

Vaccine Choice Canada litigation

Date: March 15, 2023

To: City Council

From: City Solicitor

Wards: All

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation that affects the City of Toronto and the attachment to this report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

Vaccine Choice Canada ("VCC") and seven individuals have brought a legal claim against the City of Toronto (the "City"), the federal government, the Ontario government, other municipal governments and government actors as well as various officials and employees of those entities. Both Toronto's mayor and medical officer of health are named in their official capacity. The claim was brought in Superior Court, bearing Court File No. CV-20-00643451-0000 ("the Claim").

The Claim seeks declarations that public health measures that were adopted in response to the COVID-19 pandemic are unconstitutional and seeks injunctions against future COVID-19 public health measures.

A motion to strike the Claim has been scheduled for January 30 and February 1, 2024.

Confidential Attachment 1 contains legal advice from the City Solicitor regarding this legal proceeding.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1.
2. City Council direct that the confidential instructions in Confidential Attachment 1 remain confidential at the discretion of the City Solicitor and that the balance of

Confidential Attachment 1 remain confidential in its entirety, as it pertains to litigation and contains advice that is subject to solicitor-client privilege

FINANCIAL IMPACT

The financial implications of the litigation are discussed in Confidential Attachment 1.

DECISION HISTORY

The City Solicitor has not previously reported on the litigation discussed in this report.

COMMENTS

The Claim was issued on July 6, 2020. It alleges that various public health measures adopted in response to the COVID-19 pandemic are unconstitutional, and it seeks injunctions against future COVID-19 public health measures.

The Parties

The Claim has been brought by Vaccine Choice Canada ("VCC") and seven individuals (collectively, "**the Plaintiffs**"). VCC is a not-for-profit, self-proclaimed vaccine advocacy group. The seven individual plaintiffs allege that they were personally impacted by various COVID-19 public health measures that were passed by Canadian governments and government actors during the COVID-19 pandemic.

The plaintiffs have named as defendants the City of Toronto, "officials and employees" of the City, its mayor and medical officer of health.

The plaintiffs have also claimed against the following federal government entities and actors: His Majesty the King in Right of Canada, Attorney General of Canada, Prime Minister Justice Trudeau, Dr. Teresa Tam (Chief Public Health Officer for Canada), and Marc Garneau (former Minister of Transport) (the "**Federal Defendants**").

The plaintiffs have claimed against the following Ontario government entities and actors: His Majesty the King in Right of Ontario, Attorney General of Ontario, Premier Doug Ford, Christine Elliot (former Ontario Minister for Health and Long-term Care), Stephen Lecce (Ontario Minister of Education), and Dr. David Williams (former Chief Medical Officer of Health for Ontario) (the "**Ontario Defendants**").

The plaintiffs have claimed against the following municipal governments and municipal government actors: the "County of Wellington-Dufferin-Guelph", Dr. Nicola Mercer (Medical Officer of Health for the Wellington-Dufferin-Guelph Public Health Unit), "Windsor-Essex County", and Dr. Wajid Ahmed (former Medical Officer of Health for the Windsor-Essex County Health Unit) (the "**other Municipal Defendants**").

The plaintiffs had previously claimed against the Canadian Broadcasting Corporation ("**CBC**") but have since discontinued that claim.

Nature of the Claim

In the plaintiffs' 191 page Claim, the plaintiffs seek declarations that public health measures that were adopted in response to the COVID-19 pandemic are unconstitutional. They are also seeking interim and permanent injunctions against future COVID-19 public health measures, including mandatory vaccination policies and mandatory masking policies.

The plaintiffs previously sought \$1,000,000 in general damages and \$10,000,000 in punitive damages from the defendant CBC. The plaintiffs have since discontinued their claim as against the CBC, so the only remaining relief sought in the action is declaratory and injunctive in nature.

Relief sought against the City of Toronto Defendants

The Plaintiffs seek several declarations as against the Toronto Defendants, including, but not limited to, the following:

- a) Declarations that the COVID-19 measures enacted by City of Toronto bylaw and orders made by the City of Toronto Medical Officer of Health are ultra vires and unconstitutional for breaches of s.2, s.7, s.8, s. 9 and s. 15 of the *Charter of Rights and Freedoms*. The Claim specifically challenges municipal measures regarding self-isolation, social distancing, masking, closure of businesses, closure of schools, daycares, park amenities and playgrounds, discontinuance of access to various services, and closures of places of worship.
- b) Declarations that officials engaged in ultra vires and unconstitutional conduct and acted in abuse and excess of their authority.

The Plaintiffs are also seeking interim and/or final injunctive relief against the Toronto Defendants to prevent future public health measures regarding mandatory vaccination, compelled use of face-masks and other unspecified COVID-19 measures.

Motion to Strike Scheduled for January 30 and February 1, 2024

Rule 21 of the Ontario Rules of Civil Procedure provides for a process for striking out a Statement of Claim at an early stage in the proceeding if certain conditions are met. The Federal Defendants, Ontario Defendants and other Municipal Defendants have booked a motion to strike the Claim pursuant to Rule 21 on the basis that there is no cause of action and the claim is frivolous, vexatious and an abuse of process. The motion is scheduled to be heard on January 30 and February 1, 2024.

Confidential legal advice about the litigation is provided in Confidential Attachment 1.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

Confidential Attachment 1 - Legal Advice and Confidential Instructions to Staff