lack of long-term data regarding the Covid-19 vaccines on pregnancy. She objects to state coercion that would have her take a vaccine that is proving to cause serious adverse reactions in some people.

65. Ms. Keyser suffered a miscarriage in the spring of 2021, at nine weeks' gestation.

66. Ms. Keyser objects to taking the vaccine mandated in the October 5, 2023 orders. She requests accommodation through the opportunity to wear a mask if entering a patient care area, provided mask-wearing was a requirement for all workers, whether vaccinated for COVID-19 or not.

Lynda June Hamley

67. Ms. Hamley resides in Nelson, British Columbia. She was employed by Kootenay Society of Community Living ("KCLS") as a residential support worker. KCLS provides care to young men and women with developmental disabilities, living in a group home setting. Ms. Hamley was hired by KCLS in December 2020. She started as a casual support worker and obtained a full-time position with KCLS in November 2021. Ms. Hamley is also a certified Classroom and Community Support Worker. She has worked supporting children with disabilities and challenging behaviours in the school system for 13 years.

68. Until December 9, 2021, Ms. Hamley was supporting three young men and a young woman in their homes as a residential support worker for KCLS.

69. On December 10, 2021, Ms. Hamley was placed on unpaid leave for failing to provide proof of vaccination against Covid-19. She had until January 13, 2022 to become fully vaccinated against Covid-19, otherwise she was advised her employment would be terminated. Ms. Hamley has not had a Covid-19 vaccine. Ms. Hamley has not yet received official notice that her position at KCLS was terminated.

70. Ms. Hamley is a Christian. She objects to taking a Covid-19 vaccine on the basis of religion. Ms. Hamley submitted a request for a religious exemption, but it was denied.

71. Ms. Hamley objects to state coercion that has put her in the profoundly bewildering position of being forced to choose between providing for her family, which would force her to submit to a vaccine that goes against her sincerely held religious beliefs, and potentially being unable to provide for her family.

72. Ms. Hamley objects to taking the vaccine mandated in the October 5, 2023 orders and requests accommodation through the opportunity to mask and rapid test if

entering a patient care area.

Melinda Joy Parenteau

73. The Petitioner, Melinda Joy Parenteau is a registered midwife, and previously worked as a private contractor for Apple Tree Maternity ("Apple Tree") in Nelson, BC. She worked for Apple Tree between July 1, 2020, and October 25, 2021.

74. Mrs. Parenteau holds an associate degree in the Science of Midwifery, which she obtained through the National College of Midwives in Taos, New Mexico, USA. In addition, Mrs. Parenteau has completed the International Midwifery Pre-Registration Bridging Program at Ryerson University in Toronto, to enable her to be a registered midwife in Canada

75. Mrs. Parenteau's hospital privileges were removed on October 26, 2021, because she failed to show proof of vaccination for Covid-19 as required by the Hospital and Community Order. She has never had a complaint or disciplinary action taken against her, neither by her College, health authority, or hospital. She has been registered as a midwife in both Manitoba and B.C.

76. Mrs. Parenteau is opposed to the Covid-19 vaccine mandate. She says it violates a fundamental right to make an informed choice, without coercion, to a medical treatment. She has not taken the Covid-19 vaccine. She will not take it under the current mandate which puts her in a position of duress, coercion by the state, and under threat.

77. Mrs. Parenteau is not opposed to vaccines in general and has received many throughout her life. She recognizes there are benefits to vaccines that have been thoroughly tested and proven safe. These Covid-19 vaccines have not completed their testing and clinical trials and not expected to until the end of 2022 and into 2023. This qualifies these vaccines as being in the experimental category. She will not be coerced by the state into taking an experimental vaccine.

78. Mrs. Parenteau is no longer able to practice midwifery, as her license depends on having hospital privileges. Mrs. Parenteau is experiencing financial hardship because she has lost her hospital privileges, and thus her ability to work in her chosen field.

79. Ms. Parenteau objects to taking the vaccine mandated in the October 5, 2023. She would comply with reasonable accommodations applied to other contagious respiratory illnesses.

Dr. Joshua Nordine

80. Dr. Nordine resides in Kelowna, BC. He is a family physician, most recently

practicing at Rutland Medical Associates, a private clinic in Kelowna. He has practiced there since 2016.

81. Dr. Nordine was also a clinic physician at the Bridge Detox Centre in Kelowna from 2017 until October 2021. Bridge Detox Centre is a clinic operated by Interior Health. He was initially placed on unpaid leave from the Bridge Clinic on October 26, 2021, because he failed to show proof of having taken the Covid-19 vaccines. He also lost his hospital privileges at that time for the same reason.

82. On November 16, 2021, Dr. Nordine's employment with the Bridge Detox Centre was terminated by Interior Health for not having taken the Covid-19 vaccines, as mandated by the Hospital and Community Care Order. His hospital privileges were revoked for the same reason.

83. Between 2013 and 2016, Dr. Nordine was a family physician at Edmonton Imagine Health in Edmonton, AB.

84. Dr. Nordine obtained his medical degree from Jagiellonian University Medical College in Poland. Dr. Nordine is also a licentiate of the Medical Council of Canada

85. Dr. Nordine is a Christian. He objects to taking a Covid-19 vaccine, including Novavax, on religious grounds. Dr. Nordine also objects to taking a Covid-19 vaccine on medical grounds. He submitted a request for an exemption to the vaccine mandate, but it was denied.

86. In addition, in January 2022, Dr. Nordine was diagnosed with the Covid-19 virus. He now has natural immunity to Covid-19. Dr. Nordine points out that the BC Covid therapeutics Committee states natural immunity is the same as having had two doses of a Covid-19 vaccine.

87. While working as a family physician, Dr. Nordine observed many patients suffer adverse reactions to the Covid-19 vaccines. When requested by his patients to do so, Dr. Nordine has reported those adverse reactions to the Canadian Adverse Events Following Immunization office.

88. Dr. Nordine notes there is a general doctor shortage in BC, and this has been the case since before the pandemic. Similarly, he states that hospitals were short-staffed and operating at over-capacity limits prior to Covid-19.

89. Dr. Nordine objects to taking the vaccine mandated in the October 5, 2023 orders and requests accommodation through the opportunity to mask and rapid test if entering a patient care area.

C. Additional Facts

Elizabeth Ringrose

90. Elizabeth Ringrose resides in Vancouver, BC. She is a Registered Nurse in the Day Health Program at the Dr. Peter Centre in Vancouver, BC.

91. Ms. Ringrose has taken two doses of the Pfizer Covid-19 vaccine.

92. Ms. Ringrose took the first dose of the Covid-19 vaccine on or about January 6, 2021. She took the second dose on or about February 19, 2021. Ms. Ringrose suffered a severe allergic reaction after the second dose of the Covid-19 vaccine in that within 72 hours after that injection, she could not stand up for a period of six hours and had to crawl to the bathroom. She has experienced dizzy spells on and off since this time.

93. As a result of the adverse reactions Ms. Ringrose has suffered after receiving the second dose of the Covid-19 vaccine, she has had to take a medical leave from her position with the Dr. Peter Centre.

94. While still employed, Ms. Ringrose tried to send an adverse reaction form for a person in her care, but the office listed on the BCCDC website did not seem to receive it after 10 facsimile attempts, and then would not confirm the report would go to the appropriate person. Ms. Ringrose's manager told her to stop asking the office if it got to the right place.

Jennifer Koh

95. Jennifer Koh was an Organization Development & Change Management Consultant for the Interior Health Authority ("Interior Health"). She held this position for two years. Prior to this position, Ms. Koh was an Organizational Development Consultant for the Northern Health Authority for approximately 3.5 years.

96. Ms. Koh has a Bachelor of Arts degree, with a major in psychology. She is also a certified Professional Coach (ICF-accredited), a certified Resilience@Work Practitioner, a certified Human Systems Dynamics Practitioner, and a certified Yoga, meditation & breathwork Instructor. She also has multiple other leadership development certifications.

97. From March 2020, Ms. Koh's work for Interior Health was 100% remote. She had no contact with any patients or co-workers.

98. Ms. Koh was terminated by her employer due to her refusal to take a Covid-19 vaccine.

99. Ms. Koh objects to taking the Covid-19 vaccine on the basis of religion. She was

raised with the teachings of the Catholic faith. As an adult, since undergoing extensive training in various Vedic meditation and yoga practices, she has followed the Vedic scriptures very closely, and as a result, has a strong spiritual faith. She submitted a request for religious exemption, but it was denied.

100. Ms. Koh believes in bodily sovereignty and the right to choose what goes into her body. She has not been made aware of all the contents of the injections and is concerned. In addition, she is aware of multiple studies which have shown the adverse effects of the experimental injection, including death, disability, and stillborn births. She is also aware of the number of deaths and adverse reactions reported by the Vaccine Adverse Event Reporting System (VAERS) in the United States. She is also aware that the vaccine companies assume no liability for adverse reactions, and that she will solely bear the burden of any adverse reactions if she takes the injection.

101. On or about November 26, 2021, after being terminated from her job on November 15, 2021, Ms. Koh received a call from a recruiter with a job proposal for two of the other BC health authorities for a remote contract Change Management Consultant position, which is essentially a part of the role she performed as a full-time employee. When Ms. Koh asked about their policy related to remote workers and the vaccine mandate, she was told that the vaccine mandate did not apply to contract workers who work remotely. She also learned that these same contract workers who are not subject to the vaccine mandate are permitted to enter a healthcare facility, provided they do not enter more than once per month.

D. Expert Evidence

102. Vaccinated and unvaccinated persons can be infected with Covid-19.

103. There is no significant difference in the rates at which vaccinated and unvaccinated persons transmit Covid-19.

104. Certain persons suffer serious health consequences as a result of Covid-19 vaccines.

105. Persons under 60 without co-morbidities have an approximately 99.997% chance of recovering from Covid-19.

106. Natural immunity provides protection against infection with Covid-19.

Part 3: LEGAL BASIS

1. This action is for review of Public Health Orders and Guidelines issued by an administrative decision-maker, Dr. Bonnie Henry, ~~Public~~ Provincial Health Officer for the Province of British Columbia, who is appointed by the Lieutenant Governor in Council pursuant to section 65 of the *Public Health Act.* The Public Health Orders and Guidelines have the force of law and are government action, and, as such, the *Charter* applies.

2. The Public Health Orders and Guidelines infringe the Petitioners' sections 2(a), 7 and 15 *Charter* rights and the infringements are not justified by section 1 of the *Charter*. Section 24(1) of the *Charter* provides that anyone whose rights or freedoms have been infringed may obtain a remedy the court considers just and appropriate. Section 52(1) of the *Constitution Act,1982* provides that to the extent the impugned law is inconsistent with the *Charter,* it is of no force and effect.

3. The Petitioners submit that the ~~Public~~ Provincial Health Officer has an ongoing legal obligation to ~~access~~ assess whether the above orders are still required to protect public health. The ~~Public~~ Provincial Health Officer's failure to review, rescind or alter the orders is an ongoing decision by the ~~Public~~ Provincial Health Officer that the orders are required to protect public health, and must be justified as proportionate. If the government has failed to even consider whether to change the orders in light of the new evidence regarding transmission and vaccination, then mandamus is available.

1. Infringement of section 7 of the Charter

4. Ordering vaccination as a condition of employment for the petitioners interferes with and infringes their rights to medical self-determination. Section 7 *Charter* rights to life, liberty and security of the person encompass the right of medical self-determination: *Carter v. Canada (Attorney General)* 2015 1 SCR 5 at paras. 64-69; *AC v. Manitoba (Director of Child and Family Services,* 2009 SCC 30; *B(R) v. Children's Aid Society of Metropolitan Toronto,* [1995] 1 SCR 315. Section 7 is also engaged by state interference with an individual's physical or psychological integrity: *Chaoulli v. Quebec (Attorney General)* 2005 SCC 35 at para. 116; *New Brunswick (Minister of Health and Community Services) v. G.(J.)* [1999] 3 S.C.R. 46 at para. 58;

5. Section 7 does not promise that the state will not interfere with life, liberty and security of the person, but that it will not do so except in accordance with the principles of fundamental justice: "While the Court has recognised a number of principles of fundamental justice, three have emerged as central in the recent s. 7 jurisprudence: laws that impinge on life, liberty or security of the person must not be arbitrary, overbroad, or have consequences that are grossly disproportionate to their object": *Carter v. Canada (Attorney General), supra* at

paras. 71-72.

6. In assessing whether an impugned law violates the principles of fundamental justice, the object of the law must be given a precise and narrow definition: *Carter v. Canada (Attorney-General), supra* at paras. 73-78. The Petitioners say that the object of the Public Health Orders and the Guidelines is to reduce transmission of Covid-19 to vulnerable persons.

7. The Public Health Orders and Guidelines are over-broad, arbitrary, and disproportionate. The Public Health Orders and Guidelines require vaccination of persons who work remotely, or in an administrative capacity, or with persons that are not vulnerable to the deleterious effects of Covid-19. For those workers who are in contact with vulnerable persons, the orders do not provide for other options to mandatory vaccination, such as re-assignment of workers to work-places not dealing with vulnerable persons, and/or masking or rapid testing prior to attending the workplace. Finally, the Public Health Orders and Guidelines permit third-party contractors doing work similar to the work of the Petitioners to remain unvaccinated.

2. Infringement of section 2(a) of the *Charter*

8. Vaccine mandates that fail to provide religious and conscientious exemptions infringe section 2(a) *Charter* rights. Section 2(a) of the *Charter* protects the right to freedom of conscience and religion. “Freedom, in a broad sense, embraces both the absence of coercion and constraint, and the right to manifest beliefs and practices. Freedom means that, subject to such limitations are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others, no-one is forced to act in a way contrary to his beliefs or his conscience”: *R v. Big M Drug Mart Ltd,* 1985 CanLII 69 (SCC) at para. 95. Freedom of religion includes the right to ascribe to sincerely held beliefs or conduct that “are not objectively recognised by religious experts as being obligatory tenets or precepts of a particular religion”: *Syndicat Northcrest v. Amselem*, 2004 SCC 47, at paras. 43-51.

9. Freedom of conscience includes the right to act in accordance with a coherent set of beliefs but does not require that the individual asserting freedom of conscience ascribe to an organised religion: *R. v. Morgenthaler,* [1988] 1 SCR 30 at p. 37; *Carter v. Canada (Attorney-General)*, *supra* at para. 132.

10. The unavailability of exemptions on the basis of religion or conscience from the vaccine mandates contained in the Public Health Orders and Guidelines is more than a trivial or insubstantial interference with the petitioners’ section 2(a) *Charter* rights, and consequently, is an infringement of *Charter* section 2(a).

11. Suspension of the right to apply for exemptions is a breach of procedural fairness.

3. Infringement of section 15(1) of the Charter

12. The Public Health Orders and Guidelines treat the Petitioners differently than those workers who have chosen to comply with the orders and accept vaccination as a condition of employment. Section 15(1) of the *Charter* protects equality rights. In *Quebec (Attorney General) v. A,* 2013 SCC 5 at para.169 the LaBel J. stated, after reviewing the s. 15(1) jurisprudence, that a comparator group analysis would not always sufficiently identify instances of infringements of section 15(1) of the *Charter.* LaBel, J. distilled the section 15(1) test down to two questions at paras. 171:

> "(1) Does the law create a distinction based on an enumerated or analogous ground?
>
> (2) Does the distinction create a disadvantage by perpetuating prejudice or stereotyping?"

13. The Petitioners are discriminated against based on their medical status, that is, as unvaccinated persons. Medical status is a ground analogous to mental or physical disability or citizenship status: *Andrews v. Law Society of British Columbia,* [1989] 1 S.C.R. 143 at p. 164, 183; *Quebec (Attorney General) v. A, supra* at 173-184; *Attorney General of Ontario v. G,* 2020 SCC 38, at para. 43.

14. The Petitioners are not required to establish that unvaccinated persons are historically disadvantaged to make out a claim under s.15(1) of the *Charter*: *Trociuk v. British Columbia (Attorney General)* 2003 SCC 34. However, the Petitioners are, in any case, able to establish that discrimination on the basis of medical status does have historical antecedents.

15. The Petitioners can point to prejudice and stereotyping to make out their claim for infringement. Pervasive prejudice and stereotyping against those not vaccinated for Covid-19 exists in Canada and around the world. Examples of this include: the inflammatory comments made by the Prime Minister of Canada about the unvaccinated as being "misogynists" and "racists"; comments made by the President of France that he wanted to "piss off" the unvaccinated with recent legislation; a recent poll showing that approximately ¼ of the Canadian population supports short jail sentences for the unvaccinated and Quebec Premier Legault's initial proposal to impose a medical tax on the unvaccinated.

~~4. Infringements not justified under Section 1 of the *Charter*~~

~~16. Because the Public Health Orders have the effect of laws of general application,~~

rather than administrative decisions pertaining specifically to the interests of a particular individual, whether the Public Health Orders are justified under section 1 of the *Charter* is determined by the test set out in *R. v. Oakes*, [1986] 1 SCR 103: *Christian Medical and Dental Society of Canada v. College of Physicians and Surgeons of Ontario,* 2018 ONSC 579, paras. 51-69; ONCA 393 at paras. 58-60; *Carter v. Canada (Attorney General), supra; Doré v. Barreau du Québec,* 2012 SCC 12.

17. In *Doré v. Barreau du Québec, supra,* at para. 36, the Justice Abella stated: "As explained by Chief Justice McLachlin in *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37… the approach used when reviewing the constitutionality of a law should be distinguished from the approach used for reviewing an administrative decision that is said to violate the rights of a particular individual. When *Charter* values are applied to an individual administrative decision, they are being applied in relation to a particular set of facts. *Dunsmuir* tells us this should attract deference (para. 53; see also *Suresh v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1…at para.39). When a particular "law" is being assessed for *Charter* compliance, on the other hand, we are dealing with principles of general application."

18. The onus is on the Respondents to prove that the infringements of section 7, 2(a) and 15 of the *Charter* are justified: *R v. Oakes*, *supra.* The Respondents must "show that the law has a pressing and substantial object and that the means chosen are proportional to that object. A law is proportionate if (1) the means adopted are rationally connected to that objective; (2) it is minimally impairing of the rights in question; (3) there is proportionality between the deleterious and salutary effects of the law": *R v. Oakes, supra*; *Carter v. Canada (Attorney General) supra* at para. 94.

19. The object of the Public Health Orders and Guidelines, to prevent transmission of Covid-19 to vulnerable persons, has a pressing and substantial objective, but the means chosen are not proportionate.

20. While a measure of deference is accorded to laws enacted by the legislature to address complex social issues (*Carter v. Attorney General, supra* at paras. 96-99) the Petitioners assert that such deference is not properly applied to the Public Health Orders and Guidelines, which were issued by an unelected official.

21. Some of the Petitioners have experienced serious health consequences because of vaccines or reasonably anticipate experiencing serious health consequences from the Covid-19 vaccine. The Public Health Orders and Guidelines provide no religious or conscientious exemptions at all. The Public Health Orders and Guidelines apply to persons employed in workplaces where

~~no vulnerable persons are at risk. For those workers who are in contact with vulnerable persons, other options are and were available to Public Health Officer Dr. Bonnie Henry, such as re-assignment of unvaccinated workers to a different workplace, and/or providing for rapid testing when unvaccinated workers attend a workplace where vulnerable persons are present. Finally, the Public Health Orders and Guidelines do not consider the impact of natural immunity on rates of infection or transmission.~~

5. The violations of sections 2(a), 7 and 15 *Charter* rights are not reasonable

22. The Petitioners submit that the Public Health Orders and Guidelines are decisions by an administrative body that engage section 2(a), section 7 and section 15(1) *Charter* rights and are thus subject to a review by the court to determine if the decisions were reasonable, in accordance with the law as set out by the Supreme Court of Canada in *Mason v. Canada (Citizenship and Immigration)* 2023 SCC 21, *Canada (Minister of Citizenship and Immigrations) v. Vavilov,* 2019 SCC 5 and employing the *Doré/Loyola* framework: *Beaudoin v. British Columbia,* 2021 BCSC 512 paras. 119-126; *Baker v. Canada (Minister of Citizenship and Immigration),* [1999] 2 SCR 817.

23. Delegated authority must be exercised "in light of constitutional guarantees and the values they reflect" (*Doré,* at para. 35). In *Loyola,* this Court explained…"*Charter* values help determine the extent of any given infringement in the particular administrative context, and, correlatively, when limitations on that right are proportionate in light of the applicable statutory objectives": *Law Society of British Columbia v. Trinity Western University,* 2018 SCC 32 at para. 57; *Loyola High School v. Quebec (Attorney General)* 2015 SCC 12 at para. 38; *Doré v. Barreau du Québec*, *supra* at para. 35.

24. Comparing the test applied in *R. v. Oakes, ~~supra~~* [1986] 1 SCR 103*,* to the review as to whether a decision of an administrative body is reasonable, the Supreme Court of Canada said "In assessing whether an adjudicated decision violates the *Charter,* however, we are engaged in balancing somewhat different but related considerations, namely, has the decision-maker disproportionately, and therefore unreasonably, limited a *Charter* right. In both cases, we are looking for whether there is an appropriate balance between rights and objectives, and the purpose of both exercises is to ensure that the rights at issue are not unreasonably limited": *Doré v. Barreau du Québec*, *supra* at para.6.

25. The Public Health Orders and the Guidelines are unreasonable. The objectives of the Public Health Orders and Guidelines could be met with measures that do not disproportionally limit the Petitioners' *Charter* rights.

26. The Petitioners are unable to seek review under section 43 of the *Public Health*

Act or apply for any exemptions other than the narrow medical exemption provided for by the Public Health Orders and Guidelines. Some of the Petitioners work remotely, others in an administrative capacity, or not even in a health-care setting. No provision was made for Petitioners that do not work with persons who are vulnerable to the deleterious effects of the virus. For Petitioners who do attend facilities where vulnerable persons are present, there is no consideration of whether use of additional personal protective equipment and rapid testing prior to attending the workplace would meet the objectives of the Public Health Orders, not even where the Petitioners attend the workplace occasionally or rarely. No provision for alternate employment was made for those Petitioners who chose not to be vaccinated for religious reasons or reasons of conscience, or other medical reasons, and who do work with vulnerable persons. The Public Health Orders and Guidelines do not consider the impact of natural immunity on infections with, and transmissibility of, Covid-19. Finally, some third-party contractors doing similar work to the Petitioners are not required to be vaccinated.

27. The object of the Public Health Orders and Guidelines, to prevent transmission of Covid-19 to vulnerable persons, has a pressing and substantial objective, but the means chosen are not proportionate.

28. Some of the Petitioners have experienced serious health consequences because of vaccines or reasonably anticipate experiencing serious health consequences from the Covid-19 vaccine. The Public Health Orders and Guidelines provide no religious or conscientious exemptions at all. The Public Health Orders and Guidelines apply to persons employed in workplaces where no vulnerable persons are at risk. For those workers who are in contact with vulnerable persons, other options are and were available to Public Health Officer Dr. Bonnie Henry, such as re-assignment of unvaccinated workers to a different workplace, and/or providing for rapid testing when unvaccinated workers attend a workplace where vulnerable persons are present. Finally, the Public Health Orders and Guidelines do not consider the impact of natural immunity on rates of infection or transmission.

29. The effect of the Public Health Orders and Guidelines is to coercively require vaccination, not to protect the health of vulnerable persons.

6. Unreasonable in Accordance with Administrative Law Principles as set out in *Canada (Minister of Citizenship and Immigration*) v. *Vavilov* 2019 SCC 56

30. The Orders are unreasonable and not justified on the factual and legal constraints that bear on the decision.

~~7. The Health Professionals Order impinges on the statutory powers of the~~

British Columbia College of Physicians and Surgeons, and the British Columbia College of Nurses and Midwives to license and govern their members

31. The British Columbia College of Physicians and Surgeons of B.C. (CPSBC) and the College of Nurses and Midwives (BCCNM) are constituted in accordance with the *Health Professions Act* and makes by-laws for self-governance, which are subject to approval by the Minister of Health. Regulation of members of the CPSBC and BCCNM is by a self governing body, known as a "College" and an appointed Government licensing board. Section 16 of the *Health Professions Act* provides that the duty and objects of a College governed by the legislation are as follows:

Duty and objects of a college

16 (1) It is the duty of a college at all times

(a) to serve and protect the public, and

(b) to exercise its powers and discharge its responsibilities under all enactments in the public interest.

(2) A college has the following objects:

(a) to superintend the practice of the profession;

(b) to govern its registrants according to this Act, the regulations and the bylaws of the college;

(c) to establish the conditions or requirements for registration of a person as a member of the college;

(d) to establish, monitor and enforce standards of practice to enhance the quality of practice and reduce incompetent, impaired or unethical practice amongst registrants;

(e) to establish and maintain a continuing competency program to promote high practice standards amongst registrants;

(f) to establish, for a college designated under section 12 (2) (h), a patient relations program to seek to prevent professional misconduct of a sexual nature;

(g) to establish, monitor and enforce standards of professional ethics amongst registrants;

(h) to require registrants to provide to an individual access to the individual's health care records in appropriate circumstances;

(i) to inform individuals of their rights under this Act and the *Freedom of Information and Protection of Privacy Act*;

(i.1) to establish and employ registration, inquiry and discipline procedures that are transparent, objective, impartial and fair;

(j) to administer the affairs of the college and perform its duties and exercise its powers under this Act or other enactments;

(k) in the course of performing its duties and exercising its powers under this Act or other enactments, to promote and enhance the following:

i. collaborative relations with other colleges, regional health boards designated under the *Health Authorities Act* and other entities in the Provincial health system, post-secondary education institutions and the government;

ii. interprofessional collaborative practice between its registrants and persons practising another health profession;

iii. the ability of its registrants to respond and adapt to changes in practice environments, advances in technology and other emerging issues.

32. The privilege of self-regulation is granted to a profession in exchange for the profession's commitment to protecting the public interest; *Law Society of New Brunswick v. Ryan,* 2003 SCC 20. The justification for granting self-governing status to a profession is that the members of the profession are best qualified to ensure proper standards and ethics are maintained: The Privatization of Regulation: Five Models of Self-Regulation, Margot Priest, 1998 Ottawa Law Review 233, 1998 CanLIIDocs 19; Canada's Legal Profession: Self-Regulating in the Public Interest?, John Pearson, Canadian Bar Review, 2015 92-3 2015 CanLIIDocs 230.

33. The decision to grant a profession self-regulating status is one that is made after extensive consideration with all levels of government and representatives of the profession: *College of Midwives of British Columbia v. Mary Moon*, 2019 BCSC 1670. The granted statutory scope of authority over its members of the self-governing profession is meant to protect the public and maintain the independence of professionals from government interference: By Her Own Authority: The Scope of Midwifery Practice under the Ontario Midwifery Act, 1991, 1993 CanLIIDocs 199; What is a "Profession", Peter Wright, Canadian Bar Review 1951 29-7, 1951 CanLIIDocs 230.

34. In the Western world the roots of physician self-governance date back to Hellenic Greek and the Hippocratic Oath; "Self-Regulation was originally instituted at the request of the medical profession because the body of knowledge in the profession was esoteric and unknown to the average citizen, and it would be difficult for external regulation to be as effective": Professionalism: the historical contract, Roger Collier, Canadian Medical Association Journal (CMAJ), August 9 2012. Professional societies of began

formally regulating medical practice in or about 1760 in the Western world and by the early 1800, medical societies oversaw establishing regulations, standards of practice and certification of doctors. Professional self-regulation allows the government to have some control over the professional group without maintaining the special expertise that would be needed to regulate the profession. One of the central principles of self-governing professions is a climate of open debate and collegial exchange regarding the issues facing the profession: Professionalism, Governance and Self-Regulation of Medicine, Howard Bauchner, M.D., Phil B. Fontanarosa, M.D. MBA, Amy E. Thompson, MD, Editorial, May 12, 2015, Journal of the American Medical Association (JAMA) 2015; 313(18).

35. Nursing has been a regulated health profession under British Columbia legislation since 1918. Before designation under the *Health Professions Act*, the profession was regulated under the *Nurses (Registered) Act,* [R.S.B.C. 1996] Chapter 335 (repealed). Practical nursing has been a designated health profession under the *Health Professions Act* since 1996. Midwifery became a designated health profession under the *Health Professions Act* in 1998, although midwifery was practiced in Canada throughout human history in all cultures. In September 2020, the BCCNM was established to govern all three professions.

36. The Health Professionals Order trenches on the common law and statutorily granted powers of the Colleges to make rules for the admission, licensing, standards of practice, professional ethics, self-governance, and comportment of its members as set out in the *Health Professions Act.* The Health Professionals Order, issued by an unelected official, Dr. Bonnie Henry as Public Health Officer for British Columbia, is neither in the public interest nor consistent with the aims reflected in the legislative and regulatory history of the development of the CPSBC and BCCNM and the as self-governing professions.

8. The Orders and Guidelines Fetter the Discretion of the ~~Public~~ Provincial Health Officer and breach the principles of natural justice

37. It is an abuse of discretion for a statutory decision-maker to fetter its discretion by policy, as the ~~Public~~ Provincial Health Officer did when she issued the Public Health Orders and Guidelines restricting available exemptions and the ambit of review under section 43 of the *Public Health Act,* and in doing so, she breached the principles of natural justice.

~~9. Violation of the right to informed consent~~

38. The Public Health Orders and Guidelines deprive the Petitioners of their right to informed consent, as required by section 6(a) and (f) of the *Health Care*

Consent Act.

10. Violation of privacy

39. The collection of the Petitioners' personally-identifying and Covid-19 vaccination status by employers, contractors and colleges, as authorized by Dr. Henry's Orders are an unjustified violation of the Petitioners' privacy.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Anneke Pingo, sworn August 22, 2022, filed September 7, 2022;
2. Affidavit #1 of Phyllis Janet Tatlock, filed June 6, 2022;
3. Affidavit #2 of Phyllis Janet Tatlock, to be filed, filed May 31, 2023;
4. Affidavit #3 of Phyllis Janet Tatlock, to be filed;
3. Affidavit #1 of Laura Koop, filed May 5, 2022;
4. Affidavit #2 of Laura Koop, to be filed;
5. Affidavit #1 of Monika Bielecki, filed June 6, 2022;
6. Affidavit #2 of Monika Bielecki, to be filed;
7. Affidavit #1 of Scott Macdonald, filed May 5, 2022;
8. Affidavit #2 of Scott Macdonald, to be filed;
9. Affidavit #1 of Ana Lucia Mateus, filed May 13, 2022;
10. Affidavit #2 of Ana Lucia Mateus, filed October 26, 2023;
11. Affidavit #1 of Darold Sturgeon, filed May 3, 2022;
12. Affidavit #2 of Darold Sturgeon, filed October 24, 2022;
13. Affidavit #3 of Darold Sturgeon, to be filed;
14. Affidavit #1 of Lori Jane Nelson filed May 12, 2022;
15. Affidavit #2 of Lori Jane Nelson filed November 3, 2022;
16. Affidavit #3 of Lori Jane Nelson, filed October 30, 2023;
17. Affidavit #1 of Ingeborg Keyser, filed June 6, 2022;

18. Affidavit #2 of Ingeborg Keyser, to be filed;

19. Affidavit #1 of Lynda June Hamley, filed June 6, 2022;

20. Affidavit #2 of Lynda June Hamley, filed November 8, 2022;

21. Affidavit #3 of Lynda June Hamley, to be filed;

22. Affidavit #1 of Melinda Joy Parenteau, filed June 9, 2022;

23. Affidavit #2 of Melinda Joy Parenteau, to be filed;

24. Affidavit #1 of Dr. Joshua Nordine, filed September 20, 2022;

25. Paragraphs 1 - 8 of Affidavit #2 of Dr. Joshua Nordine, filed November 17, 2022;

26. Affidavit #3 of Dr. Joshua Nordine, filed October 31, 2023;

27. Affidavit #1 of Elizabeth Ringrose, filed June 2, 2022;

28. Affidavit #1 of Jennifer Koh, filed May 20, 2022;

29. Affidavit #2 of Jennifer Koh, filed November 1, 2022;

30. Affidavit #1 of Benneth Johnson, filed August 26, 2022;

31. Affidavit #1 of Ashley Sexton, filed September 14, 2022;

32. Affidavit #2 of Ashley Sexton, filed September 21, 2022;

33. Affidavit #5 of Ashley Sexton~~, to be filed~~ filed May 1, 2023; ~~and~~

34. Affidavit #6 of Ashley Sexton, filed September 13, 2023;

35. Affidavit #2 of Anneke Pingo, filed October 3, 2023; and,

36. Such further materials this Honourable Court may permit.

The Petitioners estimate that the hearing of the petition will take 10 days .

Date: ~~April 20th, 2023~~
October 31, 2023

Co-counsel for the Petitioners
for KAREN BASTOW

To be completed by the court only: Order made [ ] in the terms requested in paragraphs ..... of Part 1 of this petition [ ] with the following variations and additional terms:	
Date: .....[dd/mmm/yyyy].....	..... Signature of [ ] Judge [ ] Master

Court File No. S-222427
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners

and

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

3RD FURTHER AMENDED PETITION

Karen Bastow Associate Counsel David G. Milburn, Trial Lawyers [redacted]	Charlene E. Le Beau Charlene E. Le Beau Law Office [redacted]

No. 222427
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners

and

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

RESPONSE TO PETITION

Filed by: The Respondent the Provincial Health Officer for the Province of British Columbia (the "PHO")

THIS IS A RESPONSE TO the petition filed March 16, 2022 and the amended petition filed August 23, 2022.

Part 1: ORDERS CONSENTED TO

The PHO consents to the granting of **NONE** of the orders set out in Part 1 of the petition.

Part 2: ORDERS OPPOSED

The PHO opposes the granting of **ALL** of the orders set out in Part 1 of the petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The PHO takes no position on the granting of **NONE** of the orders set out in Part 1 of the petition.

Part 4: FACTUAL BASIS

Overview

1. This Petition challenges a number of orders made by Dr. Bonnie Henry, the Provincial Health Officer (PHO), including:

    a. the *Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventative Measures Order* as made October 21, 2021 and its replacements (the "Hospital and Community Order") and

    b. the *Residential Care Covid-19 Preventive Measures* – as made October 21, 2021, and its replacements (the "Residential Care Orders"),

2. The Hospital and Community Order and the Residential Care Orders (collectively, the "Health Care Orders") were made under the authority of the *Public Health Act,* S.B.C. 2008, c. 28.

3. The Health Care Orders had the effect of requiring individuals working in the health-care system and long-term care (LTC) facilities to provide proof of vaccination, exemption or exemption request to employers in order to work. The only exemptions allowed under the Health Care Orders are for medical reasons. Such exemptions are determined under s. 43 of the *Public Health Act* by medical health officers (MHOs). None of the petitioners claim a medical exemption.

4. The reasoning for the Health Care Orders are set out in two forms:

    a. detailed written recitals, which have been amended as the COVID-19 pandemic has developed (the "Recitals"), and

    b. public statements by Dr. Henry (the "Public Statements") (collectively, the "Reasons").

5. In her Reasons, Dr. Henry recognized that the Health Care Orders – like other orders that have proved necessary earlier in the COVID-19 pandemic – limit interests protected by the *Canadian Charter of Rights and Freedoms* (*Charter*). Dr. Henry recognized that the Health Care Orders require some people to choose between their sincere opposition to vaccination and continuing to work in BC's health care sector. Some of those sincere beliefs have a connection to religion or

conscience, while others would be based on personal medical belief or preference. Public health ethics permits vaccination mandates – in the sense of limiting some activities and employment to vaccinated persons – provided they are necessary and proportionate to protect public health in the circumstances. Dr. Henry recognized that limitations on medical autonomy, whether specifically protected by the *Charter* or not, had to be justified in light of compelling public health needs.

6. Vaccination mandates, while appropriately controversial, are effective in increasing the rate of vaccination. The central rationale for requiring vaccination of LTC and health care workers is that it protects the health of patients, clients and residents of care facilities. A vaccination requirement in settings where vulnerable patients receive care also promotes the integrity of the health care system, including preserving its ability to respond to all care needs, in two ways:

a. first, as a statistical matter, a vaccinated healthcare workforce is less likely to get sick and will likely have less severe sickness. Since epidemics and pandemics, including the COVID-19 pandemic, put pressure on the capacity of the healthcare system – and since this pressure is correlated with outbreaks of COVID-19 – a vaccinated workforce will be better able to provide health care for COVID and non-COVID care needs for all British Columbians at times of extreme stress on the health care system; and

b. second, a vaccinated healthcare workforce will be less likely to infect vulnerable patients and LTC facility residents and thereby more likely to keep them healthy and safe from preventable COVID-19 infection, severe outcomes and death.

7. While the immunological profile of the population and the dominant variant of SARS-CoV-2 (the “Virus”) has changed – and with that many aspects of COVID-19 strategy, Dr. Henry continued to consider the balance to support the Health Care Orders.

8. Two time frames are particularly relevant.

a. In the Fall of 2021, the dominant variant of the Virus was the “Delta” variant, which was more highly transmissible than previous variants of the Virus. Vaccines available in British Columbia provided durable and highly effective protection against infection by Delta. In her Reasons at this time, Dr. Henry found that vaccination was the single most important

preventive measure for providers of care or services in hospital or community settings, and the staff or contractors of an organization which provides care or service in hospital or community settings can take to protect patients, residents, clients and the health care and personal care workforce from infection, severe illness and possible death from COVID-19. She found that while there were clear, objective criteria for determining whether a person has a medical deferral and few people fall into that category, there were difficulties and risks in accommodating other unvaccinated persons. Dr. Henry considered the effect on unvaccinated people and on their constitutionally-protected interests. Dr. Henry found that the volume of requests for reconsideration was beyond the capacity of her office to address and was using resources better directed at the public health emergency of COVID 19. The Orders were very effective in getting high rates of vaccination among the employees to whom it applied. Some employees, including the petitioners, resisted on various grounds, and were therefore unable to continue to work.

b. In the course of 2022, the Omicron variant of the Virus – which is better able to cause "breakthrough" infections of those who already have some immunity as a result of vaccination or prior infection – became the dominant variant in British Columbia. In September 2022, Dr. Henry set out new recitals and explained why, in her view, the Health Care Orders continue to be required to maintain the BC health care system and to protect vulnerable patients. In her September 2022 Reasons, she set out the following rationales for continuing the course:

    i. While Omicron infection is a real possibility for everyone, unvaccinated workers in the healthcare system are more likely to get sick for longer, and are more likely to transmit infection to other healthcare workers, patients, clients and residents than if they were vaccinated, all other things being equal and taking into account the precautionary principle.

    ii. It is not practical to provide exemptions based on past infections or job duties. There is no reliable way of knowing how many times an individual has been infected with the Virus. Employees in the health care system who do not themselves have patient-facing duties often interact with those who do and may share physical space and ventilation with clinical health care workers. Designing

> specific exemptions and monitoring compliance with those exemptions is not practical, given the PHO's many duties in respect of public health at a population level.

9. The question for this court on judicial review is whether Dr. Henry's conclusions in Fall 2021 and in Fall 2022 were a reasonable and proportionate way of balancing the interests at stake.

Emergence of the SARS-CoV-2 Pandemic in BC

10. The first diagnosis of a case of COVID-19 in British Columbia occurred on January 27, 2020.

11. On March 11, 2020, the World Health Organization ("WHO") declared the COVID-19 outbreak a pandemic. The WHO declaration remains in effect.

12. On March 17, 2020, Dr. Henry issued a Notice of Regional Event under s. 52(2) of the *Public Health Act*, designating the transmission of the infectious agent SARS-CoV-2, which "has caused cases and outbreaks of a serious communicable disease known as COVID-19" among the population of British Columbia, a regional event as defined under s. 51 of the *Public Health Act*.

13. The designation of a regional event allowed the PHO to exercise powers under Parts 5 and 6 (see specifically s.67(2)) of the *Public Health Act*, including the power to make oral and written public health orders in response to the COVID-19 pandemic. The Notice of Regional Event issued under the *Public Health Act* continues to be in effect.

14. SARS-CoV-2 is highly infectious and has evolved to become more so over time. The Virus can be spread by people who do not have symptoms. Without public health interventions, it has a high transmissibility and infectivity. While immunity resulting either from vaccination or infection significantly reduced the transmissibility of earlier variants, the Virus has continued to evolve and has become better able to transmit despite the existence of immunity, although immunity considerably reduces virulence. As long as the number of additional people each infected person transmits the virus to is greater than 1, the Virus will spread exponentially, ultimately potentially overwhelming the health system.

15. Since the Virus first emerged it has mutated, resulting in variants. Variants that pose a greater threat to public health than the original virus are called “variants of concern”. Five variants of concern have emerged in BC: Alpha, Beta, Gamma, Delta, and as of late November 2021, Omicron.

16. From late July 2021 to late December 2021, the Delta variant was the most common variant of concern in BC. The Delta variant is significantly more infectious and induces a higher severity of illness, particularly in vulnerable populations, than the original strain of SARS-CoV-2 or its earlier variants.

17. As of late December 2021, Omicron became the most common variant of concern in BC. By comparison with Delta and previous variants, Omicron is more likely to lead to “breakthrough” infections in people who already have some immunity as a result of vaccination or prior infection. However, prior immunity remains highly effective at reducing the severity of illness and there is evidence that it reduces transmission in close settings. Acquired immunity is cumulative – with each dose of vaccine or infection tending to increase it – but it also tends to decline over time. There is more predictable durability to acquired immunity from vaccination than from infection. Vaccination remains the most important preventive measure an individual can take to protect against COVID-19.

18. Preventing and controlling transmission of the Virus is essential to maintaining the provincial health system’s ability to deliver quality care and continue the safe delivery of essential health services.

19. Throughout the COVID-19 pandemic, the Province and the PHO have been actively preventing and containing the transmission of COVID-19 through a series of comprehensive public health measures, including health promotion, prevention, testing, case identification, isolation of cases and contact tracing, and vaccination, all based on the best available scientific evidence.

20. Dr. Henry has made a number of orders under the *Public Health Act* in response to the COVID-19 regional event, including new orders and orders revoking or amending prior orders, to respond to the ever-changing circumstances of the COVID-19 pandemic in British Columbia.

21. The overriding goal of the public health response to the SARS-CoV-2 pandemic has and continues to be to protect the most vulnerable members of society, and the health care system’s ability to continue to deliver care for COVID-19-related and other illness, while minimizing social disruption, which includes

interference with autonomy over medical decisions among many other social values.

22. In a public health emergency, the need to take action to protect the public in face of changing circumstances does not permit all decisions to be made with scientific certainty. Dr. Henry therefore relies on the generally accepted scientific and epidemiological evidence available to her at the relevant time, and the precautionary principle, when making public health orders under the *Public Health Act*.

Requests for Reconsideration of PHO Orders

23. Under s. 43 of the *Public Health Act*, a person affected by a public health order can request reconsideration if that person:

a. has relevant information that was not available to the PHO at the time the order was made;

b. has a proposal that was not presented to the PHO when the order was made and if implemented, would meet the objective of the order (or be suitable for a written agreement under s. 38 of the *Public Health Act*); or

c. requires more time to comply with the order.

24. Under s. 54(l)(h) of the *Public Health Act*, the PHO can, in an emergency, elect not to reconsider an order.

25. Under s. 56(2) of the *Public Health Act,* if the PHO makes an order under s. 56 of the *Public Health Act,* a person to whom the order applies is required to comply unless that person provides to the PHO or MHO:

a. A written notice from a medical practitioner stating that the health of the person who must comply would be seriously jeopardized if the person did comply; and

b. A copy of each portion of that person's health record relevant to these statement in paragraph (a), signed and dated by the medical practitioner.

Vaccination in General

26. Vaccination is the deliberate triggering of the immune system through the introduction of a substance into the body in order to protect against the likelihood and severity of future infection. Vaccines are evaluated for “safety” (the probability and severity of negative effects) and “efficacy” (the reduction in probability and extent of illness as a result of future infection). A safe and efficacious vaccine is one that does not have unacceptable side effects but reduces either the likelihood or severity of infection in the population.

27. Vaccination protects at both individual and community/population levels. High vaccination coverage in a community or population reduces spread of the virus, limits severe outcomes (including hospitalization and death), and helps prevent new variants from emerging.

28. The introduction of vaccines often goes together with “vaccine hesitancy” among part of the population. The extent of vaccine hesitancy will typically vary. To the extent possible, health authorities respond to vaccine hesitancy through education, i.e., providing accurate information about the scientific understanding of safety and efficacy in as understandable a fashion as possible.

29. A vaccine “mandate” exists where there are some legal consequences for not being vaccinated. Mandates have been found to increase the rate of vaccination. Public health ethics requires that mandates be evaluated for proportionality between benefit and impact on those subject to them.

30. A sequence of doses of a vaccine is a “series”. The “primary series” of vaccination against SARS-CoV-2 consists of two doses of a Health Canada-approved vaccine (or one dose of the Janssen vaccine). The primary series may have higher amounts of antigen and must be given prior to additional doses. A person is considered to be vaccinated once they are at least 7 days post-receipt of the primary series of the vaccine.

31. Vaccination is the single most effective measure to provide protection against infection, severe illness, hospitalisation, intensive care (“ICU”) admission and death from the Virus. Vaccination also plays a key role in limiting transmission of SARS-CoV-2. However, vaccination does not provide complete protection from infection, and protection from infection and severe outcomes can wane over time, particularly in elderly populations and those with pre-existing conditions or risk factors that make them vulnerable to severe illness and death from SARS-CoV-2.

32. All individuals living or visiting British Columbia who are six months of age and older are eligible to receive a Health Canada-approved vaccine for SARS-CoV-2. As of August 15, 2022, 92% of people in British Columbia six months and older have received the primary series of vaccination against the Virus.

33. In British Columbia, third doses are available to individuals who are 18 years of age or older, and at least 6 months post-second dose of their initial course of vaccine. Third doses were prioritized for vulnerable populations and healthcare workers. Fourth doses have been made available, as noted in the PHO's September 6, 2022 press conference. The only mandates have been for the primary series.

Residential Care Facilities, Hospitals and Community Care Settings

34. Throughout the COVID-19 pandemic, long-term care and assisted living residents and staff have experienced a disproportionate share of cases, severe illness, and deaths from COVID-19. Residents of these facilities are typically elderly and often suffer from chronic health conditions or compromised immune systems, which make them particularly vulnerable to severe illness and death from SARS-CoV-2, even if vaccinated.

35. At various material times from March 2020 onwards, LTC facilities have been subject to significant restrictions to mitigate the impacts of SARS-CoV-2 on their staff and residents, including restricting visitors to, restricting staff working in these facilities to work at one site only, and – once vaccines became available - prioritizing vaccination for staff and residents.

36. Following the commencement of the COVID-19 vaccination program for residents and staff in LTC facilities, the number of COVID-19 outbreaks in these settings decreased dramatically. The risk of breakthrough infection remains, however.

37. Persons receiving care in hospital or community settings are also often of an advanced age, have chronic health conditions or compromised immune systems and are thus particularly vulnerable to severe illness and death from COVID-19, even if they are vaccinated.

Protection of the Health Care System

38. The health-care system has finite resources and therefore a certain planned capacity to address health care needs ("demand"). Epidemics and pandemics can overload the health-care system in two ways: first, they can create surges in demand for care and second they can make it harder for the system to respond, both as a result of overwork and use of resources and because health care workers get sick.

39. The health-care system has been experiencing high demands for care throughout the COVID-19 pandemic. In addition, the health-care and public health systems typically experience a seasonal increase in care needs during the fall and winter respiratory virus seasons. Finally, local outbreaks of any disease, including COVID-19, create high local demands.

40. Vaccination of health professionals in hospitals and community care settings is the most important measure that can be taken to ensure the continued functioning of the public health and health-care systems and their ability to prevent disease and deliver care across the systems for both COVID-19 and other illness, particularly in circumstances where those systems are under extreme duress.

British Columbia's Delta-Driven Fourth Wave and the Omicron waves

41. From July to October 2021, the number of COVID-19 cases in British Columbia increased significantly, resulting in the fourth wave of the pandemic in British Columbia. The rise in SARS-CoV-2 cases in British Columbia during the fourth wave was comprised primarily of cases of persons infected with the Delta variant, which is more infectious and spreads faster than early forms of SARS-COV-2.

42. In or about late December 2021, Omicron became the dominant variant circulating in British Columbia, and began driving a fifth wave of the pandemic that has resulted in case rates and hospitalizations far in excess of any prior wave of the pandemic. Omicron is less virulent but more infectious than Delta. Vaccination continues to be the most effective measure to reduce the virulence of an Omicron infection. Since December 2021, a larger proportion of British Columbians have been infected with the Virus, usually Omicron, leading to a combination of infection-induced and vaccine-induced immunity in the population. On an individual and population basis, a combination of infection-induced and vaccine-induced immunity has the highest efficacy.

43. Omicron, which has sub-variants, continues to be the dominant variant circulating in British Columbia.

The Health Care Orders

44. By approximately mid-July 2021, the risk presented by COVID-19 in British Columbia changed, particularly by way of the emergence of the Delta variant of SARS-CoV-2. The number of new cases, hospitalizations and the reproduction rate of SARS-CoV-2 all increased in late summer of 2021.

45. By mid-August 2021, LTC Facilities were experiencing a rise in outbreaks, many of which may have been caused by the presence of unvaccinated persons in those settings. These outbreaks caused severe illness in both vaccinated and unvaccinated individuals, at least one death in the immediate period, and caused significant disruption to the lives of staff, residents, and their families.

46. In response to the risks presented by COVID-19 in LTC Facilities, Dr. Henry implemented new public health measures for residents, staff, and other persons providing services in LTC Facilities.

47. On September 9, 2021 Dr. Henry issued the *COVID-19 Vaccination Status Information and Preventive Measures Order* (the "Vaccination Status Order"), which provided as follows in material part:

> Q. I have reason to believe and do believe that
>
> (i) a lack of information about the vaccination status of resident and staff interferes with the suppression of SARS-CoV-2 in facilities and constitutes a health hazard under the *Public Health Act*;
>
> (ii) the presence of an unvaccinated staff member or an unvaccinated outside provider in a facility constitutes a health hazard under the *Public Health Act*;
>
> (iii) in order to mitigate the risk of the transmission of SARS-CoV-2 arising from the presence of unvaccinated persons in facilities, operators, medical health officers and I need information about the vaccination status of residents and staff, and employers need information about the vaccination status of staff;
>
> (iv) in order to confirm the vaccination status of residents in facilities, I need to

a. collect personal information about residents from admitters and operators; and

b. match this information with information in the Provincial Immunization Registry;

(v) in order to confirm the vaccination status of staff in facilities, I need to

a. collect personal information about staff from employers;

b. provide this information to the Minister of Health, so that the Minister may match it with information in the Enterprise Master Patient Index for the purpose of validating or providing me with the personal health numbers of staff; and

c. upon receiving the personal information of staff from employers, and the validation of or the personal health numbers of staff from the Minister of Health, match this information with information in the Provincial Immunization Registry.

48. The Vaccination Status Order:

a. required operators and admitters of LTC Facilities to collect from residents and staff certain personal, information, including legal first and last names, birthdates, and personal health numbers or, in certain circumstances, addresses;

b. imposed vaccination requirements effective September 16, 2021 that staff of LTC Facilities, outside health care providers and personal care providers abide by certain preventative measures, including rapid testing and mask wearing; and

c. prohibited certain persons from attending LTC Facilities absent proof of vaccination, including outside support or personal service providers, and regular other outside providers who have close contact with residents and, effective October 12, 2021, outside health care or personal care providers, regular other outside providers who do not have close contact with residents, and occasional other outside providers who have close contact with residents.

49. For those with less proximity to persons residing in LTC Facilities, the Vaccination Status Order imposed less stringent requirements, including complying with preventative measures such as physical distancing and mask wearing.

50. On September 27, 2021, the Vaccination Status Order was repealed and replaced. In the September 27 Vaccination Status Order, Dr. Henry exercised her discretion Under s. 54(1)(h) of the *Public Health Act* to refuse requests for reconsideration of the order, except for the purpose of a medical exemption to vaccination for COVID-19.

51. On October 21, 2021, Dr. Henry issued the *Residential Care COVID-19 Preventive Measures* order (the "Residential Care Order"), which provided as follows in material part:

> S. I have reason to believe and do believe that
>
> (i) the presence of an unvaccinated staff member, provider or visitor in a facility constitutes a health hazard under the *Public Health Act*;
>
> […]

52. The Residential Care Order imposed vaccination requirements on staff members of LTC Facilities and a variety of health care personnel who might come into contact with residents of LTC Facilities, including outside health care, personal care and personal service providers.

53. Depending on the degree of proximity to residents of LTC Facilities, the Residential Care Order required many of these classes of persons to have received two doses of COVID-19 vaccine by October 26, 2021, or they would not be permitted in a LTC Facility.

54. Persons who had not received a full dosage prior to October 26, 2021 could, pending full vaccination, attend a LTC Facility if they complied with certain preventative measures, including rapid testing and mask wearing.

55. For those with less proximity to persons residing in LTC Facilities, the Residential Care Order imposed less stringent requirements, including complying with preventative measures such as physical distancing and mask wearing.

56. In the Residential Care Order, Dr. Henry exercised her discretion pursuant to s. 54(1)(h) of the *Public Health Act* to not consider requests for reconsideration of the order, except for the purpose of a medical deferral for COVID-19 vaccination.

57. On October 21, 2021, Dr. Henry issued the *Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventative Measures* order (the "Hospital and Community Order" and, together with the Residential Care Order and the Vaccination Status Order, the "Orders"). Recital V to the Hospital and Community Order read as follows in material part:

> I have reason to believe and do believe that
>
> a. a lack of information on the part of employers about the vaccination status of staff interferes with the suppression of SARS-CoV-2 in hospital and community settings, and constitutes a health hazard under the *Public Health Act*;
>
> b. an unvaccinated person who provides health care or services in a hospital or community setting, puts patients, residents, clients, staff and other persons who provide health care or services at risk of infection with SARS-CoV-2, and constitutes a health hazard under the *Public Health Act*;
>
> c. an unvaccinated staff member of an organization which provides health care or services puts staff who provide health care or services, and patients, residents or clients, at risk of infection with SARS-CoV-2, and constitutes a health hazard under the *Public Health Act*;

58. The Hospital and Community Order required that persons employed, contracted, funded or otherwise affiliated with hospital and community settings provide proof of vaccination for COVID-19 for input, by those who had access, into the Workplace Health Indicator Tracking and Evaluation database by October 26, 2021.

59. Persons who had not received a full dosage prior to October 26, 2021 could, pending full vaccination, continue to attend hospital and community settings if they complied with certain preventative measures, including mask wearing.

60. For those with less proximity to persons residing in hospital and community care settings, the Hospital and Community Order imposed less stringent requirements, including complying with preventative measures such as social distancing and mask wearing.

61. The Hospital and Community Order was repealed and replaced on November 9 and November 18, 2021. In both subsequent orders, Dr. Henry exercised her discretion pursuant to s. 54(1)(h) of the *Public Health Act* to refuse any further requests for reconsideration of the order, except for the purpose of a medical exemption COVID-19 vaccination.

62. The Orders were made for the overarching purpose of, *inter alia*:

a. Reducing the risk and spread of SARS-CoV-2 infection in populations who are more likely to suffer severe illness and require hospitalization, critical care admission and potentially suffer serious outcomes of COVID-19 including death if infected; and

b. Protecting the ability of the health care system to continue to provide care to all British Columbians by reducing the risk of clusters and outbreaks of COVID-19 in health care settings, which is extremely disruptive to the services they deliver, and by reducing the risk of transmission and severe illness within the healthcare workforce who, if infected with COVID-19, experience illness and are unable to provide care while they are ill.

Requests for Reconsideration of the Orders

63. Under s. 43 of the *Public Health Act*, a request for reconsideration may be made by a person affected by an order. On October 7, 2021, Dr. Henry issued *Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders.*

64. Dr. Henry weighed the interests of persons receiving health care and related services in LTC Facilities, hospitals and community care settings against the interests of persons who provide care in those settings who were unvaccinated for reasons other than medical deferral, and exercised her discretion pursuant to s. 54(1)(h) of the *Public Health Act* to not consider any requests for reconsideration of the Orders except for the purpose of a medical exemption. In the Hospital and Community Order, Dr. Henry reasoned in material part as follows:[1]

> After weighing the interests of persons who receive health care and related services in hospital or community settings, against the interests of persons who provide care and services in those settings who are not vaccinated for reasons other than medical deferral to a vaccination, and taking into account the importance of maintaining a healthy workforce in hospitals and community care locations, the stress under which the public health and health care systems are currently operating, and the impact this is having on the provision of health care to the population, the burden which responding to more clusters and outbreaks of COVID-19 would put on the public health system, the burden which responding to

[1] See for example, Hospital and Community Order dated November 18, 2021.

> more patients with serious illness would place upon an already overburdened health care system, and the risk inherent in accommodating persons who are not vaccinated […]
>
> […] it is my reasonable belief that it is necessary, in the interest of the public health, that I not accept requests for a reconsideration of this Order, except from an individual on the basis of a medical deferral to a vaccination […].

65. The Orders permitted affected individuals to submit a request for reconsideration from the requirement to be vaccinated, or to provide proof of vaccination, on the basis that their health would be "seriously jeopardized" were they to comply with the Orders.

66. The Petitioners have not sought reconsideration on the basis of medical deferral to vaccination, but instead on the basis of alleged religious or conscience grounds. These are not available.

September 2022 Orders

67. In September 2022, Dr. Henry repealed and replaced the Hospital and Community Preventive Measures Order and the Residential Care Preventive Measures Order. A number of recitals to the updated Orders specifically address the argument that infection-induced immunity or rapid testing could be an adequate substitute for vaccine-induced immunity in accomplishing the public health objectives of the Orders. An infection-induced or testing-based approach were rejected with the following reasons:

a. While people who have contracted SARS-CoV-2 may develop some infection-induced immunity for a period of time following infection, the strength and duration of that immunity varies depending on a multitude of factors;

b. The risk of reinfection and hospitalization is significantly higher in people who remain unvaccinated after contracting SARS-CoV-2 than in those who are vaccinated post-infection. Vaccination, even after infection, remains an important measure to protect against reinfection by providing a more consistent and reliable immune response than immunity arising from infection alone;

c. There is no reliable means of assessing the level of immunity which a person may have to re-infection or serious illness in consequence of infection with SARS-CoV-2;

d. Routine COVID-19 testing of asymptomatic people is not recommended in British Columbia, and PCR testing capacity is reserved for people who may be ill with COVID-19 to enable initiation of treatment. Asymptomatic testing can result in false negative testing, leading to a false sense of security that someone is not infected when in fact they are, and increases the likelihood of generating false positive tests, which can be misleading and lead to imposition of unnecessary requirements on people who are not infected;

e. Rapid antigen testing is not a substitute for vaccination and is most useful when used for symptomatic people in specific settings in which additional layers of protection are needed to protect people at higher risk of serious outcomes of COVID-19, and then followed up with confirmatory PCR testing for positive tests, and when used in remote communities where obtaining results of PCR testing may be delayed;

f. Although the wearing of personal protective equipment (PPE) provides a measure of protection, it does not provide the level of protection afforded by vaccination, particularly in an environment where there are people who are highly vulnerable to infection and serious illness.

68. The September 2022 Orders no longer base the decision not to consider exemptions for non-medical reasons on capacity to address those exemption requests. Rather accommodating persons who are unvaccinated is rejected on the basis that “no other measures are nearly as effective as vaccination in reducing the risk of contracting or transmitting SARS-Co-2, and the likelihood of severe illness and death”. This reasoning is based on the compelling concern that the health-care system is stretched and absences as a result of COVID-19 would tend to correlate to outbreaks in the community, which would put increase demands on the system at the same time, particularly given the annual fall/winter respiratory virus season.

69. The September 2022 Health Care Order states:

> A high incidence of transmission and illness in one or more regions has already created, and could again create, spill-over effects on health-care delivery across

> the Province, including in critical care and surgical services, resulting in a substantial backlog of surgeries and an increase in surgical wait times;

70. The September 2022 HCW Order continues to recognize the need to balance interests of unvaccinated individuals, including those guaranteed by the *Canadian Charter of Rights and Freedoms* with the needs of public health and maintenance of the healthcare system to respond to care needs for all British Columbians.

Part 5: LEGAL BASIS

71. The petitioners seek judicial review of the Orders on the basis that they are unjustified infringements of sections 7, 2(a) and 15 of the *Charter* and are unreasonable in an administrative law sense. None of these grounds of review are the basis for overturning the Health Care Orders.

72. Section 7 is not engaged because the interest at stake for the petitioners is *employment,* not life, liberty or security of the person. If that is incorrect, then the Orders are not arbitrary, overbroad or grossly disproportionate.

73. While the petitioners have not established that the Orders breach their *Charter* rights, it is conceded that the lack of a mechanism for accommodation of religious or conscientious belief is a *prima facie* limit on s. 2(a) of the *Charter*. That limit is, however, justified under s. 1 of the *Charter* as a proportionate balance between freedom of religion and conscience and public health objectives.

74. The petitioners have not established that the Orders make a distinction based on an enumerated or analogous ground or that such a distinction amounts to disadvantage. Section 15 of the *Charter* is therefore not engaged.

75. The Orders do not demonstrate either a lack of internal rationality or a failure to address a legal or factual constraint. They are therefore reasonable exercises of statutory authority.

A. Section 7 Is Not Engaged

76. To establish a breach of section 7 of the *Charter,* a claimant must establish that:

a. the impugned government law or action interferes with, or deprives them of, their life, liberty or security of the person; and

b. the deprivation is not in accordance with the principles of fundamental justice.[2]

77. The Orders complained of here are not laws requiring anyone to undergo medical treatment. Rather, they require those subject to them to choose between performing their job duties and undergoing medical treatment. The interest of an employee in a job is not, itself, protected by section 7 of the *Charter* and therefore the claim fails at the first stage.[3]

78. Even if the Orders interfere with a protected interest under s. 7, they are not arbitrary, overbroad or grossly disproportionate to the statutory objectives of the *Public Health Act.* An arbitrary law is one that is not capable of fulfilling its objectives, such that it exacts a constitutional price in terms of protected interests, without furthering the public good that is said to be the object of the law.[4] An overbroad law is one that is arbitrary "in part" (i.e. in some range of its application).[5] A law is grossly disproportionate if the seriousness of the deprivation of life, liberty and security of the person is totally out of sync with the objective of the measure, such that its draconian impact is entirely outside norms accepted in a free and democratic society. Gross disproportionality is illustrated by a sentence of life imprisonment for spitting on the sidewalk – which might have a deterrent effect on an unhygienic practice, but at an obviously unacceptable price.[6]

79. The objects here are protection of the health of the health-care workforce and its patients and clients and to protect the preparedness and resiliency of the health-care system, and by doing so to protect against preventable death, severe illness and hospitalization

80. The Orders, as originally enacted, were clearly rationally connected to these objects in light of the protection vaccination gave against the Delta variant of the Virus. It was not practical to address the situation of individual workers on a case-by-case basis and thus the law was not overbroad. While vaccine mandates are no doubt controversial in many quarters, it is not plausible that the impact of having

[2] *Bedford v. Canada (Attorney General)*, 2013 SCC 72 at para. 57.
[3] *B.C. Teachers' Federation v. School District No. 39,* 2003 BCCA 100.
[4] *Carter* at para. 83.
[5] *Bedford* at para. 112.
[6] *Bedford* at para. 120.

to find a different job is outside the norms of a free and democratic society, comparable to life imprisonment for a trivial infraction.

81. The rise of the Omicron variant has changed some elements of the calculation, but not the ultimate result. The healthcare system's patients, clients and residents are still among the most vulnerable British Columbians. The health-care system is still stretched, still subject to annual seasonal respiratory virus variation, and an outbreak within it could still have devastating consequences. Individualized assessment of past infection remains impracticable. It is still the case that vaccination is the most important preventive measure an individual can take to minimize the effects of COVID-19, including to reduce the risk of serious outcomes, hospitalization and death Vaccination-based immunity and infection-based immunity are complementary. A highly vaccinated workforce continues to be the best defence against outbreaks and the consequences of a health-care system that is overwhelmed, locally or province-wide.

82. If some of these considerations cannot be taken into account under s. 7 of the *Charter*, because they are insufficiently individualized, then they can still be the basis for a justified limitation under s. 1 of the *Charter.*

B. Section 2(a) [Freedom of Religion and Conscience]

83. Section 2(a) of the *Charter* guarantees the fundamental freedom of freedom of conscience and religion. This provision guarantees freedom to *hold* religious or conscientious beliefs and freedom of religious *practice,* but it does not guarantee the object of beliefs.[7]

84. The religious petitioners may have sincere beliefs, but that does not make them sincere *religious* beliefs. The conscientious petitioners may have concerns with the vaccines (or governments, or pharmaceutical companies, etc.) but that does not make the concerns *Charter*-protected conscience rights. A belief only has a nexus with religion if the individual demonstrates it is held "in order to connect with the divine or as a function of spiritual faith". A belief only has a nexus with conscience if the individual demonstrates it is held as an overarching moral commitment, analogous to ethical vegetarianism or pacifism.[8] A sincere belief about the risks and benefits of a medical treatment is not itself a religious or

[7] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 at para. 63; *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54

[8] *R. v. Locke,* 2004 ABPC 152 at para. 25.

conscientious belief just because the individual holding it is religious or has moral commitments.

85. While the sincerity of the petitioners' opposition to taking a vaccine against the Virus is not in dispute, none of them have demonstrated a nexus to religion or conscience:

a. Ms. Tatlock deposes that she is religious, and that she has a sincerely held belief that the vaccine is contrary to her anti-abortion views. However, that is not a *religious belief* simply because she is religious. Indeed, her evidence instead suggests her belief is counter to her own Church's views.

b. Ms. Koop rejects the vaccine because she has concerns ranging from safety, to mRNA technology, to "the lack of transparency from pharmaceutical corporations and all level of Canadian (and international) governments". These concerns do not ground a *Charter*-protected *Charter* right of conscience.

c. Ms. Bielecki rejects the vaccine because of her objection to perceived state coercion. This does not ground a *Charter*-protected Charter right of conscience. Ms. Bilecki is not being asked to participate in state coercion that she has a moral objection to: rather she is asking for vindication of the *object* of her belief.

d. Mr. MacDonald rejects the vaccine largely due to his own assessment of medical risk, and also cites the "rush to market" of the vaccines. These concerns do not ground a *Charter*-protected *Charter* right of conscience.

e. Mr. Mateus rejects the vaccine because of the "unanswered questions "regarding the vaccine" and because the pharmaceutical companies "have no liability" in relation to the vaccines. These concerns do not ground a *Charter*-protected *Charter* right of conscience.

f. Mr. Sturgeon rejects the vaccine based on his unqualified medical opinion and a diagnosis from August 2021 purportedly giving him "natural" (infection-based) immunity. These concerns do not ground a *Charter*-protected *Charter* right of conscience. Mr. Sturgeon also professes to have a religious objection, but his objection is not that his Catholicism prohibits vaccines—instead his objection is that his church

teaches freedom to make moral decisions and he finds the "coercion" to be immoral. Respectfully, that is insufficient to engage Mr. Sturgeon's religious rights in the sense of the *Charter.*

g. Ms. Nelson and Ms. Keyser reject the vaccine because their own assessment that the vaccine is unsafe and coercive. That does not engage the *Charter.*

h. Ms. Koh asserts a religious objection but does not depose that her religion prohibits vaccination. Ms. Koh also makes her own assessment that infection-related immunity is "superior" to that obtained through vaccination. Her assertion on that point does not engage the *Charter*.

i. Ms. Hamley asserts a religious objection, but does not depose that her religion prohibits vaccination. Instead, Ms. Hamley deposes that God only sanctions just mandates, and that in her view the vaccine mandate is unethical and therefore unjust. With respect, that is insufficient to engage Ms. Hamley's religious rights in the sense of the *Charter.*

j. Mrs. Parenteau rejects the vaccine because she considers the requirement to be coercive, to put her under duress, and to constitute a threat. She does not oppose vaccination. These concerns do not ground a *Charter*-protected *Charter* right of conscience.

k. Dr. Nordine deposes only that he is "a Christian, and [has] sincerely held religious belief that prevent me from taking the Covid-19 vaccine." Without doubting the sincerity of his belief, there is no evidentiary basis on which it could be concluded that his belief is itself religious.

86. The Respondents concede that there is no *process* in the Orders for religious or conscientious objection and that this could be contrary to s. 2(a) of the *Charter.* However, if this is a proportionate limit on the protected right in light of the statutory objectives of the *Public Health Act,* it is a justified limitation under s. 1 of the *Charter*.[9] Both in the Fall of 2021 and again in September 2022, Dr. Henry turned her mind specifically to this issue and explained why it would be impracticable to have such an individualized process.

[9] *Beaudoin v British Columbia,* 2021 BCSC 512

(iii) Section 15 – Discrimination

87. To establish a *prima facie* breach of s. 15(1) of the *Charter*, the petitioners must demonstrate that the impugned law or state action:

a. on its face or in its impact, creates a distinction based on enumerated or analogous grounds; and

b. imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.[10]

88. A personal choice to refuse vaccination is not an enumerated or analogous ground.

89. The Orders do not impose a burden or deny a benefit that have the effect of reinforcing, perpetuating, or exacerbating disadvantage to the petitioners.

(iv) Section 1: The Orders Proportionately Balanced Charter *Rights*

90. Alternatively, if the Orders do infringe the petitioners' rights under ss. 2(a), 7 or 15 of the *Charter*, all of which is denied, the Orders are reasonable and reflect a proportionate balancing of the *Charter* rights at play with the objectives of the Orders.[11]

91. In making the Health Care Orders, Dr. Henry was guided by the principles applicable to public health decision making, and in particular, that public health interventions be proportionate to the threat faced and that measures should not exceed those necessary to address the actual risk.

92. The Orders are continually revised and reassessed to respond to current scientific evidence and epidemiological conditions in British Columbia.

93. In making the Orders, Dr. Henry specifically recognized and considered constitutionally-protected interests including rights and freedoms guaranteed by the *Charter.*

[10] *Fraser v. Canada (Attorney General)*, 2020 SCC 28 at para. 27
[11] *Doré v. Barreau du Québec,* 2012 SCC 12, para. 57; *Beaudoin* at paras. 206-223.

B. No Basis to Quash the Orders as Unreasonable

94. The Orders are administrative law decisions made through the delegation of discretionary decision-making authority under the *Public Health Act*. The standard of review with respect to the Orders is reasonableness.[12]

95. The petitioners bear the burden of establishing that the Orders are unreasonable. They must establish a failure of rationality internal to the reasoning process, or that the Orders cannot be justified in light of a factual or legal constraint.[13]

96. Dr. Henry is entitled to curial deference, in particular in respect of the factual bases of the management of a pandemic by public health officials. These are matters of science and medicine that this Court is not well-suited to second guess.[14]

97. The Orders are internally rational, and consistent with the constraints imposed by the legal and factual context within which they were made.

98. There can be no doubt that protecting the capacity of the health-care system in a pandemic and protecting residents and patients from infection from healthcare workers are both rational public health goals. Dr. Henry has laid out in her Reasons why those goals are best promoted by vaccine mandates and why religious and conscientious objection processes are unworkable.

99. The existence of differing opinions on scientific or medical matters – including as to whether vaccine mandates are necessary and proportionate - does not render the Orders unreasonable.[15]

100. Dr. Henry made the Orders in the face of scientific uncertainty and relied on specialized medical and scientific expertise. Dr. Henry was guided by the principles applicable to public health decision making, including the precautionary principle, and adhered to the principle that public health interventions be proportionate to the

[12] *Beaudoin* at paras. 119-125, 218
[13] *Vavilov* at paras. 101-107.
[14] *Beaudoin* at para. 124; *Vavilov* at paras. 75, 125
[15] *Doré* at para. 56; *Beaudoin* at paras. 124-125; Vavilov at para. 83

threat faced and that measures should not exceed those necessary to address the actual risk.

101. The Orders are reasonable. There is no basis for this Court to interfere on judicial review.

C. Other Grounds in the Petition

102. The existence of self-regulation by a profession does not mean that profession is exempted from public regulation. The Petitioners' claim that self-regulated professions are entitled to immunity from orders under the *Public Health Act* is without merit.

103. It is not an abuse of discretion or fettering for Dr. Henry to restrict the ambit of reconsideration under s. 43 of the *Public Health Act.* The PHO's authority to do so in an emergency is specifically affirmed by s. 54(1)(h) of the *Act* and Dr. Henry exercised this authority appropriately.

104. The orders in no way affect the right of an adult not to consent to health care under s. 6 of the *Health Care (Consent) and Care Facility Act.* Vaccination must be consented to. Similarly, personal and medical information transferred under the Orders must be consented to and the Orders provide statutory authority.

105. To the extent that the Amended Petition references the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c.165 ("FIPPA"), FIPPA complaints fall under the jurisdiction of the Information and Privacy Commissioner.[16]

106. The assertion that s. 1 of the *Privacy Act* RSBC 1996 c. 373 is engaged is without merit. Section 1(1) of the *Privacy Act* sets out a tort, which can only be pursued in a civil action. A cause of action under the *Privacy Act* cannot be adjudicated in a judicial review proceeding.

107. A complaint under section 13(1) of the *Human Rights Code,* RSBC 1996, c. 210 must be made to the Human Rights Tribunal.

[16] It is a collateral attack to go directly to court rather than to seek review from the Information and Privacy Commissioner: *Varzeliotis v. The Queen et al*, 2007 BCSC 620.

III. REMEDY

108. The respondent seeks an order dismissing the petition.

109. Damages are not an available remedy on judicial review.[17]

110. If the Petitioners succeed on their application for judicial review, the appropriate remedy is to set the decision aside and remit the matter to the PHO for reconsideration.

JRPA, ss. 5-7; *Testa v. W.B.C. (B.C.)* (1989), 36 B.C.L.R. (2d) 129 (C.A.) at paras. 53-55; *Vavilov* at paras. 140-142

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Dr. Brian Emerson, to be filed;
2. Affidavit #1 of A. Dragland, to be filed;
3. The pleadings and proceedings herein; and
4. Such further and other material as counsel may advise and the Court permit.

The petition respondent estimates that the application will take ten days.

Date: September 15, 2022

Signature of lawyer for the Respondents
Gareth Morley, Julie K. Gibson, Alexander Bjornson

Petition Respondents' address for service:

Ministry of Attorney General
Legal Services Branch
[redacted]

180

[17] *Madadi* v. *British Columbia*, 2014 BCSC 1062 at para. 50.

No. 222427
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners

and

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

AMENDED RESPONSE TO PETITION

Filed by: The Respondent the Provincial Health Officer for the Province of British Columbia (the "PHO")

THIS IS A RESPONSE TO the petition filed March 16, 2022 and the amended petition filed August 23, 2022 and the amended petition filed November 1, 2023.

Part 1: ORDERS CONSENTED TO

The PHO consents to the granting of **NONE** of the orders set out in Part 1 of the petition.

Part 2: ORDERS OPPOSED

The PHO opposes the granting of **ALL** of the orders set out in Part 1 of the petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The PHO takes no position on the granting of **NONE** of the orders set out in Part 1 of the petition.

Part 4: FACTUAL BASIS

Overview

1. This Petition challenges a number of orders made by Dr. Bonnie Henry, the Provincial Health Officer (PHO), including:

    a. the *Hospital and Community (Health Care and Other Services) Covid-19 Vaccination Status Information and Preventative Measures Order* as made October 21, 2021 and its replacements (the "Hospital and Community Order") and

    b. the *Residential Care Covid-19 Preventive Measures* – as made October 21, 2021, and its replacements (the "Residential Care Orders"),

2. The Hospital and Community Order and the Residential Care Orders (collectively, the "Health Care Orders") were made under the authority of the *Public Health Act,* S.B.C. 2008, c. 28.

3. The Health Care Orders had the effect of requiring individuals working in the health-care system and long-term care (LTC) facilities to provide proof of vaccination, exemption or exemption request to employers in order to work. The only exemptions allowed under the Health Care Orders are for medical reasons. Such exemptions are determined under s. 43 of the *Public Health Act* by medical health officers (MHOs). None of the petitioners claim a medical exemption.

4. The reasoning for the Health Care Orders are set out in two forms:

    a. detailed written recitals, which have been amended as the COVID-19 pandemic has developed (the "Recitals"), and

    b. public statements by Dr. Henry (the "Public Statements") (collectively, the "Reasons").

5. In her Reasons, Dr. Henry recognized that the Health Care Orders – like other orders that have proved necessary earlier in the COVID-19 pandemic – limit interests protected by the *Canadian Charter of Rights and Freedoms* (*Charter*). Dr. Henry recognized that the Health Care Orders require some people to choose between their sincere opposition to vaccination and continuing to work in BC's health care sector. Some of those sincere beliefs have a connection to religion or

conscience, while others would be based on personal medical belief or preference. Public health ethics permits vaccination mandates – in the sense of limiting some activities and employment to vaccinated persons – provided they are necessary and proportionate to protect public health in the circumstances. Dr. Henry recognized that limitations on medical autonomy, whether specifically protected by the *Charter* or not, had to be justified in light of compelling public health needs.

6. Vaccination mandates, while appropriately controversial, are effective in increasing the rate of vaccination. The central rationale for requiring vaccination of LTC and health care workers is that it protects the health of patients, clients and residents of care facilities. A vaccination requirement in settings where vulnerable patients receive care also promotes the integrity of the health care system, including preserving its ability to respond to all care needs, in two ways:

a. first, as a statistical matter, a vaccinated healthcare workforce is less likely to get sick and will likely have less severe sickness. Since epidemics and pandemics, including the COVID-19 pandemic, put pressure on the capacity of the healthcare system – and since this pressure is correlated with outbreaks of COVID-19 – a vaccinated workforce will be better able to provide health care for COVID and non-COVID care needs for all British Columbians at times of extreme stress on the health care system; and

b. second, a vaccinated healthcare workforce will be less likely to infect vulnerable patients and LTC facility residents and thereby more likely to keep them healthy and safe from preventable COVID-19 infection, severe outcomes and death.

7. While the immunological profile of the population and the dominant variant of SARS-CoV-2 (the "Virus") has changed – and with that many aspects of COVID-19 strategy, Dr. Henry continued to consider the balance to support the Health Care Orders.

8. Three ~~Two~~ time frames are particularly relevant.

a. In the Fall of 2021, the dominant variant of the Virus was the "Delta" variant, which was more highly transmissible than previous variants of the Virus. Vaccines available in British Columbia provided durable and highly effective protection against infection by Delta. In her Reasons at this time, Dr. Henry found that vaccination was the single most important

preventive measure for providers of care or services in hospital or community settings, and the staff or contractors of an organization which provides care or service in hospital or community settings can take to protect patients, residents, clients and the health care and personal care workforce from infection, severe illness and possible death from COVID-19. She found that while there were clear, objective criteria for determining whether a person has a medical deferral and few people fall into that category, there were difficulties and risks in accommodating other unvaccinated persons. Dr. Henry considered the effect on unvaccinated people and on their constitutionally-protected interests. Dr. Henry found that the volume of requests for reconsideration was beyond the capacity of her office to address and was using resources better directed at the public health emergency of COVID 19. The Orders were very effective in getting high rates of vaccination among the employees to whom it applied. Some employees, including the petitioners, resisted on various grounds, and were therefore unable to continue to work.

b. In the course of 2022, the Omicron variant of the Virus – which is better able to cause "breakthrough" infections of those who already have some immunity as a result of vaccination or prior infection – became the dominant variant in British Columbia. In September 2022, Dr. Henry set out new recitals and explained why, in her view, the Health Care Orders continue to be required to maintain the BC health care system and to protect vulnerable patients. In her September 2022 Reasons, she set out the following rationales for continuing the course:

    i. While Omicron infection is a real possibility for everyone, unvaccinated workers in the healthcare system are more likely to get sick for longer, and are more likely to transmit infection to other healthcare workers, patients, clients and residents than if they were vaccinated, all other things being equal and taking into account the precautionary principle.

    ii. It is not practical to provide exemptions based on past infections or job duties. There is no reliable way of knowing how many times an individual has been infected with the Virus. Employees in the health care system who do not themselves have patient-facing duties often interact with those who do and may share physical space and ventilation with clinical health care workers. Designing

specific exemptions and monitoring compliance with those exemptions is not practical, given the PHO's many duties in respect of public health at a population level.

c. By fall 2023, the XBB sublineages had become the most prevalent lineage in Canada. These sublineages had been demonstrated as some of the most immune evasive variants to date, based on neutralizing antibody data from those vaccinated with the Omicron-targeted vaccines, according to the National Advisory Committee on Immunization (NACI). NACI also referred to modelling that suggested an additional vaccine dose offered in fall 2023 could prevent thousands of hospitalizations and deaths across the country over the year. NACI issued strong recommendations that individuals aged 5 and over be immunized with the primary series mRNA vaccine, and that beginning fall 2023, a dose of the XBB formulation be available for individuals at least six months from their previous COVID-19 vaccine dose or known infection (whichever was later). On September 12, 2023, Health Canada authorized an XBB.1.5-containing mRNA COVID-19 vaccine for use in individuals aged 6 months and older. Dr. Henry issued new Health Care Orders on October 5, 2023, and in her Reasons set out, among the rationales for continuing a vaccination requirement for health care workers:

   i. the continuing emergence of variants leading to changes in British Columbia and elsewhere, the unique vulnerability of those receiving health care in hospital or community settings in that those individuals are often of advanced age or have chronic health conditions or compromised immune systems making them particularly vulnerable to severe illness and death from COVID-19 even if vaccinated.

   ii. that slippage in vaccination of the health care workforce could result in significant illness within that workforce which would undermine the health care system's capacity to respond to a resurgence of disease.

   iii. with COVID-indicators in British Columbia increasing since late July 2023 (including hospitalization and deaths), the critical priority of preserving the health care and public health systems

ability to protect and care for the needs of the population (both COVID-19 and non-COVID-19 care needs).

9. The question for this court on judicial review is whether Dr. Henry's conclusions in Fall 2021 ~~and in~~ Fall 2022, and Fall 2023 were a reasonable and proportionate way of balancing the interests at stake.

Emergence of the SARS-CoV-2 Pandemic in BC

10. The first diagnosis of a case of COVID-19 in British Columbia occurred on January 27, 2020.

11. On March 11, 2020, the World Health Organization ("WHO") declared the COVID-19 outbreak a pandemic. The WHO declaration ~~remains in effect~~ was ended on May 5, 2023.

12. On March 17, 2020, Dr. Henry issued a Notice of Regional Event under s. 52(2) of the *Public Health Act*, designating the transmission of the infectious agent SARS-CoV-2, which "has caused cases and outbreaks of a serious communicable disease known as COVID-19" among the population of British Columbia, a regional event as defined under s. 51 of the *Public Health Act*.

13. The designation of a regional event allowed the PHO to exercise powers under Parts 5 and 6 (see specifically s.67(2)) of the *Public Health Act*, including the power to make oral and written public health orders in response to the COVID-19 pandemic. The Notice of Regional Event issued under the *Public Health Act* continues to be in effect.

14. SARS-CoV-2 is highly infectious and has evolved to become more so over time. The Virus can be spread by people who do not have symptoms. Without public health interventions, it has a high transmissibility and infectivity. While immunity resulting either from vaccination or infection significantly reduced the transmissibility of earlier variants, the Virus has continued to evolve and has become better able to transmit despite the existence of immunity, although immunity considerably reduces virulence. As long as the number of additional people each infected person transmits the virus to is greater than 1, the Virus will spread exponentially, ultimately potentially overwhelming the health system.

15. Since the Virus first emerged it has mutated, resulting in variants. Variants that pose a greater threat to public health than the original virus are called "variants of concern". ~~Five~~ Several variants of concern have emerged in BC: Alpha, Beta, Gamma, Delta, ~~and~~ as of late November 2021, Omicron, and the XBB sublineages by fall 2023.

16. From late July 2021 to late December 2021, the Delta variant was the most common variant of concern in BC. The Delta variant is significantly more infectious and induces a higher severity of illness, particularly in vulnerable populations, than the original strain of SARS-CoV-2 or its earlier variants.

17. As of late December 2021, Omicron became the most common variant of concern in BC. By comparison with Delta and previous variants, Omicron is more likely to lead to "breakthrough" infections in people who already have some immunity as a result of vaccination or prior infection. However, prior immunity remains highly effective at reducing the severity of illness and there is evidence that it reduces transmission in close settings. Acquired immunity is cumulative – with each dose of vaccine or infection tending to increase it – but it also tends to decline over time. There is more predictable durability to acquired immunity from vaccination than from infection. Vaccination remains the most important preventive measure an individual can take to protect against COVID-19.

18. Preventing and controlling transmission of the Virus is essential to maintaining the provincial health system's ability to deliver quality care and continue the safe delivery of essential health services.

19. Throughout the COVID-19 pandemic, the Province and the PHO have been actively preventing and containing the transmission of COVID-19 through a series of comprehensive public health measures, including health promotion, prevention, testing, case identification, isolation of cases and contact tracing, and vaccination, all based on the best available scientific evidence.

20. Dr. Henry has made a number of orders under the *Public Health Act* in response to the COVID-19 regional event, including new orders and orders revoking or amending prior orders, to respond to the ever-changing circumstances of the COVID-19 pandemic in British Columbia.

21. The overriding goal of the public health response to the SARS-CoV-2 pandemic has and continues to be to protect the most vulnerable members of society, and the health care system's ability to continue to deliver care for COVID-

19-related and other illness, while minimizing social disruption, which includes interference with autonomy over medical decisions among many other social values.

22. In a public health emergency, the need to take action to protect the public in face of changing circumstances does not permit all decisions to be made with scientific certainty. Dr. Henry therefore relies on the generally accepted scientific and epidemiological evidence available to her at the relevant time, and the precautionary principle, when making public health orders under the *Public Health Act*.

Requests for Reconsideration of PHO Orders

23. Under s. 43 of the *Public Health Act*, a person affected by a public health order can request reconsideration if that person:

a. has relevant information that was not available to the PHO at the time the order was made;

b. has a proposal that was not presented to the PHO when the order was made and if implemented, would meet the objective of the order (or be suitable for a written agreement under s. 38 of the *Public Health Act*); or

c. requires more time to comply with the order.

24. Under s. 54(l)(h) of the *Public Health Act*, the PHO can, in an emergency, elect not to reconsider an order.

25. Under s. 56(2) of the *Public Health Act,* if the PHO makes an order under s. 56 of the *Public Health Act,* a person to whom the order applies is required to comply unless that person provides to the PHO or MHO:

a. A written notice from a medical practitioner stating that the health of the person who must comply would be seriously jeopardized if the person did comply; and

b. A copy of each portion of that person's health record relevant to these statement in paragraph (a), signed and dated by the medical practitioner.

Vaccination in General

26. Vaccination is the deliberate triggering of the immune system through the introduction of a substance into the body in order to protect against the likelihood and severity of future infection. Vaccines are evaluated for “safety” (the probability and severity of negative effects) and “efficacy” (the reduction in probability and extent of illness as a result of future infection). A safe and efficacious vaccine is one that does not have unacceptable side effects but reduces either the likelihood or severity of infection in the population.

27. Vaccination protects at both individual and community/population levels. High vaccination coverage in a community or population reduces spread of the virus, limits severe outcomes (including hospitalization and death), and helps prevent new variants from emerging.

28. The introduction of vaccines often goes together with “vaccine hesitancy” among part of the population. The extent of vaccine hesitancy will typically vary. To the extent possible, health authorities respond to vaccine hesitancy through education, i.e., providing accurate information about the scientific understanding of safety and efficacy in as understandable a fashion as possible.

29. A vaccine “mandate” exists where there are some legal consequences for not being vaccinated. Mandates have been found to increase the rate of vaccination. Public health ethics requires that mandates be evaluated for proportionality between benefit and impact on those subject to them.

30. A sequence of doses of a vaccine is a “series”. The “primary series” of vaccination against SARS-CoV-2 consists of two doses of a Health Canada-approved vaccine (or one dose of the Janssen vaccine). The primary series may have higher amounts of antigen and must be given prior to additional doses. A person is considered to be vaccinated once they are at least 7 days post-receipt of the primary series of the vaccine.

31. Vaccination is the single most effective measure to provide protection against infection, severe illness, hospitalisation, intensive care (“ICU”) admission and death from the Virus. Vaccination also plays a key role in limiting transmission of SARS-CoV-2. However, vaccination does not provide complete protection from infection, and protection from infection and severe outcomes can wane over time, particularly in elderly populations and those with pre-existing conditions or risk factors that make them vulnerable to severe illness and death from SARS-CoV-2.

32. All individuals living or visiting British Columbia who are six months of age and older are eligible to receive a Health Canada-approved vaccine for SARS-CoV-2. As of August 15, 2022, 92% of people in British Columbia six months and older have received the primary series of vaccination against the Virus.

33. In British Columbia, third doses are available to individuals who are 18 years of age or older, and at least 6 months post-second dose of their initial course of vaccine. Third doses were prioritized for vulnerable populations and healthcare workers. Fourth doses have been made available, as noted in the PHO's September 6, 2022 press conference. The only mandates have been for the primary series and, more recently, for a single dose of the updated mRNA vaccine tailored to the XBB.1.5 variant.

Residential Care Facilities, Hospitals and Community Care Settings

34. Throughout the COVID-19 pandemic, long-term care and assisted living residents and staff have experienced a disproportionate share of cases, severe illness, and deaths from COVID-19. Residents of these facilities are typically elderly and often suffer from chronic health conditions or compromised immune systems, which make them particularly vulnerable to severe illness and death from SARS-CoV-2, even if vaccinated.

35. At various material times from March 2020 onwards, LTC facilities have been subject to significant restrictions to mitigate the impacts of SARS-CoV-2 on their staff and residents, including restricting visitors to, restricting staff working in these facilities to work at one site only, and – once vaccines became available - prioritizing vaccination for staff and residents.

36. Following the commencement of the COVID-19 vaccination program for residents and staff in LTC facilities, the number of COVID-19 outbreaks in these settings decreased dramatically. The risk of breakthrough infection remains, however.

37. Persons receiving care in hospital or community settings are also often of an advanced age, have chronic health conditions or compromised immune systems and are thus particularly vulnerable to severe illness and death from COVID-19, even if they are vaccinated.

Protection of the Health Care System

38. The health-care system has finite resources and therefore a certain planned capacity to address health care needs ("demand"). Epidemics and pandemics can overload the health-care system in two ways: first, they can create surges in demand for care and second they can make it harder for the system to respond, both as a result of overwork and use of resources and because health care workers get sick.

39. The health-care system has been experiencing high demands for care throughout the COVID-19 pandemic. In addition, the health-care and public health systems typically experience a seasonal increase in care needs during the fall and winter respiratory virus seasons. Finally, local outbreaks of any disease, including COVID-19, create high local demands.

40. Vaccination of health professionals in hospitals and community care settings is the most important measure that can be taken to ensure the continued functioning of the public health and health-care systems and their ability to prevent disease and deliver care across the systems for both COVID-19 and other illness, particularly in circumstances where those systems are under extreme duress.

British Columbia's Delta-Driven Fourth Wave and the Omicron waves

41. From July to October 2021, the number of COVID-19 cases in British Columbia increased significantly, resulting in the fourth wave of the pandemic in British Columbia. The rise in SARS-CoV-2 cases in British Columbia during the fourth wave was comprised primarily of cases of persons infected with the Delta variant, which is more infectious and spreads faster than early forms of SARS-COV-2.

42. In or about late December 2021, Omicron became the dominant variant circulating in British Columbia, and began driving a fifth wave of the pandemic that has resulted in case rates and hospitalizations far in excess of any prior wave of the pandemic. Omicron is less virulent but more infectious than Delta. Vaccination continues to be the most effective measure to reduce the virulence of an Omicron infection. Since December 2021, a larger proportion of British Columbians have been infected with the Virus, usually Omicron, leading to a combination of infection-induced and vaccine-induced immunity in the population. On an individual and population basis, a combination of infection-induced and vaccine-induced immunity has the highest efficacy.

43. Omicron, which has sub-variants, was the dominant variant circulating in British Columbia until the arrival of the XBB sublineages.

Fall 2023 – The XBB Sublineages

44. The XBB sublineages had become prevalent in British Columbia by fall 2023, among them some of the most immune evasive variants to that point. These sublineagues provoked increased hospitalizations and more severe illness compared to the immediate prior period.

The Health Care Orders

45. By approximately mid-July 2021, the risk presented by COVID-19 in British Columbia changed, particularly by way of the emergence of the Delta variant of SARS-CoV-2. The number of new cases, hospitalizations and the reproduction rate of SARS-CoV-2 all increased in late summer of 2021.

46. By mid-August 2021, LTC Facilities were experiencing a rise in outbreaks, many of which may have been caused by the presence of unvaccinated persons in those settings. These outbreaks caused severe illness in both vaccinated and unvaccinated individuals, at least one death in the immediate period, and caused significant disruption to the lives of staff, residents, and their families.

47. In response to the risks presented by COVID-19 in LTC Facilities, Dr. Henry implemented new public health measures for residents, staff, and other persons providing services in LTC Facilities.

48. On September 9, 2021 Dr. Henry issued the *COVID-19 Vaccination Status Information and Preventive Measures Order* (the "Vaccination Status Order"), which provided as follows in material part:

> Q. I have reason to believe and do believe that
>
> (i) a lack of information about the vaccination status of resident and staff interferes with the suppression of SARS-CoV-2 in facilities and constitutes a health hazard under the *Public Health Act*;
>
> (ii) the presence of an unvaccinated staff member or an unvaccinated outside provider in a facility constitutes a health hazard under the *Public Health Act*;

(iii) in order to mitigate the risk of the transmission of SARS-CoV-2 arising from the presence of unvaccinated persons in facilities, operators, medical health officers and I need information about the vaccination status of residents and staff, and employers need information about the vaccination status of staff;

(iv) in order to confirm the vaccination status of residents in facilities, I need to

a. collect personal information about residents from admitters and operators; and

b. match this information with information in the Provincial Immunization Registry;

(v) in order to confirm the vaccination status of staff in facilities, I need to

a. collect personal information about staff from employers;

b. provide this information to the Minister of Health, so that the Minister may match it with information in the Enterprise Master Patient Index for the purpose of validating or providing me with the personal health numbers of staff; and

c. upon receiving the personal information of staff from employers, and the validation of or the personal health numbers of staff from the Minister of Health, match this information with information in the Provincial Immunization Registry.

49. The Vaccination Status Order:

a. required operators and admitters of LTC Facilities to collect from residents and staff certain personal, information, including legal first and last names, birthdates, and personal health numbers or, in certain circumstances, addresses;

b. imposed vaccination requirements effective September 16, 2021 that staff of LTC Facilities, outside health care providers and personal care providers abide by certain preventative measures, including rapid testing and mask wearing; and

c. prohibited certain persons from attending LTC Facilities absent proof of vaccination, including outside support or personal service providers, and regular other outside providers who have close contact with residents and, effective October 12, 2021, outside health care or personal care providers, regular other outside providers who do not have close contact with residents, and occasional other outside providers who have close contact with residents.

50. For those with less proximity to persons residing in LTC Facilities, the Vaccination Status Order imposed less stringent requirements, including complying with preventative measures such as physical distancing and mask wearing.

51. On September 27, 2021, the Vaccination Status Order was repealed and replaced. In the September 27 Vaccination Status Order, Dr. Henry exercised her discretion Under s. 54(1)(h) of the *Public Health Act* to refuse requests for reconsideration of the order, except for the purpose of a medical exemption to vaccination for COVID-19.

52. On October 21, 2021, Dr. Henry issued the *Residential Care COVID-19 Preventive Measures* order (the "Residential Care Order"), which provided as follows in material part:

> S. I have reason to believe and do believe that
>
> (i) the presence of an unvaccinated staff member, provider or visitor in a facility constitutes a health hazard under the *Public Health Act*;
>
> […]

53. The Residential Care Order imposed vaccination requirements on staff members of LTC Facilities and a variety of health care personnel who might come into contact with residents of LTC Facilities, including outside health care, personal care and personal service providers.

54. Depending on the degree of proximity to residents of LTC Facilities, the Residential Care Order required many of these classes of persons to have received two doses of COVID-19 vaccine by October 26, 2021, or they would not be permitted in a LTC Facility.

55. Persons who had not received a full dosage prior to October 26, 2021 could, pending full vaccination, attend a LTC Facility if they complied with certain preventative measures, including rapid testing and mask wearing.

56. For those with less proximity to persons residing in LTC Facilities, the Residential Care Order imposed less stringent requirements, including complying with preventative measures such as physical distancing and mask wearing.

57. In the Residential Care Order, Dr. Henry exercised her discretion pursuant to s. 54(1)(h) of the *Public Health Act* to not consider requests for reconsideration of the order, except for the purpose of a medical deferral for COVID-19 vaccination.

58. On October 21, 2021, Dr. Henry issued the *Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventative Measures* order (the "Hospital and Community Order" and, together with the Residential Care Order and the Vaccination Status Order, the "Orders"). Recital V to the Hospital and Community Order read as follows in material part:

> I have reason to believe and do believe that
>
> a. a lack of information on the part of employers about the vaccination status of staff interferes with the suppression of SARS-CoV-2 in hospital and community settings, and constitutes a health hazard under the *Public Health Act*;
>
> b. an unvaccinated person who provides health care or services in a hospital or community setting, puts patients, residents, clients, staff and other persons who provide health care or services at risk of infection with SARS-CoV-2, and constitutes a health hazard under the *Public Health Act*;
>
> c. an unvaccinated staff member of an organization which provides health care or services puts staff who provide health care or services, and patients, residents or clients, at risk of infection with SARS-CoV-2, and constitutes a health hazard under the *Public Health Act*;

59. The Hospital and Community Order required that persons employed, contracted, funded or otherwise affiliated with hospital and community settings provide proof of vaccination for COVID-19 for input, by those who had access, into the Workplace Health Indicator Tracking and Evaluation database by October 26, 2021.

60. Persons who had not received a full dosage prior to October 26, 2021 could, pending full vaccination, continue to attend hospital and community settings if they complied with certain preventative measures, including mask wearing.

61. For those with less proximity to persons residing in hospital and community care settings, the Hospital and Community Order imposed less stringent requirements, including complying with preventative measures such as social distancing and mask wearing.

62. The Hospital and Community Order was repealed and replaced on November 9 and November 18, 2021. In both subsequent orders, Dr. Henry exercised her discretion pursuant to s. 54(1)(h) of the *Public Health Act* to refuse any further requests for reconsideration of the order, except for the purpose of a medical exemption COVID-19 vaccination.

63. The Orders were made for the overarching purpose of, *inter alia*:

d. Reducing the risk and spread of SARS-CoV-2 infection in populations who are more likely to suffer severe illness and require hospitalization, critical care admission and potentially suffer serious outcomes of COVID-19 including death if infected; and

e. Protecting the ability of the health care system to continue to provide care to all British Columbians by reducing the risk of clusters and outbreaks of COVID-19 in health care settings, which is extremely disruptive to the services they deliver, and by reducing the risk of transmission and severe illness within the healthcare workforce who, if infected with COVID-19, experience illness and are unable to provide care while they are ill.

Requests for Reconsideration of the Orders

64. Under s. 43 of the *Public Health Act*, a request for reconsideration may be made by a person affected by an order. On October 7, 2021, Dr. Henry issued *Guidelines for Request for Reconsideration (Exemption) Process for Health Care Workers affected by the Provincial Health Officer Orders.*

65. Dr. Henry weighed the interests of persons receiving health care and related services in LTC Facilities, hospitals and community care settings against the interests of persons who provide care in those settings who were unvaccinated for reasons other than medical deferral, and exercised her discretion pursuant to s. 54(1)(h) of the *Public Health Act* to not consider any requests for reconsideration of the Orders except for the purpose of a medical exemption. In the Hospital and Community Order, Dr. Henry reasoned in material part as follows:[1]

[1] See for example, Hospital and Community Order dated November 18, 2021.

> After weighing the interests of persons who receive health care and related services in hospital or community settings, against the interests of persons who provide care and services in those settings who are not vaccinated for reasons other than medical deferral to a vaccination, and taking into account the importance of maintaining a healthy workforce in hospitals and community care locations, the stress under which the public health and health care systems are currently operating, and the impact this is having on the provision of health care to the population, the burden which responding to more clusters and outbreaks of COVID-19 would put on the public health system, the burden which responding to more patients with serious illness would place upon an already overburdened health care system, and the risk inherent in accommodating persons who are not vaccinated […]
>
> […] it is my reasonable belief that it is necessary, in the interest of the public health, that I not accept requests for a reconsideration of this Order, except from an individual on the basis of a medical deferral to a vaccination […].

66. The Orders permitted affected individuals to submit a request for reconsideration from the requirement to be vaccinated, or to provide proof of vaccination, on the basis that their health would be "seriously jeopardized" were they to comply with the Orders.

67. The Petitioners have not sought reconsideration on the basis of medical deferral to vaccination, but instead on the basis of alleged religious or conscience grounds. These are not available.

September 2022 Orders

68. In September 2022, Dr. Henry repealed and replaced the Hospital and Community Preventive Measures Order and the Residential Care Preventive Measures Order. A number of recitals to the updated Orders specifically address the argument that infection-induced immunity or rapid testing could be an adequate substitute for vaccine-induced immunity in accomplishing the public health objectives of the Orders. An infection-induced or testing-based approach were rejected with the following reasons:

f. While people who have contracted SARS-CoV-2 may develop some infection-induced immunity for a period of time following infection, the strength and duration of that immunity varies depending on a multitude of factors;

g. The risk of reinfection and hospitalization is significantly higher in people who remain unvaccinated after contracting SARS-CoV-2 than in those

who are vaccinated post-infection. Vaccination, even after infection, remains an important measure to protect against reinfection by providing a more consistent and reliable immune response than immunity arising from infection alone;

h. There is no reliable means of assessing the level of immunity which a person may have to re-infection or serious illness in consequence of infection with SARS-CoV-2;

i. Routine COVID-19 testing of asymptomatic people is not recommended in British Columbia, and PCR testing capacity is reserved for people who may be ill with COVID-19 to enable initiation of treatment. Asymptomatic testing can result in false negative testing, leading to a false sense of security that someone is not infected when in fact they are, and increases the likelihood of generating false positive tests, which can be misleading and lead to imposition of unnecessary requirements on people who are not infected;

j. Rapid antigen testing is not a substitute for vaccination and is most useful when used for symptomatic people in specific settings in which additional layers of protection are needed to protect people at higher risk of serious outcomes of COVID-19, and then followed up with confirmatory PCR testing for positive tests, and when used in remote communities where obtaining results of PCR testing may be delayed;

k. Although the wearing of personal protective equipment (PPE) provides a measure of protection, it does not provide the level of protection afforded by vaccination, particularly in an environment where there are people who are highly vulnerable to infection and serious illness.

69. The September 2022 Orders no longer base the decision not to consider exemptions for non-medical reasons on capacity to address those exemption requests. Rather accommodating persons who are unvaccinated is rejected on the basis that “no other measures are nearly as effective as vaccination in reducing the risk of contracting or transmitting SARS-Co-2, and the likelihood of severe illness and death”. This reasoning is based on the compelling concern that the health-care system is stretched and absences as a result of COVID-19 would tend to correlate to outbreaks in the community, which would put increase demands on the system at the same time, particularly given the annual fall/winter respiratory virus season.

70. The September 2022 Health Care Order states:

> A high incidence of transmission and illness in one or more regions has already created, and could again create, spill-over effects on health-care delivery across the Province, including in critical care and surgical services, resulting in a substantial backlog of surgeries and an increase in surgical wait times;

71. The September 2022 HCW Order continues to recognize the need to balance interests of unvaccinated individuals, including those guaranteed by the *Canadian Charter of Rights and Freedoms* with the needs of public health and maintenance of the healthcare system to respond to care needs for all British Columbians.

April 2023 Orders

72. On April 6, 2023, Dr. Henry repealed and replaced the Hospital and Community Preventive Measures Order. The Order includes Dr. Henry's assessment that the criteria described in s. 52(2) of the *Public Health Act* continue to be met due to:

(a) the history of mutation of SARS-CoV-2, uncertainty about its future behaviour, and the reasonable risk of a serious impact on public health;

(b) reasonable risk of an unexpected occurrence of a new variant which could cause serious disease among the population; and

(c) the infectious agent, SARS-CoV-2, continues to spread in British Columbia, Canada and around the world.

73. The Order, in the Recitals, explains that people over 70 and those with chronic health conditions or compromised immune systems are particularly vulnerable to severe illness, hospitalization, ICU admission and death from COVID-19, even if they are vaccinated.

74. The Order also notes that slippage in the level of vaccination in the health-care workforce could result in significant illness on the part of the health-care workforce

(Recital I) which would undermine the health care-system's capacity to respond to significant resurgence of disease.

75. The Order also contains an explanation of Dr. Henry's consideration, based on currently available generally accepted scientific evidence, of whether other measures are as effective as vaccination; and that vaccination, even after infection, remains an important measure in protecting against reinfection by providing a more consistent and reliable immune response than immunity arising from infection alone, and that there is no reliable means of assessing the level of immunity which a person may have to re-infection or serious illness in consequence of infection.

76. The Order describes that routine testing is not recommended due to the risks of false negative or false positive testing, that rapid antigen testing is not a substitute for vaccination, and that personal protective equipment does not provide the level of protection afforded by vaccination.

77. The Order outlines the impacts of the pandemic on the hospital and community care systems, and emphasizes that ensuring safe hospital and community care is critical to the wellbeing of the public and that the public health and health-care systems have experienced severe stress and been stretched beyond capacity. The Order specifically balances the competing interests, including *Charter* interests, of the public on the one hand and people who are unvaccinated on the other.

October 5, 2023 Orders

78. On October 5, 2023, Dr. Henry repealed and replaced the Hospital and Community Preventive Measures Order. The Order states Dr. Henry's view that s. 52(2) of the *Public Health Act* continue to be met. The Order notes that the WHO declared an end to the public health emergency, but that at the same time, the WHO Director-General made it clear that the change does not mean COVID-19 is over as a global health threat; and stated that the virus "is still killing, and it's still changing."

79. The Order notes that since the end of July 2023, COVID-19 indicators in the province has stopped declining and have instead continued to increase, and that an earlier onset of annual respiratory viruses is anticipated.

80. The Order reiterates that vaccination is safe and highly effective. The Order notes that Health Canada has authorized that vaccination with the mRNA based updated vaccines, rather than the vaccines previously recommended, is adequate to provide protection, and that the NACI has advised to no longer provide the previous vaccines once the updated vaccines are available. The Order also notes that most people who have been already vaccinated with a previously recommended primary series are most likely to have had their immune systems stimulated by subsequent vaccination or infection and therefore continue to have an immunity to infection such that an updated vaccination is not necessary.

81. The Order also notes that Dr. Henry has considered, based on currently available generally accepted scientific evidence, whether other measures are as effective as vaccination; and has concluded that vaccination, even after infection, remains an important measure in protecting against reinfection by providing a more consistent and reliable immune response than immunity arising from infection alone, and further, there is no reliable means of assessing the level of immunity which a person may have to re-infection or serious illness in consequence of infection.

82. The Order describes that routine testing is not recommended because of the risks of false negative or false positive testing, that rapid antigen testing is not a substitute for vaccination, and that personal protective equipment does not provide the level of protection afforded by vaccination.

83. The Order outlines the impacts on the hospital and community care systems, including that ensuring safe hospital and community care is critical to the wellbeing of the public and that the public health and health-care systems have experienced severe stress and been stretched beyond capacity.

84. The Order specifically balances the competing interests of the public and people who are unvaccinated.

85. The Order concludes with the following:

(a) An unvaccinated workforce in hospital and community care settings poses a risk to patients, residents and clients, to other workers and to the functioning of the health-care system, and constitutes a health hazard under the Public Health Act;

(b) The provision of care or services by an unvaccinated person in a hospital or community care setting puts patients, residents, clients and other workers at risk of infection with SARS-CoV-2, and constitutes a health hazard under the Public Health Act;

(c) It is essential to maintain the high level of vaccination currently in place in the hospital and community care workforce since this is the best means available by which to mitigate the risk to the health of patients, residents, clients and workers and to ensure the preparedness and resiliency of the health care system, both at present and in the event of a resurgence of COVID19 disease in the province;

(d) Expanding the grounds upon which a person may request an exemption to the requirement to be vaccinated beyond those based upon a risk to the health of the person would undermine the high level of vaccination which is currently in place among the hospital and community care workforce, introduce an unacceptable level of risk to the health of patients, residents, clients and workers, weaken the preparedness and resiliency of the health-care system, and undermine the confidence of the health-care workforce in the safety of their working environment and the confidence of the public in the safety of the health-care system;

(e) A lack of information on the part of employers and operators about the vaccination status of workers interferes with the suppression of SARS-CoV-2

in hospital and community care settings, and constitutes a health hazard under the Public Health Act;

(f) Medical health officers need to know the vaccination status of workers in order to most effectively respond to clusters or outbreaks of COVID-19 among patients, residents, clients or workers;

(g) In order to mitigate the risk in hospital and community care settings and to the health-care system arising from an unvaccinated workforce, and to ensure the preparedness and resilience of the health-care system, it is necessary for me to exercise the powers in sections 30, 31, 32, 39, 53, 54, 56, 57, 67 (2) and 69 of the Public Health Act TO ORDER as follows:

Part 5: LEGAL BASIS

86. The petitioners seek judicial review of the Orders on the basis that they are unjustified infringements of sections 7, 2(a) and 15 of the *Charter* and are unreasonable in an administrative law sense. None of these grounds of review are the basis for overturning the Health Care Orders.

87. Section 7 is not engaged because the interest at stake for the petitioners is *employment,* not life, liberty or security of the person. If that is incorrect, then the Orders are not arbitrary, overbroad or grossly disproportionate.

88. While the petitioners have not established that the Orders breach their *Charter* rights, it is conceded that the lack of a mechanism for accommodation of religious or conscientious belief is a *prima facie* limit on s. 2(a) of the *Charter*. That limit is, however, justified under s. 1 of the *Charter* as a proportionate balance between freedom of religion and conscience and public health objectives.

89. The petitioners have not established that the Orders make a distinction based on an enumerated or analogous ground or that such a distinction amounts to disadvantage. Section 15 of the *Charter* is therefore not engaged.

90. The Orders do not demonstrate either a lack of internal rationality or a failure to address a legal or factual constraint. They are therefore reasonable exercises of statutory authority.

A. Section 7 Is Not Engaged

91. To establish a breach of section 7 of the *Charter,* a claimant must establish that:

l. the impugned government law or action interferes with, or deprives them of, their life, liberty or security of the person; and

m. the deprivation is not in accordance with the principles of fundamental justice.[2]

92. The Orders complained of here are not laws requiring anyone to undergo medical treatment. Rather, they require those subject to them to choose between performing their job duties and undergoing medical treatment. The interest of an employee in a job is not, itself, protected by section 7 of the *Charter* and therefore the claim fails at the first stage.[3]

93. Even if the Orders interfere with a protected interest under s. 7, they are not arbitrary, overbroad or grossly disproportionate to the statutory objectives of the *Public Health Act.* An arbitrary law is one that is not capable of fulfilling its objectives, such that it exacts a constitutional price in terms of protected interests, without furthering the public good that is said to be the object of the law.[4] An overbroad law is one that is arbitrary "in part" (i.e. in some range of its application).[5] A law is grossly disproportionate if the seriousness of the deprivation of life, liberty and security of the person is totally out of sync with the objective of the measure, such that its draconian impact is entirely outside norms accepted in a free and democratic society. Gross disproportionality is illustrated by a sentence of life imprisonment for spitting on the sidewalk – which might have a deterrent effect on an unhygienic practice, but at an obviously unacceptable price.[6]

94. The objects here are protection of the health of the health-care workforce and its patients and clients and to protect the preparedness and resiliency of the health-care system, and by doing so to protect against preventable death, severe illness and hospitalization

[2] *Bedford v. Canada (Attorney General)*, 2013 SCC 72 at para. 57.
[3] *B.C. Teachers' Federation v. School District No. 39,* 2003 BCCA 100.
[4] *Carter* at para. 83.
[5] *Bedford* at para. 112.
[6] *Bedford* at para. 120.

95. The Orders, as originally enacted and updated, were clearly rationally connected to these objects in light of the protection vaccination gave against the Delta variant and subsequent variants of the Virus. It was not practical to address the situation of individual workers on a case-by-case basis and thus the law was not overbroad. While vaccine mandates are no doubt controversial in many quarters, it is not plausible that the impact of having to find a different job is outside the norms of a free and democratic society, comparable to life imprisonment for a trivial infraction.

96. The rise of the Omicron variant and subsequent XBB lineages has changed some elements of the calculation, but not the ultimate result. The healthcare system's patients, clients and residents are still among the most vulnerable British Columbians. The health-care system is still stretched, still subject to annual seasonal respiratory virus variation, and an outbreak within it could still have devastating consequences. Individualized assessment of past infection remains impracticable. It is still the case that vaccination is the most important preventive measure an individual can take to minimize the effects of COVID-19, including to reduce the risk of serious outcomes, hospitalization and death Vaccination-based immunity and infection-based immunity are complementary. A highly vaccinated workforce continues to be the best defence against outbreaks and the consequences of a health-care system that is overwhelmed, locally or province-wide.

97. If some of these considerations cannot be taken into account under s. 7 of the *Charter*, because they are insufficiently individualized, then they can still be the basis for a justified limitation under s. 1 of the *Charter.*

B. Section 2(a) [Freedom of Religion and Conscience]

98. Section 2(a) of the *Charter* guarantees the fundamental freedom of freedom of conscience and religion. This provision guarantees freedom to *hold* religious or conscientious beliefs and freedom of religious *practice,* but it does not guarantee the object of beliefs.[7]

99. The religious petitioners may have sincere beliefs, but that does not make them sincere *religious* beliefs. The conscientious petitioners may have concerns with the vaccines (or governments, or pharmaceutical companies, etc.) but that

[7] *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 at para. 63; *Ktunaxa Nation v. British Columbia (Forests, Lands and Natural Resource Operations)*, 2017 SCC 54

does not make the concerns *Charter*-protected conscience rights. A belief only has a nexus with religion if the individual demonstrates it is held "in order to connect with the divine or as a function of spiritual faith". A belief only has a nexus with conscience if the individual demonstrates it is held as an overarching moral commitment, analogous to ethical vegetarianism or pacifism.[8] A sincere belief about the risks and benefits of a medical treatment is not itself a religious or conscientious belief just because the individual holding it is religious or has moral commitments.

100. While the sincerity of the petitioners' opposition to taking a vaccine against the Virus is not in dispute, none of them have demonstrated a nexus to religion or conscience:

n. Ms. Tatlock deposes that she is religious, and that she has a sincerely held belief that the vaccine is contrary to her anti-abortion views. However, that is not a *religious belief* simply because she is religious. Indeed, her evidence instead suggests her belief is counter to her own Church's views.

o. Ms. Koop rejects the vaccine because she has concerns ranging from safety, to mRNA technology, to "the lack of transparency from pharmaceutical corporations and all level of Canadian (and international) governments". These concerns do not ground a *Charter*-protected *Charter* right of conscience.

p. Ms. Bielecki rejects the vaccine because of her objection to perceived state coercion. This does not ground a *Charter*-protected Charter right of conscience. Ms. Bilecki is not being asked to participate in state coercion that she has a moral objection to: rather she is asking for vindication of the *object* of her belief.

q. Mr. MacDonald rejects the vaccine largely due to his own assessment of medical risk, and also cites the "rush to market" of the vaccines. These concerns do not ground a *Charter*-protected *Charter* right of conscience.

r. Mr. Mateus rejects the vaccine because of the "unanswered questions "regarding the vaccine" and because the pharmaceutical companies

[8] *R. v. Locke,* 2004 ABPC 152 at para. 25.

"have no liability" in relation to the vaccines. These concerns do not ground a *Charter*-protected *Charter* right of conscience.

s. Mr. Sturgeon rejects the vaccine based on his unqualified medical opinion and a diagnosis from August 2021 purportedly giving him "natural" (infection-based) immunity. These concerns do not ground a *Charter*-protected *Charter* right of conscience. Mr. Sturgeon also professes to have a religious objection, but his objection is not that his Catholicism prohibits vaccines—instead his objection is that his church teaches freedom to make moral decisions and he finds the "coercion" to be immoral. Respectfully, that is insufficient to engage Mr. Sturgeon's religious rights in the sense of the *Charter.*

t. Ms. Nelson and Ms. Keyser reject the vaccine because their own assessment that the vaccine is unsafe and coercive. That does not engage the *Charter.*

u. Ms. Koh asserts a religious objection but does not depose that her religion prohibits vaccination. Ms. Koh also makes her own assessment that infection-related immunity is "superior" to that obtained through vaccination. Her assertion on that point does not engage the *Charter*.

v. Ms. Hamley asserts a religious objection, but does not depose that her religion prohibits vaccination. Instead, Ms. Hamley deposes that God only sanctions just mandates, and that in her view the vaccine mandate is unethical and therefore unjust. With respect, that is insufficient to engage Ms. Hamley's religious rights in the sense of the *Charter.*

w. Mrs. Parenteau rejects the vaccine because she considers the requirement to be coercive, to put her under duress, and to constitute a threat. She does not oppose vaccination. These concerns do not ground a *Charter*-protected *Charter* right of conscience.

x. Dr. Nordine deposes only that he is "a Christian, and [has] sincerely held religious belief that prevent me from taking the Covid-19 vaccine." Without doubting the sincerity of his belief, there is no evidentiary basis on which it could be concluded that his belief is itself religious.

101. The Respondents concede that there is no *process* in the Orders for religious or conscientious objection and that this could be contrary to s. 2(a) of the

Charter. However, if this is a proportionate limit on the protected right in light of the statutory objectives of the *Public Health Act,* it is a justified limitation under s. 1 of the *Charter*.[9] Both in the Fall of 2021 and again in September 2022 and in fall 2023, Dr. Henry turned her mind specifically to this issue and explained why it would be impracticable to have such an individualized process.

(iii) Section 15 – Discrimination

102. To establish a *prima facie* breach of s. 15(1) of the *Charter*, the petitioners must demonstrate that the impugned law or state action:

a. on its face or in its impact, creates a distinction based on enumerated or analogous grounds; and

b. imposes burdens or denies a benefit in a manner that has the effect of reinforcing, perpetuating, or exacerbating disadvantage.[10]

103. A personal choice to refuse vaccination is not an enumerated or analogous ground.

104. The Orders do not impose a burden or deny a benefit that have the effect of reinforcing, perpetuating, or exacerbating disadvantage to the petitioners.

(iv) Section 1: The Orders Proportionately Balanced Charter *Rights*

105. Alternatively, if the Orders do infringe the petitioners' rights under ss. 2(a), 7 or 15 of the *Charter*, all of which is denied, the Orders are reasonable and reflect a proportionate balancing of the *Charter* rights at play with the objectives of the Orders.[11]

106. In making the Health Care Orders, Dr. Henry was guided by the principles applicable to public health decision making, and in particular, that public health interventions be proportionate to the threat faced and that measures should not exceed those necessary to address the actual risk.

[9] *Beaudoin v British Columbia,* 2021 BCSC 512 affirmed at 2022 BCCA 427, application for leave to appeal to the Supreme Court of Canada dismissed August 10, 2023.
[10] *Fraser v. Canada (Attorney General)*, 2020 SCC 28 at para. 27
[11] *Doré v. Barreau du Québec,* 2012 SCC 12, para. 57; *Beaudoin* at paras. 206-223.

107. The Orders are continually revised and reassessed to respond to current scientific evidence and epidemiological conditions in British Columbia.

108. In making the Orders, Dr. Henry specifically recognized and considered constitutionally-protected interests including rights and freedoms guaranteed by the *Charter.*

B. No Basis to Quash the Orders as Unreasonable

109. The Orders are administrative law decisions made through the delegation of discretionary decision-making authority under the *Public Health Act*. The standard of review with respect to the Orders is reasonableness.[12]

110. The petitioners bear the burden of establishing that the Orders are unreasonable. They must establish a failure of rationality internal to the reasoning process, or that the Orders cannot be justified in light of a factual or legal constraint.[13]

111. Dr. Henry is entitled to curial deference, in particular in respect of the factual bases of the management of a pandemic by public health officials. These are matters of science and medicine that this Court is not well-suited to second guess.[14]

112. The Orders are internally rational, and consistent with the constraints imposed by the legal and factual context within which they were made.

113. There can be no doubt that protecting the capacity of the health-care system in a pandemic and protecting residents and patients from infection from healthcare workers are both rational public health goals. Dr. Henry has laid out in her Reasons why those goals are best promoted by vaccine mandates and why religious and conscientious objection processes are unworkable.

114. The existence of differing opinions on scientific or medical matters – including as to whether vaccine mandates are necessary and proportionate - does not render the Orders unreasonable.[15]

[12] *Beaudoin* at paras. 119-125, 218
[13] *Vavilov* at paras. 101-107.
[14] *Beaudoin* at para. 124; *Vavilov* at paras. 75, 125
[15] *Doré* at para. 56; *Beaudoin* at paras. 124-125; Vavilov at para. 83

115. Dr. Henry made the Orders in the face of scientific uncertainty and relied on specialized medical and scientific expertise. Dr. Henry was guided by the principles applicable to public health decision making, including the precautionary principle, and adhered to the principle that public health interventions be proportionate to the threat faced and that measures should not exceed those necessary to address the actual risk.

116. The Orders are reasonable. There is no basis for this Court to interfere on judicial review.

C. Other Grounds in the Petition

~~45. The existence of self regulation by a profession does not mean that profession is exempted from public regulation. The Petitioners' claim that self-regulated professions are entitled to immunity from orders under the *Public Health Act* is without merit.~~

117. It is not an abuse of discretion or fettering for Dr. Henry to restrict the ambit of reconsideration under s. 43 of the *Public Health Act.* The PHO's authority to do so in an emergency is specifically affirmed by s. 54(1)(h) of the *Act* and Dr. Henry exercised this authority appropriately.

~~46. The orders in no way affect the right of an adult not to consent to health care under s. 6 of the *Health Care (Consent) and Care Facility Act.* Vaccination must be consented to. Similarly, personal and medical information transferred under the Orders must be consented to and the Orders provide statutory authority.~~

~~47. To the extent that the Amended Petition references the *Freedom of Information and Protection of Privacy Act*, RSBC 1996, c.165 ("FIPPA"), FIPPA complaints fall under the jurisdiction of the Information and Privacy Commissioner.~~[16]

~~48. The assertion that s. 1 of the *Privacy Act* RSBC 1996 c. 373 is engaged is without merit. Section 1(1) of the *Privacy Act* sets out a tort, which can only be pursued in a civil action. A cause of action under the *Privacy Act* cannot be adjudicated in a judicial review proceeding.~~

[16] It is a collateral attack to go directly to court rather than to seek review from the Information and Privacy Commissioner: *Varzeliotis v. The Queen et al*, 2007 BCSC 620.

~~49. A complaint under section 13(1) of the *Human Rights Code*, RSBC 1996, c. 210 must be made to the Human Rights Tribunal.~~

III. REMEDY

118. The respondent seeks an order dismissing the petition.

119. Damages are not an available remedy on judicial review.[17]

120. If the Petitioners succeed on their application for judicial review, the appropriate remedy is to set the decision aside and remit the matter to the PHO for reconsideration. There is no remedy in mandamus available in these circumstances.

JRPA, ss. 5-7; *Testa v. W.B.C. (B.C.)* (1989), 36 B.C.L.R. (2d) 129 (C.A.) at paras. 53-55; *Vavilov* at paras. 140-142

Rogers Communication Inc. v *British Columbia* (Assessors of Areas #01, 08, 09, 10, 11, 14,15, 20, 22, 23, 45, 50 and 53), 2022 BCSC 1688

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Dr. Brian Emerson dated September 13, 2022.
2. Affidavit #1 of A. Dragland dated September 15, 2022.
3. Affidavit #2 of Dr. Brian Emerson dated October 27, 2022.
4. Affidavit #3 of Dr. Brian Emerson dated September 27, 2023.
5. Affidavit #2 of A. Dragland dated October 6, 2022.
6. Affidavit #3 of A. Dragland dated November 30, 2022.
7. Affidavit #1 of Haley Miller made November 1, 2023.
8. The pleadings and proceedings herein; and
9. Such further and other material as counsel may advise and

[17] *Madadi* v. *British Columbia*, 2014 BCSC 1062 at para. 50.

the Court permit.

The petition respondent estimates that the application will take ten days.

Date: ~~September 15, 2022~~ November 3, 2023

Signature of lawyer for the Respondents
~~Gareth Morley~~, Julie K. Gibson, Alexander Bjornson, Christine Bant

Petition Respondents' address for service:

Ministry of Attorney General
Legal Services Branch
[redacted]

No. S222427
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners

and

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

ORDER MADE AFTER APPLICATION

BEFORE	THE HONOURABLE JUSTICE COVAL	10/MAY/2024

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia on November 20-24, 28-30, December 1, and December 18-21, 2023, and on hearing Karen A. Bastow and Charlene E. Le Beau, counsel for the Petitioners, and Julie K. Gibson, Alexander C. Bjornson, and Christine Bant, counsel for the Respondents, and judgment being reserved to this date;

THIS COURT ORDERS that:

1. The petition is dismissed, with the exception that, under section 5(1) of the *Judicial Review Procedure Act*, the Court remits to the Provincial Health Officer for reconsideration, in light of the Court's decision, whether to consider requests under section 43 of the *Public Health Act*, for

reconsideration of the vaccination requirement from healthcare workers able to perform their roles remotely, or in-person but without contact with patients, residents, clients or the frontline workers who care for them.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of **Charlene E. Le Beau**,
Counsel for the Petitioners

Signature of **Julie K. Gibson**,
Counsel for the Respondents

By the Court:

Digitally signed by
Coval, J

Registrar

No. 222427
Vancouver Registry

In the Supreme Court of British Columbia

Between

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners

and

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondent

ORDER

Charlene E. Le Beau Law Office
[redacted]1

Charlene E. Le Beau
Barrister and Solicitor

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hoogerbrug v. British Columbia,* 2024 BCSC 794

Date: 20240510
Docket: S224652
Registry: Vancouver

Between:

Peternella Hoogerbrug

Petitioner

And

Provincial Health Officer of British Columbia

Respondent

- and -

Docket: S224731
Registry: Vancouver

Between:

York Hsiang, David William Morgan and Hilary Vandergugten

Petitioners

And

Provincial Health Officer of British Columbia

Respondent

- and -

Docket: S222427
Registry: Vancouver

Between:

Phyllis Janet Tatlock, Laura Koop, Monika Bielecki, Scott Macdonald, Ana Lucia Mateus, Darold Sturgeon, Lori Jane Nelson, Ingeborg Keyser, Lynda June Hamley, Melinda Joy Parenteau and Dr. Joshua Nordine

Petitioners

And

**Attorney General for the Province of British Columbia and
Dr. Bonnie Henry in her capacity as Provincial Health Officer
for the Province of British Columbia**

Respondents

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

Counsel for the Petitioners in S224652 and S224731:	P.A. Gall, K.C. M. Nohra S. Gyawali P. Thind, Articling Student
Counsel for the Petitioners in S222427	K.A. Bastow C.E. Le Beau
Counsel for the Respondents:	J. Gibson A.C. Bjornson C. Bant
Place and Dates of Hearing:	Vancouver, B.C. November 20-24, 28-30 December 1 and 18-21, 2023
Place and Date of Judgment:	Vancouver, B.C. May 10, 2024

Table of Contents

Introduction

[1] The petitioners are healthcare workers who have lost their jobs in the British Columbia healthcare system due to being unvaccinated against COVID-19. The respondent is Dr. Bonnie Henry, the Provincial Health Officer of British Columbia ("PHO").

[2] In these proceedings, the petitioners challenge the PHO's two orders of October 5, 2023 ("Orders"), which continued the vaccination requirement for the healthcare workforce in British Columbia which had been in place since October 2021.

[3] The petitioners argue that this continuation of the Orders was an unreasonable exercise of the PHO's statutory powers under the *Public Health Act*, S.B.C. 2008, c. 28 [*PHA*], causing ongoing hardship and harm to the unvaccinated healthcare workers who had lost their jobs, and to the healthcare system itself from the absence of these highly qualified personnel.

[4] The petitioners challenge the reasonableness of the Orders on four main grounds. First, they say that, by October 2023, COVID-19 was no longer "an immediate and significant risk" to public health in British Columbia, and therefore the statutory preconditions for the continued use of the PHO's emergency powers no longer applied.

[5] Second, they say the scientific record no longer indicated that unvaccinated healthcare workers posed any greater risk to vulnerable patients, or the healthcare system generally, than vaccinated workers.

[6] Third, those petitioners who worked remotely or held purely administrative positions argue that their inclusion in the orders was unreasonable, given their lack of contact with vulnerable patients or the frontline healthcare workers who care for them.

[7] Fourth, some petitioners challenge the Orders on constitutional grounds under the *Canadian Charter of Rights and Freedoms*. They argue that, by forcing them to choose between adherence to their fundamental religious and personal beliefs about vaccination, or keeping their jobs in their chosen professions, the Orders infringed their s. 2(a) right to freedom of conscience and religion, and their s. 7 right to liberty and security of the person.

[8] In response, the PHO submits that the Orders were reasonable measures to reduce the risk of transmission of COVID-19 to vulnerable patients and healthcare workers in hospitals and other care settings, and to protect the overall functioning and capacity of these crucial facilities.

[9] The PHO argues that, at the time of the Orders, the medical and scientific information continued to support the effectiveness of vaccination against COVID-19's most serious outcomes and its transmission to others. There was also a rising trend in British Columbia of COVID-19 severe cases and deaths, just as the worst of the respiratory illness season was fast approaching.

[10] The PHO submits that, in those circumstances, continued use of the *PHA* emergency powers was justified to protect the health of British Columbians, particularly the most vulnerable, and to safeguard the capacity of our healthcare system to provide essential services to those suffering from COVID-19 and other illnesses or conditions requiring acute care.

[11] Finally, the PHO says that the Orders did not infringe the petitioners' *Charter* rights. The petitioners remained free to follow their religious and conscientious beliefs by refusing to take the vaccines, which their evidence indicates they all chose to do, and the rights of liberty and security of the person do not extend to the ability to practice the profession of one's choice without complying with the rules and regulations that apply to it.

Summary of Decision

[12] The summary of this decision is as follows.

[13] The key findings regarding the medical and scientific record available to the PHO, as of October 5, 2023, are found in paragraphs 109-177 below. Based on those findings, in my view there was ample evidence in the record to support as reasonable the PHO's conclusions that:

a) Transmission of the virus continued to pose an immediate and significant risk to public health throughout the province, justifying the ongoing use of the emergency powers in the *PHA (*paragraphs 179-198);

b) An unvaccinated healthcare workforce continued to pose a risk to patients, residents, clients and healthcare workers in hospitals and other care settings, and to the functioning of the healthcare system, and to constitute a "health hazard" as defined in the *PHA* (paragraphs 199-209); and

c) It was essential to maintain the high level of workforce vaccination already in place in these settings, as the best means to mitigate these risks and safeguard the public health system in the province (paragraphs 199-209).

[14] Therefore, with one limited exception, the Orders were reasonable in light of the information available to the PHO at the time.

[15] The limited exception is that, in my view, there was a lack of justification in the record or Orders to support as reasonable the decision not to consider requests, under s. 43 of the *PHA*, for reconsideration of the vaccination requirement from healthcare workers able to perform their roles remotely, or in-person but without contact with patients, residents, clients, or the frontline healthcare workers who care for them (paragraphs 210-227).

[16] Regarding the *Charter* challenges, I find that the Orders infringed the s. 2(a) *Charter* rights of those petitioners who refused the vaccines on religious grounds. However, this infringement was reasonable in the circumstances because, on the record available to the PHO, it did not exceed what was necessary to achieve the essential public health objectives of protecting vulnerable patients, residents and clients from serious illness and death, and safeguarding the functioning of the province's healthcare system (paragraphs 223-261, 301-314).

[17] I find that the Orders did not infringe the s. 2(a) *Charter* rights of those petitioners who refused vaccination based on their personal concerns and convictions. On the evidence, these personal perspectives did not rise to the level of constitutionally-protected matters of conscience (paragraphs 239-245, 253-254, 262-263).

[18] Finally, regarding the petitioners' s. 7 *Charter* rights, I find that the Orders did not engage their rights to liberty or security of the person. The Orders did not compel them to accept unwanted medical treatment, and so did not interfere with their bodily integrity or medical self-determination. Further, under the case law, s. 7 protects neither the right to work in any specific employment or particular profession, nor the right to avoid the stress and hardship of being denied employment in a profession due to non-compliance with its governing rules and regulations (paragraphs 264-300).

[19] The petitions are therefore dismissed with the exception that, under s. 5(1) of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241, I remit to the PHO for reconsideration, in light of this decision, whether to consider s. 43 *PHA* requests for reconsideration of the vaccination requirement from healthcare workers able to perform their roles remotely, or in-person but without contact with patients, residents, clients, or the frontline healthcare workers who care for them.

The Petitioners

[20] In this hearing, three petitions were heard together.

[21] The first petition was filed on March 16, 2022, by eleven petitioners, made up of nurses, managers, administrators, therapists and one doctor ("Tatlock Petition"). Having worked across the province in hospitals, care and community living centres, and health service offices, they lost their jobs between October and December 2021 for being unvaccinated. Many among this group described themselves as solely administrative or remote workers whose roles did not require contact with patients or frontline healthcare workers. Their individual circumstances are summarized in paragraphs 221 and 254 below.

[22] The second petition was filed on June 8, 2022, by Ms. Peternella Hoogerbrug ("Hoogerbrug Petition"). Ms. Hoogerbrug is a nurse practitioner, previously employed in an urgent care centre within the Fraser Health Authority. She was terminated from her job in May 2022, having refused the vaccine for religious reasons. Ms. Hoogerbrug is a member of the Reformed Congregation in North America. Her faith is an integral and deeply rooted part of her life and identity. Her Church opposes vaccination on the basis that it "interferes with the providence of God". Its teachings include that placing one's trust in the vaccine, rather than God, can lead to idolatry. In October 2021, she applied for a vaccination exemption which was denied. She deposed to being devastated by losing her job due to adherence to her faith, and that providing healthcare services has been a core aspect of her identity. The majority of alternative job postings she has seen for nurse practitioners are for settings subject to the Orders or in private clinics that have instituted similar requirements.

[23] The third petition was filed on June 10, 2022, by three petitioners ("Hsiang Petition"). Two are doctors, Dr. York Hsiang, a surgeon from Vancouver General Hospital, and Dr. David Morgan, a psychiatrist from Prince George Youth Forensic Clinic. The third, Ms. Hilary Vandergugten, is a registered nurse who was the clinical coordinator at Langley Memorial Hospital. All three refused vaccination based on their personal convictions and risk-benefit analyses.

[24] Dr. Hsiang is a vascular surgeon. In 2015, he ceased performing surgery and instead provided consultation services and referrals to other surgeons. He was also a professor at the University of British Columbia. He chose to retire in November 2021, at the age of 67, rather than face termination of his consultation and teaching roles. He chose not to receive the vaccine based on his own "medically-informed risk-benefit analysis in relation to my health and personal circumstances, and the risks posed by the virus and from vaccination to [him] personally", and his strong belief that such matters should be his choice to make. He deposed that providing healthcare services to the public has long been a core aspect of his identity and a

source of pride, and being forced to retire in this way caused him to suffer personal, professional and financial harm.

[25] Dr. Morgan was terminated from his role at the Prince George Youth Forensic Clinic in December 2021, where he assessed and treated youths in the criminal justice system. He was also the regional clinical director for northern British Columbia, where he participated in establishing goals for the Ministry's Youth Forensic Psychiatrist Services. He decided not to accept the vaccine based on his assessment of the risks and benefits given his personal circumstances, particularly that he was in good health and had likely already contacted and recovered from the virus. He has maintained a full-time private psychiatry practice and his role as a clinical assistant professor in UBC's Faculty of Forensic Psychiatry.

[26] Ms. Vandergugten was terminated in February 2022 from her position as patient care coordinator in the Emergency Department of the Langley Memorial Hospital, where she worked for 27 years. She decided against the vaccine based on her own "medically-informed risk-benefit analysis in relation to my health and personal circumstances", including that she was in good health and had already contracted and recovered from the virus. She described the loss of her job as impacting her financially and emotionally. She deposed that "it is very isolating losing my career due to my vaccination status. I loved my job. I loved learning, teaching, and helping people who were often at their most vulnerable". At the time of her affidavit, she was working part-time conducting COVID-19 testing in the film industry.

[27] The petitioners' reasons for vaccination refusal divided roughly evenly between religious beliefs and personal convictions. In their affidavit evidence, they took strong exception to being forced to choose between what they saw as an invasive, unwanted vaccine and keeping their healthcare jobs. Nearly all viewed vaccination as a personal health decision that should be a matter of choice.

[28] Most who refused on religious grounds referred to the conflict between their Christian beliefs and the use of fetal cells in the vaccines' development. Some described accepting the vaccine as contravening their obligation to trust in God's will

and providential care, protect their body from contaminants, or make their own moral decisions without coercion. A senior director of two hospitals described the vaccine as containing contaminants that offended the teaching that the body is “the temple of the Lord”.

[29] Those who refused for secular reasons expressed doubts about the safety and efficacy of the vaccines, citing studies and personal experiences of exaggerated benefits, negative side effects, and lack of rigorous testing. Some emphasized concerns about government transparency and access to reliable information. Many pointed to their personal risk/benefit assessments, focussing on their youth, good health, and natural immunity from prior COVID-19 infections. They recounted witnessing serious vaccine reactions, such as vertigo and bladder control issues, and seeing the vaccinated fall ill with COVID-19. Many described the vaccines as “rushed to market”, and some perceived the vaccines to be a “genetic experiment”.

[30] Their medical reasons for refusal included previous allergic reactions to flu shots, pregnancies or planned pregnancies, and compromised immune systems from blood or inflammatory conditions. Some had made unsuccessful medical exemption requests under s. 43 of the *PHA*.

[31] Many petitioners described severe consequences from losing their jobs for vaccine refusal. Most were placed on unpaid leave in the fall of 2021 and then terminated by their employers a few weeks later. Generally, they were terminated “for cause”, and so were ineligible for severance or employment insurance benefits. They lost jobs that included pension and insurance plans. A nurse who worked with mental health patients alleged losing over 1,000 hours of accrued sick time without compensation. Some deposed to abrupt terminations without time to prepare transitional care plans or explain their departures to colleagues or patients. Some described fighting for a better outcome, or voicing grievances to their employers and government decision-makers, all to no avail.

[32] With limited opportunity to practise their professions in British Columbia outside of the public health and long-term care settings, most petitioners described

remaining unemployed or underemployed. Some contemplated relocating to work elsewhere in Canada or the United States. Some described serious financial hardship, including limited means to pay for food and housing for themselves and their children. Many described stress, anxiety, depression, and feelings of being stigmatized and pariahs for losing their healthcare jobs in this fashion.

The PHO and Public Health

[33] Dr. Henry is a medical doctor with a master's degree in public health (epidemiology). As PHO during the pandemic, she had the formidable responsibility of making the public health decisions required to manage and prevent illness and death from this terrible disease, while at the same time reasonably balancing individual rights.

[34] As PHO, Dr. Henry is the senior public health official for British Columbia. In that role, she is responsible for monitoring the health of the population and providing independent advice to ministers and public officials on public health issues (*PHA*, ss. 64, 66). Dr. Henry has extensive experience in public health and preventative medicine. She has been a member of the Faculty of Medicine at the University of British Columbia and the University of Toronto. In 2000, she was the senior Canadian assigned to a World Health Organization ("WHO") mission to assist with the large-scale outbreak of Ebola in Uganda. While Associate Medical Officer of Health for the City of Toronto, she was the operational lead for the SARS outbreak in 2003. She was also formerly the Provincial Executive Medical Director for the BC Centre for Disease Control ("BCCDC"), the scientific and operational arm of the Public Health Office.

[35] Public health is one component of the Province's healthcare system. From the perspective of caring for the population as a whole, it aims to reduce premature death, and minimize the effects of disease, disability, and injury.

[36] When transmissible viruses like COVID-19 are present, public health initiatives seek to prevent and manage outbreaks, reduce the risk of infections, serious illnesses, and premature deaths, and protect the healthcare system's ability

to service the diverse medical needs of the population as a whole. The public health system is also responsible for developing and delivering province-wide vaccination programs.

The Public Health Act

[37] The PHO made the October 2023 Orders under the statutory authority conferred by the *PHA,* specifically ss. 30, 31, 32, 39, 53, 54, 56, 57, 67(2) and 69.

[38] The legislative framework of these parts of the *PHA* was summarized by the Court of Appeal in *Beaudoin v. British Columbia (Attorney General)*, 2022 BCCA 427, leave to appeal ref'd [2023] S.C.C.A. No. 78, as follows:

> [30] Section 30(1)(a) of the *PHA* provides that a health officer may issue an order if they reasonably believe that a health hazard exists. "Health hazard" is defined under s. 1 to mean "(a) a condition [or] a thing … that (i) endangers, or is likely to endanger public health" or "(b) a prescribed condition [or] thing … that (i) is associated with injury or illness…".
>
> [31] Section 31(1)(b) of the *PHA* provides that a health officer (or the PHO in an emergency) "may order a person to do anything that the health officer reasonably believes is necessary for any of the following purposes: … (b) to prevent or stop a health hazard, or mitigate the harm or prevent further harm from a health hazard."
>
> [32] Section 32(2) of the *PHA* provides that without limiting s. 31, a health officer (or the PHO in an emergency) may make one or more of the broad-ranging orders enumerated therein.
>
> [33] Section 39(1) of the *PHA* provides that orders made under Part 4 – Division 4 of the *PHA* (including ss. 30–32) must be made in writing and describe, among other things, who must comply with the order, what must be done or not done pursuant to the terms of the order, the date on which, or the circumstances under which, the order is to expire (if the date or circumstances are known) and how a person affected by the order may have the order reconsidered. Pursuant to s. 39(3), an order may be made in respect of a class of persons. Section 42(1) provides that a person named or described in an order must comply with the order.
>
> [34] The circumstances in which a person affected by an order may request reconsideration of the order are set out in s. 43 of the *PHA*….[T]he relevant provisions of s. 43 are set out below:
>
> > 43 (1) A person affected by an order, or the variance of an order, may request the health officer who issued the order or made the variance to reconsider the order or variance if the person

> (a) has additional relevant information that was not reasonably available to the health officer when the order was issued or varied,
>
> (b) has a proposal that was not presented to the health officer when the order was issued or varied but, if implemented, would
>
> (i) meet the objective of the order, and
>
> (ii) be suitable as the basis of a written agreement under section 38 [*may make written agreements*], or
>
> (c) requires more time to comply with the order.
>
> (2) A request for reconsideration must be made in the form required by the health officer.
>
> (3) After considering a request for reconsideration, a health officer may do one or more of the following:
>
> (a) reject the request on the basis that the information submitted in support of the request
>
> (i) is not relevant, or
>
> (ii) was reasonably available at the time the order was issued;
>
> (b) delay the date the order is to take effect or suspend the order, if satisfied that doing so would not be detrimental to public health;
>
> (c) confirm, rescind or vary the order.
>
> (4) A health officer must provide written reasons for a decision to reject the request under subsection (3)(a) or to confirm or vary the order under subsection (3)(c).
>
> (5) Following a decision made under subsection (3)(a) or (c), no further request for reconsideration may be made.
>
> (6) An order is not suspended during the period of reconsideration unless the health officer agrees, in writing, to suspend it.
>
> …

[35] Section 44 provides that a person affected by an order may request a review of the order, but only after the order has been reconsidered pursuant to s. 43.

[36] Section 45 provides that, subject to the regulations, a person affected by an order may request the health officer who issued the order to reassess the circumstances relevant to the making of the order to determine whether it should be terminated or varied.

> [37] Part 5 of the *PHA* provides for enumerated emergency powers. For present purposes, an "emergency" is defined in s. 51 to mean a regional event that meets the conditions set out in s. 52(2). A "regional event" means "an immediate and significant risk to public health throughout the region or the province".
>
> [38] Pursuant to s. 52(2) of the *PHA*, emergency powers must not be exercised in respect of a regional event unless the PHO provides notice that they reasonably believe at least two of the following criteria exist:
>
> > (a) the regional event could have a serious impact on public health;
> >
> > (b) the regional event is unusual or unexpected;
> >
> > (c) there is a significant risk of the spread of an infectious agent or hazardous agent;
> >
> > (d) there is a significant risk of travel or trade restrictions as a result of the regional event.
>
> [39] In an emergency, a health officer (including the PHO) may, pursuant to ss. 54(c) of the *PHA*, do orally what must otherwise be done in writing. In addition, pursuant to s. 54(1)(h), a health officer (including the PHO) has the authority not to reconsider an order under s. 43, not to review an order under s. 44, and not to reassess an order under s. 45.
>
> [40] Sections 70–72 of the *PHA* provide for the appointment of medical health officers who exercise powers within the geographic area of British Columbia to which they are designated …

[39] Under s. 56, the PHO may order persons to take vaccinations as a preventative measure in an emergency. In a non-emergency, persons can refuse such preventative measures if they believe them harmful to their health or object for reasons of conscience (s. 16). In an emergency under Part 5 of the *PHA*, however, the PHO may order that compliance is required except for persons with written notice from a medical practitioner that compliance would seriously jeopardize their health (s. 56(2)).

[40] Under s. 59(b), the authority to act under emergency powers for a regional event such as COVID-19 ends when the PHO provides notice that the emergency has passed.

The COVID-19 Pandemic

[41] The PHO relied on the following description of the exceptional nature of the COVID-19 pandemic, from *Ontario v. Trinity Bible Chapel et al,* 2022 ONSC 1344, aff'd 2023 ONCA 134, leave to appeal ref'd [2023] S.C.C.A. No. 168:

> [1] The COVID-19 pandemic sent shockwaves across the globe. The virus has killed millions worldwide and has caused many others to experience chronic debilitating health conditions. While particularly dangerous for certain populations - those over the age of 60 and/or with underlying health conditions - COVID-19 does not discriminate based on age or infirmity. New variants of concern have increased mortality rates among young and healthy individuals. COVID-19 has threatened the viability of health care systems by consuming medical resources, leaving other illnesses untreated, and stretching hospitals and intensive care units ("ICUs") to their limits.

[42] British Columbia diagnosed its first case of COVID-19 on January 27, 2020. On January 30, 2020, the WHO declared a public health emergency of international concern. On March 11, 2020, it declared a pandemic, due to the extensive international spread of the infectious agent SARS-CoV-2 that causes COVID-19.

[43] By mid-March 2020, British Columbia was in the first wave of the pandemic. Case counts rapidly rose and it became clear that an infected person could transmit the virus to others in close quarters. There was no treatment or cure, and no vaccine to protect against transmission.

[44] On March 17, 2020, the PHO gave notice, under *PHA* s. 52(2)*,* that the spread of SARS-CoV-2 constituted a "regional event" as defined in s. 51. As explained above, this permitted the PHO to exercise the emergency powers under Part 5, including oral and written public health orders. Never before in British Columbia had these powers been implemented in response to a communicable disease. On March 18, 2023, the Minister of Public Safety and Solicitor General declared a state of emergency throughout the province pursuant to the *Emergency Program Act*, R.S.B.C. 1996, c. 111.

[45] Later in March, the PHO began issuing the public health orders responding to the pandemic. Since that time, she has regularly updated her orders to respond to

local surveillance data, information about evolving situations, and national and international epidemiological information about the spread of COVID-19.

[46] SARS-CoV-2 has proven highly infectious and has come in waves of different dominant variants. In mid-October 2020, the province began experiencing its second wave, causing a surge of hospitalizations and admissions to intensive care units. Further waves occurred in March and July 2021. Surgeries were suspended and reduced throughout much of 2020 and 2021.

[47] Vaccines were introduced near the end of 2020, while the Delta variant was still dominant. British Columbia's immunization plan for the two-dose primary series was developed through collaboration between the PHO, the provincial and federal governments, the BCCDC, and regional health authorities. Expert leaders were retained to spearhead the initiative, and special working groups were established to oversee and implement this massive initiative. Health Canada conducted a rigorous scientific review of the available medical evidence to assess the safety of the approved COVID-19 vaccines.

[48] By the fall of 2021, Omicron was developing into the dominant variant of concern, and so its severity, contagiousness and response to the vaccines were being studied and assessed. Its sub-variants remained dominant in British Columbia at the time of the 2023 Orders.

[49] By early January 2022, Omicron's greater transmissibility brought a fifth wave of COVID-19 to British Columbia, with case rates and hospitalizations in excess of any prior stage of the pandemic. BCCDC data for the fall of 2021 and into 2022 showed cases, hospitalizations and deaths surging, and over 8,000 surgical postponements.

[50] By this time, as described by the PHO in an April 5, 2022 media briefing, over 90% of eligible adults in British Columbia had received the two-dose primary series, and 60% had received a third booster dose. In other briefings, the PHO advised that hospitalizations were increasing at the same time that healthcare workers were ill

and absent from work more than ever before. On April 5, 2022, the PHO reported that over 3,000 people in British Columbia had died of COVID-19 during the pandemic.

[51] Throughout 2022–2023, the PHO, BCCDC and others continued to monitor COVID-19 care-facility outbreaks, hospitalizations, critical care admissions, and deaths. At times, the healthcare system was stretched beyond capacity. In January 2023, the number of those hospitalized in British Columbia was 110% of base-bed capacity (or 87% of total beds plus surge-bed capacity). Non-urgent surgeries continued to be postponed and some regions faced overnight closure of emergency departments.

[52] On September 12, 2023, Health Canada approved an updated mRNA vaccine tailored to the newly-dominant sub-variant known as “XBB 1.5”, which is a sub-lineage of Omicron. The original two-dose primary series was phased out and National Advisory Committee on Immunization (“NACI”)[1] strongly recommended that individuals six months of age or older receive this XBB 1.5-specific vaccine.

[53] In a media briefing on September 28, 2023, the PHO discussed XBB 1.5 and emphasized that unvaccinated people remained most at risk for illness and hospitalization. She noted increasing COVID-19 rates, the fall respiratory virus season, and the need for vaccination of the healthcare workforce to preserve its ability to provide care, including for the most vulnerable.

The October 5, 2023 Orders

[54] The Orders are entitled “Hospital and Community (Health Care and Other Services) COVID-19 Vaccination Status Information and Preventive Measures Order” and “Residential Care COVID-19 Vaccination Status Information and Preventive Measures Order”.

1 NACI is a national advisory committee of experts in multiple fields that provides guidance on the use of vaccines to the Government of Canada.

[55] The two Orders are similar, except the former is addressed to hospital and community care settings, and the latter to long-term care facilities, private hospitals and assisted living residences. They are lengthy and complex. When referring to specific paragraphs, I will use the Hospital and Community Care Order.

[56] The Orders continued the vaccine mandate for healthcare workers that had commenced in October 2021, and was repealed and replaced by subsequent orders in November 2021, September 2022, and April 2023. As with the prior orders, the October 2023 Orders contained no expiration date.

[57] The prior orders required all healthcare workers across the province's hospitals, community health facilities, and residential and long-term care settings to have received at least the original two-dose, primary series of the vaccine introduced in British Columbia in December 2020. During the hearing, counsel advised that: (i) at the time of the Orders, all healthcare workers in the designated facilities had received the primary series, apart from approximately 35–40 workers who had obtained medical-deferral exemptions under *PHA* ss. 43 and 56(2); and (ii) approximately 1,800 healthcare workers had lost their jobs due to being unvaccinated contrary to these mandates.

[58] The Orders did not alter the mandate for healthcare workers already vaccinated with the primary series. They were not required to receive the new XBB.1.5 dose, though it was highly recommended. The Orders explained this was because of the high level of immunity amongst those already working within the healthcare sector, due to multiple factors such as the primary series of vaccines, boosters, and natural immunity from infections.

[59] The Orders did require the XBB.1.5 vaccine, however, for unvaccinated workers seeking new employment. This reflected Health Canada's approval of this updated mRNA vaccine tailored to XBB.1.5 and the associated phasing out of the primary series.

[60] They also reaffirmed the PHO's decision not to accept s. 43 requests for reconsideration of the Orders, other than for a medical deferral under s. 56(2). This continued the PHO's order, first made on November 9, 2021, exercising her power under s. 54(1)(h) to halt s. 43 reconsideration requests except for the limited medical deferrals mandated by s. 56(2).

[61] Focussing on the Hospital and Community Order, it includes 54 paragraphs of recitals, describing the context and reasoning underlying the vaccination mandate. The recitals address: the epidemiology of COVID-19; the importance and effectiveness of vaccines; post-infection immunity; impacts on the hospital and community healthcare systems; and, the balancing of the competing interests of the unvaccinated.

[62] After the Recitals come the PHO's key conclusions about the importance of workforce vaccination in medical and care settings ("Conclusions'). In the Hospital and Community Order, the Conclusions say this:

> **Therefore, I have reason to believe and do believe that**
>
> (a) An unvaccinated workforce in hospital and community care[2] settings poses a risk to patients, residents and clients, to other workers and to the functioning of the health-care system, and constitutes a health hazard under the *Public Health Act*;
>
> (b) The provision of care or services by an unvaccinated person in a hospital or community care setting puts patients, residents, clients and other workers at risk of infection with SARS-CoV-2, and constitutes a health hazard under the *Public Health Act*[3];
>
> (c) It is essential to maintain the high level of vaccination currently in place in the hospital and community care workforce since this is the best means available by which to mitigate the risk to the health of patients, residents, clients and workers and to ensure the preparedness and resiliency of the health care system, both at present and in the event of a resurgence of COVID- 19 disease in the province;

2 "Community care" and "care location" are defined in the Orders. Care locations include hospitals, community health centres, assisted living residences, and other provincial health facilities and agencies. They include, among other things, home nursing and support, mental health, drug and alcohol care, counselling, and health care provided in an office or clinic.
3 "Health hazard" is defined in s. 1 of the *PHA* to include a thing that (i) endangers, or is likely to endanger, public health, or (ii) interferes or is likely to interfere with the suppression of infectious agents or hazardous agents.

(d) Expanding the grounds upon which a person may request an exemption to the requirement to be vaccinated beyond those based upon a risk to the health of the person would undermine the high level of vaccination which is currently in place among the hospital and community care workforce, introduce an unacceptable level of risk to the health of patients, residents, clients and workers, weaken the preparedness and resiliency of the health-care system, and undermine the confidence of the health-care workforce in the safety of their working environment and the confidence of the public in the safety of the health-care system;

(e) A lack of information on the part of employers and operators about the vaccination status of workers interferes with the suppression of SARS-CoV-2 in hospital and community care settings, and constitutes a health hazard under the *Public Health Act*;

(f) Medical health officers need to know the vaccination status of workers in order to most effectively respond to clusters or outbreaks of COVID-I9 among patients, residents, clients or workers;

(g) In order to mitigate the risk in hospital and community care settings and to the health-care system arising from an unvaccinated workforce, and to ensure the preparedness and resilience of the health-care system, it is necessary for me to exercise the powers in sections 30, 31, 32, 39, 53, 54, 56, 57,67 (2) and 69 of the *Public Health Act* TO ORDER as follows: …

[63] The Orders then set out, in just under 20 pages for the Hospital and Community Order, their terms, including specifying which public healthcare and community care employers are captured, details of the vaccination requirements, and status information and records-of-proof required of employees.

[64] Pursuant to *PHA* s. 54(1)(h) and 56, the Orders continue to suspend the ability of an individual to apply for a s. 43 reconsideration, except for a medical deferral on the basis that "vaccination would so seriously jeopardize the individual's health that the risk to the individual's health posed by vaccination outweighs the benefit" (see Article F, "Variance and Reconsideration").

Reasonableness Review

[65] The parties agree that this judicial review of the Orders is to apply the reasonableness standard, not correctness. Under *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, reasonableness is the presumptive standard where the legislature has created a decision-maker such as the PHO to

administer a statutory scheme. None of the established exceptions that would alter that standard apply in this case.

[66] Thus, the essential question of this judicial review is whether the Orders were reasonable in light of the information available to the PHO at the time.

[67] The aim of a reasonableness review is to balance: (a) deference for the legislative intent to leave certain decisions to the administrative body, with, (b) the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law (*Vavilov,* para. 82).

[68] In this way, the goal is to maintain the rule of law and safeguard the legality, rationality, and fairness of the administrative process while according appropriate deference to the statutory delegate's decision (*Vavilov,* para 13).

[69] A reviewing court must take a "reasons first" approach, which evaluates the administrative decision-maker's justification for its decision rather than the conclusion the court itself would have reached in the decision-maker's place. Reasons must be read "in light of the record and with due sensitivity to the administrative regime in which they were given" (*Vavilov*, para. 103). Absent exceptional circumstances, a reviewing court will defer to an administrative decision-maker's factual findings (*Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, para. 73).

[70] The decision-maker's specialized knowledge and experience are relevant considerations, calling for an understanding of the institutional limitations of the court and a correspondingly respectful measure of judicial deference (*Vavilov,* paras. 31, 75, 93).

[71] As stated by our Court of Appeal in *Beaudoin* (at para. 150), in the public health context, courts have consistently acknowledged the specialized expertise of public health officials and the need to judicially review decisions made by them in emergent circumstances with a degree of judicial humility.

[72] In *Beaudoin*, the Court of Appeal characterized the PHO's actions to safeguard public health in response to COVID-19's unprecedented threats, "a textbook recipe for deferential review" (para. 152). Justice Fitch said:

> [150] In the public health context, courts have consistently acknowledged the specialized expertise of public health officials and the need to judicially review decisions made by them in emergent circumstances with a degree of judicial humility …

[73] The Court went on to adopt (para. 150) the following from Chief Justice Joyal in *Gateway Bible Baptist Church et al. v. Manitoba et al*., 2021 MBQB 219, para. 292:

> … Although courts are frequently asked to adjudicate disputes involving aspects of medicine and science, humility and the reliance on credible experts are in such cases, usually required. In other words, where a sufficient evidentiary foundation has been provided in a case like the present, the determination of whether any limits on rights are constitutionally defensible is a determination that should be guided not only by the rigours of the existing legal tests, but as well, by a requisite judicial humility that comes from acknowledging that courts do not have the specialized expertise to casually second guess the decisions of public health officials, which decisions are otherwise supported in the evidence.

[74] At the same time, however, a reasonableness review must not be a mere "rubber-stamping" process that shelters administrative decision-makers from accountability. It must remain a "robust form of review" that highlights "the need to develop and strengthen a culture of justification in administrative decision making" (*Beaudoin,* para. 143; *Mason,* para. 63).

[75] This balancing is described as "a thoughtful deference that recognizes the complexity of the problem presented to public officials, and the challenges associated with crafting a solution" (*Beaudoin,* para. 151).

[76] *Vavilov* identified two types of "fundamental flaws" indicating the unreasonableness of an administrative decision: a failure of rationality internal to the reasoning process; and, a failure of justification given the legal and factual constraints bearing on the decision (*Vavilov,* para. 101; *Mason,* para. 64). A reviewing court need not categorize unreasonableness as falling into one category or another. They are simply a helpful way of describing how a decision may be

unreasonable. In each case, “the key question is whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker” (*Mason*, para. 69).

[77] Particularly important in a case such as this, where the decisions under review imposed serious consequences on the petitioners, is what *Vavilov* called the principle of “responsive justification” (para. 133). Because the *PHA* entrusts the PHO with an extraordinary degree of power over the lives of ordinary people, particularly in an emergency, there is a “heightened responsibility” to ensure that the reasons “reflect those stakes” by demonstrating consideration of “the consequences of a decision and that those consequences are justified in light of the facts and law” (*Vavilov*, paras.133–135; *Mason,* para. 76; *Beaudoin*, para. 148).

The Record

[78] The parties agree that, apart from general background, the evidence in this judicial review is confined to the record before the PHO when she made the Orders. This is because of the limitations on the court’s supervisory role described above.

[79] The “record of proceeding” is defined in s. 1 of the *JRPA* to include documents produced in evidence before the tribunal and the tribunal's decision and reasons given by it.

[80] In a non-adjudicative situation such as this, the record must be constructed. It potentially involves vast amounts of public health information and scientific evidence accumulated over the past three and a half years of the pandemic. The PHO’s orders have been regularly updated to respond to local surveillance data, information about evolving situations from other PHOs, the BCCDC, the Public Health Agency of Canada (“PHAC”), NACI, the WHO, and other national and international epidemiological information about the spread of COVID-19. (See the prior decision in these proceedings concerning the record, indexed at 2023 BCSC 284.)

[81] Recital WW of the Hospital and Community Order provides a summary of the types of information the PHO considered in arriving at the Orders:

> WW. I … continually engage in the reconsideration of these measures, based upon the information and evidence available to me, including case rates, sources of transmission, the presence of clusters and outbreaks, the number of people in hospital and in intensive care, deaths, the emergence of and risks posed by virus variants of concern, vaccine availability, immunization rates, the vulnerability of particular populations, reports from the rest of Canada and other jurisdictions, scientific journal articles reflecting divergent opinions, and opinions expressing contrary views to my own submitted in support of challenges to my orders …;
>
> [Emphasis added.]

[82] The record constructed for court purposes included three affidavits from Dr. Emerson, the Deputy Provincial Health Officer, plus additional affidavits appending numerous COVID-19 publications and medical briefings.

[83] Throughout the COVID-19 pandemic, Dr. Emerson has been the Deputy PHO with the Ministry of Health. Working closely with the PHO on many aspects of the COVID-19 response, he was the lead public health official involved in drafting and amending PHO orders under the *PHA*, including the orders under consideration in these proceedings.

[84] His affidavits provided background information about the COVID-19 pandemic and described the responses taken by the PHO and her team. Such evidence is admissible in judicial review cases such as this, involving procedural and factual complexity and a voluminous, evolving record. Such evidence may, “in a neutral and uncontroversial way”, review the steps taken and evidence considered by the administrative decision-maker (*Beaudoin*, para. 51).

[85] The record contains over 6,000 pages of material documents said to have been before the PHO when she made the Orders. This includes: dozens of BCCDC Situation Reports; NACI reports, recommendations and summaries; PHAC Monitoring Reports and Scans of Evidence; other federal government COVID-19 Immunity Task Force research newsletters and reviews; PHO media and public

briefings and modelling presentations; and many other reports and studies. It also includes Dr. Emerson's affidavits in other proceedings, and numerous medical reports and affidavits provided by the petitioners primarily in 2022.

Issues and Remedies

[86] In terms of the reasonableness challenges, in my view the key issues for decision are whether, on the record as of October 5, 2023, it was reasonable for the PHO to conclude that:

a) COVID-19 continued to pose an immediate and significant risk to public health, satisfying at least two of the four conditions in *PHA* s. 52(2);

b) the primary series of vaccination continued to materially reduce the risk of transmission; and

c) remote and administrative workers should be included within the Orders, without a right of reconsideration under s. 43.

[87] In terms of the *Charter* challenges, I see the key issues as:

a) Whether the Orders limited *Charter* ss. 2(a) or 7 rights or values?

b) If so, did they reflect a proportionate balancing of those rights or values with the public health objectives in issue?

[88] In terms of remedy, the Hoogerbrug and Hsiang petitioners assert that the Orders should be quashed because of the unreasonableness of the PHO's position that an emergency, as defined in the *PHA*, continued to exist. As a result, they argue, the Orders should not survive judicial review because they were adopted on a flawed understanding of the PHO's statutory authority (*Vavilov,* para. 86; *Mason*, para. 101).

[89] In the alternative, they seek directions, under *JRPA* s. 5(1), for the PHO to reconsider and determine whether to maintain the Orders, in light of the findings they seek about the absence of an immediate and significant risk to public health from either COVID-19 or unvaccinated healthcare workers.

[90] Regarding Ms. Hoogerbrug's s. 2(a) challenge, she seeks a finding that the omission of a reconsideration process for individuals with sincere religious-based opposition to vaccination, similar to the medical exemption process under s. 56, was unreasonable and disproportionately limited her s. 2(a) rights.

[91] Turning to the Tatlock petitioners, during the hearing they expressly confined their relief to seeking, under *JRPA* s. 5(1), directions to the PHO to provide a meaningful s. 43 reconsideration process for remote and administrative workers and for those whose ss. 2(a) and 7 rights had been infringed.

[92] They ask that such directions indicate why it was unreasonable, and not a proper balancing of the applicable *Charter* rights, to: (a) include remote and administrative workers; and (b) terminate the reconsideration process for those with religious or conscientious reasons for vaccination refusal, or who refused vaccination on s. 7 grounds.

[93] The Tatlock petitioners also sought "an expanded basis" for s. 43 medical exemptions, but in my view they provided neither a factual foundation for such relief, nor specifics of what they were seeking.

Analysis

Reasonableness Challenges

[94] As described above, the petitioners' core argument is that, by October 2023, the medical and scientific record no longer provided a reasonable basis to support the conclusions that: (i) COVID-19 posed an immediate and significant risk to public health, or (ii) unvaccinated healthcare workers posed any greater risk to vulnerable patients, residents or clients in the healthcare and community care settings in questions (whom I will now refer to simply as "patients"), or the healthcare system generally, than vaccinated workers who received the initial two-dose series first offered in December 2020.

[95] On argument (i), the petitioners submitted that, while at one time COVID-19 did present a public health emergency justifying the use of emergency powers, by

October 2023 that had passed due to greater scientific certainty, less severe variants, vaccinations, and natural immunity.

[96] They argued that, by continuing the vaccine mandate in October 2023, the *PHA*'s emergency powers were being used as a quasi-permanent precautionary measure for a virus which, by that time, the PHO herself described as no more serious than the common cold or flu. In this way, the Orders unreasonably strayed beyond the boundaries of the statutory scheme and failed to comply with its overall rationale and purview (*Mason*, para. 67).

[97] The petitioners pointed to the following PHO statements—in November 2022, January 2023, and April 2023, respectively—describing COVID-19 as no more severe than other respiratory infections, even for the vulnerable and immuno-compromised, and indicating the end of the emergency phase of the pandemic:

> What we do know is that right now it's really important for people to get that booster dose to protect us all from infection and help dampen down the transmission of COVID-19. And we know that the combinations we've seen mean that most people in BC are no longer at risk of severe illness and hospitalization -- even in long-term care, even people who are immunocompromised. And that is really important.
>
> …
>
> We do have the best protection that we have through vaccination; that level of immunity in our communities is that buffer. That means COVID is not causing any more severe illness than other respiratory infections, so to try and incrementally reduce transmission above that, we would have to take additional measures that would impact people's ability to do important things in their lives …So the most important thing that we can do as a community – and people in BC have done this – is to get vaccinated… [COVID is] another virus that we have to deal with. We are in a very different situation.
>
> I think we've been coming out of the emergency phase… I think in the next few months we're likely to be able to say we're no longer in a pandemic. We're sort of in a bit more of a steady state now, but we still don't know yet about the periodicity or the seasonality of the virus. We have some ideas that its worse in the winter when other things are worse and a little bit easier in the summer and were sort of seeing that, but we'll have to watch that.

[98] The petitioners also pointed to the WHO declaration, in May 2023, that "it is time for countries to transition from emergency mode to managing COVID-19 alongside other infectious diseases."

[99] The petitioners also relied on the fact that, by October 2023, the PHO had terminated all other emergency mandates—such as masking, capacity limits in restaurants, bars and gyms, vaccine passports, and so forth—except for these Orders for healthcare workers. Moreover, by this time, no other province had retained similar healthcare worker orders, although certain hospitals in Ontario and Nova Scotia had similar mandates in their working conditions.

[100] Finally, the petitioners argued that the wording of the Orders themselves revealed the lack of immediate and significant risk to public health. They pointed to the reference in Recital A, to a "reasonable risk" that SARS-CoV-2 "could have a serious impact on public health" or "an unusual or unexpected occurrence of a new variant … could cause serious disease". This, they said, was implicit acknowledgement of only a possible future threat to public health, not the "immediate and significant risk" required under the *PHA*.

[101] On argument (ii), the petitioners strenuously asserted there was nothing in the record to suggest, by October 2023, any difference in risk of infection or transmission between the unvaccinated and those vaccinated with the primary series. They also referred to reports and evidence in the record from their own medical experts, taking the position that no such difference existed. They placed little weight on this latter point, however, recognizing that, for judicial review purposes, the existence of competing views about the risks that were considered and weighed by the PHO was insufficient to establish that her views, or the factual considerations underlying them, were unreasonable based on the entire record.

[102] Regarding absenteeism, they argued that the healthcare system was highly attuned to dealing with absenteeism, and made the point that the system's capacity would be enhanced by return of the approximately 1,800 healthcare workers in British Columbia who had lost their jobs because of the vaccination mandate.

[103] The Tatlock petitioners made the additional argument that extending the Orders to include remote and administrative workers was particularly unreasonable because they posed no risk to vulnerable patients, or frontline healthcare workers.

They argued the unreasonableness was accentuated by the fact that the Orders permitted unvaccinated patients, visitors, and construction workers within these same settings.

[104] In response, the PHO drew a fundamental distinction between the circumstances inside, versus outside, healthcare and community care settings. By October 2023, outside such settings, the PHO had terminated most, if not all, public emergency measures. This, the PHO submitted, demonstrated her commitment to eliminating emergency measures once changes in the medical data and trends made it reasonable to do so.

[105] Inside healthcare settings, on the other hand, there were unique public health concerns. First, the consequences of infection were more serious because healthcare facilities are charged with caring for the medically vulnerable, including those at increased risk due to age or compromised immunity.

[106] Second was the broader issue of maintaining public healthcare capacity across the Province. The PHO pointed to the prior strains on the system when COVID-19 spiked, resulting in postponement of essential surgeries and other care while resources were redirected to the COVID-19 waves of increased serious illness, hospitalizations, and death.

[107] Third, the PHO pointed to the evidence, in the summer and fall of 2023, that key COVID-19 negative indicators were trending upwards, including serious illness and deaths. At the same time, flu and other respiratory illnesses were expected to arrive imminently.

[108] The PHO argued that, when the circumstances in October 2023 were understood and assessed from that perspective, her decision to extend the emergency Orders to protect the healthcare system, and the most vulnerable patients within it, could not be assessed as unreasonable.

Findings Regarding the Record

[109] Before turning to the issues for determination, I will address the key factual disputes about the medical and scientific evidence available to the PHO as of October 5, 2023.

[110] The essential time period for this assessment begins in around November 2021. By then, Omicron was designated the new variant of concern by the WHO, and its severity, contagiousness, and response to the vaccines were being studied and assessed. When the Orders were made in October 2023, sub-variants of Omicron remained dominant in British Columbia.

[111] In my view, the summaries below indicate there was ample evidence in the record, as of October 2023, to support the PHO's Conclusions (quoted in paragraph 62 above) regarding the risks of an unvaccinated workforce and the importance of maintaining its high level of vaccination.

Dr. Dove's Evidence Review

[112] I begin with the September 8, 2022 report by Dr. Naomi Dove, a member of the PHO's public health team. The PHO's oral submissions relied extensively on Dr. Dove's conclusions about healthcare worker COVID-19 infection and transmission, depending on vaccination status. I agree this report is a key aspect of the record for purposes of this judicial review.

[113] Dr. Dove's report is entitled "Impacts of COVID-19 Vaccination on Health Care Worker SARS-CoV-2 Transmission". Its goal was to assess "evidence of health care worker (HCW) transmission of SARS-CoV-2 according to vaccination status during the COVID-19 pandemic."

[114] To accomplish this, Dr. Dove identified, assessed, and summarized studies and reviews, including by other public health organizations, up to August 2022, evaluating the impact of vaccination on immunity and transmission during the

pandemic, and incorporating the "emerging evidence specific to the currently dominant Omicron variant wave".[4]

[115] In reaching her conclusions, Dr. Dove reviewed an extensive array of materials, from British Columbia and around the world, evaluating the impact of vaccination on immunity and transmission. She "prioritized studies higher in the evidence hierarchy, expert syntheses as well as BC data, representing the best quality aggregate evidence". As counsel for the PHO submitted, such prioritization is entitled to significant deference because of the specialized expertise and experience brought to bear.

[116] Dr. Dove's conclusions included the following regarding the role of vaccination in reducing healthcare worker infection and transmission:

> **Conclusion**
>
> …
>
> Studies of household transmission - including among households of health care workers - suggest that fully vaccinated persons [i.e. having received the primary series] are less likely to become infected and contribute to SARS-CoV-2 transmission. …
>
> … Thus a history of vaccination is often the most practical way to assure that an individual has sufficient immune protection and is less likely to transmit SARS-CoV-2.
>
> … [D]uring the Omicron wave individuals who had combined immunity from prior vaccination and an Omicron SARS-CoV-2 infection showed more robust protection against infection compared to those who are unvaccinated …
>
> Lastly, while data is limited, health care workers appear to be a high-risk group for acquiring and transmitting SARS-CoV-2. Since the onset of the COVID-19 pandemic, HCW have experienced a considerable burden of SARS-CoV-2 infections that declined with the onset of mass vaccination, with prior evidence suggesting an elevated incidence among HCW who remain unvaccinated. Throughout the COVID-19 pandemic, numerous outbreaks have occurred in health care settings, including in BC, with data suggesting that HCW are a common contributor to transmission, particularly to colleagues.
>
> … Hybrid immunity appears to provide the most robust protection against infection, particularly observed during the Omicron wave. Ultimately, evidence accumulated throughout the pandemic largely supports the role of vaccination in promoting the dual pandemic goals of protecting patients from

4 The petitioners did not contest the PHO's submission that Dr. Dove's references to "vaccination" were to the primary series unless otherwise indicated.

> SARS-CoV-2 infection and preserving health system capacity, particularly when considering the role of hybrid immunity and booster doses to strengthen the prevention of SARS-CoV-2 transmission moving forward.

[117] The four questions Dr. Dove addressed, and key excerpts from her summary of findings for each, were as follows:

> [**Question 1**]
>
> **What is the evidence regarding the transmission of the SARS-CoV-2 virus by unvaccinated people compared to vaccinated people? What is the evidence regarding SARS-CoV-2 transmission to patients from vaccinated health professionals compared to unvaccinated health professionals?**
>
> Summary: Available studies suggest that fully vaccinated persons are less likely to become infected and contribute to SARS-CoV-2 transmission, with attenuated but still beneficial impact during the Omicron wave. This includes data from household transmission studies in the general population, as well as specifically for households of health care workers (HCW)…
>
> [**Question 2**]
>
> **How does vaccination induced immunity compare to infection induced immunity in terms of transmission risk?**
>
> Summary: Based on immunology and vaccine efficacy data, both SARS-CoV-2 infection and vaccination can induce an immune response that protects against symptomatic COVID-19 illness for at least 6 months, however vaccination leads to a more consistent and reliable antibody response.
>
> …
>
> Overall, studies suggest that the combination of vaccination and infection induced immunity may provide the strongest protection against future infection…
>
> Thus, vaccination is likely the most consistent way to assure that an individual has immune protection and is less likely to transmit COVID-19 illness, particularly with consideration of booster doses and the contribution of recent antigenic exposure through infection…
>
> [**Question 3**]
>
> **What is the risk that health care workers… will transmit SARS-CoV-2 to patients?**
>
> Summary: Data collated during the COVID-19 pandemic has consistently shown a considerable burden of SARS-CoV-2 infections among HCW. … Throughout the COVID-19 pandemic, numerous outbreaks have occurred in health care settings in BC, with HCW identified as a common source of transmission. Evidence directly tracing HCW transmission in health settings is limited, however available data suggests the transmission often originates from infected coworkers in shared workspaces, including outpatient settings.

> Goals of vaccination policies for HCW include protecting patients against SARS-CoV-2 transmission and reducing lost work time…
>
> [**Question 4**]
>
> **What evidence exists regarding the effectiveness of 2-doses vs. 3-doses of COVID-19 vaccine in protecting against SARS-CoV-2 infection?**
>
> Summary: Available clinical and epidemiology studies suggests that a 3rd dose of COVID-19 vaccine boosts antibody titres and restores protection against SARS-CoV-2 infection, largely counteracting the decline in VE observed during the Omicron dominant wave however the duration of boosted protection is uncertain …

[118] The petitioners highlighted certain statements in the Dove Report indicating the primary series to be more effective against Delta than Omicron. The main examples were: “emerging studies of Omicron infection suggest comparable viral loads and duration of viral shedding between vaccinated and unvaccinated individuals”; and, “two-dose protection ... has been substantial up to and including the Delta wave but has declined during the Omicron wave”. However, those statements must be read in the context of the overall summaries and conclusions quoted above.

[119] They also argued for the limited relevance of Dr. Dove’s conclusions because her review was performed only around eight months into Omicron’s dominance, and more than a year before the Orders. In my view, however, it would be an error for me to make such an assessment because: (a) the report repeatedly referred to incorporating the emerging Omicron evidence; (b) the subject matter is extremely technical in nature; and, (c) the petitioners did not demonstrate that the record supported discounting or dismissing the report on such a basis.

[120] In a judicial review such as this, my role is not to assess the competing scientific evidence in the record and decide which to prefer. That is for the PHO and her team. My role is to assess whether her Orders were reasonable in the context of the record before her. As the Hsiang petitioners put it in their Outline/Overview of Argument, the court must not “purport to resolve areas of scientific controversy – but rather .. look at the evidence of whether there is any credible evidence in support of what the PHO is saying.”

[121] I turn next to assessing the evidence in the record regarding the key factual disputes raised between the parties.

Vaccination and protection against serious illness, hospitalization, and death

[122] The Recitals assert that vaccination was the single most important preventative measure against COVID-19 infection, severe illness, hospitalization and possible death (see Recitals M, R, S, U, Z, FF, HH).

[123] The petitioners acknowledged evidence in the record from which the PHO could reasonably conclude that the primary series is safe and effective in reducing the seriousness of illness and hospitalizations from infection with Omicron. However, they downplayed its effectiveness, particularly compared with natural immunity.

[124] I find that, as of October 2023, there was ample evidence in the record to support the statements in the Recitals regarding the continued effectiveness and importance of the primary series, particularly when combined with hybrid immunity and boosters. As counsel for the PHO pointed out, it is important to bear in mind that such combinations of protections were only available to those who had received the primary series.

[125] Some key examples in the record were as follows.

[126] Starting with the Dove Report, as shown above, its conclusions included that the evidence supported vaccination to protect against infection and preserve health system capacity, even more so when considering the role of hybrid immunity and booster doses to strengthen the prevention of SARS-CoV-2 transmission moving forward. Media briefings in the record indicated that, as of September/October 2023, 80% of adults under 80 years old had some degree of natural immunity from prior infection, and most healthcare workers had the primary series plus at least one booster and hybrid immunity.

[127] The Dove Report also stated that, during the Omicron wave, vaccine effectiveness “remained substantial against serious illness”, and that when

combined with boosters, its efficacy reached the high levels previously achieved against Delta:

> During the Omicron dominant wave in BC, two dose VE estimates declined [compared to the Delta wave] but remained substantial against serious illness (65-75% vs. hospitalization, 40-50% ER visits), with a notable decline in protection against SARS-CoV-2 infection (to 10-15%).
>
> However, a 3rd booster dose significantly increased protection up to 90% for Delta associated hospitalization and infection, while a booster dose in the Omicron wave increased protection against hospitalization (>90%) and bumped up protection against any SARS-CoV-2 infection (to [approx.] 50-60%).
>
> Similar vaccine immune profiles have been found among HCW … A cohort study of over 11,000 HCW in India found that almost a fifth were infected during the Omicron wave and exhibited predominantly milder disease in hospital settings …
>
> … [D]uring the Omicron wave … individuals who had combined immunity from prior vaccination and an Omicron SARS-CoV-2 infection showed more robust protection against infection compared to those who are unvaccinated …

[128] The Dove Report also stated that "similar vaccine immune profiles" have been found among healthcare workers, and that the combination of vaccination and prior infection "appears to provide the most robust protection against infection, particularly observed during the Omicron wave."

[129] The PHO's December 14, 2021 presentation on Omicron modelling said:

> 86% of people who are hospitalized are people from that very small group who have not yet been vaccinated and 78% of people in our ICUs and critical care are people who have not been vaccinated. If we break that down further … it really shows [the] picture that age and not being vaccinated are what put you at risk of being hospitalized, [and] will put you at risk of requiring ICU, intubation, critical care and put you at risk of dying.

[130] PHAC's Omicron Monitoring Report, January 11, 2022, said this in its "Summary of Key Epidemiology Information":

> Transmissibility: Higher for Omicron than other variants…
>
> Symptoms and severity:
>
> … Despite being less severe, Omicron is causing significant burden on the health care system because it is very transmissible and resulting in large

> numbers of cases. The impact on the health care system is compounded by Omicron causing illness among health care workers …
>
> Vaccine effectiveness:
>
> … Severe disease with two COVID-19 vaccine doses: A study from England and a study from South Africa note good vaccine effectiveness against hospitalizations after the second dose …
>
> Severe disease with mRNA booster: A study from England noted 88% vaccinated effectiveness against hospitalization from third dose. Another study from the UK in those 65 years of age and over showed the booster was 94% effective against hospitalization within 2 to 9 weeks and 89% effective at 10 more weeks.

[131] On January 21, 2022, the PHO's "Hospital Risk – Preliminary Analysis of Risk" report for cases from mid-December showed that persons with the two-dose primary series were 4.2 times less likely to be hospitalized (controlling for other factors) and those with three doses were 9 times less likely to be hospitalized.

[132] The March 8, 2022 BCCDC report on "Measuring Vaccination Impact and Coverage," stated that: "For Omicron: Two doses provided good protection against severe outcomes." It went on to say that "Two doses prevented about 65-75% of hospitalizations (reducing the risk of COVID-19 hospitalizations by about two-thirds to three-quarters compared to unvaccinated people)."

[133] A September 9, 2022 study by numerous authors of vaccine and infection induced immunity in children and adults in British Columbia, from March 2020–August 2022 stated that "Multiple … studies have reinforced the improved protection afforded by hybrid (vaccine + infection) immunity over that induced by exposure alone."

[134] On December 9, 2022, NACI published a report titled "Updated recommendations on the use of COVID-19 vaccine booster doses in children 5 to 11 years of age and concurrent vaccine administration". Addressing the Omicron variant, it said that NACI "continues to recommend a primary series with an original mRNA vaccine in all authorized age groups." It also said that for young children:

> Hybrid immunity (ie. protection conferred from both vaccination and infection) is more robust than immunity due to either infection or vaccination alone …

> Omicron infection in a previously-vaccinated individual confers a significant protection from reinfection with Omicron …

[135] The March 3, 2023 NACI report "Guidance on additional COVID-19 booster dose in the spring of 2023 for individuals at high risk of severe illness due to COVID-19" reported on the benefits of vaccination as against severe outcome. Under "Vaccine effectiveness and duration of vaccine protection of mRNA COVID-19 vaccine booster doses", it said:

> Vaccine protection against infection and symptomatic disease with original monovalent COVID-19 vaccines has been shown to wane over time; however protection against severe outcome persists longer that protection against symptomatic disease… [Vaccine Effectiveness] against severe disease from booster doses is generally higher and more sustained than against infection.
>
> [Emphasis added.]

[136] In July 2023, NACI advisories stated that:

> Rates of hospitalizations and deaths in Canada continue to be highest for adults 65 years of age and older, with risk increasing with age and highest among those >80 years and those who are unvaccinated... Rates of infection and severe disease are lowest for those recently vaccinated and those with hybrid immunity …

[137] The June 27, 2023 report from the COVID-19 Immunity Task Force stated that

> People vaccinated against COVID-19 are more likely to neutralize Omicron than unvaccinated individuals. A CITF-funded study published in *Microbiology Spectrum* found that vaccinated [blood] donors, regardless of infection status, were more likely than unvaccinated donors to neutralize Omicron …

[138] The July 11, 2023 NACI Advisory Statement stated that:

> In addition to age, vaccination status and prior history of SARS-CoV-2 infection, studies looking at risk factors continue to show individuals with comorbidities are at higher risk for severe outcomes due to COVID-19 in adults.

[139] The September 1, 2023 COVID-19 Immunity Task Force Report concluded that "vaccination helps reduce workplace absenteeism among Canadian healthcare workers." The report summarized a Canadian study that included British Columbia

healthcare workers and found that “absenteeism from work declined with each vaccine dose.”

[140] The record also included evidence to support the statement in Recital N that

> As the variants of the virus have evolved in the past year and vaccines have been updated to cover the variants now circulating the best protection for unvaccinated people is derived from receipt of one of the updated vaccines tailored to the XBB.1.5 variant of the Omicron strain. …

[141] For example, in the fall of 2023, PHAC and NACI released guidance strongly recommending vaccination with the new formulation of COVID-19 vaccine containing mRNA for XBB.1.5, given ongoing evidence of higher rates of hospitalization and death in Canada for those over age 65, and those who are unvaccinated.

Vaccination and protection against transmission

[142] The Orders assert that vaccination continued to provide protection against transmission of the virus to others, and therefore the unvaccinated posed a greater risk of transmission than the vaccinated. (See the Conclusions and Recitals E, T, U, FF, HH.)

[143] Regarding healthcare workers in particular, they assert that worker vaccination reduces transmission to others, and so protects the healthcare workforce, reduces absenteeism, and protects the capacity of the healthcare system. (See Conclusions and Recitals H, M, QQ, RR, SS.)

[144] The petitioners strenuously denied there was evidence in the record to support these conclusions, arguing that there was “no evidence in the record that the primary series vaccination makes it any less likely that a person will transmit Omicron to others.” They also referred to the expert evidence they themselves had submitted to the PHO on these issues in 2022, from experts such as Dr. Richard Schabas, a former public health officer in Ontario, and Dr. Shirin Kalyan, an immunologist specializing in immune dysfunction and an Adjunct Professor at the University of British Columbia, Department of Medicine.

[145] I find there was evidence in the record to support the PHO's assertions in the Orders regarding the continued effectiveness of the primary series of vaccination, including that it continued to be an important preventative measure against transmission of the virus, by the healthcare workforce, to both vulnerable patients and other workers.

[146] Regarding healthcare workers in particular, Dr. Dove's report concluded that healthcare workers "are commonly implicated in COVID-19 outbreaks and clusters in health settings … particularly between colleagues". The report referred to numerous studies showing healthcare workers as a common source of transmission to colleagues and patients. On October 2, 2023, the COVID-19 Immunity Task Force reported that a pre-print study found that healthcare workers had a higher incidence of SARS-CoV-2 infection compared to the general population.

[147] The petitioners pointed to statements in the Dove Report appearing to suggest that vaccination status may not affect contagiousness. For example, they emphasized the statement that "Studies during the Omicron wave show similar viral loads and duration of viral shedding between vaccinated and unvaccinated individuals". They referred to similar statements from the Chief Medical Health Officer of Vancouver Coastal Health.

[148] However, as quoted above, Dr. Dove's conclusions were replete with statements about studies finding that vaccinated persons, and vaccinated healthcare workers specifically, were "less likely to …contribute to SARS-CoV2 transmission", and that:

> Studies of household transmission - including among households of health care workers - suggest that fully vaccinated persons [i.e. having received the primary series] are less likely to become infected and contribute to SARS-CoV-2 transmission. …
>
> Thus a history of vaccination is often the most practical way to assure that an individual has sufficient immune protection and is less likely to transmit SARS-CoV-2.
>
> ... Hybrid immunity appears to provide the most robust protection against infection, particularly observed during the Omicron wave. Ultimately, evidence accumulated throughout the pandemic largely supports the role of

> vaccination in promoting the dual pandemic goals of protecting patients from SARS-CoV-2 infection and preserving health system capacity, particularly when considering the role of hybrid immunity and booster doses to strengthen the prevention of SARS-CoV-2 transmission moving forward.

[149] The Dove Report contained further statements to the same effect:

> Available studies suggests that fully vaccinated persons are less likely to become infected and contribute to SARS-CoV-2 transmission, with attenuated but still beneficial impact during the Omicron wave. This includes data from household transmission studies in the general population, as well as specifically for households of health care workers (HCW)…
>
> Thus, vaccination is likely the most consistent way to assure that an individual has immune protection and is less likely to transmit COVID-19 illness, particularly with consideration of booster doses and the contribution of recent antigenic exposure through infection.

[150] The Dove Report also referred to various studies of the Omicron variant wave, between December 2021 and January 2022, that found the vaccinated had reduced "susceptibility and transmissibility compared to unvaccinated individuals". One such study found vaccination reduced risk of transmission to close contacts by 24%, and by 41% when combined with prior infection.

Protection of vulnerable patients and residents

[151] The Orders assert that those particularly vulnerable to serious outcomes from COVID-19—due to advanced age, health conditions, or compromised immune systems—were at risk of infection from healthcare workers. (See Recitals C, D, LL, MM, OO.)

[152] I find there was evidence in the record to reasonably support the PHO's view that such groups were particularly vulnerable to serious outcomes, and so were both the most in need of protection from COVID-19, and most likely to find themselves in hospitals and long-term care facilities by necessity rather than choice. There was also evidence that their own vaccination provided them with less protection than healthier members of the community compared to others.

[153] As shown above, the Dove Report found that evidence accumulated throughout the pandemic "largely supports" vaccination of healthcare workers to

protect patients from infection, because such workers were less likely to become infected and contribute to transmission.

[154] The Dove Report also said:

> Throughout the COVID-19 pandemic, numerous outbreaks have occurred in health care settings in BC, with HCW identified as a common source of transmission … Goals of vaccination policies for HCW include protecting patients against SARS-CoV-2 transmission and reducing lost work time.

It also said:

> Numerous outbreaks have occurred in acute care and residential care facilities in BC stemming from the early days of the COVID-19 pandemic.

[155] Modelling presentations from the PHO for the BC Ministry of Health in 2020 and 2022 showed that 36% of COVID-19 cases were associated with other chronic conditions (cancer, diabetes, cardiac disease, etc.), which made severe illness more likely. A NACI study, referred to in the PHO's September 6, 2022 Technical Briefing, indicating various medical pre-conditions that "increase the risk of poor outcomes from COVID-19".

[156] A study in March 2023 by the Federal Government's COVID-19 Immunity Task Force indicated that waning of vaccine immunity "seems to occur faster" for people with compromised immune systems from severe health conditions or auto-immune disease. A further NACI study published in July 2023 found that, in addition to age, vaccination status, and prior history of infection, risk factors for serious outcomes included co-morbidities.

Strain on the healthcare system

[157] The Orders asserted that the public health and healthcare systems have at times been stressed beyond capacity by COVID-19, and that preserving the capacity of these systems is critical (Conclusion (c) and Recitals JJ to MM).

[158] I find there was evidence in the record to support the reasonableness of these assertions, including evidence of: (i) Omicron waves causing severe spikes in cases,

hospitalizations, and deaths; (ii) public health and healthcare systems at times being severely stressed, sometimes beyond capacity, by COVID-19.

[159] In *Beaudoin* (para. 69), the Court found that the record as of November 19, 2020, established that the PHO knew the "capacity of the public healthcare system to deliver essential services could be breached during the peak periods of COVID-19 activity".

[160] As shown above, the Dove Report referred to the numerous outbreaks in BC healthcare settings. It stated that "Evidence suggests that HCW are commonly implicated in COVID-19 outbreaks and clusters in health settings", and concluded that vaccination promoted "preserving health system capacity".

[161] In the PHO's December 14, 2021 presentation on Omicron modelling, after referring to the elevated risks for hospitalization and critical care for those over 60, it said:

> It is unvaccinated people, as we get older, who are more and more likely to end up in hospital. This means that in many cases people had to be flown out of their home communities, our hospital system was stretched to care for people and the challenge we now have is that these types of hospitalizations—even with the Delta variant, with the Omicron variant that we're seeing now, we need to protect ourselves.

[162] The COVID-19 briefings indicated various stages in which the pandemic contributed to surgical cancellations and postponements. For example, In March–May 2020, non-urgent surgeries were cancelled. Non-elective surgeries were cancelled throughout the spring of 2020. From September to October 2021, the Provincial Health Services Authority postponed 2,140 surgeries. In the March 10, 2022 modelling presentation to the media with the PHO, the Minister of Health said "[a]ccumulatively from September 5, 2021 to March 5, 2022, regional surges of COVID-19 and [other] factors had caused 8,098 surgical postponements."

[163] In a media briefing on January 14, 2022, the PHO advised that Omicron infecting healthcare workers "has led to staff being off ill in higher numbers than ever before in the pandemic." In the briefing, she referred to 14,591 healthcare workers

off due to illness from January 3–9, 2022, compared with 8,802 for the same time in 2020 which was a "higher influenza and respiratory illness year".

[164] The January 26, 2022 PHAC Monitoring Report said:

> Despite being less severe, Omicron is causing significant burden on the health care system because it is very transmissible and resulting in large numbers of cases. The impact on the health care system is compounded by Omicron causing illness among health care workers.

The record referred to situations, during some of the early waves, where people had to be flown from their home communities to locations with Intensive Care Units that could treat them.

[165] On June 9, 2023, NACI reported that hospitalizations remained at a relatively high level since the arrival of Omicron. NACI's July 11, 2023 "Guidance on the use of COVID-19 vaccines in the fall of 2023" said that:

> Transition to long-term management of the COVID-19 pandemic is now needed, but there continue to be uncertainties such as the ongoing epidemiology of COVID-19, duration of protection from current COVID-19 booster doses and previous infection, and vaccine effectiveness (VE) of future vaccines.

Risks in October 2023

[166] The Orders asserted that, since the end of July 2023, COVID-19 indicators of severe outcomes in British Columbia had increased. Compounding this concern was the imminent arrival of seasonal respiratory viruses and infections. According to the Orders, this led the PHO to be "particularly concerned" that unvaccinated healthcare workers could "ravage" vulnerable populations and cause significant absenteeism among the workforce, thereby stressing healthcare facilities and the system. (See Recitals L and TT.)

[167] I find there was evidence in the record as of October 5, 2023 to support this view. Key indicators of COVID-19 pointed to severe outcomes and deaths increasing, while the annual onset of flu and other respiratory illnesses was also imminent.

[168] On March 25, 2022, the PHAC published "Public Health Response Plan for Ongoing Management of COVID-19", which warned that new variants of concern "may be more transmissible, severe and/or immune-evasive". It further said that "uncertainty will continue to factor into risk assessments going forward… [and] will not be known until it is observed over a number of months to years."

[169] On June 9, 2023, NACI reported that "[t]he evolutionary trajectory or SARS-CoV-2, including the emergence of novel variants of concern… remains uncertain". Also, "[r]ates of hospitalizations and deaths in Canada continue to be highest for adults 60 years of age and older, with risk increasing with age and highest among those 80 years of age and older and those who are unvaccinated, and lowest for those recently vaccinated and those with hybrid immunity, particularly if the previous infection was with an Omicron strain." In the same report, NACI recommended that "unvaccinated individuals receive a primary series of COVID-19 vaccines".

[170] On September 12, 2023, NACI published the "Addendum to Guidance on the Use of COVID-19 Vaccines in the Fall of 2023", strongly recommending immunization for "[p]eople who provide essential community services", and identifying those at increased risk to include adults 65 or over, residents of long-term care and assisted living settings, and those with underlying medical conditions.

[171] Its report also said that, based on the available scientific literature, the evolutionary trajectory of SARS-CoV-2 remained uncertain with recombinant XBB sub-lineages continuing to circulate in Canada and globally, and that vaccination of healthcare providers "is expected to be important in maintaining the health system capacity".

[172] In the media briefing of September 28, 2023, the PHO commented on the upcoming trajectory for COVID-19 and the arrival of other respiratory diseases:

> The southern hemisphere can give us some indications of what we might expect this year and what they saw again was, variable COVID over the period of their respiratory virus season. They also saw influenza HINI and Influenza 8, and we're starting to see that that may be what we would see here. Again, those are viruses that particularly affect children. So that's

> something we will be looking out for. And they also saw a variable RSV season.

[173] On October 5, 2023, the BCCDC reported "[i]ncreased COVID-19 activity across the Province". The Centre reported increases in: a) SARS-CoV-2 levels at all wastewater plants across the province; b) COVID-19 cases, particularly for those over 60; and c) COVID-19 cases of patients hospitalized and in critical care.

[174] The parties agreed that three further reports, prepared after October 5, 2023, were also properly part of the record because their information was available to the PHO at the time of the Orders.

[175] The BCCDC's "COVID-19 Situation Report" of October 27, 2023, with British Columbia-specific information, referred to an increase in COVID-19 activity since late August, with indications of decreasing positive tests and hospitalizations in October while "deaths have steadily increased". This report showed 1,282 COVID-19 deaths from April–October 2023 and another 296 with underlying cause of death pending.

[176] On November 2, 2023, the BCCDC "COVID-19 Situation Report" showed that, as of September 2023, the seven-day rolling average of severe outcomes (hospitalizations, critical care admissions, and deaths) had been on the rise since July 2023 and had reached similar levels to the fall of 2021.

[177] Regarding the petitioners' submission that COVID-19 had become no more dangerous than the flu, the PHO pointed to the BCCDC "Respiratory Season Surveillance Report", for August 2022–April 2023, which showed 110 COVID-19 outbreaks declared—47 in long-term care and 63 in acute care facilities, compared with 43 influenza outbreaks.

The Three Reasonableness Challenges

[178] Having found ample support in the record for these fundamental aspects of the Orders, I turn to the petitioners' three reasonableness challenges.

Challenge 1: No Immediate and Significant Risk to Public Health

[179] Under s. 52 of the *PHA*, for the PHO to use the emergency powers in response to a "regional event", there must be "an immediate and significant risk to public health throughout a region or the province", which the PHO "reasonably believes" satisfies two of the four criteria in s. 52(2).

[180] The "regional event" declared by the PHO on March 17, 2020 was "the transmission of the infectious agent SARS-CoV-2".

[181] The four criteria in s. 52(2) are:

> (a) the regional event could have a serious impact on public health;
>
> (b) the regional event is unusual or unexpected;
>
> (c) there is a significant risk of the spread of an infectious agent or a hazardous agent; and
>
> (d) there is a significant risk of travel or trade restrictions as a result of the regional event.

[182] Recital A of the Orders says the PHO believed the s. 52(2) criteria continued to be met for the following reasons:

> (a) In view of the history and ongoing mutation of SARS-CoV-2, and the uncertainty which exists about its future behaviour, there continues to be a reasonable risk that it could have a serious impact on public health;
>
> (b) There is a continued reasonable risk of an unusual or unexpected occurrence of a new variant of SARS-CoV-2 which could cause serious disease among the population; [and]
>
> (c) The infectious agent, SARS-CoV-2 continues to mutate and new variants continue to spread in British Columbia, Canada and around the world.

[183] In my view, the summaries above demonstrate abundant support in the record for the PHO to reasonably conclude that COVID-19 continued to represent a regional event that satisfied ss. 52(2)(a), (b), and (c).

[184] As the Supreme Court of Canada said in *Vavilov* and *Mason*, the governing statutory scheme can play an important part of a reasonableness review. Whether

an interpretation of the governing statutory scheme is justified will "depend on the context, including the language chosen by the legislature in describing the limits and contours of the decision maker's authority" (*Vavilov,* para. 110; *Mason,* para. 67).

[185] In this case, the broad powers and open-ended, highly qualitative concepts throughout ss. 51–52 suggest greater flexibility for the PHO in the implementation of the emergency powers (*Vavilov,* paras. 68, 110; *Mason*, para. 67). This is further exemplified in s. 59(b), which says that the authority to act under the emergency powers ends "when the provincial health officer provides notice that the emergency has passed."

[186] Another important consideration for this assessment is the "precautionary principle," which the petitioners acknowledged applied to the PHO's COVID-19 decision-making. The principle being that, in the face of serious threats, scientific uncertainty must be resolved in favour of protection of the healthcare system. It would be a dereliction of duty for the PHO to await the actual grips of another severe COVID-19 wave before taking steps to protect the healthcare system. As the point is sometimes put in the cases, to wait for certainty about the risks is to wait too long.

[187] Approaching this question with the appropriate deference, in recognition of the specialized expertise of the PHO, the flexibility afforded her by the statutory language in issue, and the precautionary principle, in my view one cannot say the PHO was unreasonable in deciding to extend the use of the *PHA* emergency powers.

[188] As summarized above, the circumstances evident in the record included: (i) the three-year COVID-19 experience of an unprecedented and unpredictable virus, with the ability to create new variants, and to attack in waves causing widespread serious illness, death, and harm to the functioning of the healthcare system which stressed it beyond capacity to protect and care for the health needs of the population; (ii) the extreme contagiousness of Omicron and its variants, including within healthcare settings; (iii) the particular vulnerability of patients within the healthcare and long-term care settings; and (iv) the key negative indicators, leading

up to October 2023, of rising COVID-19 severe outcomes and deaths, back to levels seen in the fall of 2021, as the annual onset of flu and other respiratory illnesses was about to arrive.

[189] Turning to the s. 52(2) pre-conditions to the exercise of emergency powers, and beginning with s. 52(2)(a), for the reasons summarized in the previous paragraph, there was ample support in the record for the reasonableness of the PHO's conclusion that the transmission of SARS-CoV-2 continued to pose a significant and immediate risk that "could have a serious impact on public health", including the health of vulnerable patients and the capacity of our healthcare system to continue providing essential care for those afflicted by the virus or other serious illnesses or conditions.

[190] Regarding s. 52(2)(b), I agree with counsel for the PHO that, despite the pandemic having commenced more than three and a half years earlier, in October 2023 COVID-19 continued to be an "unusual and unexpected" immediate and significant risk to public health. As counsel submitted, the overdose drug crisis is another example of an unusual and unexpected event giving rise to an extended emergency.

[191] British Columbia had not previously faced the type of health crisis posed by this highly communicable, dangerous, global disease. The negative indicators, reasonable risk of new variants, previous waves of infections causing serious illness and harm to the public health system, and applicability of the precautionary principle all contributed to the reasonableness of continuing to characterize COVID-19 in this way.

[192] Finally, regarding s. 52(2)(c), the petitioners acknowledged that at the time of the Orders, there continued to be a significant risk of the spread of SARS-CoV-2, and therefore s. 52(2)(c) was satisfied. I agree that is uncontroversial.

[193] Regarding the evidence that other jurisdictions had terminated this type of mandate, the case law repeatedly states that judicial review is highly context-

sensitive. In October 2023, circumstances in some of those jurisdictions may have been different than here. More fundamentally, there is more than one reasonable way to approach the complex medical, scientific, and social issues addressed in the Orders. At the time, there could be no certainty about what will be most effective or strike the right balance. Rather, these are judgment calls on which reasonable public health experts may disagree.

[194] Regarding the PHO's statements in the spring of 2023, downplaying the risks of COVID-19 and comparing it to other respiratory illnesses, I agree with counsel for the PHO that many of these statements were aspirational regarding the direction it appeared things were headed at that time, and before the key negative indicators began to rise in the summer and fall of 2023.

[195] These statements can also be reconciled with the Orders by reference to the distinction between inside and outside the healthcare contexts. As stated in Recital PP:

> This high level of vulnerability to infection … and risk of resulting serious illness, distinguishes the situation of people receiving health care, personal care or home support in hospital or community settings …

[196] Outside of healthcare, the PHO saw it as safe to transition away from much of the former emergency regime, such as public masking, distancing, vaccine passports, and restrictions on gatherings and travel. As the record indicates, in large part this was due to the high percentage of the population that was vaccinated. At the same time, the record indicated good reason for continued vigilance within the healthcare system itself for the reasons that I have summarized above.

[197] An important aspect of the within-healthcare context is that, as the record repeatedly indicated, hospital patients and long-term care residents are more vulnerable than the general population to COVID-19. This is due to pre-existing conditions, suppressed immune systems, and less protection from their own vaccination due to reduced antibody production. The petitioners did not contest this. It must also be borne in mind that, generally speaking, such patients do not choose to be in these healthcare settings. If there were no vaccine mandate, they could not

simply choose to avoid receiving treatment from unvaccinated healthcare workers. This differentiates their situation from outside-healthcare settings, such as restaurants, gyms, etc., which the vulnerable can choose to avoid if the staff are unvaccinated.

[198] In sum, in light of the record as of October 5, 2023 and applying the appropriate legal deference, in my view the record supported the reasonableness of the PHO's decision to continue to exercise the emergency powers in the *PHA,* to protect public health, and in particular the functioning of the healthcare system and the health of those most vulnerable to COVID-19.

Challenge 2:Unvaccinated healthcare workers posed no greater risk

[199] The petitioners' second challenge is that the Orders were unreasonable because, by October 2023, the record no longer indicated that the primary series of vaccination reduced a healthcare worker's contagiousness, i.e. the risk of transmission of the virus to patients and other healthcare workers.

[200] In my view, the record, as summarized above, clearly refuted this submission. It also contained abundant evidence to support as reasonable the PHO's Conclusions that: (i) unvaccinated healthcare workers continued to pose a "health hazard" as defined in s. 1 of the *PHA*, because of their greater risk of becoming infected, being sicker for longer, and transmitting their infection to vulnerable patients and other healthcare workers; and, (ii) it was therefore essential to maintain the high level of vaccination in the healthcare settings, as the best means to mitigate these risks and safeguard the preparedness and resiliency of the healthcare system.

[201] The petitioners argued that, if one accepted that continuation of a vaccine mandate was indeed justified, the only reasonable approach would be requiring all healthcare workers to obtain the new vaccine, tailored to the dominant XBB 1.5 sub-variant of Omicron.

[202] The orders addressed this in Recital O:

> Although it is highly recommended that people who were vaccinated with a primary series of vaccine previously recommended by Health Canada be vaccinated with one of the updated vaccines, seroprevalence data from British Columbia indicates that nearly all people in British Columbia have antibodies to SARS CoV-2 virus from combinations of infection and vaccination. This means that people who have been vaccinated with a previously recommended primary series are most likely to have had their immune systems stimulated by subsequent vaccination or infection and therefore continue to have an immunity to infection. Therefore, I am satisfied that it is not necessary to require that a person who was vaccinated with a primary series previously recommended by Health Canada, and who is already working, or is already a student, or is already a volunteer in the health-care sector, be vaccinated with one of the updated vaccines.

[203] Given the support in the record for the continued, significant benefits of the primary series of vaccination for healthcare workers, including when combined with previous boosters and hybrid immunity, in my view this does not manifest any internal inconsistency. The balancing of these complex considerations falls squarely within the expertise of the PHO. I can see no basis to find unreasonable the PHO's decision not to require the new vaccine for healthcare workers who had already received at least the primary series.

[204] The petitioners also argued that the vaccine mandate was unreasonable in circumstances where, as an alternative, vaccinated workers could be required to mask and test, just as many other categories of unvaccinated people were permitted to do in these healthcare facilities, such as patients, family members, visitors, and some construction workers.

[205] The Orders state that, while these other methods of protection are useful, they do not provide the level of protection afforded by vaccination, particularly in an environment of people highly vulnerable to infection and serious illness, or promote the same level of preparedness and resiliency in the healthcare system (see Recitals BB, CC, DD, YY). This too falls squarely within the expertise of the PHO, and is supported by the Dove Report and other evidence in the record regarding the limitations on masking and testing, including false negative and positive results, and the review of COVID-19 outbreaks in care homes which described rapid tests as having "lower sensitivity to detecting the virus".

[206] Regarding the categories of other persons allowed in these settings without proof of vaccination, the Dove Report highlighted the particular concerns regarding transmission by healthcare workers. I also accept the submission of counsel for the PHO about the unique role of healthcare workers in the public healthcare system, given the crucial role they play and their close contact with vulnerable patients, who generally speaking have no choice but to accept that contact.

[207] Drawing the lines in this way is therefore rationally connected to protecting the most vulnerable patients, and the capacity of these key members of the healthcare system, while at the same time reducing other aspects of the coercive regime implemented during the worst of the pandemic.

[208] Finally, the petitioners argued that the Orders were unreasonable for having no expiration date. In my view, such an approach is not unreasonable in circumstances where the record demonstrates the PHO is consistently reassessing and revising the emergency orders in light of current evidence and conditions.

[209] In sum, I find the PHO's decisions about the risks of unvaccinated healthcare workers to be reasonable. The record provided ample support for the reasonableness of her Conclusions (quoted in paragraph 62 above) that, at the time of the Orders: unvaccinated healthcare workers continued to pose unacceptable risks to vulnerable patients and other healthcare workers; and, it was therefore essential to maintain the high level of vaccination in place in the hospital, community care and residential care workforce, to mitigate the risks to patients and other healthcare workers, and to safeguard the functioning of the healthcare system.

Challenge 3: Was it reasonable to include remote and administrative workers without a s. 43 reconsideration process?

[210] The Tatlock petitioners argued that it was unreasonable for the Orders to exclude s. 43 requests for reconsideration by remote and administrative healthcare workers who posed no risk to vulnerable patients or the frontline healthcare workers who cared for them.

[211] They argued that the unreasonableness was accentuated by the fact that the Orders permitted unvaccinated patients, visitors, and construction workers access to the settings in question. Moreover, prior versions of the Orders allowed the same for some vendors, suppliers and technical specialists.

[212] Recital SS indicates that the PHO was alive to this issue, which had been squarely raised by the Tatlock petitioners' pleadings, evidence and arguments since at least March 2022.

[213] Recital SS says it is necessary to keep the number of unvaccinated workers as low as possible, even amongst this group of workers with limited contact with patients:

> To avoid the risk of undermining the ability of the hospital and community care sectors to function safely, and to properly care for patients, residents and clients, it is necessary to keep the number of unvaccinated people in the health-care workforce as low as possible, including among the members of the workforce who may have little or no direct contact with patients, residents, clients or other workers on a regular basis;
>
> [Emphasis added.]

[214] Article F, "Variance and Reconsideration" says that, after taking into account all the circumstances, the PHO believed it necessary to limit requests for reconsideration to solely medical exemptions where vaccination would seriously jeopardize a person's health.

[215] Such statements from the PHO about the functioning of the healthcare system must receive significant judicial deference. Nevertheless, in my view, there remains a question of failure of justification regarding this issue. In other words, there is a question whether the Orders and record meet the "heightened responsibility" of demonstrating why the significant consequences of the Orders are justified for unvaccinated remote and purely administrative workers.

[216] As stated by the Supreme Court of Canada in *Mason* (citing *Vavilov*):

> [74] An administrative decision maker's reasons must "meaningfully account for the central issues and concerns raised by the parties" (para. 127). Reasons must be "responsive" to the parties' submissions, because reasons

> are the "primary mechanism by which decision makers demonstrate that they have actually *listened* to the parties" (para. 127 (emphasis in original)). Although an administrative decision does not have to "respond to every argument or line of possible analysis" raised by the parties, "a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it" (para. 128).

[217] A first point to note, in my view, is that Recital SS expresses concerns about workers who have "little or no direct contact with patients, residents, clients or other workers on a regular basis". According to the evidence of the Tatlock petitioners, however, many of their roles involved no such contact at all.

[218] Second, there is a lack of connection between vaccination of these types of workers and the central rationale for the Orders, which is to protect vulnerable patients and the healthcare workers who care for them. This lack of connection can be seen in the following excerpt from the PHO's submissions, which in my view does not apply to purely remote and administrative workers:

> 92. Generally speaking, the settings covered by the Health-care Orders are settings where vulnerable populations reside in communal environments and where people are receiving health care services. The PHO observed that transmission occurs in these types of settings over the course of the pandemic and the majority of people residing or seeking care in these settings are people who, on account of a variety of factors, including advanced age, being immunocompromised, or experiencing other health challenges, are at high risk of suffering severe illness, hospitalization, critical care admission or death if infected with COVID-19. Requiring staff in these settings to be vaccinated mitigates the risk of transmission and resulting risk of outbreaks and potential serious health consequences for residents and patients, while also mitigating the impact on the health-care system of clusters and outbreaks of disease, and of staff being absent due to illness from COVID-19.

[219] Third, there is an absence of evidence in the record considering this specific issue of vaccination and healthcare workers who are able to perform their roles remotely or without direct contact with vulnerable patients or the healthcare workers who care for them. For example, while there was evidence in the record, including as described in the Dove Report, about vaccination status and transmission of the virus within care settings, there was not such evidence regarding remote and administrative workers.

[220] The PHO's first point in response on this issue was that none of the Tatlock petitioners who self-described as remote or administrative workers provided clear evidence that their prior jobs truly involved no contact with patients or frontline healthcare workers, and therefore their relief sought was not supported by the evidence.

[221] In my view, while some of the evidence is ambiguous in this way, overall it does establish that some petitioners were able to perform their jobs without any such contact. For example:

> Ms. Phyllis Tatlock, a registered nurse, described her former role as director of operations for BC Cancer, as "solely administrative" and deposed that she did not interact with patients. Ms. Tatlock was terminated on November 15, 2021. Her evidence described significant emotional upset and anxiety from her job loss. Ms. Tatlock is a life-long Christian whose beliefs align with the National Catholic Bioethics Centre, which views as ethically problematic the use of fetal cell lines in the vaccine development. Her request for a religious exemption was denied.
>
> Ms. Monika Bielecki, a former Employee Health and Wellness advisor with BC Interior Health, described her work as remote since early 2016, apart from the occasional team meeting in the office which could be attended by telephone if necessary. She had no workspace with Interior Health and worked entirely from home. In 2019, she signed a flexible work location agreement, prepared by her manager. She refused vaccination based on her own risk-benefit analysis, and was terminated in November 2021.
>
> Ms. Ingeborg Keyser, formerly a communications advisor for Interior Health, deposed to working at corporate offices in Kelowna and then remotely during the pandemic. She deposed to viewing vaccination as a personal choice, and that it is "illegal to force a person to receive an injection to keep his or her job". She believes there are other effective treatments for COVID-19, including her own healthy lifestyle. She expressed concerns about vaccine safety and efficacy, particularly during her pregnancy. She was terminated in November 2021, and deposed to resulting economic hardship for her and her children.
>
> Ms. Ana Mateus, formerly an administrative assistant with Vancouver Coastal Health, deposed to working remotely during the pandemic. She was terminated in November 2021. Ms. Mateus deposed to seeing vaccination as a personal choice, and the vaccines as rushed to market with too many unanswered questions about safety and effectiveness. She believes her own immune system and natural immunity are sufficient protections. Placed on

> unpaid leave in October 2021, she deposed to anxiety and emotional upheaval from the vaccine mandate and lack of exemption process. She stated she would comply with reasonable accommodations in patient-care areas.
>
> Mr. Darold Sturgeon, former executive director of Medical Affairs for Interior Health in Kelowna, was terminated from his job in November 2021. He deposed that his role did not involve the provision of healthcare services and that he worked entirely remotely for the past few years, including before the pandemic. A lifelong Catholic, he refused vaccination based on his religious views about the use of fetal cells in their development.
>
> Ms. Lori Jane Nelson, former senior director for BC Children's Hospital and BC Women's Hospital & Health Care deposed to working remotely, with a "work from home agreement", although it was unclear if that was only during the pandemic. Having been a person of religious faith throughout her life, she could not accept the vaccine because of the fetal cell line issue. She also deposed to severe allergies and prior anaphylactic reactions. On the evidence, it appears her request for a medical exemption was denied because she did not provide all requisite information.
>
> Dr. David Morgan, one of the Hsiang Petitioners described in para. 24 above, lost his position treating youths in the criminal justice system. He deposed to providing "100% of the assessment, management, and treatment of my patients virtually which eliminated any risk of transmission of the virus … When I questioned the basis for [my termination], I was informed that … I might be asked to see a patient in-person in the future, despite the fact that I had not done so for an extended period of time, and that it is simply not necessary in my practice."
>
> Jennifer Koh, a witness for the Tatlock petitioners, was Organization Development and Change management consultant for the Interior Health Authority. From July 2020 to November 2021 she worked 100% remotely, and had no contact with patients and only rarely with co-workers. She refused the vaccine for reasons of her Catholic beliefs and her personal views about its safety.

[222] Counsel for the PHO pointed to the statements in the Orders about the enhanced risk of absenteeism and associated slippage in the system. They gave the example of a surgery booking clerk, and submitted that, while such a role might be performed remotely, any increased absenteeism from lack of vaccination could create problems for surgical scheduling. In my view, such a single example does not justify the total elimination of a reconsideration process for all remote and administrative workers.

[223] Counsel for the PHO also referred to the evidence in the record of the inordinate time and resources required to deal with s. 43 reconsideration requests before they were suspended on November 9, 2021. However, all of this evidence referred back to when such requests related to the broad range of orders applicable to the general public, regarding gatherings, events, restaurants, gyms, bars, etc. Further, the bases for such requests were much broader, and included claims based on competing medical evidence and pure personal disagreement. To my understanding, there is nothing in the record to suggest such difficulties would arise in a reconsideration process limited to remote and administrative workers.

[224] The PHO also argued for the impracticality of requiring her team to make the individual determinations required of a such reconsideration process, because they lacked the requisite specifics about the personnel and roles in question. I was shown nothing in the record, however, to suggest this was a significant obstacle, and in my view there would appear to be reasonable ways of addressing the issue if it arises. For example, a remote worker requesting such reconsideration might provide evidence—such as a supporting letter from the employer—that their role can be fully performed remotely and that absenteeism is generally manageable due to back-up personnel and systems. As the petitioners pointed out, the record indicates that hundreds, if not thousands, of healthcare workers are absent every day across the province, for a host of reasons, which the system is able to manage. For purely administrative workers, who unlike remote workers present the additional consideration of potential spread of illness to colleagues, there might be evidence of the option for remote work when feeling ill.

[225] In sum, for the reasons expressed in this section, I find the Tatlock Petitioners have demonstrated that there remains a lack of justification for not including a reconsideration process for remote and purely administrative workers, as a less drastic means of achieving the PHO’s objectives, particularly given the heightened burden of justification because what is at stake is the loss of a person’s job as a healthcare professional.

[226] In terms of remedy, I am guided by the legislature having entrusted decisions about these matters to the PHO, not the court, and by the deference owed to the PHO on these complex public health decisions. I cannot say this is a case where any decision refusing the s. 43 reconsideration process would be unreasonable, and no particular outcome on this issue is "overwhelmingly" favoured or "inevitable". Thus, the issue should be remitted to the PHO for reconsideration with the benefit of these reasons (*Vavilov,* paras. 124, 140, 141; *Mason,* para. 120).

[227] Thus, under *JRPA* s. 5(1), I remit to the PHO for reconsideration whether to consider s. 43 requests for reconsideration of the vaccination requirement from healthcare workers who are able to perform their roles remotely, or in-person but without contact with patients or the frontline workers who care for them.

Charter **Challenges**

[228] Ms. Hoogerbrug and the Tatlock petitioners argue that the Orders infringed their *Charter* rights by forcing them to choose between accepting an unwanted vaccine or losing their jobs in healthcare.

[229] Those who refused the vaccine for reasons of religion or personal conviction argue that the Orders infringed their rights to freedom of conscience and religion under s. 2(a). The Tatlock petitioners, but not Ms. Hoogerbrug, also argue that the imposition of this choice, between vaccination and keeping their jobs, infringed their s. 7 rights to life, liberty and security of the person.

[230] As part of the *Constitution Act*, 1982, Schedule B to the *Canada Act* 1982 (UK), 1982, c 11, the *Charter* guarantees everyone certain fundamental rights and freedoms to be protected from infringement by the state. These protections are not absolute. Under s. 1, they are subject to "such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Thus, the government may limit an individual's *Charter* rights when it can demonstrate that the limit is reasonable and justified under s. 1.

[231] Based on the Court of Appeal's decision in *Beaudoin* (paras. 255–258), the parties agreed that the framework applicable to reviewing these *Charter* challenges is that established in *Doré v. Barreau du Québec*, 2012 SCC 12. This is because the Orders are administrative decisions made through a delegation of discretionary decision-making authority under the *PHA.* The petitioners' constitutional case did not challenge any provision of the *PHA* or the legislative authority of the PHO to make the Orders, in which case the approach from *R. v. Oakes*, [1986] 1 S.C.R. 103, 1986 CanLII 46, would have applied.

[232] Applying the *Doré* framework to these *Charter* challenges, two questions arise (*Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12 at para. 39; *Doré* at paras. 7, 57):

1. Do the Orders limit *Charter* protections – rights and values?
2. If so, do they reflect a proportionate balancing of those *Charter* protections with the public health and safety objectives underlying the Orders?

Section 2(a)

[233] First, then, is whether the Orders limit the s 2(a) *Charter* protections of Ms. Hoogerbrug and the Tatlock petitioners.

[234] Section 2(a) says: "Everyone has the… freedom of conscience and religion". Its purpose is to ensure the state does not interfere with profoundly held personal beliefs that govern a person's conception of themselves, humankind, nature, and, in some cases, a higher or different order of being. Canada's pluralistic, multicultural society depends on respect for a broad range of such beliefs and their associated practices (*R. v. Edwards Books and Art Ltd.*, [1986] 2 S.C.R. 713, 1986 CanLII 12, at paras. 97, 215).

[235] The parties agree that, to establish an infringement of s. 2(a) religious freedom, one must meet the two-part test established in *Syndicat Northcrest v. Amselem*, 2004 SCC 47, at para. 65*,* and reaffirmed in subsequent cases including *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at para. 32, by

showing*:* sincere commitment to a belief or practice that has a nexus with religion; and, that the Orders interfered, in a non-trivial way, with the ability to act in accordance with that belief or practice.

[236] To satisfy (i), the belief or practice must have spiritual significance for the person as an individual. It may be entirely personal and not part of a more widely held belief system. It need not be obligatory, required by official religious dogma or in conformity with the position of religious officials, but only personally and sincerely held and linked to their spiritual faith or connection to the divine, so long as the practice has a nexus with religion (*Amselem*, paras. 46-56, 69).

[237] To satisfy (ii), the non-trivial, state-imposed cost or burden can be "direct or indirect, intentional or unintentional, foreseeable or unforeseeable" (*Edwards Books*, para. 96).

[238] Ms. Hoogerbrug and these Tatlock petitioners submit that the Orders imposed such a burden by forcing them to choose between the lesser of two evils: violating their deeply held religious or personal convictions, or losing their employment in the healthcare system. By placing them on the horns of this dilemma, they say the Orders substantially interfered with their freedom to follow their religious or conscience-based beliefs, and so infringed their s. 2(a) rights, particularly due to cancellation of any s. 43 religious reconsideration process.

[239] Turning to freedom of conscience, this aspect of s. 2(a) has received less judicial attention than freedom of religion. In my view, the following principles emerge from the cases:

a) freedom of religion may be viewed as a subset of freedom of conscience, in that religious belief and practice are "paradigmatic of conscientiously-held beliefs" (*R. v. Big M Drug Mart Ltd.,* [1985] 1 S.C.R. 295, 1985 CanLII 69, at para. 123);

b) freedom of conscience is aimed at protecting serious matters of conscience based on strongly held moral ideas of right and wrong (*Roach v. Canada (Minister of State for Multiculturalism and Citizenship)*, [1994] 2 F.C. 406, 1994 CanLII 3453 (C.A.));

c) freedom of conscience is not the mere decision to act or not act in a certain way. To warrant constitutional protection, the behaviour or practice must be based upon "a set of beliefs by which one feels bound to conduct most, if not all, of one's voluntary actions" (*R. v. Videoflicks Ltd*., 48 O.R. (2d) 395, 1984 CanLII 44 (C.A.) at 40, rev'd in part on other grounds in *Edwards Books*); and

d) the commitment must have a "profound moral dimension" and be embedded in a "larger belief system of right and wrong" The *Amselem* test for infringement of religious freedom might be adapted and applied to an alleged infringement of freedom of conscience by substituting "nexus with conscience" for "nexus with religion" in the first branch of the test (*Affleck v. The Attorney General of Ontario,* 2021 ONSC 1108 at paras. 40-46, 51-52).

[240] While not conceding the point, counsel for the PHO acknowledged that the religious petitioners likely satisfied the first branch of the *Amselem* test. Counsel took a stronger line however against the petitioners who had purely conscience-based objections to the vaccine.

[241] In opposing the petitioners who relied on freedom of conscience, the PHO relied on cases such as *R. v. Locke*, 2004 ABPC 152 and *Affleck*. In *Locke*, the Provincial Court of Alberta found that Mr. Locke's refusal to wear a seatbelt—because he believed it caused more harm than good—did not engage s. 2(a). The trial judge found that Mr. Locke's beliefs about seatbelts were not part of a "comprehensive value system" but merely strong views about a particular issue.

[242] In *Affleck*, the applicants argued for a right to purchase raw milk based on their sincere beliefs about its health benefits. The Court found their beliefs more akin to a lifestyle choice than a fundamental ethical belief system about right and wrong. Thus, they did not "rise to the level of a belief with profound moral dimensions" required for s.2(a) matters of conscience (paras. 4, 51).

[243] The PHO also relied on prior judicial rejection of freedom of conscience claims in the context of COVID-19 vaccination disputes. In *Costa, Love, Badowich and Mandekic v. Seneca College of Applied Arts and Technology*, 2022 ONSC 5111 ("*Costa*"), leave to appeal to the Ontario Superior Court of Justice ref'd in 2023 ONSC 443, two students opposing vaccination applied for an interlocutory injunction

to restrain the College from requiring vaccination as a condition of being on campus. The students opposed the mandate as a violation of their s. 2(a) freedom of conscience based on their own assessment of the benefits and risks.

[244] In denying their injunction, the Court found no "strong case" for s. 2(a) protection because their objections were not part of a "comprehensive moral code or value system yielding a foundational belief that requiring vaccinations is 'wrong'" (paras. 52, 62-63). Instead, they were better characterized as "individual concerns about potential dangers of the vaccine, and the fact that they perceive, by virtue of not being able to complete their programs, that they are being treated unfairly" (para. 61).

[245] Similarly, in *Lewis v. Alberta Health Services*, 2022 ABCA 359, (paras. 38-39), leave to appeal ref'd [2023] S.C.C.A. No. 6, the Court found Ms. Lewis' belief that the vaccine was experimental, lacking in long-term safety data, and forced upon her did not attract protection under s. 2(a). This was because it was "not grounded in morality but concerns over vaccine safety".

[246] On the second branch of *Amselem*, the PHO submits that the petitioners fall short because the Orders did not compel vaccination. The petitioners were left free to follow their personal or religious beliefs and decline the vaccine, which on the evidence they in fact all did.

[247] On this point, the PHO relies primarily on *Hutterian Brethren*, which challenged amendments to Alberta regulations terminating an exemption process for those who, for religious reasons, objected to having their photos taken and shown on their driver's licences. Before the amendment, members of the Hutterian Brethren of Wilson Colony were exempted from the photographic requirement because of their belief that the Bible's Second Commandment forbade the making of photographic images. Under the amended regulations, they were required to be photographed to have a licence issued.

[248] In upholding the amendment, Chief Justice McLachlin for the majority found that the Colony members were neither compelled to take a photo, nor deprived of a meaningful choice about whether to follow their fundamental beliefs. The photo requirement did not "negate the choice that lies at the heart of freedom of religion" (paras. 98–99).

The Religious Reasons for Refusal

[249] Ms. Hoogerbrug and five of the Tatlock petitioners—Phyllis Tatlock, Darold Sturgeon, Lori Nelson, Lynda Hamley, and Joshua Nordine—deposed to being Christians of different denominations who believe in their religious obligation to avoid the COVID-19 vaccine. Each described, in personal terms, why the vaccination was contrary to their fundamental religious beliefs. As described above, for most this included the use of fetal cell lines in the vaccines' development, contrary to their religious views about treatment of unborn human life.

[250] The personal circumstances of Ms. Hoogerbrug, Ms. Tatlock, Mr. Sturgeon and Ms. Nelson are described above.

[251] Ms. Hamley, a single mother, was a residential support worker with the Kootenay Society for Community Living, which provides group home care to persons with developmental challenges. She deposed to believing that it is contrary to God's will to force a person to accept a novel medical intervention. She deposed that, after her request for a religious exemption was denied, she was placed on unpaid leave in December 2021, and returned to a previous job as a classroom support worker. She described stress and anxiety from the financial pressures caused by losing her job, and expressed willingness to mask and rapid-test before contact with patients.

[252] Dr. Joshua Nordine was a clinical physician with the Bridge Detox Centre in Kelowna. In November 2021, he was terminated by the Centre and lost his hospital privileges. He is a member of the Kelowna Right to Life Society, and objects to receiving the vaccine on religious and medical grounds. He deposed to having observed patients suffer adverse consequences from the vaccines. He deposed that

his exemption request was denied and he has continued his family practice in a private clinic in Kelowna, and is willing to mask and rapid-test in patient-care areas.

The Conscience Reasons for Refusal

[253] The remaining Tatlock petitioners offered secular reasons for their vaccine refusal. Their affidavits described strongly-held beliefs about: (a) the vaccines being rushed, experimental, ineffective and possibly unsafe; and (b) decisions about vaccination being a matter of personal self-determination, particularly for those not at high risk for serious consequences from COVID-19 due to their youth, good health, and/or natural immunity from prior infection.

[254] More specifically, I would summarize the concerns expressed in their respective affidavits as follows:

> Ms. Laura Koop is a primary care nurse practitioner, specializing in high-risk situations such as drug and alcohol abuse. She lost her position in Creston, with the Interior Health Authority, in November 2021. Ms. Koop deposed to concerns about safety and lack of information from pharmaceutical companies and the government, and lack of freedom of choice. Her affidavit described financial difficulties from the loss of her job and associated benefits, as she was the primary wage-earner for her family. She also deposed to stress and anxiety from the loss of her career and inability to assist her former patients.
>
> Ms. Monika Bielecki (previously mentioned above) is a health and wellness adviser and certified vocational rehabilitation professional, residing in Kelowna. She lost her position with Interior Health in November 2021. She deposed to believing vaccination should be a matter of free choice and not a condition of employment. She also expressed confidence in her natural immunity and lifestyle, and doubts about the safety and efficacy of the vaccines. She would be willing to mask and rapid-test before entering patient-care areas.
>
> Mr. Scott MacDonald was a registered art therapist at the Dr. Peter Centre in Vancouver. He was placed on unpaid medical leave in October 2021. He deposed to believing vaccination should be a matter of personal choice and expressed concerns about the vaccines being rushed to market, ineffective and unsafe. He believed COVID-19 posed a low risk to him personally and had experienced adverse reactions to other vaccines in the past. He deposed to being willing to consider reasonable accommodations in patient areas.

> Ms. Ana Mateus (previously mentioned above), formerly employed by Coastal Health, deposed to working remotely during the pandemic. She was terminated in November 2021. Ms. Mateus deposed to seeing vaccination as a personal choice, and these vaccines as rushed to market with too many unanswered questions about safety and effectiveness. She believed her own immune system and natural immunity were sufficient protections. Placed on unpaid leave in October 2021, she deposed to anxiety and emotional upheaval from the vaccine mandate and lack of exemption process. She stated she would comply with reasonable accommodations in patient-care areas
>
> Ms. Ingeborg Keyser (previously mentioned above) was a communications adviser for Interior Health in Kelowna. She deposed to the view that vaccination was a personal choice and it was "illegal to force a person to receive an injection to keep his or her job". She believed there are other effective treatments for COVID-19 including her own healthy lifestyle. She expressed concerns about vaccine safety and efficacy, particularly during her pregnancy. She was terminated in November 2021, and deposed to resulting economic hardship for her and her children.
>
> Ms. Melinda Parenteau is a registered midwife, who lost her hospital privileges in Nelson in October 2021. She deposed to belief in the right of informed medical choice without coercion. She viewed the vaccines as experimental, and had concerns about their safety and long-term effects, and doubts about their efficacy particularly compared with natural immunity. She described being unable to practice midwifery without hospital privileges, and financial hardship and stress for her spouse and their two young children, as well as personal distress over the loss of her chosen career.

Were the Petitioners' s. 2(a) rights infringed?

[255] In my view, the religious petitioners have shown a limitation of their s. 2(a) rights, but the petitioners relying on freedom of conscience have not.

[256] On the first branch of the *Amselem* test, the religious petitioners' uncontested evidence demonstrates sincere religious beliefs which conflict with accepting the vaccine. They each explained, in concrete terms, why being true to their religious faith required them to refuse. On the evidence, their reasons for refusal reflected sincerely held aspects of their religious faith.

[257] On the second branch of the test, the Orders imposed far more than a trivial or insubstantial burden on their freedom to act in accordance with their religious

beliefs, by forcing them to choose between accepting vaccination, contrary to their sincere religious beliefs, or losing their jobs.

[258] In my view, this conclusion that the Orders limited the religious petitioners' s. 2(a) rights is supported by previous s. 2(a) COVID-19 decisions. In *Beaudoin*, the Court of Appeal upheld Chief Justice Hinkson's findings that orders restricting the size of religious gatherings limited s. 2(a) rights, although the limits were justified under both the analysis in *Doré* and the analysis in *Oakes*. The Ontario Court of Appeal upheld similar findings in *Trinity Bible Chapel*, as did the Manitoba Court of Appeal in *Gateway Bible Baptist Church et al v Manitoba et al,* 2023 MBCA 56, aff'g 2021 MBQB 219, leave to appeal ref'd [2023] S.C.C.A. No. 369.

[259] It is also supported by *Multani v. Commission Scolaire Marguerite-Bourgeoys*, 2006 SCC 6, where the majority held that forcing a Sikh student to choose between wearing a kirpan and attending public school amounted to an infringement of his freedom of religion. This was so despite the student being able to follow his religious convictions by moving to a private school (para. 40).

[260] I do not accept the PHO's argument that s. 2(a) was not infringed because the Orders leave the religious petitioners free to refuse the vaccine. In my view, this is contrary to *Multani* and the principle from *Edwards Books* that interference can include indirect burdens or costs placed upon one's religious practices. By making the religious petitioners choose between vaccination and losing their jobs, the Orders clearly imposed a substantial burden and cost on following their religious beliefs.

[261] I also do not accept the PHO's argument that this conclusion runs contrary to Chief Justice McLachlin's analysis in *Hutterian Brethren.* In that case, the s. 2(a) infringement was conceded by Alberta (*Hutterian Brethren*, paras. 33-34). The Chief Justice's conclusion that the law did not rise to the level of seriously affecting the claimants' right to pursue their religion was part of the s. 1 analysis of whether the infringement was justified.

[262] Regarding those Tatlock petitioners who rely on reasons of conscience, while accepting the uncontradicted evidence of their specific objections and concerns, I find their s. 2(a) freedom of conscience rights were not limited by the Orders. This is because their objections and concerns, summarized above, do not reflect an overarching moral belief system, but rather personal convictions and assessments regarding the vaccine and vaccination mandates. On the evidence, these convictions and assessments, primarily about safety, the approval process and freedom of choice regarding vaccination, do not rise to the level of profound and overarching moral belief systems about themselves and how to live their lives that receive constitutional protection under freedom of conscience. Cases such as *Videoflicks*, *Affleck, Costa,* and *Lewis* suggest this is insufficient. In my view, the petitioners provided no applicable cases to the contrary.

[263] In sum, I find that the Orders limited the s. 2(a) rights of the religious petitioners, all of whom demonstrated that the Orders presented an objectively significant interference with following their religious beliefs. I find the Orders did not, however, infringe the s. 2(a) freedom of conscience rights of those petitioners who refused vaccination due to their personal concerns and convictions.

Section 7

[264] Section 7 says that:

> Everyone has 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.

[265] To establish a limitation on s. 7 rights, a claimant must show that a law or state action has: (i) interfered with, or deprived them of, their life, liberty or security of the person, and (ii) done so in a manner inconsistent with the principles of fundamental justice. Such inconsistency may be proven by showing the law or government measure is arbitrary, overbroad, or grossly disproportionate (*Carter v. Canada (Attorney General)*, 2015 SCC 5, paras. 55, 72).

[266] The Tatlock petitioners argue that the Orders infringed their right to liberty by interfering with medical self-determination (relying on *Carter,* and *A.C. v. Manitoba (Director of Child and Family Services),* 2009 SCC 30), and their right to security of the person by causing serious psychological stress and harm (relying on *United Steelworkers, Local 2008 v. Attorney General of Canada*, 2022 QCCS 2455 [*United Steelworkers*]).

[267] As the Supreme Court of Canada said in *Carter* (para. 64), underlying both of these rights is a concern for the protection of individual autonomy and dignity. Liberty protects the right to make fundamental personal choices free from state interference. Security of the person encompasses a notion of personal autonomy involving control over one's bodily integrity free from state interference. It is engaged by state interference with an individual's physical or psychological integrity, including any state action that causes physical or serious psychological suffering.

[268] The effects of state interference on security of the person must be assessed objectively, with a view to the impact on the psychological integrity of a person of reasonable sensibility. It need not rise to the level of nervous shock or psychiatric illness, but must have a serious and profound effect on a person's psychological integrity, that is greater than ordinary stress or anxiety (*New Brunswick (Minister of Health and Community Services) v. G. (J.)*, 3 S.C.R. 46, 1999 CanLII 653 [*J.G.*], paras. 56–60).

[269] In *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2022 BCCA 245 [*Cambie Surgeries*], leave to appeal ref'd [2022] S.C.C.A. No. 354, Justice Harris for the majority said this about the scope of these rights in the medical context:

> [234] The right to liberty is a right to make fundamental personal decisions without interference from the state. In the medical context, this has been interpreted as limited to the right to consent to or withhold consent from certain medical interventions: see e.g., *Carter* at para. 67; *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30 at para. 100.
>
> [235] Importantly, the Supreme Court of Canada has said, "[t]he right to life, liberty and security of the person encompasses fundamental life choices, not

> pure economic interests": *Siemens v. Manitoba (Attorney General)*, 2003 SCC 3 at para. 45.
>
> [Emphasis added in original.]

[270] The Tatlock petitioners argued that requiring vaccination as a condition of employment infringed their s. 7 liberty right to make fundamental personal decisions without state interference, and the stress and anxiety caused by their job losses were interference with their psychological integrity infringing security of the person.

[271] While acknowledging that s. 7 challenges to the COVID-19 mandates have generally been unsuccessful, the Tatlock petitioners relied primarily on *United Steelworkers.*

[272] In *United Steelworkers*, s. 7 rights were found to be engaged by orders of the federal Minister of Transport, requiring COVID-19 vaccination in the federally regulated marine, air and rail transport sectors. The Court agreed with the claimants—who were unions and some individual workers—that the rights to liberty and security of the person were engaged because of the significant constraint on important life choices and the severe psychological stress and pressure of accepting the vaccine or losing one's job (paras. 171–176).

[273] This case was a double-edged sword for the Tatlock petitioners, however, because the Court found the orders complied with the principles of fundamental justice and so s. 7 rights were not breached. Having accepted that the objective of the vaccine mandate was to protect workers from severe illness, reduce absenteeism, and foster key supply chains, Justice Phillips found the orders: not arbitrary, as there was evidence to suggest that unvaccinated people were at higher risk to develop more severe forms of the disease, with consequences on the rate of absenteeism (paras. 195–198); not overbroad, as the petitioners had not shown that the measure caused effects unrelated to its objective (paras. 199–202); and proportionate to the important goal of avoiding the potentially dramatic consequences of absenteeism and disruptions in the Canadian transport system (paras. 203–211).

[274] The PHO argues, first, that the Orders do not constitute state interference with "fundamentally important and personal medical decision-making", because the petitioners remained free to choose whether to accept or decline vaccination for COVID-19. This distinguishes the situation from *Carter* which dealt with the right to medical self-determination in the context of physician-assisted dying, and from *A.C.* which dealt with coercive medical treatment.

[275] Second, the PHO argues that s. 7 is not engaged by a law or state action that threatens a claimant's right to practice their particular profession or occupation, even if this causes significant emotional distress (*Mussani v. College of Physicians and Surgeons of Ontario*, [2004] O.J. No. 5176, 2004 CanLII 48653 (C.A.); *Tanase v. College of Dental Hygienists of Ontario,* 2021 ONCA 482, leave to appeal ref'd [2021] S.C.C.A. No. 350; *Ouellette v. Law Society of Alberta*, 2019 ABQB 492, leave to appeal ref'd 2021 ABCA 99; *Siemens v. Manitoba (Attorney General),* 2003 SCC 3; and *Banas v. HMTQ*, 2022 ONSC 999).

Did the Orders limit s. 7 rights?

[276] On the evidence, the Orders compelled none of the Tatlock petitioners to accept unwanted medical treatment. Thus, unlike *Carter*, their s. 7 rights associated with bodily integrity and medical self-determination were not engaged.

[277] Instead, they lost their jobs because they chose not to accept vaccination against a highly contagious virus which posed the risk of serious illness and death to vulnerable patients and other healthcare workers. In my view, this loss did not engage their s. 7 right to liberty because of the well-established principle that s. 7 does not protect the right to work in any specific employment or particular profession, particularly when the job-loss arises from non-compliance with its governing rules and regulations. This is not a constitutionally-protected fundamental life choice.

[278] In my view, their s. 7 security of the person rights were also not engaged. The fact that they experienced serious consequences, including stress and hardship, from choosing to follow their personal convictions about vaccination does not make

the Orders a state interference with their physical or psychological integrity. In effect, their position amounts to security of the person being engaged unless vaccination were a matter of free choice without any serious state-imposed consequences for refusal. As stated in by Chief Justice Lamer in *J.G.* at para. 59*:*

> … It is clear that the right to security of the person does not protect the individual from the ordinary stresses and anxieties that a person of reasonable sensibility would suffer as a result of government action. If the right were interpreted with such broad sweep, countless government initiatives could be challenged on the ground that they infringe the right to security of the person, massively expanding the scope of judicial review, and, in the process, trivializing what it means for a right to be constitutionally protected …
>
> [Emphasis added.]

[279] In arriving at these conclusions, it is important to bear in mind that, to the extent the petitioners' reasons for refusal reflected religious beliefs or matters of conscience, they are protected under s. 2(a). Also important is the fact that the petitioners are not seeking a finding that the vaccines were objectively unsafe.

[280] In my view, a number of cases support this conclusion that s. 7 is not infringed by the Orders, and persuade me not to follow *United Steelworkers* on that issue.

[281] In *B.C. Teachers' Federation v. School District No. 39 (Vancouver)*, 2003 BCCA 100 [*BCTF*], leave to appeal ref'd [2003] S.C.C.A. No. 156, the majority found the s. 7 right to liberty not engaged in the context of a teacher who lost her job for refusing to submit to a psychiatric examination. After a thorough review of *Blencoe v. British Columbia (Human Rights Commission),* 2000 SCC 44 and other decisions, Justice Hall for the majority concluded that s. 7 rights did not extend to matters concerning an individual's employment, including citing with approval the propositions that s. 7 is not engaged by "a right to any specific employment" or "the right to exercise their chosen profession" (paras. 201–210).

[282] Importantly, it was the dissenting judgment of Justice Prowse that would have supported the petitioners in this case. Justice Prowse saw the teacher's s. 7 liberty

interest as implicated because of the basis upon which her employment was terminated. She held that "the teacher's liberty interest was infringed by the state mandating that she forego her right to personal and psychological integrity or forfeit her means of livelihood" (paras. 142, 148).

[283] These same points were forcefully made in the recent decision of *Tanase.* Mr. Tanase lost his licence as a dental hygienist after a discipline committee found he engaged in a sexual relationship with a patient whom he eventually married. He argued the revocation was an "absurdity" because their relationship did not engage the concerns the scheme was meant to address, such as the exploitation of power dynamics and inducement of consent.

[284] Mr. Tanase asked a five-member panel of the Ontario Court of Appeal to overturn its prior decision of *Mussani,* and find that his s. 7 rights were infringed. Like Mr. Tanase, Dr. Mussani's licence had been revoked pursuant to mandatory provisions in Ontario's *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18. Dr. Mussani argued unsuccessfully that the mandatory revocation policy violated his s. 7 liberty and security of the person interests. He pointed, in particular, to the stigma and stress he had suffered as a result of being disciplined.

[285] The Court In *Tanase* declined to overturn *Mussani*, which they summarized this way:

> [35] In *Mussani* this court held that there is no constitutional right to practice a profession and that the penalty of mandatory revocation of a health professional's certificate of registration affects an economic interest that is not protected by ss. 7 or 12 of the *Charter*. Security of the person was not engaged by the revocation of registration regardless of the stress, anxiety, and stigma to which disciplinary proceedings inevitably give rise in the context of sexual abuse allegations, nor was a liberty right engaged …

[286] The Court in *Tanase* also found no common law, proprietary or constitutional right to practice as a regulated health professional, and so revocation of Mr. Tanase's registration, for violating the *Health Professions Procedural Code,*

"engages neither the right to liberty nor the right to security of the person" (paras. 41–42).

[287] Importantly for present purposes, Mr. Tanase had characterized the issue to be decided in a similar way to the petitioners in this case. That is, it was characterized:

> [38] … not as whether s. 7 protects a positive right to practice a profession unfettered by standards and regulations, but instead, as whether it encompasses the negative right not to be deprived of a state-granted privilege to practice a profession except in accordance with the principles of fundamental justice. The appellant argues that psychological stress flows directly and automatically from the revocation of registration, and that this stress should be considered analogous to the possibility of the removal of a child, which was held to have engaged security of the person in *New Brunswick (Minister of Health and Community Services) v. G.(J.)*, 1999 CanLII 653 (SCC), [1999] 3 S.C.R. 46.

[288] In rejecting this argument, the Court found "an unbroken line of authority from the Supreme Court of Canada confirming that s. 7 of the *Charter* does not protect the right to practice a profession or occupation, an example of what that court has described as "pure economic interests'" (para. 40). They held that Mr. Tanase's argument for his negative right not to be deprived of his state-granted privilege to practice his profession did not engage security of the person because there was no "interference with bodily integrity and autonomy or serious state-imposed psychological stress" (para. 43).

[289] In rejecting his argument that publication of the revocation of his registration under the characterization of "sexual abuse" amounted to severe psychological stress and anguish, the Court said the following, which in my view also applies in this case:

> [44] … Professional discipline is stressful, to be sure, but it does not give rise to constitutional protection on that account. In *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44, [2000] 2 S.C.R. 307, and in *G.(J.),* the Supreme Court articulated the need for a "serious and profound effect" on a person's psychological integrity before security of the person is engaged: *Blencoe*, at para. 81; *G.(J.)*, at para. 60. The threshold was crossed in *G.(J.)* because a mother was facing the possibility that the state would sever her relationship with her child. This is a profound

> interference with family autonomy and decisions taken in the context of regulating health care practitioners pale alongside it.
>
> [45] In saying this, I do not mean to minimize the significance of professional discipline. But s. 7 does not apply simply because legislation gives rise to serious consequences. Psychological integrity is a narrow and limited concept, and the right to security of the person is engaged only if there is a serious and profound effect on psychological integrity. The matter is to be judged on an objective basis, having regard to persons of ordinary sensibilities. It is irrelevant whether state action causes upset, stress, or worse. There must be a serious and profound impact on psychological integrity before the protection of s. 7 is engaged. Nothing in this case suggests that this threshold has been crossed, nor has the appellant proffered any basis for this court to revisit that threshold.

[290] Apart from *United Steelworkers*, the COVID-19 cases also do not favour the Tatlock petitioners regarding s. 7. In *Maddock v. British Columbia*, 2022 BCSC 1605 (appeal dismissed as moot, 2023 BCCA 383), Chief Justice Hinkson found s. 7 not engaged by the PHO's orders requiring restaurant patrons to provide proof of vaccination or proof of exemption. Mr. Maddock, a paralegal, argued the orders interfered with his s. 7 right to liberty because he could not carry on his business by meeting clients in restaurants. He argued that he faced coercive pressure to accept an unwanted medical treatment.

[291] Mr. Maddock's situation was different from that of the Tatlock petitioners because his vaccination refusal deprived him, not of his job, but merely access to privately owned establishments open to the public. Nevertheless, some of the Chief Justice's reasoning regarding s. 7 and COVID-19 vaccination applies:

> [78] However, the Suspension Order does not compel or prohibit subjection to any form of medical treatment. The Suspension Order may make the decision of whether or not to accept medical treatment in the form of vaccination more difficult, but it does not impose a decision on the petitioner. Each of the cases cited by the petitioner dealt with laws that left affected individuals with no reasonable choice but to accept, or effectively accept, non-consensual treatment …

[292] In *Costa,* as described above, the court rejected the students' application for an injunction restraining the vaccination mandate at their college. In doing so, it adopted the following comments from an arbitrator regarding s. 7 not being engaged:

> [57] Section 7 of the Charter protects an individual's right to decide: whether or not to be vaccinated. The Policy does not require mandatory vaccination. The Policy does not violate anyone's life, liberty or security of the person. It does not mandate a medical procedure or seek to impose one without consent… The Policy had an impact on TDSB employees who decided not to attest and/or get vaccinated, but there is no basis to conclude that life, liberty or security of the person is in any manner impaired by the Policy and by the choices individuals make. Employees are not prevented in any way from making a fundamental life choice …

[293] In *Lewis*, Ms. Lewis risked dying if she did not receive an organ transplant. She was ineligible for the transplant program, however, because she was unvaccinated against COVID-19. She argued that this ineligibility violated her s. 7 rights to life and security of the person. The Alberta Court of Appeal held that the anguish of her situation was not state-imposed. Rather, her serious psychological stress was caused by her personal views about vaccination, and the consequences of the decisions she made as a result:

> [60] … The consequences of Ms Lewis' refusal have caused her anguish but s 7 of the *Charter* only protects against serious psychological stress which is "state-imposed": *Blencoe* at para 57, citing *Morgentaler* at 56. We are not persuaded the COVID-19 vaccine requirement, deemed medically necessary to protect Ms Lewis and others in the transplant context, amounts to serious state-imposed psychological stress.

[294] Based on the analysis above, I respectfully depart from the finding in *United Steelworkers* that the vaccine mandate engaged the petitioners' s. 7 rights. The stress and difficulties they have endured from following their personal convictions about the vaccine do not engage s. 7 rights of liberty or security of the person.

Principles of Fundamental Justice

[295] Given that the rights protected by s. 7 are not engaged by the Orders, it is unnecessary to determine whether the petitioners' loss of their jobs was contrary to the principles of fundamental justice. However, for completeness, I would say that in my view there are strong reasons why, even if s. 7 rights were engaged, the Orders would not be contrary to the principles of fundamental justice.

[296] The relevant principles of fundamental justice in this case are arbitrariness, overbreadth, and gross disproportionality (*Carter*, para. 72).

[297] In my view, the Orders cannot be said to be arbitrary because of the clear connection in the Orders, supported by the record, between vaccination and protection of vulnerable patients and the healthcare system.

[298] The Orders are not overbroad because they do not go too far and interfere with some conduct that bears no connection to their objectives (*Cambie Surgeries* , para. 310). The vaccination of healthcare workers is directly related to the objectives of protecting vulnerable patients and residents and other healthcare workers, and safeguarding the capacity of the healthcare system (*Canada (Attorney General) v. Bedford*, 2013 SCC 72, at paras.101, 112).

[299] Finally, gross disproportionality occurs when the impugned decision infringes on the right in a way that is grossly disproportionate to its object. This standard is not easily met. The law's effects can be incommensurate with its object without being grossly disproportionate (*Cambie Surgeries,* para. 321 citing *Carter* at para. 89). Rather, the impact must be "totally out of sync with the objective of the measure"; "so severe that it violates our fundamental norms"; or, "too high a cost to life liberty or security of individuals" (*Cambie Surgeries,* para. 320).

[300] While the consequences of refusing the vaccine have been significant for the petitioners, in my view the Orders are not in violation of our fundamental norms or out of sync with their objectives. This is because the objectives are the critical public healthcare goals of protecting the public against a highly contagious disease, which that over the past few years has caused much death, serious illness, and harm to the functioning of the healthcare system.

Were the Orders reasonable under Doré?

[301] Having found that the Orders limited the s. 2(a) rights of the religious petitioners, I must assess whether they were nevertheless reasonable under the *Doré* framework.

[302] Under *Doré*, the reasonableness of the Orders is determined based on whether they reflect a proportionate balancing of the public health objectives of the

PHA and the petitioners' *Charter*-protected freedom of religion (*Beaudoin*, para. 257). The public health intervention must be proportionate to the threats faced and the measures should not exceed what is reasonably necessary to address the actual risks.

[303] There is no doubt that containing the spread of the virus and the protection of public health is a legitimate objective which can support limits on religious freedoms (*Beaudoin*, para. 267). In *Beaudoin (*para. 258), the Court of Appeal described the proper approach to the assessment of proportionate balancing by quoting extensively from Justice Abella's majority reasons in *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32 (cites omitted; reproduced in part):

> [79] … *Doré*'s approach recognizes that an administrative decision-maker, exercising a discretionary power under his or her home statute, typically brings expertise to the balancing of a *Charter* protection with the statutory objectives at stake. Consequently, the decision-maker is generally in the best position to weigh the *Charter* protections with his or her statutory mandate in light of the specific facts of the case. It follows that deference is warranted when a reviewing court is determining whether the decision reflects a proportionate balance …
>
> [80] … For a decision to be proportionate, it is not enough for the decision-maker to simply balance the statutory objectives with the *Charter* protection in making its decision. Rather, the reviewing court must be satisfied that the decision *proportionately* balances these factors, that is, that it "gives effect, as fully as possible to the *Charter* protections at stake given the particular statutory mandate" (*Loyola*, at para. 39). The *Charter* protection must be "affected ….as little as reasonably possible" in light of the applicable statutory objectives (*Loyola*, at para. 40). When a decision engages the *Charter*, reasonableness and proportionality become synonymous. Simply put, a decision that has a disproportionate impact on *Charter* rights is not reasonable.
>
> [81] … The question for the reviewing court is always whether the decision falls within a range of reasonable outcomes. However, if there was an option or avenue *reasonably* open to the decision-maker that would reduce the impact on the protected right while still permitting him or her to sufficiently further the relevant statutory objectives, the decision would not fall within a range of reasonable outcomes. This is a highly contextual inquiry.
>
> [82] … In working "the same justificatory muscles" as the *Oakes* test (*Doré*, at para. 5), the *Doré* analysis ensures that the pursuit of objectives is proportionate. In the context of a challenge to an administrative decision where the constitutionality of the statutory mandate itself is not at issue, the proper inquiry is whether the decision-maker has furthered his or her statutory mandate in a manner that is proportionate to the resulting limitation on the *Charter* right.

[304] The Orders are clear that the PHO fully recognized both the stakes for the individual rights of those whose beliefs clashed with accepting the vaccine, and the proportionality principle, meaning that the terms and effects of the Orders must be proportionate to the nature of the apprehended harm and not unnecessarily limit constitutional rights.

[305] The final section of the Recitals included this:

> Balancing Competing Interests
>
> WW. I recognize the effect which the measures I am putting in place to protect the health of patients, residents, clients and workers in hospital and community care settings may have on people who are unvaccinated and, with this in mind, continually engage in the reconsideration of these measures, based upon the information and evidence available to me, including case rates, sources of transmission, the presence of clusters and outbreaks, the number of people in hospital and in intensive care, deaths, the emergence of and risks posed by virus variants of concern, vaccine availability, immunization rates, the vulnerability of particular populations, reports from the rest of Canada and other jurisdictions, scientific journal articles reflecting divergent opinions, and opinions expressing contrary views to my own submitted in support of challenges to my orders, with a view to balancing the interests of the people working or volunteering in the hospital and community care sectors, including constitutionally protected interests, against the risk of harm posed by unvaccinated people working or volunteering in the hospital or community care sectors;
>
> XX. I further recognize that constitutionally protected interests include the rights and freedoms guaranteed by the Canadian Charter of Rights and Freedoms, including specifically freedom of religion and conscience, freedom of thought, belief, opinion and expression, and the right not to be deprived of life, liberty or security of the person, other than in accordance with the principles of fundamental justice. However, these rights and freedoms are not absolute and are subject to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society, which includes proportionate, precautionary and evidence-based measures to prevent loss of life, serious illness and disruption of our hospital and community care systems;
>
> YY. When exercising my powers to protect the health of the public from the risks posed by COVID19, I am aware of my obligation to choose measures that limit the Charter rights and freedoms of British Columbians less intrusively, and to balance these rights and interests in a way that is consistent with the protection of public health. I have concluded that the measures which I am putting in place in this Order are proportionate, rational, and tailored to address the risk, and are consistent with principles of fundamental justice. The measures are neither arbitrary, overbroad, nor grossly disproportionate in light of the need to protect public health at this time. In my view, any limits on constitutionally protected rights and freedoms

> arising from this Order are proportionate and reasonable in the interests of protecting public health, and there are no other reasonable alternatives that would provide the same level of protection to patients, residents, clients and workers in hospital and community care settings and would promote the preparedness and resiliency of the health-care system;

[306] In my view, the following two Recitals capture the PHO's conclusions about the proportionate balancing from a public health perspective:

> H. … [A]ny slippage in the level of vaccination in the health-care workforce could result in significant illness on the part of the health-care workforce which would undermine the capacity of the health-care system to respond to a significant resurgence of disease; [and] …
>
> SS. To avoid the risk of undermining the ability of the hospital and community care sectors to function safely, and to properly care for patients, residents and clients, it is necessary to keep the number of unvaccinated people in the health-care workforce as low as possible …

[307] It is difficult to imagine more important and pressing public health concerns and objectives than reducing serious illness and loss of life, and safeguarding the functioning of the healthcare system.

[308] As the Court said in *Beaudoin* (paras. 267, 307), limits on individual rights can be proportionate where there is a "need to take precautions to stop preventable deaths from occurring, and the need to protect the capacity of the healthcare system". It is the PHO who is uniquely qualified to make these decisions and her judgment must be afforded deference (*Beaudoin*, para. 278; *Doré,* paras. 54–57).

[309] In this context, the precautionary principle applies, because human life and safety are at stake and there is scientific uncertainty as to the nature and magnitude of the risks (*Trinity Bible Chapel,* paras. 112–115).

[310] Having found a sufficient evidentiary foundation in the record for the PHO's Conclusions regarding the risks posed by an unvaccinated healthcare workforce, and recognizing that deference is owed regarding these complex medical and scientific issues, I find the Orders reasonably balanced the risks posed by unvaccinated healthcare workers and the s. 2(a) rights of those who eschewed the vaccine for religious reasons.

[311] I find the Orders were not overbroad in precluding the unvaccinated religious petitioners from working in the designated healthcare settings while the Orders remain in place. Conclusion (c) explains that, from a public health perspective, the Orders are broad by necessity, because it is essential to maintain the high level of vaccination currently in place in the hospital and community care workforce. I have found this Conclusion reasonably supported by the evidence in the record.

[312] The Tatlock petitioners argue that the Orders are disproportionate in specific ways. First, they do not allow for alternatives to vaccination such as masking or rapid testing. In my view, on this issue the Court must defer to the PHO's medical conclusions that such alternatives are not as effective against transmission as vaccination (see Recitals BB-DD and the Dove Report.).

[313] Second, other unvaccinated persons are now permitted in these settings, namely, patients, visitors, healthcare workers with medical exemptions, and some construction workers (subject to distancing rules). In my view, that does not render the Orders arbitrary or disproportionate. Healthcare workers are in a special situation given the crucial role they play in the system and their near-constant, close contact with the most vulnerable patients, who generally speaking have no choice but to be treated by them. Drawing the lines in this way is connected to protecting the most vulnerable and the capacity of the healthcare system, while at the same time dismantling as much as possible the regime implemented during the worst of the pandemic. In my view, it cannot be said that this approach falls outside the range of reasonable outcomes.

[314] In sum, I find that the Orders, as supported by the record, represent a proportionate balancing of the public health objectives of the *PHA* and the petitioners' *Charter*-protected freedom of religion.

Conclusion

[315] The petitions are dismissed, with the exception that, under *JRPA* s. 5(1), I remit to the PHO for reconsideration, in light of this decision, whether to consider requests under s. 43 of the *PHA*, for reconsideration of the vaccination requirement

from healthcare workers able to perform their roles remotely, or in-person but without contact with patients, residents, clients or the frontline workers who care for them.

"Coval J."

COURT OF APPEAL FOR BRITISH COLUMBIA

FORM 1 NOTICE OF APPEAL *(RULE 6(1))*

VANCOUVER
10-Jun-24
COURT OF APPEAL REGISTRY

Court of Appeal File No.
(For Registry Use Only)

Case File No. CA49934

Supreme Court File No. S222427

The file number can be found on the upper right corner of the Supreme Court documents

Supreme Court Registry Location Vancouver Registry

To the respondent(s)
A Court proceeding has been commenced against you in the Court of Appeal. See the final page of this form for details on how to respond.

1. PARTIES TO THE APPEAL

Appellant(s)
List the party(ies) appealing the Supreme Court or tribunal order. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (plaintiff, petitioner, etc.)

Phyllis Janet Tatlock, Laura Koop, Monika Bielecki, Scott Macdonald, Ana Lucia Mateus, Darold Sturgeon, Lori Jane Nelson, Ingeborg Keyser, Lynda June Hamley, Melinda Joy Parenteau and Dr. Joshua Nordine (Petitioners)

Respondent(s)
List the other party(ies) in the Supreme Court or tribunal order you are appealing who are affected by the appeal. Identify their roles in the proceeding below in brackets. E.g., Jane Doe (defendant).

Attorney General for the Province of British Columbia and Dr. Bonnie Henry in her capacity as Provincial Health Officer for the Province of British Columbia (Respondents)

2. THE ORDER YOU ARE APPEALING

Is leave to appeal required?
Court of Appeal Rule 12 explains when you need leave to appeal. If you are unsure, check "Yes".

☐ Yes ☑ No

Who made the order?
Name the justice or other decision maker who pronounced the order you are appealing.

The Honourable Mr. Justice Coval

What court and/or tribunal pronounced the order(s)?

☑ Supreme Court ☐ Tribunal

Name of tribunal

Date the order was pronounced
Include the day, month and year that the order being appealed was pronounced (not the date the

10/05/2024

DD/MM/YYYY

City where the order was pronounced

Vancouver, BC

Length of lower court hearing
Indicate in days or hours the length of the hearing that led to the order you are appealing from. For example, if you are appealing a judgment from a trial that took two hours, enter "two hours."

13 days

What type of proceeding are you appealing from?
Check one only.

☐ Trial Judgment
☐ Summary Trial Judgment
☐ Order of a Tribunal
☑ Chambers Judgment

3. RELIEF SOUGHT

If leave to appeal is not required, fill out Part A. If you are seeking leave to appeal, fill out Part B.

PART A: LEAVE NOT REQUIRED

Part of the order being appealed
If you only want to appeal one part of an order, enter the part

The order dismissing the petition.

Order(s) you are seeking on appeal
Briefly list the order(s) you will ask this Court to make on appeal For example: "Set aside the trial judgment and order a new trial". Include any order as to costs.

Order allowing the appeal, setting aside the judgment dismissing the petition, and granting the relief sought in the petition, with no costs of the appeal awarded to any party.

PART B: SEEKING LEAVE TO APPEAL

Part of the order being appealed
If you are only seeking leave to appeal one part of an order, enter the part that you are seeking leave to appeal.

Grounds for leave to appeal
Be as specific as possible. For example, if you believe the trial judge used an incorrect legal test or otherwise misapplied the law, indicate that here.

4. ADDITIONAL INFORMATION

Sealing order
Is there an order sealing any part of the trial court or tribunal file? If yes, add date(s).

☐ Yes ☑ No Date

DD/MM/YYYY

Anonymity order/publication ban
Are there orders that protect the identity of a party or parties? If yes, add date(s).

☐ Yes ☑ No Date

DD/MM/YYYY

Areas of law raised in the appeal
You may check more than one box if appropriate. For example, you should check "motor vehicle accidents" and "torts" for a personal injury claim involving a

☑ Constitutional/Administrative	☐ Civil Procedure	☐ Commercial
☐ Motor Vehicle Accidents	☐ Municipal Law	☐ Real Property
☐ Torts	☐ Equity	☐ Wills and Estates
☐ Divorce Act (Canada)	☐ Family Law Act	☐ Other

Appeals involving children
Does this appeal involve the rights or interests of a child? E.g., Parenting order

☐ Yes ☑ No

5. SERVICE

Are you representing yourself?

☐ Yes ☑ No

Name(s) and address(es) within BC for service of appellant(s). *If you have a lawyer, include the law firm's address; otherwise provide your own residential address.*

Allison Pejovic
Pejovic Law
[redacted]

Phone number(s) of appellant(s)

([redacted]

Email address(es) for service of appellant(s)
If you provide an email address, you are consenting to have documents served on you by email.

[redacted]

Date form completed

Date: 10/06/2024
DD/MM/YYYY

Name of lawyer or party authorizing filing of this form: Allison Pejovic

To the appellant(s):
You must file and serve this form on each respondent named in this document within the timelines required by the *Court of Appeal Act* and Court of Appeal Rules. You must file a Notice of Hearing **not more than one year** after filing this Form 1 or your appeal will be placed on the inactive list (Rule 50(1)(a)).

To the respondent(s)

If you intend to participate in this proceeding, **you must give notice** of your intention by doing the following **not more than 10 days** after receiving this Notice of Appeal: (1) file a "Notice of Appearance" (Form 2 of the *Court of Appeal Rules*) in a Court of Appeal registry and; (2) serve the Notice of Appearance on the appellant.

If you fail to file and serve a Notice Appearance:

(a) You are presumed to take no position on the appeal, or the application for leave to appeal (if leave is required).

(b) The parties are not obliged to serve you with any further documents related to the appeal, including an order granting leave to appeal (if leave is required).

You are presumed to take no position if you fail to file and serve a Notice of Appearance within the time described above. The filing registries for the British Columbia Court of Appeal are as follows.

Central Registry:

B.C. Court of Appeal
Suite 400, 800 Hornby St.
Vancouver BC V6Z 2C5

Other Registries:

B.C. Court of Appeal
The Law Courts
P.O. Box 9248
STN PROV GOVT
850 Burdett Ave.
Victoria BC V8W 1B4

B.C. Court of Appeal
223 - 455 Columbia St.
Kamloops BC V2C 6K4

Inquiries should be addressed to (604) 660-2468.

Court File No. S-222427
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

PHYLLIS JANET TATLOCK, LAURA KOOP, MONIKA BIELECKI, SCOTT MACDONALD, ANA LUCIA MATEUS, DAROLD STURGEON, LORI JANE NELSON, INGEBORG KEYSER, LYNDA JUNE HAMLEY, MELINDA JOY PARENTEAU and DR. JOSHUA NORDINE

Petitioners/Applicants

and

ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA and DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE PROVINCE OF BRITISH COLUMBIA

Respondents

NOTICE

under section 8(2)(b) of the *Constitutional Question Act,* RSBC 1996 c.68

TO: Minister of Justice and Attorney General of British Columbia
[redacted]

AND TO: Attorney General of Canada
[redacted]

TAKE NOTICE that, pursuant to sections 8(2)(b) of the *Constitutional Question Act,* application will be made, by Petition, by the Petitioners, to the presiding judge at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on a date to be set, seeking a remedy pursuant to section 24(1) of the

This Notice of Constitutional Question is filed by Karen Bastow, Associate Counsel, David G. Milburn, Trial Lawyers, [redacted]

Canadian Charter of Rights and Freedoms, being Part 1 of the Constitution Act, 1982, and s. 52 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* c. 11, as set out in the Petition attached to this Notice of Constitutional Question.

AND FURTHER TAKE NOTICE THAT the material facts giving rise to this application are set out in the Petition attached to this Notice of Constitutional Question.

AND FURTHER TAKE NOTICE THAT at the hearing the Petitioners will make argument on the legal basis as set out in the Petition attached to this Notice of Constitutional Question.

DATED: May 4, 2022

Signature of Lawyer for the Petitioners/Applicants
KAREN BASTOW

This Notice of Constitutional Question is filed by Karen Bastow, Associate Counsel, David G. Milburn, Trial Lawyers, [redacted]