



## CITADEL LAW CORPORATION

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Philip J. Dougan  
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File No. 1502-1

May 6, 2021

### VIA MAIL & EMAIL

Fraser Health Authority  
Suite 1150, Central City Tower  
13450 – 102nd Avenue  
Surrey, BC V3T 5X3

Attn: Inderjeet Gill, Regional Manager

City of Vancouver, Development, Buildings &  
Licensing  
Licensing & Community Standards  
453 West 12th Avenue  
Vancouver, BC V5Y 1V4

Attn: Kathryn Holm, Chief License  
Inspector

Royal Canadian Mounted Police  
RCMP National Headquarters  
Headquarters Building  
73 Leikin Drive  
Ottawa, ON K1A 0R2

Minister of Health  
PO Box 9050  
Stn Prov Gov  
Victoria, BC V8W 9E2

Attn: Honourable Adrian Dix

Vancouver Coastal Health Authority  
Office of the Chief Medical Health Officer -  
Environmental Health  
1200 - 601 West Broadway  
Vancouver, BC V5C 4C2

Liquor and Cannabis Regulation Branch,  
PO Box 9292 Stn Prov Govt,  
Victoria BC V8W 9J8

Attn: Licensing Division

Vancouver Police Department  
2120 Cambie Street  
Vancouver, BC V5Z 4N6

Hon. Mike Farnworth, Minister of Public  
Safety and Solicitor General  
PO Box 9010  
Stn Prov Gov  
Victoria, BC V8W 9E2

PSSG.Minister@gov.bc.ca

Dear Sirs/Mesdames:

**Re: Enforcement of Orders of the Provincial Health Officer, Dr. Bonnie Henry**

***Canadian Society for the Advancement of Science in Public Policy v. Her Majesty  
the Queen in Right of the Province of British Columbia et al,  
SCBC Vancouver Registry File No. S210831***

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### CITADEL LAW CORPORATION

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•Associate Counsel

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We represent the Canadian Society for the Advancement of Science in Public Policy and write on behalf of class members in the above noted action.

We are advised by numerous class members of ongoing site inspections and business and liquor license suspensions under the guise of British Columbia's *Public Health Act*.

Suspending, cancelling or varying an operator's licence on the grounds that they are causing a health hazard is not scientifically supported. The emergency powers under the *Public Health Act*, and any regulations made under Part 5 of the Act you seek to enforce are also controversial and are currently before the British Columbia Supreme Court. Enclosed is the filed Notice of Civil Claim in this respect.

Section 18 of the *Public Health Act* requires operators to take "reasonable care" to prevent and respond to health hazards as follows:

**18(1)** *An operator who engages in a regulated activity must take reasonable care to*  
*(a) prevent health hazards from arising in the course of the regulated activity, and*  
*(b) respond to health hazards that arise, including mitigating harmful effects of*  
*the health hazard.*

Most small businesses in British Columbia comply with this "reasonable care" standard, while the emergency orders under the *Public Health Act* or related requirements your agency seeks to enforce are unreasonable, as they lack scientific basis, are contradictory, and highly prejudicial to businesses in our community.

Accordingly, we hereby put you on notice that any enforcement actions by your agency against business operators acting reasonably in accordance with s. 18 of the *Public Health Act* or the enforcement of emergency regulations under Part 5 of the Act, will result in damages to class members for which you may be liable.

Overzealous actions by your enforcement officers that lack reasonable scientific basis, and which are predicated on insufficient and incorrect information are harmful to our community, much more than any perceived harm of a virus, that has proven to be harmless to the vast majority of British Columbians.

Please consider the hard work and commitment of business owners in our community when carrying out your mandate.

Yours very truly,

CITADEL LAW CORPORATION

A handwritten signature in black ink, appearing to read "Polina H. Furtula".

POLINA H. FURTULA

JAN 26 2021

No. ....  
Vancouver Registry



**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN**

CANADIAN SOCIETY FOR THE ADVANCEMENT  
OF SCIENCE IN PUBLIC POLICY

**PLAINTIFF**

**AND**

HER MAJESTY THE QUEEN 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 plaintiff 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 plaintiff,

- 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**

#### ***Overview***

1. Pandemic is a word that, if misused, can cause unreasonable fear, or unjustified acceptance that the fight is over, leading to unnecessary suffering and death.<sup>1</sup>
2. Science is the study of reality. It informs sound public policy.
3. In its response to the COVID-19 virus, the government of British Columbia has invoked extraordinary executive powers predicated on unsubstantiated scientific and legal grounds with catastrophic consequences for British Columbians.

#### ***Parties***

4. The plaintiff, the Canadian Society for the Advancement of Science in Public Policy (the “Society”), a not-for-profit society duly incorporated under the *Societies Act*, SBC 2015, c. 18 with its head office at 108-2115 Cypress Street, Vancouver, British Columbia.
5. The Society is a non-partisan and secular organization. Its mandate is to advocate for a greater role of science in the formation of public policy. Its directors,

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<sup>1</sup> [WHO Director-General's opening remarks at the media briefing on COVID-19 - 11 March 2020](#)

officers, donors, and patrons draw themselves from diverse communities and from across the political spectrum.

6. The defendant, Her Majesty the Queen in Right of the Province of British Columbia, may exclusively make laws in relation to matters that are not within the jurisdiction of the Government of Canada and its ministers may make orders pursuant to the *Emergency Program Act*, R.S.B.C. 1996, c. 111 (the “EPA”), and has an address for service care of the Attorney General, Ministry of Attorney General, PO Box 9290 Stn Prov Govt, Victoria, British Columbia (the “Provincial Government”).

7. The defendant, Dr. Bonnie Henry is British Columbia's Provincial Health Officer (the “Provincial Health Officer”) appointed under Part 6 of the *Public Health Act*, S.B.C. 2008, c 28.

### ***Proposed class***

8. This action is brought on behalf of members of the class consisting of all persons residing or doing business in British Columbia who, since on or after March 17, 2020, have suffered personal injury or other damages as a result of the actions of the defendants in declaring a state of emergency pursuant to the *EPA* and Part 5 of the *Public Health Act* (the “Class”).

9. It is estimated that the Class consists of hundreds of thousands of residents and businesses in British Columbia.

### ***Government Declares an Emergency***

10. On March 17, 2020, the Provincial Health Officer issued a notice under the *Public Health Act* (the “PHA”) that the transmission of the infectious agent SARS-CoV-2, had caused cases and outbreaks of an illness known as COVID-19 in British Columbia.

11. The following day, on March 18, 2020, the Provincial Government declared a “state of emergency” under the *EPA*.

12. A declaration of a state of emergency enabled the Provincial Government to exercise sweeping statutory powers under the *EPA*. This legislation has its roots in the federal *War Measures Act* of 1914. The latter was originally intended to implement a declaration of war for the First World War.

13. The declaration of a public health emergency also provided for a range of emergency powers under the *PHA*, including empowering the Provincial Health Officer to issue verbal orders that had immediate effect.

### ***Rationale for State of Emergency***

14. In the period between January 1 to March 31, 2020, there were 3 reported deaths attributed to the COVID-19 virus in British Columbia.

15. In the following months, the mortality rate attributed to COVID-19 increased but clustered around care home facilities, and especially those that were understaffed and without sufficient medical supplies.

16. In its “emergency” response, the Provincial Government closed large sectors of the British Columbia economy issuing orders prohibiting attendance at restaurants, fitness facilities, shopping centres, religious and other peaceful gatherings, issued travel bans and cancelled medical treatments.

17. While hospitals prepared for an influx of COVID-19 patients, many medical procedures and operations were cancelled under the Provincial Government’s directives. However, the high number of intensive care COVID-19 patients did not materialize. Most people infected with COVID-19 experienced mild to moderate influenza-like symptoms that abated quickly.

18. By June 24, 2020, the Provincial Government and Public Health Officer’s restrictions on non-essential travel, hotels, and film industries were lifted. By September 2020, on site and in person instruction at public schools was reintroduced.

19. The authority to exercise emergency powers under Part 5 of the *PHA* ends when the Provincial Health Officer provides notice that the emergency has passed (s. 59(1)).

20. Despite the relatively low number of persons infected by COVID-19 in British Columbia, the Public Health Officer failed to provide notice that the emergency had passed and the Lieutenant Governor in Council continued to extend the emergency declaration under *EPA*.

21. British Columbia is currently in the longest state of emergency in provincial history.

### ***COVID-19***

22. The COVID-19 disease is similar in symptoms to influenza (also known as the common seasonal flu), but influenza, according to the World Health Organization can spread faster than COVID-19.

23. The most at risk for severe influenza infection are children, pregnant women, the elderly, those with underlying chronic medical conditions and those who are immunosuppressed. For COVID-19, older age and underlying conditions increase the risk for severe infection.

24. The infection fatality ratio of COVID-19 (the “IFR”) is extremely low, comparable to the seasonal flu. The all-cause mortality of British Columbia from June 30, 2019 to July 1, 2020, the period in which COVID-19 appeared, does not differ drastically from the all-cause mortality statistics since 2016.

25. The language the defendants have used, and continue to use, in public statements respecting COVID-19 deaths misrepresent the true fatality of this disease. The defendants only report the case fatality ratio (the “CFR”) rather than infection fatality ratio of COVID-19 (“IFR”). In reality, the number of persons infected but not reported is significantly higher than the cases reported. This means that the true fatality due to COVID-19 is significantly lower than reported by the defendants.

26. This misunderstanding of statistical data has caused, and continues to cause, unwarranted public alarm.

27. The defendants have refused to take responsibility for the inaccurate information provided to the public. For example, the British Columbia Centre for Disease Control (the “BCCDC”), states as follows in its disclaimer:

*“... the Province of British Columbia, including the British Columbia Centre for Disease Control, the Provincial Health Services Authority and the British Columbia Ministry of Health makes no representation or warranties regarding the accuracy of the information in the dashboard and the associated data, nor will it accept responsibility for errors or omissions. (...) Anyone using this information does so at his or her own risk, and by using such information agrees to indemnify the Province of British Columbia, including the British Columbia Centre for Disease Control, the Provincial Health Services Authority and the British Columbia Ministry of Health and its content providers from any and all liability, loss, injury, damages, costs and expenses (including legal fees and expenses) arising from such person’s use of the information on this website.”*

*pp. 3-4, British Columbia COVID-19 Disclaimer and Data Notes.*

### **COVID-19 Testing is Unreliable to a Significant Degree**

28. The tests which the Public Health Officer and the Provincial Government have used, and continue to use, to determine the presence of COVID-19 in a person

inaccurately slant results towards a higher number of positive cases of COVID-19 in the population than there actually are. This in turn causes needless panic and unfounded justification of government emergency orders.

29. This has caused excessive public alarm.

30. The reverse transcriptase polymerase chain reaction (“PCR”) testing methodology used by the Provincial Government has produced significant COVID-19 false-positives.

31. A false-positive is a test that mistakenly appears positive, but in actuality is false.

32. This methodology has produced COVID-19 false-positives for a goat, a papaya, and a kiwi.

33. A growing number of scientists are condemning the use of PCR testing kits in COVID-19 testing, which can be used for multiple purposes. This includes scientists who sell the kits.

34. According to the inventor of the PCR testing method, Dr. Kary Mullis, who earned a Nobel Prize for his work with PCR testing methodology, PCR identifies substances qualitatively not quantitatively, detecting the genetic sequences of viruses, but not the viruses themselves.

35. The PCR test used in British Columbia purported to identify positive cases of COVID-19 is not sufficient to diagnose the presence of an infectious disease, including COVID-19. It is an aid to diagnosis only.

36. These false-positives inflate the number of alleged COVID-19 cases above the true case number of actual COVID-19 infected persons.

37. In 2019, provinces reported 147 lab-confirmed cases of flu the first week of November. This year, they reported four.

38. This comes despite testing more than twice as many people for flu than usual — almost 10,000 tests were done in the first week of November, 2020 compared to a six-year average of about 4,500.

39. Unsurprisingly, by January 18, 2021, the BCCDC confirmed it had not detected a single case of influenza circulating in the community.

40. The number of new cases reported without being qualified by information about the false-positive rate or false discovery rate also misleads the public about the danger represented by the new case number. Such danger is due to a lack of general public

understanding about how disease prevalence, amount of testing, and the probability of obtaining a false-positive, affect the proportion of new cases accurately representing true-positive cases of COVID-19.

41. In spite of this a positive result has been used as a basis to enforce isolation of individuals on the grounds that they may have, and may be contagious for, a disease for which they show no symptoms, and from whom no COVID-19 virus had been isolated, purified, or shown to be biologically active.

42. This causes unnecessary fear and begets additional government policies that restrict the liberty of people to mitigate a problem which has been exaggerated by how these tests have been misused.

### ***Compromised Medical Treatments and Therapies***

43. In its “emergency” response, the Provincial Government cancelled medical treatments they deemed “non-essential” for which many residents had been on the waiting list for significant amounts of time.

44. In addition, the defendants have obstructed or discouraged licensed physicians and other treatment providers licensed under the *Health Professions Act*, R.S.B.C. 1996, c. 183, from advocating modalities or therapies with respect to the clinical approach in treating COVID-19 and related diseases, despite the physician having independently undertaken reasonable review of the scientific literature, that may improve a patient’s immune system, reduce the potential negative outcome of a viral infection, and potentially accelerate the time required for recovery.

45. These include therapies that have been studied extensively in the scientific literature for more than half a century and are proven to be safe, inexpensive, ubiquitous, effective, and essential to the optimal function of the immune system (the “Complementary Therapies”), some of which are unpatentable.

46. The defendants knew, or ought to have known, that cancelling medical treatments or obstructing or discouraging the use of any of the Complementary Therapies in the treatment of disease was not grounded in science and would cause harm to the public.

### ***Ministerial Orders***

47. As of June 17, 2020, the Provincial Government had issued 30 orders under the authority of s. 10(1) of the *EPA*, including orders that were later repealed and replaced. More orders have been issued since then. All of the orders issued by the Minister

contain a provision stating that they apply only for so long as the declaration of the state of emergency is in effect.

48. Most of the Provincial Government's orders do not reference a specific sub-paragraph in the s. 10(1) and instead rely on the general provision in s. 10(1) that the Minister may "do all acts and implement all procedures necessary to prevent, respond to or alleviate the effects of any emergency or disaster."

49. The reality is that either all or some of the Ministerial orders were not necessary to "prevent, respond or alleviate" the effects of COVID-19 to the population of British Columbia.

50. The Provincial Government also failed to establish legally binding conditions on the use of sub-delegated powers to suspend, waive or otherwise alter statutory provisions for the following Ministerial orders and subsequent orders replacing them:

- a. Ministerial Order M083 was issued on March 26, 2020, after the initial declaration of a provincial state of emergency. This order applied to municipalities, regional districts and the City of Vancouver. Ministerial Order M083 was repealed and replaced by a new order on May 1, 2020, M139, subsequently in turn repealed and replaced by a new order, M192, on June 17, 2020.
- b. M139, Local Government Meetings and Bylaw Process (COVID-19) Order No. 2, which repealed and replaced M083, Local Government Meetings and Bylaw Process (COVID-19) Order;
- c. Ministerial Order M089, Residential Tenancy (COVID-19) Order, 30 March 2020.
- d. Ministerial Order M179, Commercial Tenancy (COVID-19) Order, 29 May 2020;
- e. Ministerial Order M416, Food Liquor premises, Gatherings and Events (COVID-19) Order No. 2; and
- f. Such further orders as will be provided at trial, but which are known to the defendants.

(the "Ministerial Orders")

51. The Provincial Health Officer has issued more than 50 orders under the authority of Part 5 of the *PHA*, including verbal orders (the "PHA Orders").

52. Most of the Provincial Health Officer's PHA Orders do not reference the medical or scientific basis for issuing the order and do not satisfy the requirements of s. 52 of the *PHA*.

53. Indeed, the Ministerial Orders and PHA Orders (collectively, the “Orders”) were and continue to be, inconsistent, contradictory, and contrary to reasonably established medical and scientific principles and research, and do not satisfy the requirements of s. 9 of the *EPA* and s. 52 of the *PHA*, particulars of which include, but are not limited to:

- a. discouraging the public from wearing masks on the basis that they were ineffective;
- b. mandating that masks be worn in public places;
- c. closing in-house dining but permitting take-out;
- d. not mandating that cooks in public dining establishments wear masks while preparing food for take-out;
- e. allowing in-house dining for groups of the same household, that could sit next to groups of different households;
- f. failing to enforce these orders;
- g. allowing shopping in large warehouse grocery and “big box” franchises such as Walmart, Costco, and others (the “Big Box Stores”);
- h. prohibiting religious gatherings;
- i. prohibiting peaceful gatherings if unrelated to work;
- j. limiting shopping in shopping malls;
- k. prohibiting certain travel throughout British Columbia but allowing travellers from other provinces to travel within British Columbia;
- l. admitting that the limit on the size of gatherings is arbitrary and was never grounded in science;
- m. such other particulars as may be proven at trial.

***Effect of government measures on British Columbians***

54. The effects of these restrictions placed on British Columbians have caused damage disproportionate to any threat posed by COVID-19, including but not limited to the following (the “Restriction Effects”):

- a. Significant increase in overdose deaths. For example, approximately five people die per day in B.C. due to an overdose, which is more than the number of people attributed to COVID-19 related deaths in B.C.;
- b. Increase in suicide rates;

- c. Increase in depression and mental-health illness;
- d. Loss of gainful employment;
- e. Increase in domestic violence, including child battery;
- f. Increase in bankruptcies and foreclosures;
- g. Increase in divorces and deteriorations in personal relationships;
- h. Decrease in critical services for the homeless and low income;
- i. Increase in insurance premiums;
- j. Such other effects as may be proved at trial.

55. To put this in perspective, in 2018, 314 British Columbians died in motor vehicle incidents. In 2019, 984 people died from illicit drug use in British Columbia and in 2020, 1,548 people died from illicit drug use.

56. In contrast, there were 678 deaths in British Columbia attributed to COVID-19 to the end of week 50 in 2020.

57. Commercial insurers have already paid out billions in claims globally as a result of damage caused by government COVID-19 measures rather than physical injuries caused by the virus. The increase in insurance premiums affects the costs of everyday living and doing business in British Columbia.

58. This kind of economic harm has impacted and will continue to impact British Columbians and all those who do business in British Columbia for decades by making British Columbian goods and services less competitive in the global marketplace.

### ***Economic security of defendants versus class members***

59. Many British Columbians have experienced, and continue to experience, severe economic hardship as a result of the Orders.

60. Meanwhile the Provincial Government, the Provincial Health Officer, and her staff continue to enjoy economic security through salaries, other benefits, and pensions. All government salaries, other benefits, and pensions are at public expense and far less subject to market conditions than the millions of British Columbians' lack of economic security caused by the continued state of "emergency".

61. Neither the Provincial Government nor the Public Health Officer to-date have conducted a risk assessment to assess the likelihood and severity of the negative consequences of the Orders, including those negative outcomes to economic, physical, emotional, and mental wellbeing mentioned but not limited to the Restriction Effects.

## Part 2: RELIEF SOUGHT

1. A declaration that all Ministerial Orders and/or Public Health Orders be set aside as unreasonable.
2. A declaration that the following Ministerial Orders are *ultra vires* the *EPA*:
  - a. Ministerial Order M083, issued on March 26, 2020; repealed and replaced by a new order on May 1, 2020, M139, repealed and replaced by a new order, M192, on June 17, 2020;
  - b. Ministerial Order M089, Residential Tenancy (COVID-19) Order, 30 March 2020;
  - c. Ministerial Order M179, Commercial Tenancy (COVID-19) Order, 29 May 2020; and
  - d. Ministerial Order M416, Food Liquor premises, Gatherings and Events (COVID-19) Order No. 2.
3. A declaration that all decisions of municipal authorities made pursuant to M083, issued on March 26, 2020; repealed and replaced by a new order, M139, repealed and replaced by a new order, M192, on June 17, 2020, that do not otherwise comply with the *Local Government Act*, R.S.B.C. 2015, c. 1 or *Vancouver Charter*, S.B.C. 1953, c. 55 are of no force and effect.
4. A declaration pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), *Part I of the Constitution Act, 1982 being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11 (the "Constitution Act, 1982")* that each or all of the Orders made since March 17, 2020 and those currently in force are of no force or effect as they unjustifiably infringe and disproportionately limit the following:
  - a. s. 2 of the *Charter*;
  - b. s. 6(1) of the *Charter*;
  - c. s. 7 of the *Charter*;
  - d. s. 8 of the *Charter*;

- e. s. 9 of the *Charter*, and
  - f. s. 15 of the *Charter*.
5. A declaration that any of the Orders be read so that its effects do not limit rights established under the *Charter*.
  6. An injunction enjoining the defendants from issuing any administrative directive, order, or from exercising influence in any manner, including through its agents or regulators, that prevent or discourage any physician licensed under the *Health Professions Act*, R.S.B.C. 1996, c. 183 in the Province of British Columbia from advocating modalities or therapies that, in the physician's sole discretion, after the physician having independently undertaken reasonable review of the scientific literature, and having obtained their patient's informed consent, determines may improve their patient's immune system, reduce the potential negative outcome of a viral infection, and potentially accelerate the time required for recovery.
  7. An injunction enjoining the defendants from issuing further orders under the *EPA* and Part 5 of the *PHA*.
  8. General damages;
  9. Special damages;
  10. Special costs, or in the alternative Costs; and
  11. An order certifying this action as a class proceeding;
  12. Interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
  13. Such further and other relief as this Honourable Court may deem just.

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

1. The defendants have failed to establish the legally binding conditions necessary to declare a state of emergency and erred in concluding that the criteria for declaring an "emergency" were satisfied under the *EPA* and *PHA*.
2. The continued state of emergency is disproportional and unnecessary to deal with the nature of the problems posed by COVID-19.
3. In the alternative, if the conditions under which the defendants could declare a state of emergency did exist in March 2020, such conditions no longer existed after

May, 2020 and did not warrant the continued renewal of a state of emergency in British Columbia past May 2020.

### ***Public Health Act***

4. Part 5 of the *PHA* sets out the emergency powers available to medical health officers, the Provincial Health Officer, and the Minister of Health in a public health emergency.

5. The Provincial Health Officer did not have grounds to reasonably believe that the conditions set out in s. 52 of the *PHA* existed in declaring a state of "emergency".

6. In the alternative, if the Provincial Health Officer did have grounds to reasonably believe that the conditions set out in s. 52 of the *PHA* existed to provide the requisite notice in March 2020, which is denied, then the Provincial Health Officer did not have grounds to continue to reasonably believe that such conditions existed past May 2020.

7. The authority to exercise emergency powers under Part 5 of the *PHA* ends as soon as reasonably practical after the emergency has passed, and in the case of a regional event, when the provincial health officer provides notice that the emergency has passed.

8. The Provincial Health Officer has failed to provide notice that the emergency has passed despite reasonable medical, statistical, and scientific evidence.

9. Following May 2020, the Public Health Officer continued to exercise emergency powers pursuant to Part 5 of the *PHA*, despite there being insufficient evidence or reasonable evidence that the prerequisites of s. 52 of the *PHA* were met.

10. In the alternative, if the Provincial Health Officer had grounds to be reasonably satisfied of the requirements of s. 52 of the *PHA* to continue a state of emergency, the *PHA* Orders exceeded her statutory authority and were inconsistent with established medical and scientific principles and the actual ramifications of COVID-19 in British Columbia.

### ***Hippocratic Oath***

11. The Hippocratic Oath (the "Oath") is an oath of ethics by which physicians are bound. It is one of the oldest legal documents in attested history.

12. The Oath's most sacrosanct tenet is *primum non nocere*, or first do no harm.

13. The Provincial Health Officer is in violation of her Oath.

### ***Emergency Program Act***

14. The *EPA* establishes the conditions under which the government can declare a state of emergency, for how long those declarations can last, and when they can deploy emergency powers to protect human lives and mitigate property damage.

15. Pursuant to the *EPA* an "emergency" means "a present or imminent event" that is "caused by accident, fire, explosion, technical failure or the forces of nature," and that "require[s] prompt coordination of action or special regulation of persons or property to protect the health, safety or welfare of a person or to limit damage to property" (s. 1(1)).

16. The effects of COVID-19 in British Columbia did not fit within the definition of an "emergency" under the *EPA*.

17. The Provincial Government's interpretation of the *EPA*, its assessment of the situation, and actions taken were "unreasonable" as a matter of administrative law.

18. In the alternative, if an "emergency" existed pursuant to s. 9 of the *EPA*, which is denied, the Provincial Government exceeded the limits on its power under s. 10(1) and s.10.1(1) of the *EPA*, by making Ministerial Orders that:

- a. did not fit into, or were inconsistent with, the powers specified in s. 10(1) and s. 10.1 of the *EPA*; and
- b. were not "necessary to prevent, respond to, or alleviate the effects of an emergency or disaster".

19. The *EPA* does not authorize or give the Provincial Government and its ministers absolute discretion to suspend, amend or override valid statutes or regulations when acting under s. 10(1) of the *EPA*.

20. The plaintiff says that COVID-19 mostly seriously affects senior citizens, and that the vast majority of British Columbians, even if infected, would not be in mortal or other danger, thus an emergency order affecting all citizens is a substantial and unnecessary overreach.

21. Section 26 of the *EPA*, is not a defence as it does not include ministerial orders.

22. The Provincial Government failed to establish legally binding conditions on the use of sub-delegated powers to suspend, waive or otherwise alter statutory provisions in Ministerial Orders. The Ministerial Orders do not sufficiently guard against arbitrary or inconsistent decision making by sub-delegates.

23. In addition to being unauthorized, the Ministerial Orders do not demonstrate consideration of the principle of proportionality.

24. The *EPA*'s lineage has its roots in the federal *War Measures Act* of 1914. The latter was originally intended to implement a declaration of war for the First World War.

25. The *PHA* Orders do not discriminate between the sick and the healthy, collectively punishing a whole group in violation of Article 33 of the *Fourth Geneva Convention* of 1949.

26. An emergency order is a hammer, and now, the defendants have seen all matters relating to COVID-19 as a nail.

### ***Doctrine of unconscionability***

27. The doctrine of unconscionability is applicable to any waiver of liability issued by the defendants in the "British Columbia COVID-19 Disclaimer and Data Notes" and related notices.

### ***The Canadian Charter of Rights and Freedoms (the "Charter")***

28. The *Charter* limits British Columbia's response to an emergency under the *EPA* and the *PHA*.

29. The Orders made under the *EPA* and *PHA* are inconsistent with the *Charter* as follows:

- a. Orders that prohibit religious gatherings infringe on the s. 2(a) *Charter* right of freedom of conscience and religion;
- b. Orders that prohibit peaceful gatherings infringe on the s. 2(c) *Charter* right of freedom of peaceful assembly and s. 2(d) *Charter* right of freedom of association;
- c. Orders that prohibit or limit medical procedures infringe on the s. 7 *Charter* right of life, liberty and security of the person and s. 15 equality rights;
- d. Orders that control or prohibit travel to or from any area of British Columbia under s. 10(1)(f) of the *EPA* limit the freedom of peaceful assembly" under s. 2(c) of the *Charter*, or "the right ... to move to and take up residence in any province" under s. 6(2)(a) of the *Charter*, and the right not to be arbitrarily detained or imprisoned under s. 9 of the *Charter*;

- e. Orders that require a person to render assistance of a type that the person is qualified to provide under s. 10(1)(e) of the *EPA* limit 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 under s. 7 of the *Charter*, and
- f. Orders that authorize the entry into any building or on any land, without warrant under s. 10(1)(i) of the *EPA* limit the right to be secure against unreasonable search or seizure under s. 8 of the *Charter*.

30. Therefore, the Orders violate ss. 2, 6-9 and 15 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*.

31. The plaintiff relies on s. 52 of the *Constitution Act, 1982*, in seeking a declaration that the Orders are unconstitutional and of no force or effect.

Plaintiff's address for service: Citadel Law Corporation  
1400 – 1125 Howe Street  
Vancouver, BC V6Z 2K8

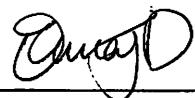
Fax number address for service: N/A

E-mail address for service: N/A

Place of trial: Vancouver

The address of the registry is: 800 Smithe Street, Vancouver, BC

Date: January 26, 2021

 For: \_\_\_\_\_

Signature of Polina Furtula  
Lawyer for the plaintiff

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:

In its response to the COVID-19 virus, the government has invoked extraordinary executive powers predicated on unsubstantiated scientific and legal grounds with catastrophic consequences for British Columbians. In doing so, the defendants have overreached their authority under the *Emergency Program Act*, the *Public Health Act*, and have infringed on *Charter* rights in a manner that does not accord with the principles of fundamental justice.

### 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:

1. *Emergency Program Act*, RSBC 1996, c. 111;
2. *Public Health Act*, SBC 2008, c 28;
3. *Canadian Charter of Rights and Freedoms (the "Charter"), Part I of the Constitution Act, 1982 being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11.*