

MAR 09 2022



S-22 1899

No.

Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

JENNIE WEISENBURGER

PLAINTIFF

AND:

COLLEGE OF NATUROPATHIC PHYSICIANS OF BRITISH COLUMBIA and HER  
MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA (IN  
RIGHT OF THE PROVINCIAL HEALTH OFFICER  
AND MINISTER OF HEALTH)

DEFENDANTS

**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

- (a) 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
- (b) serve a copy of the filed response to civil claim on the plaintiff.

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 plaintiff 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 PLAINTIFF

### Part 1: STATEMENT OF FACTS

#### The Parties

1. The Plaintiff, Jennie Weisenburger, is a naturopathic physician and a registrant of the College of Naturopathic Physicians of British Columbia. The Plaintiff recovered from an Omicron variant Covid-19 infection she contracted in January of 2022, but she has not received the Pfizer/Moderna therapy or been treated with any other vaccine against Covid-19 authorized by Health Canada on an emergency basis. The Plaintiff has an address for service at 511-55 East Cordova Street, Vancouver, BC, V6A 0A5.
2. The Defendant, the College of Naturopathic Physicians of British Columbia (the "College"), is the regulatory body responsible for licensing and regulating naturopathic doctors in British Columbia pursuant to s.15(1) the *Health Professions Act*, SBC 2008, c.28, and s. 2 of the *Naturopathic Physicians Regulation*, BC Reg 282/2008.
3. The Defendant, Her Majesty the Queen in Right of the Province of British Columbia, is named in these proceedings pursuant to s. 7 of the *Crown Proceedings Act*, R.S.B.C. 1996, c. 89 (the "Province"). The Province is named in right of the Provincial Health Officer of British Columbia ("PHO") and the Minister of Health (the "Minister").

#### Restriction of Free Expression with respect to Natural Immunity from Coronavirus

4. The Plaintiff believes, and has a reasonable basis to believe, that:
  - a) Persons tend to develop natural immunity as a result of Covid-19 infection;
  - b) Natural immunity resulting from Covid-19 infection affords significant protection from infection, from hospitalization, and from transmission of Covid-19;
  - c) In respect of the Omicron variant of Covid-19, first isolated in South Africa in December of 2021, natural immunity from infection affords equal or better protection against subsequent Omicron infection, hospitalization from Omicron, severe Omicron symptoms and from transmission of Omicron, than vaccination by the mRNA therapies sold by Pfizer and Moderna, which are the predominant forms of vaccine treatment in British Columbia;

- d) Immune system health and overall wellness (including identification and early treatment of known comorbidities such as obesity, hypertension, diabetes, chronic respiratory disease, allergies, vitamin D deficiency, malnutrition, etc.) is of critical importance in reducing the risk of severe Covid-19 infection, especially with respect to the Omicron variant;
- e) Immune system health and overall wellness (including identification and early treatment of known comorbidities such as obesity, hypertension, diabetes, chronic respiratory disease, asthma, vitamin D deficiency and malnutrition, etc.) are important factors in avoiding serious Covid-19 complications, including hospitalization, intubation and death, and may in many individual cases be a more important determinant of health than receipt of the Pfizer/Moderna mRNA treatment;
- f) People at risk of serious or lethal Covid-19 infection, and those in their proximity, should consider masking with personal protective equipment such as the N95 or equivalent masks as they are significantly more efficacious at preventing infection and transmission than the non-surgical cloth or paper masks required by law;
- g) People at risk of infection should avoid poorly ventilated social environments with close prolonged contact; and
- h) Pfizer/Moderna mRNA treatment provides protection that substantially fades within a matter of months, and the protection it affords is weakest in respect of the Omicron variant;
- i) Current scientific evidence, including BC data, indicates that Covid-19 vaccination (2 doses) is not effective at preventing infection or transmission of the Omicron variant of the virus, which now accounts for almost 100% of cases within the Province of British Columbia. There is now no material difference in likelihood that a person who is vaccinated or unvaccinated may be infected and potentially infectious to others;
- j) There has not been a single documented case of transmission of Covid-19 within a clinical naturopathic setting in British Columbia.

(collectively, the “Natural Immunity Beliefs”).

5. The Plaintiff’s factual basis and rationale for holding the Natural Immunity Beliefs is reasonable and sufficient from a scientific and statistical perspective and is consistent with the perspective of health practitioners of naturopathic medicine.
6. The Plaintiff also maintains the following beliefs regarding the approach taken by the PHO and the Minister to the risks posed to individuals and the public by the Covid-19 virus:
  - a) Current scientific evidence, including BC data, indicates that Covid-19 vaccination (2 doses) is not effective at preventing infection or

transmission of the Omicron variant of the virus, which now accounts for almost 100% of cases within the Province of British Columbia;

- b) There is now no material difference in likelihood that a person who is vaccinated or unvaccinated may be infected and potentially infectious to others;
- c) The approach taken by the PHO and the Minister to encouraging and compelling vaccination against Covid-19 places inadequate weight on natural immunity derived from Covid-19 infection;
- d) The PHO and the Minister fail to adequately warn the public about the risks of treatment with the Pfizer/Moderna vaccines after recovering from Covid-19 infection;
- e) The PHO and the Minister do not provide adequate advice to the public to address comorbidities such as promotion of management of obesity, engagement in regular exercise, and maintaining balanced nutrition as a means of avoiding or mitigating the symptoms of Covid-19 infections, and mitigating the risk of hospitalization and death;
- f) The PHO, Minister, and BC Centre for Disease Control failed to place sufficient reliance on testing to identify those with acquired immunity;
- g) The PHO, Minister and BC Centre for Disease Control failed to advise members of the public that N95 or equivalent masks are significantly more efficacious than non-surgical, paper and cloth masks in avoiding infection and transmission of Covid-19;
- h) The PHO and the Minister made a significant error in imposing public health orders requiring people to wear masks but allowing the public to wear relatively inefficacious non-surgical paper and cloth masks;
- i) The PHO and the Minister placed inordinate and scientifically unjustified faith in the Pfizer/Moderna therapy to establish herd immunity; and
- j) The PHO and the Minister failed to publicly admit that the Pfizer/Moderna therapy has failed to establish herd immunity and has significantly underperformed in reducing transmission.

(collectively, the "Critical Beliefs").

- 7. The Critical Beliefs are in discord with and are contrary to the statements and views presented by the PHO and the Minister.
- 8. The College is engaged in restricting the right of free expression of its registrants in respect of natural immunity to coronavirus infection, including Covid-19 and all of its variants, and the College has restricted the Plaintiff from expressing the

Natural Immunity Beliefs and Critical Beliefs to her patients and members of the public.

9. On March 17, 2020, the College issued a direction and threat to its members/registrants, including the Plaintiff, in the following terms:

Claims about COVID-19

The College of Naturopathic Physicians of BC (CNPBC) has become aware that some registrants are promoting treatment or supplements as a means to boost the immune system and may imply that this will prevent infection from COVID-19.

Any statements by naturopathic doctors about the prevention and/or treatment of COVID-19, beyond the information made available by the public health authorities, are inappropriate, potentially harmful, and likely to violate the CNPBC's Advertising Policy and/or Immunization Standard. When brought to the attention of the CNPBC, such statements will be forwarded to the Inquiry Committee for investigation.

(the "March 17, 2020 Threat").

10. The March 17, 2020 Threat was intended to threaten, intimidate and direct College registrants, including the Plaintiff, into refraining from any expressive activity dealing with natural immunity. The March 17, 2020 Threat had the purpose and effect of restricting the Plaintiff's expression and the Plaintiff's right to free expression. The March 17, 2020 Threat restricted the Plaintiff from expressing the Natural Immunity Beliefs and Critical Beliefs to her patients and members of the public. The PHO and the Minister, or employees of the Province acting under their direction or supervision, encouraged, directed, pressured and ordered the College to issue the March 17, 2020 Threat to registrants of the College.
11. On March 27, 2020, the College issued a further direction and threat to registrants, including the Plaintiff, to refrain from communicating to any person any message apart from information "made available by the public health authorities". The direction and threat further stated the following:

Any statements by naturopathic doctors about prevention and/or treatment of COVID-19 apart from information made available by the public health authorities are inappropriate, potentially harmful, and likely to violate the CNPBC's Advertising Policy, Immunization Standard, and/or Codes of Ethics and Conduct. When brought to the attention of the CNPBC, such

statements will be forwarded to the Inquiry Committee for investigation, and the registrant may face serious regulatory consequences.

(the “March 27, 2020 Threat”).

12. The March 27, 2020 Threat was intended to threaten, intimidate and direct College registrants, including the Plaintiff, into refraining from any expressive activity dealing with natural immunity. The March 27, 2020 Threat had the purpose and the effect of restricting the Plaintiff’s expression and the Plaintiff’s right to free expression. The March 27, 2020 Threat restricted the Plaintiff from expressing the Natural Immunity Beliefs and Critical Beliefs to her patients and members of the public. The PHO and the Minister, or employees of the Province acting under their direction or supervision, encouraged, directed, pressured and ordered the College to issue the March 27, 2020 Threat to registrants of the College.
13. The March 27, 2020 Threat does not identify the “public health authorities” to whom or to which it refers. It is not clear whether “public health authorities” includes the BC Centre for Disease Control, the Provincial Health Services Authority, the regional Health Services Authorities (Vancouver Coastal, Northern, etc.), the World Health Organization, the US Centre for Disease Control, federal Canadian health authorities, health authorities from other Canadian provinces, the Minister, or is otherwise simply limited to the PHO and/or the College. These different “public health authorities” have disseminated different and sometimes contradictory messages. At times, even the same health authority has disseminated different and contradictory information. At other times, health authorities have clearly stopped relying on outdated information or information proved false by experience, but have failed to acknowledge the change. The March 27, 2020 Threat does not address these difficulties, and has not subsequently been amended or rescinded to address this problem, although the problem is known to the PHO and the College.
14. In March of 2020, the College directed that its registrants, including the Plaintiff, were not permitted to provide any treatment, diagnosis or to counsel patients with respect of Covid-19, or even to requisition antibody tests through LifeLabs (the “2020 Practice Restriction”). The 2020 Practice Restriction had the purpose and effect of restricting the Plaintiff’s ability to express her professional opinion to her patients, and infringes the Plaintiff’s right to free expression. The direction that the Plaintiff was restricted from requisitioning antibody tests through LifeLabs

prevented the Plaintiff from obtaining information that would allow her to advise her patients about aspects of their natural immunity. The 2020 Practice Restriction further restricted the Plaintiff from expressing the Natural Immunity Beliefs and Critical Beliefs to her patients. The PHO and the Minister, or employees of the Province acting under their direction or supervision, encouraged, directed, pressured and ordered the College to issue the 2020 Practice Restriction to its registrants. The portion of the 2020 Practice Restriction that prevented registrants from requisitioning antibody tests was renewed by the College on December 22, 2020.

15. A practice standard issued by the College dealing with immunization, updated May 15, 2018, directs that registrants, including the Plaintiff, may not make any critical comment about the risks of vaccination or any positive comment about alternatives to vaccination to any patient or to the public by means of a website, broadcast, print media or social media (the “2018 Critical Comment Restriction”). The 2018 Critical Comment Restriction restricted the Plaintiff from expressing the Natural Immunity Beliefs and Critical Beliefs to her patients and members of the public. The 2018 Critical Comment Restriction had the purpose and effect of restricting the Plaintiff’s ability to express her opinion to her patients and members of the public and infringed the Plaintiff’s right to free expression.
16. The 2018 Critical Comment Restriction, the 2020 Practice Restriction, the March 17, 2020 Threat, and the March 27, 2020 Threat (collectively, the “Expressive Restrictions”), prevent the Plaintiff from expressing the Natural Immunity Beliefs and Critical Beliefs to her patients and members of the public. Administration of public health is assisted by vigorous public debate, and vigorous public debate is enhanced by the participation of medical professionals in that debate.
17. All College registrants are subject to the Expressive Restrictions, and all of them are prevented from expressing the Natural Immunity Beliefs and Critical Beliefs. All College registrants are restricted from communicating other beliefs regarding immunization that are prohibited by the Expressive Restrictions. Informed consent of the Plaintiff’s patients is limited, restricted and/or undermined by the Expressive Restrictions.



## Forced Medical Treatment

18. On October 16, 2021, the PHO issued an Order pursuant to the *Public Health Act* requiring regulated health professionals who are employed, contracted, or funded to provide public health care services by provincially funded organizations, including health authorities and provincial mental health facilities, to be vaccinated against Covid-19 (the "October 16, 2021 Order"). The October 16, 2021 Order restricted impacted individuals from providing care to patients/clients unless they had received at least the first injection of the series of vaccinations against Covid-19 by October 26, 2021.

19. The October 16, 2021 Order did not apply to naturopathic physicians, but the PHO gave notice in the following terms that other regulated health professionals should expect a similar order on a date to be specified:

*TAKE NOTICE that in accordance with further direction from me, health professionals to be determined by me and their staff, not otherwise required to be vaccinated under the Residential Care COVID-19 Preventive Measures Order or this Order, will be required to be vaccinated by a date to be determined by me, in order to provide health care or services in the Province.*

20. On February 9, 2022, the PHO and the Minister issued the following announcement by written press release and repeated words to this effect at a press conference:

In follow-up to the notice given to health professionals in October 2021, the provincial health officer is finalizing, in consultation with all health professional colleges, an order that requires all regulated health professionals to be vaccinated by March 24, 2022, to work in their occupation in British Columbia.

The purpose of this provincial health officer order is to protect patients from being infected with SARS-CoV-2 virus by unvaccinated health professionals, as well as to minimize the number of people being hospitalized or dying because of the virus. This order will ensure patients have confidence they are protected in all health-care settings and will align with the existing requirements for health-care workers working in long-term, acute and community care.

The order provides the colleges the tools they need to collect information about the vaccination status of their registrants and to communicate to registrants who have not confirmed their vaccination status that they may

not provide health services. Colleges must then follow up and investigate any instances where health professionals continue to provide health services not in compliance with the order.

Under the order, regulated health professionals who are vaccinated with one dose before March 24, 2022, may continue to work as long as they receive a second dose 28-35 days after their first dose.

Updates will be provided as consultation on the order is completed.

21. On March 7, 2022, almost five months after the PHO's October 17, 2021, statement that a state of emergency required forced vaccination of the Plaintiff and other medical practitioners, the PHO ordered that the Plaintiff to provide her vaccination status to the College for the College to relay to the PHO. The PHO's order dated March 7, 2022, is predicated on the following false and inaccurate statement:

An unvaccinated registrant who provides services to persons puts persons at risk of infection with SARS-CoV-2, and constitutes a health hazard under the *Public Health Act*.

22. By implication from the general to the particular, the PHO's order made March 7, 2022, declares the Plaintiff to be a health hazard under the *Public Health Act*. The Plaintiff has natural immunity derived from previous and recent infection. She does not present a hazard to anyone. The PHO's declaration that that Plaintiff is a public health hazard is made in bad faith and in knowing defiance of the well-developed science concluding that vaccinated and unvaccinated people are at equal risk of Omicron infection and infecting others, and in knowing defiance of the well-developed science concluding that persons who recently recovered from Omicron present no appreciable danger to others. The declaration that the Plaintiff is herself a health hazard is offensive and amounts to an old-fashioned abuse of power.

23. The PHO's order made March 7, 2022, provides that "[a] registrant must, upon request of their college and in the manner required by the college, provide proof of vaccination, or of an exemption to the college." The March 7, 2022 order does not specify the consequences if a registrant does not provide his or her college with proof of vaccination or exemption. However, the March 7, 2022 order states that failure to comply with the order is an offence under s.99(1)(k) of the *Public Health Act*, which would expose the Plaintiff to fines, imprisonment and management

orders, and threatens enforcement action under Part 4, Division 6 of the *Public Health Act*, which provides for warrants, injunctions and detention.

24. On the basis of the October 16, 2021 notice, the February 9, 2022 press release, and the PHO order issued March 7, 2022, the Plaintiff anticipates that she will be forced by the PHO and/or the College to choose between practicing her profession and her patients' well-being and being vaccinated with an mRNA therapy or other vaccine authorized by the Health Canada on an emergency basis.
25. Deprivation of the Plaintiff's entitlement to practice her profession is accretive with other deprivations imposed on non-vaccinated persons by orders of the PHO, which include the Plaintiff's exclusion from public gatherings, restaurants, bars, gyms, community centres, sporting and cultural events, and is further accretive of deprivations imposed on non-vaccinated persons by order of the federal government, including restrictions on travel by air and train. The PHO and College are aware of these additional hardships imposed on non-vaccinated persons and, indeed, is counting on them to turn this additional hardship of denying the entitlement to practice naturopathic medicine into a tipping point to compel the Plaintiff, by force of the accretive hardship, to submit to medical treatment to which she does not consent.
26. The Plaintiff does not want to be immunized with the Pfizer/Moderna mRNA therapy or any vaccine that were authorized by Health Canada on an emergency basis. Drugs authorized on an emergency basis are authorized for use in the absence of the usual proof of safety and efficacy required of drugs under the *Food and Drugs Act*, RSC 1985, c.F-27, and its regulations. The mRNA therapy and other vaccine therapies were authorized for use by Health Canada in January of 2021, long before the emergence of the Omicron variant. Whatever proof of efficacy was offered in support of that approval is now outdated and inaccurate, and is known by the PHO and the College to be outdated and inaccurate.
27. The Plaintiff has natural immunity, is in good health, is not in a risk group and does not herself require treatment to reduce her risk of hospitalization or serious symptoms. Because the Plaintiff has recently had Covid-19, she is at greater risk of adverse side-effects from the mRNA therapy and other emergency vaccines. Moreover, the safety and efficacy of mRNA therapy and other emergency vaccines following recovery from Covid-19 infection is poorly studied, particularly with the

Omicron variant. There is no appreciable evidence to suggest that mRNA therapy and other emergency vaccines reduce transmissibility of Covid-19, particularly the Omicron variant, to the Plaintiff's patients and others.

28. By October 21, 2021 the PHO and the College were aware that mRNA therapy and the other emergency vaccines were incapable of fulfilling the PHO's promise of herd immunity. The PHO has refused to publicly acknowledge in a straightforward, honest and direct way that the mRNA therapy and other emergency vaccines do not significantly reduce transmission, do not prevent infection, and do not deliver symptom alleviation or reduce deaths to the extent anticipated in January of 2021. By December of 2021 and January of 2022, the Omicron variant was known by the PHO to propagate equally among the vaccinated and unvaccinated, which extinguished any science-based or statistics-based hope that the mRNA therapy could reduce the spread of Omicron.

29. The PHO and Minister have effectively stated their intention to maintain an indefinite state of emergency in respect of Covid-19 on the basis that Covid-19 is a seasonal recurrent virus. On March 8, 2022, the PHO retracted an earlier indication that emergency measures would end in later in the spring and instead confirmed that the PHO intends to maintain the state of emergency with respect to Covid-19 until at least the fall season, notwithstanding other factors.

### **Toxic Synergy of Infringements**

30. The Expressive Restrictions prevent the Plaintiff and like-minded colleagues from engaging in political advocacy, protest activity and other forms of democratic association and expression to prevent the PHO and the Minister from forcing her to submit to unwanted medical treatment.

31. Not only is the Plaintiff forced by the Defendants to submit to unwanted medical treatment, she is restricted from public expression of the weak and unjustified rationale for forced treatment, and restricted from participating in public discourse or engaging in public advocacy against forced treatment. The infringement of free expression synergizes with the infringement of medical autonomy to create a denial of *Charter* rights that is more toxic than the sum of its parts.

## **Overbreadth**

32. The Plaintiff anticipates that the public health order will not provide an exemption from forced treatment for persons, such as herself, who have acquired natural immunity as a result of prior infection with Covid-19, or those who are practicing medicine remotely by videoconferencing or tele-practice, or those who are not at significant risk of hospitalization or serious symptoms or death, or those practitioners who are willing to self-administer routine rapid testing, or those who wear N95 or equivalent masks in well-ventilated environments.
33. To date, exemptions have only been available to persons for whom adverse reactions to the administration of mRNA therapy can be anticipated based on the presence of side-effects from previous mRNA injections, and then only when the risk of anticipated adverse reactions (even acute adverse reactions) cannot be mitigated by other means, such as the presence of emergency cardiac teams or the co-administration of beta-blockers.

## **Facts relevant to Justification under s.1 of the *Charter***

34. The purpose of restrictions on expressive freedom is ultimately to promote widespread adoption of and/or submission to mRNA therapy. The concern is that a public exposed to the Natural Immunity Beliefs and/or the Critical Beliefs would be less likely to take or accept mRNA therapy. A further concern is that public debate and critical thought about the safety, efficacy and necessity of mRNA therapy could reduce adoption of mRNA therapy, possibly from misinformation but also as a result of informed lack of consent to treatment. A further concern is that public discussion about the Natural Immunity Beliefs and/or the Critical Beliefs could foment distrust and skepticism about the present and future decisions of the PHO and the Minister, given their clear errors in judgment and the dramatic failure to achieve herd immunity. Aspects of these objectives cannot be recognized as pressing and substantial objectives consistent with a free and democratic society as they are inherently inimical in their very purpose to the rights guaranteed under the *Charter*.
35. The purpose of forced treatment of naturopathic physicians is difficult to discern. Forced treatment of the Plaintiff and a small number of College registrants, many of whom have also contracted the Omicron variant or other variants, is unlikely to benefit the registrants, their patients, or the general public, either from infection,

symptoms or public transmission. Forced treatment of the Plaintiff and other registrants is highly unlikely to achieve herd immunity. Forced treatment of the Plaintiff and other registrants will not appreciably reduce the system-wide demand for health services. If the purpose of forced treatment is to inculcate in College registrants a habit of compliance and reduce the level of dissent by College registrants, this purpose is not pressing and substantial and is outside the statutory powers of the PHO and the College.

36. mRNA therapy and other emergency vaccine therapies do not demonstrably and appreciably reduce infection or transmission rates to patients, and do not meaningfully reduce the risk of serious symptoms or death for persons who are not already in high risk groups. Risk of serious symptoms or death for persons who are not in high risk groups is miniscule. Further reduction of risk to the sub-miniscule for persons who are not at risk of death or even at risk of serious symptoms does not register as a pressing or substantial public purpose and is outside the statutory powers of the PHO and the College. The relatively small number of medical practitioners who will be affected by the anticipated order is not anticipated to result in a statistically significant change in hospitalization rates.

37. The Province, PHO and the Minister have not enacted reasonable alternatives to forced treatment of naturopathic physicians that would afford greater or equal protection to patients and registrants from Covid-19 without infringing medical autonomy. Reasonable alternatives include requiring remote patient-physician interaction for non-vaccinated registrants, requiring registrants and/or patients to wear N95 masks when dealing with each other in person, imposing minimum ventilation standards for facilities in which medical treatment or advice is given, providing exemptions for practitioners who are willing to self-administer rapid testing and providing exemptions for persons with natural immunity (on the basis of antibody testing and/or inferred natural immunity from recent infection).

## **Part 2: RELIEF SOUGHT**

1. The Plaintiff seeks the following relief:

- a. A declaration that the imposition of the Expressive Restrictions by the College constitute a breach of s.2(b) of the *Charter*,

- b. A declaration that the plaintiff does not herself constitute a “public health hazard” as defined by the *Public Health Act*;
- c. A declaration that imposition of forced treatment by the PHO and the College constitute an infringement of the right to liberty and security of person and infringement of the principle of overbreadth, disproportionality, arbitrariness and the principle of compliance with the rule of law, pursuant to s.7 of the *Charter*;
- d. An order declaring the emergency powers under the *Public Health Act* to be of no force and effect to the extent of their inconsistency with the *Charter*;
- e. An order “reading in” the following limits to the emergency powers under the *Public Health Act* pursuant to s.24(1) of the *Charter*:
  - i. Restricting the definition of “emergency” and/or “regional event” under ss.51, 52 and 53 of the *Public Health Act* to events that cannot be addressed by means of non-emergency powers;
  - ii. Restricting the exercise of powers under s.52(2) of the *Public Health Act* to regional events that are “unusual or unexpected”, in lieu of making “unusual or unexpected” one of four criteria, the presence of two of which will trigger the existence of powers, and substituting the numeral “1” for the number “2” under s.52(2) of the *Public Health Act*;
  - iii. Restricting the discretion of the PHO to decisions, the effects of which are proportionate to the “emergency” or “regional event”;
  - iv. Restricting the discretion of the PHO under s.53(2) of the *Public Health Act* to decisions that do not contravene the *Canadian Charter of Rights and Freedoms* and/or do not contravene s.6 of the *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c.181; and/or
  - v. Requiring the PHO to seek prior judicial authorization of restrictions of *Charter* and non-*Charter* rights under s.53 of the *Public Health Act*, in the absence of exigent circumstances.

- f. Damages pursuant to s.24(1) of the *Charter* to compensate the Plaintiff, vindicate her *Charter* rights and to deter further infringements of *Charter* rights;
- g. Injunctive relief, including interim, interlocutory and permanent injunctive relief, preventing the Defendants from imposing forced treatment and the Expressive Restrictions;
- h. Special damages;
- i. Costs, including special costs, elevated costs, and costs on a full indemnity basis;
- j. Interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79; and
- k. Such further relief as this Court deems just.

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

1. The restrictions imposed by each of the Defendants on the Plaintiff's expression of the Natural Immunity Beliefs and the Critical Beliefs, as set out above, infringe the Plaintiff's right to free expression as protected by s.2(b) of the *Canadian Charter of Rights and Freedoms*, and infringe the rights of her patients and the public to her opinions. The imposition of the Expressive Restrictions by each of the Defendants is without statutory foundation.
2. The restriction of the Plaintiff's right to free expression cannot be justified in a free and democratic society. The Expressive Restrictions are impermissibly vague and/or contradictory as they do not identify the "public health authorities" that set the scope for the Expressive Restrictions, and different "public health authorities" have disseminated different and sometimes contradictory information. At times, even the same health authority has sent different and contradictory information.
3. The restrictions are not minimally impairing. The Plaintiff acknowledges that medical practitioners bear a heightened duty to ensure that the information and advice they provide to patients is accurate, principled and based on current and valid science. The Plaintiff acknowledges that the PHO and College have a statutory obligation to protect the public by suppressing fraudulent or negligent medical advice.



4. However, the PHO and the College have gone too far in imposing the Expressive Restrictions. They have overreached the proper statutory limits of their roles. The PHO and the College do not, as they implicitly contend, have a monopoly on the truth about Covid-19, they do not have privileged access to a superior and unique scientific method and they are not blessed with infallible interpretive powers. There is a reasonable space set aside in law for the Plaintiff and others to maintain professional disagreement with the opinions and narratives of the PHO and the College without straying into prohibited or fraudulent misrepresentation.
5. Promoting public confidence in the PHO and/or the College is not a pressing and substantial objective. Alternatively, enhancing public confidence in the PHO and/or College by suppression of dissenting opinions at the expense of expressive freedom has no statutory foundation and is not prescribed by law. This effect is particularly pronounced when, following suppression of public debate about the efficacy and safety of mRNA vaccines, widespread mRNA vaccination did not achieve herd immunity as promised by the PHO and the Minister, and have since proven incapable of suppressing transmission of Omicron. The Expressive Restrictions do not achieve any intended lawful goal and the costs thereof are disproportionate any benefit derived therefrom. Ultimately, the Expressive Restrictions detract from any confidence placed by the public in the PHO.
6. The imposition by the Defendants of forced medical treatment on the Plaintiff infringes her medical autonomy, which is an aspect of her liberty and security of the person protected by s.7 of the *Charter of Rights and Freedoms*.
7. Imposition of forced treatment on the Plaintiff is not authorized by the emergency powers of the PHO under ss.51, 52 and 53 of the *Public Health Act* because Covid-19 and especially the Omicron variant is not a regional event that can be rectified with forced treatment.
8. The *Public Health Act* must be interpreted restrictively, or must be “read down” or “read in” to ensure that medical autonomy is not unnecessarily restricted, and to ensure that the *Public Health Act* does not unduly restrict fundamental *Charter* rights and the right to informed consent as set out in the *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c.181, including s.6, which is as follows:

6. Every adult who is capable of giving or refusing consent to health care has

- (a) the right to give consent or to refuse consent on any grounds, including moral or religious grounds, even if the refusal will result in death,
- (b) the right to select a particular form of available health care on any grounds, including moral or religious grounds,
- (c) the right to revoke consent,
- (d) the right to expect that a decision to give, refuse or revoke consent will be respected, and
- (e) the right to be involved to the greatest degree possible in all case planning and decision making.

9. A fundamental distinction should be drawn between the use of discretionary powers to require conduct of a person that will prevent, limit or control harm to others (e.g. in this case, to reduce transmission) and the use of discretionary powers to require conduct of a person to prevent, limit or control harm to that person (e.g. in this case, to improve that person's own health). This distinction between harm to self and harm to others is fundamental to statutory interpretation in this context because the mRNA and other vaccines only demonstrably reduce the risk of symptoms of those who take those vaccines; vaccines do not reduce the risk of infection or transmission of Omicron.
10. This distinction between harm to self and harm to others, especially in conjunction with s.6 of the *Health Care (Consent) and Care Facility (Admission) Act*, implies an implicit limit to the exercise of power under the *Public Health Act* for a patient's own good. If the legislature intended to enact an emergency power for forced treatment for the good of the patient, it would or should have done so expressly. Here, the only empirical basis for vaccines is avoidance of risk of harm to self.
11. The *Public Health Act* must also be interpreted to accord with the rule of law. The rule of law requires the supremacy or predominance of the regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, or prerogative, and of wide discretionary authority. The rule of law provides a shield for individuals from arbitrary state action. The rule of law cannot be jettisoned on the mere "provision of notice" by a PHO under s.53 of the *Public Health Act* of a

“reasonable belief” that there is a risk of spread of an infectious agent that could have a serious impact of public health. Further criteria limiting the temporal scope and providing for judicial review need to be “read in” to bring s.53 of the *Public Health Act* into line with the *Charter* and the rule of law.

12. It is contrary to the rule of law for the legislature to enact legislation that accords unbridled and unbounded powers to the PHO. Unacceptable lack of restrictions and boundaries on the powers granted to the PHO under the *Public Health Act* include:

- a. the lack of temporal restrictions for a regional emergency under s.59(b) of the *Public Health Act*;
- b. the power of the Minister to modify the Act without legislative approval under s.58(2) of the *Public Health Act*;
- c. the absence of a requirement under s.52(2) of the *Public Health Act*, operative at all times, that emergency powers are limited to unusual and unexpected events (the structure of s.52(2) circumvents the requirement under s.52(2)(b) wherever there is risk of spread of an infectious or hazardous agent carrying a public health risk);
- d. The absence of any requirement for prior judicial review or specific legislated criteria for breach of fundamental *Charter* rights; and
- e. the absence of any requirement under s.52(2) of the *Public Health Act* that would limit the exercise of emergency powers to situations or crises for which non-emergency powers are sufficient to address a problem or crisis.

13. The triggering mechanism for emergency powers set out in s.52(2) of the *Public Health Act* is of special concern. This section triggers emergency powers whenever there is a risk of spread of an infectious or hazardous agent carrying a public health risk pursuant to s.52(2)(a) and (c). Once triggered, the PHO’s powers override any other legal duty, limit, or requirement pursuant to s.53(b). This triggering mechanism is on its face incompatible with the rule of law as it creates the potential for permanent, arbitrary, prerogative and widely discretionary powers. The PHO and the Minister appear to intend to rely on these emergency powers indefinitely. A permanent state of emergency that overrides all legal duties, limits or requirements is contrary to the rule of law. Because the triggering mechanism

is expressed in the legislation, the problem is resistant to resolution by means of a suitable statutory interpretation, and on or more of the “reading in” remedies or a declaration of invalidity may be necessary pursuant to s.24(1) of the *Charter* in order to reconcile the *Public Health Act* with constitutional imperatives.

14. Unbounded and unrestricted powers are contrary to the rule of law, and require judicial intervention pursuant to ss.24(1) of the *Charter* and/or s.52 of the *Constitution Act, 1982*, or, alternatively, by means of statutory interpretation. The dramatic scope of *Charter* infringements authorized on the face of the statute must be subject to express stringent standards and safeguards to meeting constitutional requirements. If stringent standards and safeguards cannot be found within the intention of the legislature, they must be “read in” pursuant to s.24(1) of the *Charter*.

15. The PHO does not have the power under the *Public Health Act* to declare the Plaintiff to be a “health hazard”. A health hazard is defined under the *Public Health Act* as follows:

“health hazard” means

(a) a condition, a thing or an activity 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, or

(b) a prescribed condition, thing or activity, including a prescribed condition, thing or activity that

(i) is associated with injury or illness, or

(ii) fails to meet a prescribed standard in relation to health, injury or illness;

16. The Plaintiff cannot be designated as a “public health hazard” as the Plaintiff is not a “condition, thing or activity”, and because the condition of being vaccinated is not effective at preventing infection or transmission of the Omicron variant of Covid-19, which now accounts for almost 100% of cases within British Columbia. Designation of the Plaintiff as a “public health hazard” is contrary to current scientific evidence, including BC data. The designation of the Plaintiff as a “public health hazard” is issued in bad faith by the PHO because the PHO has specific

subjective individual knowledge that the current scientific evidence, including BC data, indicates that vaccination is not effective at preventing infection or transmission of the Omicron variant.

17. The Plaintiff seeks a declaration that she does not constitute a “public health hazard”. Deeming people to be health hazards is demeaning, divisive, socially polarizing, contrary to human dignity and diminishes public confidence in public health authorities. It is surely not what the legislature intended.
18. The College lacks any statutory authority under the *Health Professionals Act* to impose forced treatment on the Plaintiff. The order issued by the PHO on March 7, 2022 impermissibly delegates emergency powers under the *Public Health Act* to the College to force medical treatment on its registrants, apparently at the College’s sole discretion and apparently in the absence of any criteria or even principles or guidelines as to when or whether that would be appropriate. The use of backchannel or non-public directives by PHO to compel or persuade the College to exercise that improperly delegated power by restricting or terminating the entitlement of unvaccinated registrants to practice medicine is contrary to the express statutory requirement to exercise discretionary powers only upon public notice.
19. Even if forced treatment were authorized by law, which the Plaintiff denies, the Plaintiff’s deprivation of medical autonomy is not in accord with the principle of fundamental justice of overbreadth, disproportionality and arbitrariness. Forced treatment of the Plaintiff cannot be justified in a free and democratic society.
20. Protecting the Plaintiff from serious symptoms is not a pressing and substantial objective, as she is not, as a factual matter, at significant risk because she is healthy, previously infected with Covid-19, and is not in a risk group. Forced treatment purportedly for the Plaintiff’s own benefit is not prescribed by law. Forced mRNA or other emergency vaccine treatment of the Plaintiff is not likely to reduce her risk of because she is healthy, previously infected with Covid-19, and is not in a risk group. Forced mRNA or other emergency vaccine treatment would risk the Plaintiff’s health because she so recently recovered from infection by the Omicron variant of Covid-19.
21. Forced mRNA or other vaccine treatment of the Plaintiff and other naturopathic physicians who have not received the mRNA treatment is extremely unlikely to

contribute meaningfully to herd immunity and is extremely unlikely, given the small numbers of persons on whom treatment is being forced, to meaningfully achieve any other public health goal, such as avoidance of an exceedance of the maximum provincial health care capacity. The scientific evidence, including the BC data, indicate that mRNA and other emergency vaccines do not reduce transmission or infection rates.

22. Even if forced mRNA treatment or other emergency Covid treatments achieve an identifiable public health goal, which they cannot because they do not reduced Omicron transmission or infection rates, forced treatment of the Plaintiff and/or other naturopathic physicians is not minimally impairing because the public health order does not contemplate or implement the following exemptions from forced treatment that are likely to achieve the public health goal without infringing medical autonomy:

- a. Exemptions for persons such as the Plaintiff who have acquired natural immunity as a result of prior infection with Covid-19;
- b. Exemptions for practitioners who restrict themselves to remote practice by videoconferencing or tele-practice;
- c. Exemptions for people who are not at significant risk of hospitalization or serious symptoms or death;
- d. Exemptions for practitioners who engage in self-administered rapid testing; and
- e. Exemptions for practitioners who meet patients while wearing N95 or equivalent masks in well-ventilated environments.

23. Forced treatment imposes costs on the Plaintiff and other naturopathic physicians who are unwilling to submit to mRNA treatment, and these costs are not outweighed by the reasonably anticipated benefits of forced treatment.

24. If the anticipated forced treatment order of the PHO and/or College is authorized by law, the Plaintiff seeks an order declaring the emergency powers under the *Public Health Act* to be of no force and effect to the extent of their inconsistency with the *Charter*. Alternatively, the Plaintiff seeks an order “reading in” the following limits to the emergency powers under the *Public Health Act* pursuant to s.24(1) of the *Charter*.

- i. Restricting the definition of “emergency” and/or “regional event” to events that cannot be addressed by means of non-emergency powers;
- ii. Restricting the exercise of powers under s.52(2) under the *Public Health Act* to regional events that are “unusual or unexpected”, in lieu of making “unusual or unexpected” one of four criteria, the presence of two of which will trigger the existence of powers, and substituting the numeral “1” for the number “2” under s.52(2) of the *Public Health Act*;
- iii. Restricting the discretion of the PHO to decisions, the effects of which are proportionate to the “emergency” or “regional event”;
- iv. Restricting the discretion of the PHO under s.53(2) of the *Public Health Act* to decisions that do not contravene the *Canadian Charter of Rights and Freedoms* and/or do not contravene s.6 of the *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c.181; and/or
- v. Requiring the PHO to seek prior judicial authorization of restrictions of *Charter* and non-*Charter* rights under s.53 of the *Public Health Act*, in the absence of exigent circumstances.

25. Emergencies can end as quickly as they begin. When public authorities continue to exercise emergency powers even after the emergencies are at an end, the Court must exercise its supervisory jurisdiction to restore the rule of law.

Plaintiff's address for service:

Gratl & Company  
Barristers and Solicitors  
511-55 East Cordova Street  
Vancouver, BC V6A 0A5  
**Attn: Jason Gratl**

Fax number for service:

604-608-1919

E-mail address for service (if any):

n/a

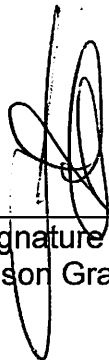
Place of trial:

Vancouver

The address of the registry is:

The Law Courts  
800 Smithe Street  
Vancouver, British Columbia  
V6Z 2E1

Date: March 8, 2022



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Signature of lawyer for plaintiff  
Jason Gratl



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.

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## **Appendix**

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

This is a claim of infringement of the right to free expression and the right to medical autonomy.

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

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ 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
- ☒ a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☒ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

**Part 4:**

*Charter of Rights and Freedoms*

*Health Professionals Act*

*Health Care (Consent) and Care Facility (Admission) Act*

*Public Health Act*