



Briefing Summary: Class Action Certification Hearing (April 28 - May 2, 2025)

Prepared for Website Posting

Introduction

This document summarizes the significant developments and legal arguments presented during the five-day class action certification hearing held from April 28 to May 2, 2025, in the B.C. Supreme Court in Victoria. The hearing concerns a joint class action law suit against His Majesty the King in Right of British Columbia and Provincial Health Officer (PHO) Dr. Bonnie Henry, challenging the COVID-19 vaccine mandates imposed on unionized B.C. public servants and healthcare workers between 2021 and 2023. The representative plaintiffs' law suits allege violations of Charter rights, misfeasance in public office, inducement of breach of contract, and significant personal and financial harm caused by these mandates.

Overview of the Class Action

Plaintiffs: Represented by Jason Baldwin (B.C. public servant) and Jedediah Ferguson and Terri Perepolkin (healthcare workers), supported by BCPSEF and UHCWBC.

Defendants: The B.C. government and Dr. Bonnie Henry, accused of issuing unlawful and harmful vaccine mandates.

Claims: The mandates violated s. 2(d) Charter rights (freedom of association), constituted misfeasance in public office, and induced breaches of employment contracts. The Plaintiffs seek damages for financial loss, emotional trauma, and Charter violations.

Hearing Goal: To certify the lawsuit as a class action under the B.C. Class Proceedings Act, allowing it to proceed to trial on behalf of thousands of affected unionized employees.

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## Day 1: April 28, 2025 – Introduction and Jurisdictional Arguments

### Introduction by Plaintiffs' Counsel:

Counsel introduced the two actions on behalf of unionized B.C. public servants and healthcare workers, highlighting their transition from being hailed as "heroes" during the early COVID-19 pandemic to being treated as "public enemies" due to vaccine mandate non-compliance. The fear generated during the pandemic was noted as a conditioning factor, necessitating a careful, evidence-based examination of the mandates' legality and impacts.

## **Jurisdictional Arguments:**

- The Defendants argued that the claims should be resolved through labour arbitration, citing exclusivity principles from *Weber v Ontario Hydro* (1995 SCC) and *Northern Regional Health Authority v Horrocks* (2021 SCC 42).
- Plaintiffs countered that the B.C. Supreme Court retains jurisdiction because:
  - The mandates were unilateral state actions that altered employment contracts, violating s. 2(d) Charter rights (freedom of association), as established in *Health Services and Support – Facilities Subsector Bargaining Assn. v British Columbia* (2007 SCC 27) and *British Columbia Teachers' Federation v British Columbia* (2016 SCC 49).
  - The claims involve constitutional and tort law issues beyond the scope of labour arbitration.

## **Core Allegations:**

- The PHO's orders, issued under the Public Health Act (PHA), mandated vaccination despite evidence that vaccines did not prevent infection or transmission, constituting misfeasance in public office (*Odhavji Estate v Woodhouse*, 2003 SCC 69).
- For healthcare workers, the PHO's actions induced breaches of employment contracts by compelling employers to exclude unvaccinated staff (*Canada Steamship Lines Inc. v Elliott*, 2006 FC 609).
- Counsel cited recent Federal Court decisions (*Hill v Canada*, 2025 FC 242; *Payne v Canada*, 2025 FC 5) that allowed similar claims to proceed at the certification stage.

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Day 2: April 29, 2025 – Plaintiffs' Evidence and PHO Orders

Focus on PHO Orders and Evidence:

- Counsel reviewed the PHO's orders, which declared unvaccinated healthcare workers a public health risk, mandated vaccination, and linked employment to vaccination status. These orders claimed vaccines were safe, effective, and the best measure to prevent infection, severe illness, and death.
- Plaintiffs argued these claims were unsupported by scientific evidence, particularly regarding transmission prevention.

Representative Plaintiffs' Experiences:

- **Jedediah Ferguson and Terri Perepolkin (Healthcare Workers):**
 - Their collective agreements lacked provisions mandating vaccination or disclosure of vaccination status, nor did they allow unilateral leaves without pay (LWOP) or terminations.
 - Both were placed on LWOP and later terminated due to the PHO orders.
 - Labour arbitrations ruled their terminations resulted from "unavailability for work" caused by the mandates, not misconduct, yet they were denied reinstatement or compensation.
 - Perepolkin shared that she and her husband sold their home to survive financially after her termination.

Continued Jurisdictional Defense:

- Plaintiffs emphasized that the absence of mandate-related terms in collective agreements and the unilateral imposition of LWOP/terminations by the state supported the Court's jurisdiction over these claims.

Day 3: April 30, 2025 – Expert Evidence and Admissibility Debate

Expert Evidence by Alan Cassels (@AKECassels):

- Alan Cassels, a pharmaceutical drug policy researcher with over 30 years of experience, provided an affidavit analyzing COVID-19 vaccine clinical trial data and product monographs.
- Key Finding: None of the Health Canada-approved COVID-19 vaccines claimed to prevent viral transmission, contradicting the B.C. government’s and PHO’s rationale for the mandates (i.e., preventing workplace transmission and protecting public health).
- Cassels’ credentials include 30+ peer-reviewed studies, four books, advisory roles with the BC Medical Association and Ministry of Health, and the Queen Elizabeth II Diamond Jubilee Medal for health journalism. He disclosed no ties to the pharmaceutical industry.

Admissibility Debate:

- The Defendants objected to Cassels’ evidence, arguing it was a medical opinion or literature review, not admissible as expert testimony.
- Plaintiffs’ counsel countered using legal frameworks for expert evidence admissibility:
 - *R v Mohan* (1994 SCC): Evidence must be relevant, necessary, absent exclusionary rules, and provided by a qualified expert.
 - *White Burgess Langille Inman v Abbott and Haliburton Co* (2015 SCC): Expert independence and impartiality are key.
 - *Pinch v Morwood* (2016 BCSC): Distinguished Cassels’ evidence as within his expertise (pharmaceutical policy analysis), not a medical opinion.
- The Plaintiffs successfully argued that Cassels’ analysis of regulatory documents and trial data fell within his established expertise.

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### Day 4: May 1, 2025 – Continued Expert Evidence and Jason Baldwin’s Evidence

#### Further on Cassels’ Evidence:

- Submissions continued on Cassels’ admissibility, reinforcing that his evidence directly challenges the scientific basis of the PHO’s orders and the government’s public health claims.

#### Jason Baldwin’s Evidence (B.C. Public Servant):

- Baldwin, a compliance analyst with the Ministry of Finance (7.5 years of service), challenged Order in Council 627/2021, which enacted the Public Service COVID-19 Vaccination Regulation (HR Policy 25).
- He was placed on LWOP in January 2022 and terminated nine months later for refusing to disclose his vaccination status. The mandate offered no exemptions for conscience, belief, or remote work and deemed terminations “for cause.”
- Baldwin and his wife (also terminated) suffered severe financial and emotional harm, forcing them to sell their home and relocate.
- His union, the BC General Employees’ Union (BCGEU), refused to challenge the mandate legally, arguing it was “law, not policy,” and that legal challenges were unlikely to succeed. The BCGEU dropped Baldwin’s grievances for LWOP and termination.

- Baldwin filed a Section 12 complaint with the B.C. Labour Relations Board, alleging the union failed in its duty to represent him. The Board dismissed the complaint, stating a disagreement over legal strategy does not constitute misconduct.

**Significance:**

- Baldwin’s evidence highlighted the personal toll of the mandates and the systemic barriers faced by public servants seeking recourse, including the union’s failure to advocate for members.

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Day 5: May 3, 2025 – Class Certification Arguments and Misfeasance Allegations

Class Certification Arguments:

- The Plaintiffs argued their claims meet the five requirements for certification under s. 4(1) of the B.C. Class Proceedings Act:
 - **Cause of Action:** The pleadings disclose valid claims (e.g., misfeasance, Charter violations).
 - **Identifiable Class:** Unionized B.C. public servants and healthcare workers affected by the mandates.
 - **Common Issues:** Shared issues include the legality of the mandates, their impacts, and the PHO’s conduct.
 - **Preferable Procedure:** A class action enhances access to justice, judicial economy, and behavior modification (*Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46).
 - **Suitable Representative Plaintiff:** Baldwin, Ferguson, and Perepolkin are appropriate representatives.

Supporting case law:

- *Hollick v Toronto* (2001 SCC 68): Courts must take a generous approach to certification; no merits test applies.
- *Sun-Rype Products Ltd v Archer Daniels Midland* (2013 SCC 58): Certification is mandatory if all criteria are met.
- *Pro-Sys Consultants Ltd v Microsoft* (2013 SCC 57): Only “some basis in fact” is needed for each requirement.
- *Hunt v Carey Canada Inc* (1990 SCC): Claims should only be struck if it’s “plain and obvious” they will fail.
- *Taylor v Canada* (2012 ONCA 479): Factual/legal uncertainties must be resolved at trial, not certification.

The Plaintiffs argued that the government’s evidence (e.g., expert affidavits) was irrelevant at this stage, as certification focuses on procedural fitness, not merits.

Misfeasance in Public Office Allegations:

- The Plaintiffs alleged that Dr. Bonnie Henry and the B.C. government acted in bad faith, with reckless indifference or willful blindness, by issuing mandates unsupported by scientific data on vaccine efficacy in preventing transmission.
- Legal standard for misfeasance (*Odhavji Estate v Woodhouse*, 2003 SCC 69):

- **Pathway A:** Intent to harm.
- **Pathway B:** Acting without authority while knowing harm is likely.

Supporting precedents:

- *Anglehart v Canada* (2018 FCA 115) and *Canada v Whaling* (2018 FCA 38): Government motives (e.g., political self-interest) can be pled at this stage.
- *Carducci v Canada* (2022 ONSC 6232): Plaintiffs need only plead facts sufficient to infer malice or improper purpose.
- *Hill v Canada* (2025 FC 242) and *Payne v Canada* (2025 FC 5): Similar misfeasance and Charter claims were allowed to proceed in federal COVID-19 mandate cases.

The Plaintiffs claimed the mandates' true objective was political compliance, not public health, causing s. 2(d) Charter violations, financial loss, and emotional trauma.

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**Current Status**

- Despite five days of hearings, the Plaintiffs' submissions remain incomplete.
- An additional 10 days of hearings are expected to be scheduled later in 2025 to conclude the Plaintiffs' submissions and hear the Defendants' response.
- Consult the BCPSEF and UHCWBC websites for updates.

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