



FORM 1 (Rule 3-1 (1))

Court File No. **VIC-S-S-233427**

No.  
Victoria Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

JASON BALDWIN

Plaintiffs

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA and  
DR. BONNIE HENRY IN HER CAPACITY AS PROVINCIAL HEALTH OFFICER FOR THE  
PROVINCE OF BRITISH COLUMBIA

Defendants

*Brought under the Class Proceedings Act, R.S.B.C. 1996, c. 50*

**NOTICE OF CIVIL CLAIM**

**This action has been started by the Plaintiffs for the relief set out in Part 2 below.**

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

file a Response to Civil Claim in Form 2 in the above-named registry of this Court within  
the time for Response to Civil Claim described below, and

serve a copy of the filed Response to Civil Claim on the Plaintiffs.

If you intend to make a Counterclaim, you or your lawyer must

- a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the  
above-named registry of this Court within the time for Response to Civil Claim  
described below, and
- b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiffs and  
on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim  
within the time for Response to Civil Claim described below.

**Time for Response to Civil Claim**

A Response to Civil Claim must be filed and served on the Plaintiffs,

- a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- d) if the time for Response to Civil Claim has been set by Order of the Court, within that time.

## **CLAIM OF THE PLAINTIFFS**

### **Part 1: STATEMENT OF FACTS**

#### **The Parties**

1. The Plaintiff Jason Baldwin (“Baldwin”) was an employee of the British Columbia Public Service (“BCPS”) and served as a compliance Analyst 2 for the Ministry of Finance (“MOF”). Baldwin had been an employee of the BCPS since 2015 and maintained an exemplary and unblemished record until he was put on leave without pay on January 10, 2022, and then his subsequent termination effective October 5, 2022. Baldwin was subject to and terminated pursuant to an Order in Council made by the Lieutenant Governor in Council; *Order in Council No. 627/2021* (“the Order”), enacting a *Regulation implementing HR Policy 25: COVID-19 Vaccination Policy* (the “Policy”) as a term and condition of employment for all BCPS employees. The Policy further states that if an employee is terminated under the Policy, they will be deemed to have been terminated for just cause. The *Order* and the *Regulation* were made on November 19, 2021. Baldwin is a member of the British Columbia General Employees Union (“BCGEU”) and at all material times his employment was governed by the BCGEU collective agreement (“the Contract”). Baldwin is a resident of British Columbia.
2. The Defendant, His Majesty the King in Right of the Province of British Columbia (“the Crown”) may exclusively make laws in relation to matters that are not within the

jurisdiction of the Government of Canada and is liable for acts and omissions of officers of the government pursuant to the Crown Proceeding Act, R.S.B.C. 1996. The Lieutenant Governor in Council, an officer of the Crown, is the individual empowered to enact regulations under s. 25 of the Public Service Act. The Minister of Finance of British Columbia, an officer of the Crown, has oversight of the British Columbia Public Service Agency, which issued and enforced the Policy. The Crown has an address for service of the Attorney General, Ministry of Attorney General, PO Box 9290 Stn Prov Govt, Victoria, British Columbia (the “Provincial Government”).

3. The Defendant, Dr. Bonnie Henry, is British Columbia’s Provincial Health Officer appointed under Part 6 of the *Public Health Act*, SBC 2008, C 28 (“PHA”) and is responsible for issuing public health orders and provided information, data, and advice which informed and was the impetus of Policy and *Order*.

#### **Class Definition**

4. This action is brought on behalf of members of the class consisting of all unionized employees of the Provincial Government in British Columbia (“Public Servants”) who have been subject to the *Order* and Policy. (“the Class”).
5. It is estimated that the Class consists of thousands of unionized Public Servants in British Columbia.

#### **Standing**

6. The Plaintiff and Class Members assert private interest standing to bring this claim.
7. The Plaintiff and Class Members have private interest standing because they are directly affected by the Policy and *Order* leading to significant financial and ancillary harm.
8. The Plaintiffs and Class Members have private interest standing because they are directly affected by the Misfeasance of the Provincial Health Officer in relation to her providing information and data stating that being fully vaccinated against COVID-19 is

the most effective way to safeguard employee health and reduce the risk of transmission which informed and was the impetus for the Policy and *Order*, and have been subjected to foreseeable ensuing harm as a result of such conduct.

9. The Plaintiff and Class Members raise a serious justifiable issue respecting the constitutionality of the Policy and *Order* which has created, contributed to, and sustained a deprivation of individuals' rights guaranteed under the *Charter*, s. 2d.
10. The Plaintiffs and Class Members have a real stake in the Provincial Officer of Health's conduct and are both directly and genuinely interested in the resolution of this claim.
11. This claim advances a reasonable and effective method of bringing the issues before the Court in all of the relevant circumstances. Many individuals impacted by the conduct of the Defendants have had their contractual employment agreements breached, were subjected to foreseeable harm caused by Misfeasance in Public Office and had *Charter* rights infringed upon. These acts impacted the Class's resources to bring forward such a claim.

### **The Policy**

12. On November 1, 2021, the British Columbia Public Service Agency implemented *Policy 25: COVID-19 Vaccination Policy*.

13. The Policy was developed based on reliance on information, guidance, and advice provided by the British Columbia Public Health Officer.

14. The stated objective of the Policy is:

*“The BC Public Service (BCPS) is committed to the health, safety, and wellbeing of employees. In accordance with information and data provided by British Columbia’s Provincial Health Office (PHO), being fully vaccinated against COVID-19 is the most effective way to safeguard employee health and **reduce the risk of transmission** [emphasis added].”*

15. The Policy sets out, inter alia, the following details:
  - a) The Policy applies to any government organization with BCPS employees hired under the Public Service Act;
  - b) The Policy applies to all employees working for BCPS, regardless of whether the employees work remotely or onsite;
  - c) New employees would be required to be vaccinated as a condition of their employment, effective November 8, 2021; and
  - d) Employees who did not have at least one dose of a Health Canada approved COVID-19 vaccine by November 22, 2021, or those who did not disclose their vaccination status to their manager or supervisor by that date, would be placed on an unpaid leave of absence, effectively suspension, on November 23, 2021, until they show proof of vaccination. The unpaid leave will last for three months, at which time the employee's employment may be terminated.

### **The Order**

16. On November 19, 2021, the Lieutenant Governor in Council issued *Order in Council No. 627/2021 enacting the Public Service COVID-19 Vaccination Regulation* ("the *Regulation*").
17. The *Regulation* sets out the following details:
  - a) In this regulation, "COVID-19 Vaccination Policy" means the policy entitled "Human Resources Policy 25 – COVID-19 Vaccination" that was issued under section 5 (4) of the Public Service Act on November 1, 2021;
  - b) the COVID-19 Vaccination Policy is a term and condition of employment for employees; and,
  - c) If an employee is terminated under the COVID-19 Vaccination Policy, the employee is deemed to have been dismissed for just cause.

## Covid -19 Vaccinations – Preventing Transmission

18. The *Order* enacting *Regulation* incorporating the Policy mandated Covid-19 vaccinations which were approved by Health Canada.
19. Health Canada regulatory approval decisions, product reviews, product monographs, and clinical study data on the Covid-19 vaccines was at all material times available to the Provincial Health Officer to inform the development, implementation, and enforcement of the Order and ensuing policy.
20. At the time the Policy was enacted all Health Canada approved COVID-19 vaccinations had filed product monographs which are available to inform the public of the effects of the vaccination. There were six (6) COVID-19 vaccines available to the public in Canada. Listed below is the manufacturer with the name of vaccine in brackets.
  - a. Pfizer/BioNTech (“Comirnaty”)
  - b. Moderna (“Spikevax”)
  - c. Janssen and Johnson & Johnson (“Jcovden”)
  - d. AstraZeneca (“Vaxzevria”)
  - e. Medicargo (“Covifenz”)
  - f. Novavax (“Nuvaxovid”)

Each of the COVID-19 vaccines presented above have a Product Monograph.

21. A Product Monograph is a factual, scientific document on a drug product that, devoid of promotional material, describes the properties, claims, indications, and conditions of use for the drug, and that contains any other information that may be required for optimal, safe, and effective use of the drug.

22. The Product Monograph of the Pfizer vaccine, Comirnaty, does not include any information related to the transmission of COVID-19. Prevention of viral transmission is NOT an approved indication for Comirnaty. The word 'transmission' or any of its correlates indicating viral conveyance to another person, does not appear in this document and therefore the Plaintiffs plead that the Public Health Officer cannot claim Comirnaty prevents viral transmission of COVID-19 to other people.
23. The Product Monograph of Moderna's vaccine, Spikevax does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim Spikevax prevents viral transmission of COVID-19 to other people.
24. The Product Monograph of VAXZEVRIA™, manufactured by AstraZeneca does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim VAXZEVRIA™ prevents viral transmission of COVID-19 to other people.
25. The Product Monograph of JCOVDEN™, manufactured by Janssen, does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim JCOVDEN™ prevents viral transmission of COVID-19 to other people.
26. The Product Monograph of COVIFENZ™, manufactured by Medicago does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim COVIFENZ™ prevents viral transmission of COVID-19 to other people.
27. The Product Monograph of NUVAXOVID™, manufactured by Novavax does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim NUVAXOVID™ prevents viral transmission of COVID-19 to other people.

### **Covid-19 Vaccination – Safety and Risk of Adverse Events**

28. On or about March 29, 2021, The National Advisory Committee on Immunization (NACI), recommended immediately suspending the use of the AstraZeneca-Oxford COVID-19 vaccine in Canadians under 55.
29. On June 26, 2021, Health Canada updated the product label for the Vaxzevria vaccine manufactured by AstraZeneca. Health Canada acknowledged that potential side effect of blood clots associated with low levels of platelets following immunization.
30. On November 18, 2020, Pfizer-BioNTech released and published updated results of their Phase 3 clinical trials, for the Pfizer and BioNTech Covid-19 vaccination. (“Study 1”).
31. Study 1 showed that of 18,198 individuals in the Vaccination group, 5770 individuals (26.7%) had an adverse reaction.
32. On April 1, 2021, Pfizer-BioNTech released and published updated results of their Phase 3 clinical trials. (“Study 2”).
33. Study 2 showed that of 21,923 individuals in the Vaccination group, 5241 individuals (23.9%) had a “related adverse event” and 127 (0.6%) suffered “any serious adverse event.”
34. On or about May 1, 2021, Health Canada announced it was stopping distribution of 300,000 doses of the Johnson & Johnson, Jcovden, vaccine to provinces and territories because the regulator had learned the active ingredient was made at a Baltimore facility where an inspection raised concerns.
35. On or about May 3, 2021 NACI recommended the Johnson & Johnson, Jcovden, shot not be given to anyone under 30 because of the risk of extremely rare blood clots combined with low platelets, a syndrome dubbed vaccine-induced immune thrombotic thrombocytopenia (VITT).
36. Moderna submitted results of one phase III randomized trial in support of the emergency use authorization for their vaccines for use in adults. The Moderna trial



exhibited a 6% higher risk of serious adverse events in vaccinated individuals compared to the placebo group. 136 per 10,000 versus 129 per 10,000 – risk difference 7.1 per cent per 10,000.

37. In the Moderna trial Serious Adverse Events of Interests (“AESI”) showed 87 AESI (57.3 per 10,000) were reported in the vaccine group and 64 (42.2 per 10,000) in the placebo group, resulting in a 36% higher risk of serious AESI’s.

38. The Medicago Covifenz COVID-19 vaccine was authorized on February 24, 2022, for use in Canada under the *Food and Drug Regulations*, however this vaccine was cancelled by the sponsor on March 31, 2023.

## **Part 2: RELIEF SOUGHT**

39. Damages pursuant to the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, s. 24(1). (“the *Charter*”)

40. A declaration that s.92 of the PHA be read so that its effects do not limit rights established under the *Charter*, with respect to *Charter* damages.

41. General damages for Misfeasance in Public Office

42. Aggravated damages;

43. Punitive damages;

44. Special costs, or in the alternative costs; and

45. And order certifying this action as a class proceeding;

46. In the alternative, if this Honourable Court refuses to certify this proceeding as a class proceeding, an order that it be allowed to continue as a proceeding under the *Supreme Court Civil Rules*;

47. Interest under the *Court Order Interest Act*, R.S.B.C 1996, c. 79;
48. Such further and other relief as the Honourable Court may deem just.

### **Part 3: LEGAL BASIS**

#### **Misfeasance in Public Office**

49. The Provincial Health Officer acting under authority of the *Public Health Act, SBC 2008, C 28* provided information data and advice to the Crown, stating that being fully vaccinated against COVID-19 is the most effective way to safeguard employee health and reduce the risk of transmission of Covid-19, which informed and was the impetus for the Policy and *Order*. The Plaintiff and Class Members plead that Provincial Health Officer acted with reckless indifference or willful blindness in issuing and enforcing the *Oder* such actions included:
  - a) The Provincial Health Officer had no basis in fact to justify the information, data, and advice provided to the Crown that Covid-19 vaccination was as a measure to prevent transmission of COVID-19. As such the Plaintiffs' and Class Members plead that the Provincial Health Officer either recklessly or willfully ignored the reality of the vaccine in exercising her authority under the *Public Health Act, SBC 2008, C 28*, with foreseeable losses to the Plaintiffs' and Class Members.
  - b) Known potential risk of adverse events associated with the Covid-19 vaccination were either recklessly or willfully ignored and omitted by the Provincial Health Officer in the information, data, and advice provided to the Crown with foreseeable losses to the Plaintiffs' and Class Members.
  - c) The Provincial Health Officer acted in furtherance of an objective which supplanted the stated objectives of the Policy and Order as those objectives were known or should have been known to be unachievable by virtue of the information and data available to the Provincial Health Officer.
50. The Plaintiff and Class Members plead that as a result of the Provincial Health Officer's

actions they suffered significant economic deprivation and emotional trauma and that such harm was foreseeable by the Provincial Health Officer.

51. The Plaintiff and Class Members plead that the Provincial Health Officer in exercising her statutory authority under the *PHA* with reckless indifference or willful blindness committed the tort of Misfeasance in Public Office.

### **Breach of the *Charter of Rights and Freedoms***

52. The Plaintiff and Class Members plead that the Order was issued in bad faith through reckless disregard or willful blindness to the disproportional unsubstantiated impact of the Order, and as a result violated their rights under s.2d of the *Charter*.

53. The Plaintiff and Class Members plead the Order violates s. 2d, by infringing on these rights in a manner that does not accord with the principles of fundamental justice. These infringements cannot be justified pursuant to the criteria of s. 1 of the *Charter*. The infringements cannot be demonstrably justified because they were not minimally impairing and there was no proportionality between the deleterious and salutary effects of the Orders.

54. The Plaintiff's plead that the Order constitutes an improper and unjustified imposition by the Defendant of a new term and condition of employment absent collective bargaining memoranda of agreement, consideration, or consent to their existing and freely negotiated employment agreements and as such violates their protected right under s. 2d of the *Charter*.

55. The Plaintiffs' and Class Members plead that Charter damages are a just and appropriate remedy in this case to vindicate rights, deter conduct, and achieve the objective of compensation.

### **Privacy Rights**

56. The Plaintiff and Class Members plead that in requiring them to disclose private medical information to the Crown the Policy and *Order* intentionally or recklessly or willfully, and

without claim of right, intruded upon the Plaintiffs' and Class Members' private affairs; a reasonable person would regard this intrusion as highly offensive and causative of distress, humiliation, or anguish.

a) Collection of personal medical information relating to their COVID-19 vaccination status or medical history represents an unreasonable infringement of their privacy rights.

b) Dissemination of personal medical information relating to their COVID-19 vaccination status or medical history represents an unreasonable infringement and intrusion of their privacy rights.

57. The Plaintiff and Class Members plead that the Policy and Order's intrusion in disclosure of private medical information violates common law and statutory privacy rights.

#### **Aggravated and Punitive Damages**

58. The Plaintiff and Class Members plead that Defendants, by virtue of the conduct included in this Statement of Claim have inflicted mental and emotional distress by engaging in conduct:

a) that constitutes conduct that is flagrant and outrageous;

b) that was calculated to produce harm and produce the consequences that flowed from the Order; and

c) that resulted in injury to the Plaintiffs and Class members.

59. The Plaintiff and Class Members plead that the conduct of the Defendants as outlined in this Statement of Claim demonstrates a wanton, high-handed and callous disregard for the interests of the Plaintiff and Class Members. This conduct merits an award of aggravated and punitive damages.

Plaintiff's address for service:

c/o Umar A. Sheikh  
Sheikh Law  
PO Box 24062 Broadmead RPO  
Victoria BC V8X 0B2

Fax number address for service (if any):

E-mail address for service (if any):

usheikh@sheikhlaw.ca

Place of trial:

Victoria, BC

The address of the registry is:

850 Burdett Avenue  
Victoria, BC V8W 1B4

Date: October 30, 2023

Umar A. Sheikh

Signature of  Plaintiff

Lawyer for Plaintiffs

Umar A. Sheikh

Date: October 30, 2023

Angela M. Wood

Signature of  Plaintiff

Lawyer for Plaintiffs

Angela M. Wood

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the Court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a List of Documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

## APPENDIX

### **Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is an action for Misfeasance in Public Office and infringement of *Charter* Rights under s.2d.

### **Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- X another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- X a matter not listed here

### **Part 3: THIS CLAIM INVOLVES:**

- X a class action
- maritime law
- aboriginal law
- constitutional law

- conflict of laws
- none of the above
- do not know

**Part 4: ENACTMENTS:**

- Builders Lien Act
- Divorce Act
- Family Relations Act
- Insurance (Motor Vehicle) Act
- Insurance (Vehicle) Act
- Motor Vehicle Act
- Occupiers Liability Act
- Supreme Court Act
- Wills Variation Act

OR

[description]