

Vancouver

14-Oct-21

REGISTRY

No. VLC-S-S-217586
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ACTION4CANADA, KIMBERLY WOOLMAN, THE ESTATE OF JAQUELINE WOOLMAN, LINDA MORKEN, GARY MORKEN, JANE DOE #1, BRIAN EDGAR, AMY MURANETZ, JANE DOE #2, ILONA ZINK, FEDERICO FUOCO, FIRE PRODUCTIONS LIMITED, F2 PRODUCTIONS INCORPORATED, VALERIE ANN FOLEY, PASTOR RANDY BEATTY, MICHAEL MARTINZ, MAKHAN S. PARHAR, NORTH DELTA REAL HOT YOGA LIMITED, MELISSA ANNE NEUBAUER, JANE DOE #3

PLAINTIFFS

AND:

HER MAJESTY THE QUEEN IN RIGHT BRITISH COLUMBIA, PRIME MINISTER JUSTIN TRUDEAU, CHIEF PUBLIC HEALTH OFFICER THERESA TAM, DR. BONNIE HENRY, PREMIER JOHN HORGAN, ADRIAN DIX, MINISTER OF HEALTH, JENNIFER WHITESIDE, MINISTER OF EDUCATION, MABLE ELMORE, PARLIAMENTARY SECRETARY FOR SENIORS' SERVICES AND LONG-TERM CARE, MIKE FARNWORTH, MINISTER OF PUBLIC SAFETY AND SOLICITOR GENERAL, BRITISH COLUMBIA FERRY SERVICES INC. (OPERATING AS BRITISH COLUMBIA FERRIES), OMAR ALGHABRA, MINISTER OF TRANSPORT, VANCOUVER ISLAND HEALTH AUTHORITY, THE ROYAL CANADIAN MOUNTED POLICE (RCMP), AND THE ATTORNEY GENERAL OF CANADA, BRITTNEY SYLVESTER, PETER KWOK, PROVIDENCE HEALTH CARE, CANADIAN BROADCASTING CORPORATION, TRANSLINK (BRITISH COLUMBIA)

DEFENDANTS

RESPONSE TO CIVIL CLAIM

Filed by: Vancouver Island Health Authority and Providence Health Care (The "Health Authority Defendants")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants' Response to Facts

1. The facts alleged in none of Part 1 of the notice of civil claim are admitted.

2. The facts alleged in all of Part 1 of the notice of civil claim are denied.
3. The facts alleged in none of Part 1 of the notice of civil claim are outside the knowledge of the Health Authority Defendants.

Division 2 –Health Authority Defendants' Version of Facts

4. Vancouver Island Health Authority is regional health board constituted pursuant to the *Health Authorities Act* R.S.B.C. 1996 c. 180, (“VIHA”).
5. Providence Health Care is not a legal entity. Providence Health Care Society (“Providence”) is a non-profit organization incorporated pursuant to the *Society Act*, RCBC 1996, c. 433.
6. The Health Authority Defendants deny every allegation of fact contained in the notice of civil claim and put the plaintiffs to strict proof thereof.
7. At all material times, the Health Authority Defendants provided appropriate and reasonable service and/or care.
8. At all material times, the Health Authority Defendants complied with the *COVID-19 Related Measures Act*, S.B.C. 2020, c. 8, *Emergency Program Act*, R.S.B.C. 1996, c. 111, regulations thereto, and Ministerial Orders.

Division 3 – Additional Facts

9. None at this time.

Part 2: RESPONSE TO RELIEF SOUGHT

10. The Health Authority Defendants oppose the granting of the relief sought in all of Part 2 of the notice of civil claim.
11. The Health Authority Defendants seek an order dismissing the plaintiffs’ action against them with costs.

Part 3: LEGAL BASIS

12. The Health Authority Defendants deny every allegation of law contained in the notice of civil claim and put the plaintiffs to strict proof thereof.
13. The allegations contained in the notice of civil claim do not disclose a cause of action as against the Health Authority Defendants. There is no basis for granting the orders sought.

14. The notice of civil claim filed by the plaintiffs:

- a. discloses no reasonable claim,
- b. is unnecessary, scandalous, frivolous or vexatious,
- c. will prejudice, embarrass or delay the fair trial or hearing of the proceeding,
- d. is prolix and improperly pleads evidence; and
- e. is otherwise an abuse of the process of the court,

and ought to be dismissed as against the Health Authority Defendants on these basis.

15. In further answer to the whole of the notice of civil claim, no action for damages lies or may be brought against the Health Authority Defendants, as all of their allegedly impugned actions were rendered pursuant to the *COVID-19 Related Measures Act* and/or the *Emergency Program Act*, R.S.B.C. 1996, c. 111, and the Health Authority Defendants plead and rely upon Section 5 of the *COVID-19 Related Measures Act*, and section 18 of the *Emergency Program Act*, R.S.B.C. 1996, c. 111. and amendments, regulations, and ministerial orders thereto, including Ministerial Order 120/2020 – Protection Against Liability (COVID-19) Order No. 2.

16. Further and in the alternative the *Canadian Charter of Rights and Freedoms* does not apply to the Health Authority Defendants.

17. In the further alternative and in further response, there is no basis in fact or law for a claim against the Health Authority Defendants pursuant to the *Canadian Charter of Rights and Freedoms*.

18. In the further alternative and in further response, the Health Authority Defendants deny that they breached any of the plaintiffs' rights under the *Canadian Charter of Rights and Freedoms*.

19. The Health Authority Defendants specifically deny that they owe the plaintiffs, or any of them, a duty of care (common law, statutory, or otherwise) as alleged or at all.

20. If the Health Authority Defendants did owe the plaintiffs, or any of them, a duty of care (common law, statutory, or otherwise), which is not admitted but denied, the Health Authority Defendants deny that they breached any duty to the plaintiffs (common law, statutory, or otherwise), or any of them.

21. In the alternative, no act or omission on the part of the Health Authority Defendants or on the part of any of their employees, agents or servants constituted negligence or breach of

any duty (common law, statutory, or otherwise) owed to the plaintiffs, or any of them, as alleged or at all, and any service, care or treatment provided by their employees, servants, or agents, in respect of the service, care or treatment provided to the plaintiffs met the applicable standard of care and was in accordance with standard and approved practice and procedures and was rendered competently with reasonable care, skill and diligence, and without fault or neglect, in the manner of a reasonably prudent health authority.

22. The Health Authority Defendants deny that the plaintiffs, or any of them, suffered, or continue to suffer, any injury, loss, damage or expense which is recoverable at law and put the plaintiffs to strict proof thereof.
23. In the alternative, the Health Authority Defendants say that if the plaintiffs, or any of them, did suffer injury, loss, damage or expense, which is not admitted but denied, this injury, loss, damage or expense was not caused or contributed to by any acts or omissions of the Health Authority Defendants, or their employees, servants, or agents.
24. Decisions regarding diagnosis, treatment, and level of care a patient receives are solely made by physicians. Physicians are independent contractors and not employees of the Health Authority Defendants. The Health Authority Defendants are not vicariously liable for any acts or omissions of the independent contractor physicians.
25. The Health Authority Defendants says that any care or treatment rendered to the plaintiffs by its employees, servants or agents, was performed and provided pursuant to physicians' orders.
26. If the plaintiffs suffered any injury, loss, damage or expense, as alleged or at all, which is denied, then:
 - f. such losses would not have reasonably been predicted or foreseen by a reasonable health authority or its employees, servants or agents;
 - g. the Health Authority Defendants could not have prevented, avoided, or minimized the plaintiffs' loss by the exercise of reasonable care;
 - h. these were caused by the plaintiffs' own negligence, or alternatively the plaintiffs' negligence was a contributing cause, the particulars of which will be plead as soon as they become known to the Health Authority Defendants, in which case the Health Authority Defendants seeks an apportionment of fault at the trial of this matter pursuant to the *Negligence Act*, R.S.B.C. 1996, c. 333; and,
 - i. such losses were caused by the fault of other parties for whom the Health Authority Defendants are not responsible or, in the alternative, such fault contributed to the plaintiffs' alleged losses, the particulars of which will be plead when they become known to the Health Authority Defendants, in which case the

Health Authority Defendants pleads and relies on the *Negligence Act*, R.S.B.C. 1996, c. 333, and shall seek apportionment of fault at the trial of this proceeding.

27. In the alternative, if the plaintiffs suffered, or will suffer, any injury, loss, damage or expense, which is not admitted but specifically denied, the plaintiffs failed to mitigate their losses by failing to take all reasonable steps to minimize or avoid such loss, damage, or expense.

Health Authority Defendants' address for service:

Carfra Lawton LLP
6th Floor - 395 Waterfront Crescent
Victoria BC V8T 5K7


Fax number address for service (if any):

(250) 381-7804

E-mail address for service (if any):

N/A

Dated: 14/Oct/2021



Signature of Timothy J. Wedge
 defendant lawyer for the Vancouver Island
Health Authority and Providence Health Care
Society

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.