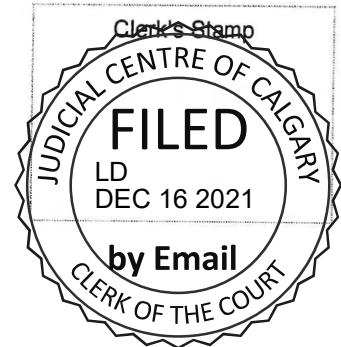


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COURT FILE NUMBER
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF(S) BRIAN FOLLETT, MATTHEW CHALUPNICEK and KAITLIN KING
DEFENDANT(S) ALBERTA HEALTH SERVICES
DOCUMENT STATEMENT OF CLAIM



INV C123229

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NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

Statement of facts relied on:

BASIS FOR THIS CLAIM

Plaintiffs

1. Plaintiffs, Matthew Chalupnicek and Brian Follett, are unionized firefighters employed by the City of Lethbridge.
2. Plaintiff, Kaitlin King, is a unionized paramedic employed by Medavie Health Services West – NEAB.

3. The Plaintiffs challenge an Alberta Health Services (“AHS”) COVID-19 vaccination policy on the grounds that it violates the *Canadian Charter of Rights and Freedoms* (“*Charter*”) and the *Alberta Bill of Rights*.
4. The Plaintiffs’ claims are not and should not be construed as claims against the Plaintiffs’ employers or unions, but notice of the Plaintiffs’ claims will be given concurrently to them in case they wish take proceedings to intervene.

Background

5. On September 14, 2021, AHS enacted the “Immunization of Workers for COVID-19” policy (the “Policy”). The Policy mandates that all workers, as defined in the Policy, are to be “fully immunized” against COVID-19 using a medical product from Pfizer, Moderna, AstraZeneca or Johnson and Johnson (the “Pharmaceutical Products”).
6. The objective of the Policy is to protect, *inter alia*, the health and safety of workers.
7. The Policy says that “immunization against COVID-19” is the most effective means:
 - a. To prevent the spread of COVID-19;
 - b. To prevent outbreaks in AHS facilities;
 - c. To preserve workforce capacity;
 - d. To support the health care system; and
 - e. To protect our workers, patients, visitors and other accessing AHS sites.
8. The Plaintiffs are “workers” under the Policy even though they are members of different unions and have different employers.
9. In order to comply with the Policy, the Plaintiffs must inject the stipulated number of doses of a Pharmaceutical Product to be considered “fully immunized” within the meaning of the Policy. Any worker currently on a leave of absence must be “fully immunized” prior to returning to work. All workers hired after November 30, 2021 must be “fully immunized” prior to commencing work.
10. If a worker is not “fully immunized” by November 30, 2021, the Policy says the following steps will be taken:
 - a. A meeting will be held with the worker to discuss his or her concerns and provide the worker with educational materials; and

- b. If the worker remains non-compliant with the Policy following the meeting, the worker will be placed on an unpaid leave of absence until the worker is “fully immunized.”
11. The Policy is scheduled to be reviewed on April 22, 2022. Workers have received no indication from AHS regarding how this review might further affect their constitutional and legal rights.
12. The Policy stipulates a one-size-fits-all approach to mitigating the harms of COVID-19. As it is being implemented, there is no room or allowance for legitimate individual health or religious differences.
13. While the Policy does anticipate the possibility that medical and religious exemptions may be granted, obtaining such an exemption is a practical impossibility. Essentially, the Policy provides only an illusory assurance that medical and religious exemptions can be obtained.
14. Notably missing from the Policy is any recognition of exemptions based on conscience, lack of consent to vaccination, naturally-acquired immunity and antibody testing, or the choice to rely on regular PCR or antigen testing to detect a COVID-19 infection (collectively and individually, “testing”).
15. Also missing from the Policy is any mention or indication whether AHS will subsequently require workers to accept additional “booster” doses of the Pharmaceutical Products.
16. For the purposes of analysis under the *Charter*, AHS is a government body carrying out the policy and directions of the Government of Alberta concerning the provision of health care services. For the purposes of *Charter* analysis, the Policy is reviewable as a government action.
17. On November 29, 2021, the Provincial Minister of Health, the Honourable Jason Copping, extended the deadline for worker compliance under the Policy from November 30, 2021 to December 13, 2021, to avoid risk of service interruptions.
18. Also on November 29, 2021, AHS President and CEO, Dr. Verna Yiu, informed AHS employees, including workers, by email of the Extended Policy and that the vast majority of AHS full-time and part-time employees are already “fully immunized.”
19. The extended Policy is the same as the Policy, except in two salient ways:
 - a. The deadline for workers to become “fully immunized” is now December 13, 2021; and

- b. Workers at some, as yet undisclosed, AHS locations will be permitted to use “frequent testing” as part of a “testing program” until the end of March 2022, as an alternative to becoming “fully immunized.”

Overview

20. As it is written and being enforced against the Plaintiffs, the Policy lacks a lawful public health purpose based upon accurate information and science about the SARS-CoV-2 virus, COVID-19 infections, naturally-acquired immunity and the nature of the Pharmaceutical Products generally.
21. The Policy contravenes both the *Charter* and *Alberta Bill of Rights* because, *inter alia*, it does not reasonably or proportionately balance AHS’s objective of mitigating the health consequences of COVID-19 with the Plaintiffs’ individual rights and freedoms. AHS’s objective could be met by other means, namely testing, which is much less intrusive to the Applicants’ individual dignity, autonomy, rights and freedoms.
22. This is largely due to the Policy’s one-size-fits-all approach that fails to treat the Plaintiffs as individuals. As such, it does not comply with the *Charter*, which demands a more nuanced and well-tailored approach that respects the Plaintiffs’ individual dignity, autonomy, rights and freedoms.
23. It was the responsibility of AHS to measure the content of the Policy against the *Charter*, and it has demonstrably failed to do so. Instead, AHS has displayed a lax disregard for the *Charter* rights of the Plaintiffs.
24. The Policy cannot satisfy the standard set by the *Alberta Bill of Rights* which recognizes the Plaintiffs’ human rights and fundamental freedoms.
25. As demonstrated by the Extended Policy:
 - a. The Policy is under the direct control of the Government of Alberta and thereby subject to the *Charter* and *Alberta Bill of Rights*; and
 - b. AHS is capable of offering a testing program and thereby satisfying the objectives of the Policy while not infringing the Plaintiff’s rights.

Urgency

26. The Plaintiffs notified AHS of their claims and requested that the November 30, 2021 deadline AHS imposed for compliance under the Policy be deferred pending their request that AHS bring the Policy into compliance with the *Charter* and not require them to take the Pharmaceutical Products or face leave without pay.

27. There is an important constitutional issue to be determined. The *Charter* should be given a generous and liberal interpretation aimed at fulfilling the purpose of the right in question and of the *Charter* as a whole. The Policy engages a right called “fundamental” by the text of the *Charter*, as well as other important rights concerning freedom of choice, bodily and psychological integrity, invasive irreversible and unnecessary medical procedures, self-determination and personal autonomy. It is difficult to overstate the importance of these legal and constitutional issues as they go to the very foundation of what it means for the Plaintiffs to live in a free and democratic society that protects their individual liberties, personal autonomy and right to self-determination.
28. The Plaintiffs will suffer irreparable and irreversible harm if the Policy is enforced against them. If the deadline for compliance is not indefinitely deferred or the Policy stayed, they will be coerced, contrary to their will, to submit to an irreversible medical procedure that injects the Pharmaceutical Products into their bodies. Unless they submit, they will be cut off from earning a living. They will not receive any pay. Since their employment is not terminated, they cannot apply for employment insurance coverage. They will be unable to find work in their profession in Alberta. If implemented, the Policy will put an economic gun to the Plaintiffs’ heads.
29. Two of the Plaintiffs are being coerced by the Policy to betray their sincerely held religious beliefs— beliefs that form and frame their worldviews, personal identity and social interactions.
30. Each of the Plaintiffs are being coerced by the Policy to bear irreversible risks to the health of their bodies from injection of the Pharmaceutical Products. The Plaintiffs alone have the right to freely decide (without compulsion or coercion) what medical procedures and associated risks to their bodies they will or will not undertake.
31. Unless the Policy is indefinitely deferred or stayed, if the Plaintiffs refuse to submit to injection of the Pharmaceutical Products, their careers, incomes, financial security, pensions, home mortgages and their family’s future prospects, will all be jeopardized. They will be indefinitely unable to work in their area of expertise in Alberta. Such losses cannot be quantified or adequately compensated with monetary damages.
32. In contrast, the objectives of the Policy can readily be met without the Pharmaceutical Products being injected into the Plaintiff’s bodies. Naturally-acquired immunity and antibody testing and PCR or antigen testing to detect a COVID-19 infection, are readily available and would be more effective than the Policy in meeting its stated objectives.
33. The personal importance and significance of this decision should be evident in that the Plaintiffs have made pleadings to this honourable Court on this matter. For the Plaintiffs, this is a decision of fundamental personal importance, an inherently personal decision, going to core of what it means for them to have individual dignity and autonomy.

34. Breaches of bodily integrity and dignity cannot be adequately remedied by a subsequent award of damages. This sort of breach is precisely what is happening to the Plaintiffs in this case. The Policy precludes the Plaintiffs from other reasonable and at least equally viable alternatives by requiring only one way, which is to submit to injection of the Pharmaceutical Products, regardless of their health risks and moral abhorrence to the Plaintiffs. Without hyperbole, this is a highly intrusive and grievous breach of bodily and psychological integrity.
35. The balance of convenience favours granting an interim injunction. AHS will not suffer harm if it is required to delay implementation of the Policy. Until this point, it has not required that workers receive injections of these Pharmaceutical Products and AHS has already twice delayed implementation of the Policy. There is no demonstrably urgent reason to implement the Policy before the Plaintiffs' claims can be heard on the merits and the Court determines whether the Policy is unconstitutional and/or in breach of the *Alberta Bill of Rights*.
36. In the interim, if it wants to monitor workers for infection with COVID-19 to mitigate spread of the SARS-CoV-2 virus in the workplace, AHS can require workers to undergo regular antibody testing for residual natural immunity or PCR/antigen testing to detect a COVID-19 infection. These tests are not nearly so invasive and the Plaintiffs would consent to them. PCR/antigen testing would have the added advantage of also testing workers who have taken the Pharmaceutical Products since those who are vaccinated can still be infected with COVID-19 and spread the SARS-CoV-2 virus. This interim arrangement would satisfy the Policy's stated objectives without coercing the Plaintiffs or others to submit to injection of the Pharmaceutical Products.

Charter Section 7, Medical Conditions

Follett

37. Plaintiff, Brian Follett, is currently on a paid medical leave through the Workers' Compensation Board ("WCB") because he acquired a life-threatening medical condition on the job.
38. Follett's medical condition prevents him from taking any of the Pharmaceutical Products without risking his life or causing potentially irreparable damage to his health.
39. On November 2, 2021, Follett received a letter from his station chief saying:

We have advised the WCB that we have modified work available for you and we remain prepared to accommodate your return to work as soon as you are medically fit to do so. In order to return to work you will need to comply with our COVID-19 vaccination policy.

40. If Follett returns to work in any capacity, he is required by the Policy to be “fully immunized” with the stipulated number of doses of one of the Pharmaceutical Products. Follett will not be completely recovered from his life-threatening medical condition when he returns to work under a modified work schedule.
41. AHS informed workers in a document called “COVID-19 Immunization Policy Staff FAQ” that:
- a. Physicians are “highly unlikely” to provide an exemption from the Policy;
 - b. Physicians will only offer an exemption based upon the “latest medical evidence from authorities,” including AHS; and
 - c. The College of Physicians and Surgeons of Alberta (“CPSA”) has guidance regarding requests for exemptions from the Policy.
42. The corresponding guidance from the CPSA mentioned above says, “we advise physicians to inform their decision-making based on the recommendations from the Alberta Health Services COVID-19 Scientific Advisory Group,” and provides a link to the relevant AHS document titled “COVID-19 Scientific Advisory Group Rapid Brief.”
43. The AHS “COVID-19 Scientific Advisory Group Rapid Brief” is a jurisdictional scan surveying how other jurisdictions are managing requests for medical exemptions. It contains no guidance individualized or scientific evidence relevant to Follett’s particular health circumstances.
44. The City of Lethbridge hired a third-party organization, Homewood Health Inc. (“Homewood”), an AHS contracted service provider, to administer the Policy for the City’s employees, including Follett. Administering the Policy includes the evaluating and granting of medical exemption requests.
45. Follett’s doctor requested to Homewood that Follett receive a deferral from the Policy until January 15, 2022.
46. The request was made on a form provided by Homewood and properly filled out by Follett’s doctor. The form asks doctors to “provide the medical condition, and its severity, that is preventing your patient from being fully vaccinated against COVID-19.” Follett’s doctor filled out the form giving the following reason for the deferral request:
- Idiopathic rhabdomyolysis. Prolonged and severe. I intend to review by 15 January 2022.
47. Homewood denied Follett’s doctor’s request. The response was sent to Follett by email. It said:

Hello,

Your request for a COVID-19 Vaccination Medical Exemption has been reviewed. Based on the current scientific literature, your request for vaccine exemption is not supported.

Please contact your employer/HR department for any further enquiries.

Thank you.

48. Notwithstanding Homewood having received notice of Follett's life-threatening medical condition and his doctor's opinion, it denied his request for a deferral without even having any medical personnel attend him to assess his current medical condition. The opinion of Follett's doctor was disregarded on the basis that it is unsupported by "scientific literature."
49. Follett followed Homewood's instruction and contacted his employer. His employer was not responsive.
50. Homewood did not provide Follett with an appeal process or any of the relevant "scientific literature" relied upon to reach its decision. Homewood's decision is binding on Follett and is determinative of his rights to a medical deferral under the Policy.
51. As it is being enforced, the Policy has reversed the onus of the doctrine of informed consent and instituted a medical exemption policy that is illusory.
52. The Policy is coercing Follett to take an irreversible, unwanted invasive medical treatment at risk to his life and health. The Policy therefore engages Follett's right to life and security of the person under section 7 of the *Charter*.
53. Follett will consent to regular PCR or antigen testing for COVID-19.

***Charter* Section 7, Naturally-acquired Immunity**

Chalupnicek and King

54. Naturally-acquired immunity is broad and long-lasting. It can be measured by antibody testing and may provide immunity superior to that which is conferred by the Pharmaceutical Products.
55. The Plaintiffs Matthew Chalupnicek and Kaitlin King, have recovered from a COVID-19 infections and have naturally-acquired immunity. Each has undergone Mayo Clinic quantitative serological blood tests to detect the presence of SARS-CoV-2 antibodies, and their test results indicate that each has a quantity of antibodies sufficiently high to provide immunity.

56. Recent, credible scientific evidence indicates that individuals with naturally-acquired immunity may be at increased risk of suffering an adverse health event following injection of one of the Pharmaceutical Products. To avoid imposing unnecessary risk on those with naturally-acquired immunity (including these Plaintiffs), in developing the Policy, AHS should have provided for testing for naturally-acquired immunity.
57. There is no evidence that people who are recovered from a previous COVID-19 infection represent a greater risk than those who take the Pharmaceutical Products, of causing COVID-19-related hospitalization or death of themselves or others.
58. There is no record that AHS considered any scientific evidence regarding naturally-acquired immunity when it devised the Policy. The Policy is completely silent regarding naturally-acquired immunity and antibody testing.
59. The long-term efficacy and safety of the Pharmaceutical Products cannot yet be known.
60. The Pharmaceutical Products do not prevent COVID-19 infections and do not prevent the transmission of the SARS-CoV-2 virus to others. Workers who are defined as “fully immunized” under the Policy are not fully immunized.
61. Those, including the Plaintiffs, who have naturally-acquired immunity as a result of their recovery from a COVID-19 infection, do not need to take any of the Pharmaceutical Products in order to protect themselves or others.
62. The Policy is coercing Chalupnick and King to submit to an unnecessary, irreversible and unwanted invasive medical treatment ostensibly to prevent them from acquiring and spreading a disease that their naturally immunity already protects them from acquiring and spreading better than the Pharmaceutical Products do.
63. Regular testing of workers (with the various PCR and antigen tests currently available in Alberta) would be adequate to meet the Policy’s objectives. Although naturally-acquired immunity may render repeated testing of them unnecessary Chalupnick and King are willing to undergo regular PCR or antigen testing.
64. For the reasons above, the Policy engages the *Charter* section 7 right to security of the person.

***Charter* Section 7, Coerced Medical Treatments**

65. The Plaintiffs are being forced and coerced by AHS to take an unnecessary, irreversible and invasive medical treatment without meaningful or sufficient recognition of their right to informed consent or their right to self-determination.
66. No medical treatment is without risk. Treatment for COVID-19 with the Pharmaceutical Products is no exception. This is why the doctrine of informed consent, based upon the

right to self-determination, is important. The choice of whether to assume the risk of taking the stipulated number of doses of a Pharmaceutical Product or taking the risk of acquiring a COVID-19 infection should be left to the individuals involved.

67. Inoculation with any of the Pharmaceutical Products may have long-term health consequences which, as yet, are not fully known due to the short testing period that these products have undergone. There are several recorded incidents of adverse reaction (and occasionally death) following inoculation with Pharmaceutical Products. Due to the unprecedented level of coercion and threat of personal consequences to compel inoculation with a Pharmaceutical Product, it is reasonable to construe the Policy as suspending freedom of choice and rendering involuntary the Plaintiffs' decision.
68. The decision whether to comply with the Policy is one that bears enormous consequences for the Plaintiffs. It affects their physical and psychological well-being and rises to the level of a decision of fundamental personal importance thereby engaging the *Charter* section 7 right to liberty.

***Charter* Section 7, Principles of Fundamental Justice**

69. The Policy is overbroad in that it unnecessarily infringes the Plaintiffs' rights to life, liberty, and security of the person when there is no need for it to capture the Plaintiffs as it does. A carefully-tailored policy relying on accurate, fulsome and reliable scientific evidence that is readily available to AHS could achieve the same objectives without infringing the Plaintiffs' rights to life, liberty, or security of the person.
70. The Policy is arbitrary in that it purports to protect the health of workers while imposing unnecessary risks on the Plaintiffs that do little, if anything, to further the Policy's objectives to curb and prevent the spread of SARS-CoV-2 and COVID-19 infections. Further, the Policy fails to advance its own objective to protect the health and safety of workers and those in contact with workers because it does not provide or mandate that all workers, including those who have taken the Pharmaceutical Products, have regular PCR or antigen testing to detect the presence of the SARS-CoV-2 virus. Workers who are defined as "fully immunized" under the Policy are not fully immunized.
71. The Policy's effects on Follett are grossly disproportionate, or even shocking to the conscience, because it needlessly and callously imposes on him the risk of life-threatening or debilitating health consequences without meaningfully furthering its own objective.

Charter Section 2(a), Freedom of Conscience and Religion

72. The Plaintiff, Chalupnicek, is a devout Reformed Christian and his sincerely held religious beliefs compel him to refuse on religious grounds all of the Pharmaceutical Products. Chalupnicek's request for a religious exemption has been denied.
73. The Plaintiff, King, is a devout Evangelical Protestant Christian and her sincerely held religious beliefs compel her to refuse on religious grounds all of the Pharmaceutical Products. For the previous 10 years, King has been exempted from the MMR vaccine on religious grounds, but her request for a religious exemption on the same grounds has been denied with regards to the Pharmaceutical Products in the Policy.
74. The Policy forces Chalupnicek and King to submit to an irreversible, unwanted invasive medical treatment in betrayal of their sincerely held religious beliefs. The Policy therefore engages their rights to freedom of conscience and religion under section 2(a) of the *Charter*.

Charter, Section 1

75. None of the violations of *Charter* sections 2(a) or 7 discussed above are reasonable limits that can be demonstrably justified in a free and democratic society for reasons, including *inter alia*, the following:
 - a. AHS is capable of offering regular PCR and antigen testing to workers that have not received an injection with the Pharmaceutical Products as demonstrated by the Extended Policy;
 - b. individuals with naturally-acquired immunity do not require treatment with one of the Pharmaceutical Products in order for AHS to meet the goals of the Policy;
 - c. AHS failed even to consider naturally-acquired immunity and antibody testing when it developed the Policy;
 - d. none of the Pharmaceutical Products mandated by the Policy provide workers with full immunity against them acquiring SARS-CoV-2 or transmitting SARS-CoV-2 to others; on the contrary, workers who have taken the Pharmaceutical Products remain at substantial risk of both acquiring SARS-CoV-2 and transmitting SARS-CoV-2 to others;
 - e. the only significant benefit to a worker inoculated with the Pharmaceutical Products mandated by the Policy, is the potential reduction of the severity of the health outcomes for that individual in the event he/she contracts SARS-CoV-2;

- f. workers who have taken the Pharmaceutical Products are not fully immunized and may transmit the virus to others, like other workers who have neither taken a Pharmaceutical Product nor acquired natural immunity;
- g. workers who have taken the Pharmaceutical Products in compliance with the Policy may be more likely than asymptomatic unvaccinated individuals to transmit the virus to others;
- h. there is already adequate testing technology available in Alberta that would satisfy the goals of the Policy; and
- i. there is a significant number of Albertans who remain opposed to taking one of the Pharmaceutical Products and it is the duty of the Government of Alberta to pursue readily available alternatives for meeting the Policy's objectives without coercing those who are opposed to taking the Pharmaceutical Products.

76. AHS has failed to properly or adequately consider:

- j. the overall impact of the Policy on the Plaintiffs, its workers, the health care system and Alberta society as a whole; or
- k. readily available alternatives for meeting the Policy's objectives without coercing those who are opposed to taking the Pharmaceutical Products.

Alberta Bill of Rights

77. The Policy is within the authority of the Legislature of Alberta.

78. AHS has authorized the abrogation, abridgment or infringement of the Plaintiff's rights under the Alberta Bill of Rights.

79. The Plaintiffs are being deprived of their rights to liberty, security of the person, and the enjoyment of property by a government policy decision lacking the formal protection offered by due process of law.

REMEDY SOUGHT

80. A declaration that the Policy is an unjustified infringement of the right to life contrary to the principles of fundamental justice pursuant to section 7 of the *Charter*;

81. A declaration that the Policy is an unjustified infringement of the right to liberty contrary to the principles of fundamental justice pursuant to section 7 of the *Charter*;

82. A declaration that the Policy is an unjustified infringement of the right to security of the person contrary to the principles of fundamental justice pursuant to section 7 of the *Charter*;
83. A declaration that the Policy is an unjustified infringement of the right to freedom of conscience and religion pursuant to section 2(a) of the *Charter*;
84. A declaration that the Policy infringes the rights to liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law, pursuant to section 1 of the *Alberta Bill of Rights*;
85. Pending determination of the declaratory relief sought, an interim injunction enjoining AHS from implementing the Policy;
86. Costs in any amount this honourable Court deems appropriate in the circumstances; and
87. Such further and other relief as counsel for the Plaintiffs may advise and this honourable Court may consider appropriate.

NOTICE TO THE DEFENDANT(S)

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.