

CANADA / JUDGMENT

Dorceus v. Ontario

2026 ONCA 321

COURT

Court of Appeal for Ontario

DECIDED

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Dorceus v. Ontario

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COA-25-CV-0051

Judges

Tulloch, Michael H.; Roberts, Lois B.; George, Jonathon C.

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Dorceus v. Ontario, 2026 ONCA 321

DATE: 20260506

DOCKET: COA-25-CV-0051

Tulloch C.J.O., Roberts and George JJ.A.

BETWEEN

Michelet Dorceus et al.

Appellants (Plaintiffs)[1]

and

His Majesty the King of Ontario, Ontario Premier Doug Ford, Former Minister of Health Christine Elliot, Current Minister of Health Sylvia Jones, Former Minister of Long Term Care Paul Calandra, Bayshore Healthcare, Belleville General Hospital, Brant Community Health Care System, Cambridge Memorial Hospital, Centre for Addiction and Mental Health, Chatham Kent Health Alliance, The Corporation of the County of Essex, Community Living Windsor, Erie Shores HealthCare, Extendicare, Georgian Bay General Hospital, Grand River Hospital, Grey Bruce Health Services, Halton Healthcare Services Corporation, Hamilton Health Services Sciences, Home and Community Care Support Services (Toronto Central Local Health Integration Network, Mississauga Halton Local Health Integration Network, Erie St. Clair Local Health Integration Network, Hamilton Niagara Haldimand Brant Local Health Integration Network, South West Local Health Integration Network), Hospital for Sick Children, Hotel Dieu Grace Healthcare, Humber River Hospital, Huron Lodge Long Term Care Home, The Corporation of the City of Windsor, Joseph Brant Hospital, Lakeridge Health, London Health Services, Niagara Health System, North Bay Regional Health Centre, Ontario Shores Centre for Mental Health Sciences, Orillia Soldiers Memorial Hospital, The Ottawa Hospital, Peterborough Regional Health Centre, Quinte Health Care, Quinte Healthcare Corporation, Riverview Gardens Long Term Care Chatham Kent, The Corporation of the Municipality of Chatham-Kent, Royal Ottawa Health Care Group, Royal Victoria Regional Health Care, Saint Elizabeth Health Care, Scarborough Health Network, Schlegel Village, Southlake Regional Health Centre, St. Joseph's Care Group, St. Joseph's Health Care London, St. Joseph's Health System, St. Mary's General Hospital, Thunder Bay Regional Health Sciences Centre, Timmins and District Hospital, Trillium Health Partners, Unity Health Toronto, University Health Network, Waypoint Centre for Mental Health Care, William Osler Health System, Windsor Regional Hospital, Woodstock Hospital

Respondents (Defendants)

Rocco Galati, for the appellants

Emily Owens and Sean Kissick, for His Majesty the King in Right of Ontario, Ontario Premier Doug Ford, Former Minister of Health Christine Elliot, Current Minister of Health Sylvia Jones, and Former Minister of Long-Term Care Paul Calandra

Frank Cesario and Shivani Chopra, for the respondents Bayshore Healthcare, Belleville General Hospital, Brant Community Health Care System, Cambridge Memorial Hospital, Centre for Addiction and Mental Health, Chatham Kent Health Alliance, The Corporation of the County of Essex, Community Living Windsor, Erie Shores HealthCare, Extendicare, Georgian Bay General Hospital, Grand River Hospital, Grey Bruce Health Services, Halton Healthcare Services Corporation, Hamilton Health Sciences, (Toronto Central Local Health Integration Network, Mississauga Halton Local Health Integration Network, Erie St. Clair Local Health Integration

Network, Hamilton Niagara Haldimand Brant Local Health Integration Network, South West Local Health Integration Network), Hospital for Sick Children, Hotel Dieu Grace Healthcare, Humber River Hospital, The Corporation of the City of Windsor, Joseph Brant Hospital, Lakeridge Health, London Health Services, Niagara Health System, North Bay Regional Health Centre, Ontario Shores Centre for Mental Health Sciences, Orillia Soldiers Memorial Hospital, The Ottawa Hospital, Peterborough Regional Health Centre, Quinte Healthcare Corporation, The Corporation of the Municipality of Chatham-Kent, Royal Ottawa Health Care Group, Royal Victoria Regional Health Care, Saint Elizabeth Health Care, Scarborough Health Network, Schlegel Village, Southlake Regional Health Centre, St. Joseph's Care Group, St. Joseph's Health Care London, St. Joseph's Health System, St. Mary's General Hospital, Thunder Bay Regional Health Sciences Centre, Timmins and District Hospital, Trillium Health Partners, Unity Health Toronto, University Health Network, Waypoint Centre for Mental Health Care, William Osler Health System, Windsor Regional Hospital, and Woodstock Hospital

Heard: October 2, 2025

On appeal from the order of Justice Markus Koehnen of the Superior Court of Justice, dated December 18, 2024, with reasons reported at 2024 ONSC 7087.

Tulloch C.J.O.:

A. Introduction [1] This appeal concerns the proper role of courts in the administration of justice and the limits of civil litigation. The appellants, a group of more than 400 current and former healthcare workers, allege that a provincial public health directive led to the suspension or termination of their employment because they declined vaccination. They challenge an order of the Superior Court of Justice striking their Amended Statement of Claim against 59 defendants – the provincial Crown, four government officials, and 54 healthcare organizations – under rr. 21.01(1)(b) and 21.01(3)(d) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194.[2]

[2] The motion judge concluded that the claim constituted both an abuse of process and a pleading that disclosed no reasonable cause of action. In particular, he ruled that the claim was a forum for a broad political and scientific inquiry into the entirety of Ontario's response to the COVID-19 pandemic rather than a vehicle for resolving legally cognizable disputes between the parties. He further concluded that the claims of the unionized appellants and those holding hospital privileges should be pursued in other statutory decision-making forums rather than in court.

[3] The appellants argue that the motion judge erred in finding an abuse of process, wrongly dismissed their Charter and tort claims at an early stage, improperly took judicial notice of scientific facts, erred in declining jurisdiction, denied them procedural fairness, and awarded excessive costs against them.

- [4] I disagree and, for the reasons that follow, would dismiss the appeal. The motion judge properly determined that the proceeding was an abuse of process which disclosed no reasonable cause of action and, for many of the appellants, was subject to the decision-making authority of labour arbitrators and hospital committees. His decision was procedurally fair, and his costs award was reasonable.
- [5] Like the motion judge, I emphasize that this decision does not foreclose the appellants from pursuing any legally viable claims for the suspension or loss of their employment which may be available to them. Because work is an important interest that merits careful protection, the law provides multiple avenues to seek remedies for the loss of employment. As the motion judge ruled, unionized appellants can pursue labour arbitration, those with hospital privileges can seek relief under a statutory process, and non-unionized appellants without those privileges have leave to amend to bring focused claims disclosing a reasonable cause of action against their employers in court.

B. Background 1. Public Health Context [6] On March 11, 2020, the World Health Organization declared COVID-19 a global pandemic. On March 17, 2020, Ontario declared an emergency pursuant to s 7.0.1 of the Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9 (“EMCPA”). Various public health measures followed.

- [7] On August 17, 2021, the Chief Medical Officer of Health issued Directive 6 under s. 77.7 of the Health Protection and Promotion Act, R.S.O. 1990, c. H.7.[3] This directive required certain healthcare organizations to establish and ensure employee and staff compliance with a vaccination policy. Pursuant to the directive, that policy must require either vaccination, written proof of a medical reason for non-vaccination along with regular COVID-19 testing, or, if an organization so chose, completion of an educational session about the benefits of vaccination together with regular testing. The directive did not mandate dismissal or discipline; those decisions remained within the discretion of individual employers.
- [8] Directive 6 was revoked on March 14, 2022.
2. The Claim [9] The appellants’ Amended Statement of Claim advances a series of sweeping allegations. In particular, the appellants assert that the COVID-19 pandemic was fabricated, that vaccines and PCR testing constituted crimes against humanity, that vaccine passports violated the Charter, that lockdown measures amounted to “martial law,” and that government officials committed criminal acts.
- [10] The claim also asserts numerous torts and seeks damages and declarations against employers, the provincial Crown, and government officials.
- [11] The pleading combines the claims of 473 individuals employed by or working at 54 healthcare organizations across Ontario. Most of the appellants are unionized, and eight of them were hospital staff with privileges governed by the Public Hospitals Act, R.S.O. 1990, c. P.40.

3. Decision of the Motion Judge [12] The motion judge ruled that the unionized and privileged hospital staff appellants had advanced their claims against the healthcare respondents in the wrong forum. He determined that the unionized appellants' claims were subject to the exclusive jurisdiction of labour arbitrators and that the claims of the privileged hospital staff should be brought before the governing bodies of their hospitals and the Health Professionals Appeal and Review Board ("HPARB").
- [13] Next, the motion judge struck the claims against all respondents as an abuse of process. He ruled that the appellants attempted to aggregate hundreds of unrelated claims while advancing scandalous and speculative allegations which risked politicizing the judicial process.
- [14] The motion judge also struck the claims against all respondents for disclosing no reasonable cause of action, as the Charter and tort claims lacked the necessary material facts and were foreclosed by existing jurisprudence.
- [15] The motion judge granted limited leave to amend in accordance with his reasons. He noted that individualized wrongful dismissal claims by non-unionized employees against their employers might merit leave if pled with supporting facts and without outlandish allegations.

C. Issues on Appeal [16] The appellants raise the following issues on this appeal:

- (a) Did the motion judge err in striking the claim as an abuse of process?
- (b) Did the motion judge err in concluding that the claim disclosed no reasonable cause of action?
- (c) Did the motion judge improperly take judicial notice?
- (d) Did the motion judge err in dismissing the claims of the unionized and privileged hospital staff appellants on jurisdictional grounds?
- (e) Was there any procedural unfairness or error in the costs award?

D. Analysis [17] I would dismiss the appeal. The motion judge committed no reversible error on any of the issues raised.

1. Abuse of Process a. The Courts' Institutional Role and the Abuse of Process Doctrine [18] Before turning to the specific legal tests applicable to the abuse of process issue, it is necessary to recall a fundamental constitutional principle: courts are not political institutions.

- [19] Canada's constitutional structure divides authority among three branches of government: the legislative, executive, and judicial. Under this separation of powers, the legislature and executive are the political branches of government, while the courts serve a different institutional role: *Reference re Remuneration of Judges of the Provincial Court of Prince Edward Island*, [1997] 3 S.C.R. 3, at para. 108.
- [20] The twin political branches exercise political responsibilities. The legislative branch makes laws, and the executive branch administers them. Both make policy choices that balance competing economic, social, and political considerations: *Nelson (City) v. Marchi*, 2021 SCC 41, [2021] 3 S.C.R. 55, at paras. 42-44.
- [21] The judicial branch performs a distinct apolitical function – upholding the rule of law by resolving legal disputes. Courts discharge this mission by independently and impartially interpreting and applying the laws enacted by the legislature and administered by the executive: *Marchi*, at para. 42; *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43, [2013] 3 S.C.R. 3, at para. 28.
- [22] The three branches are interdependent. They rise or fall together. For all to flourish, each must play its proper role. When any branch oversteps its bounds, public trust in all is endangered: *Criminal Lawyers' Association*, at paras. 29, 79.
- [23] Thus, the cornerstone of the separation of powers is mutual respect. By respecting each others' proper role, each branch preserves public confidence in our system of government. By respecting judicial independence, for example, the political branches not only show proper regard for the courts – they also strengthen public trust in the rule of law, the justice system, and our constitutional democracy: *Vriend v. Alberta*, [1998] 1 S.C.R. 493, at paras. 136-137; *British Columbia (Attorney General) v. Provincial Court Judges' Association of British Columbia*, 2020 SCC 20, [2020] 2 S.C.R. 506, at para. 29.
- [24] Because respect is reciprocal, the judiciary must remain mindful not to intrude into the domains of the political branches. The courts of law exist to resolve legal disputes. The courtroom is not a political forum. Nor is it a proxy for the public inquiry process in which the policy judgments of the legislative and executive branches can be second-guessed and re-weighed. These differences between the judicial function and the political arena must be preserved: see, e.g., *Vriend*, at para. 136; *Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)*, 2007 SCC 2, [2007] 1 S.C.R. 38, at para. 39; *Ontario Teachers' Federation v. Ontario (Attorney General)*, (1998), 39 O.R. (3d) 140 (Gen. Div.), at pp. 146, 148; *Everywoman's Health Centre Society (1988) v. Bridges (1991)*, 54 B.C.L.R. (2d) 294 (C.A.), at paras. 19-20.
- [25] The motion judge was, therefore, correct to approach the appellants' claim through the lens of the abuse of process doctrine. That doctrine protects the integrity of the judicial process against the improper use of the courts: *Appleyard v. Zealand*, 2022 ONCA 570, 162 O.R. (3d) 494, at para. 59, quoting *Foy v. Foy (No. 2)* (1979), 26 O.R. (2d) 220 (C.A.), at p. 237, per Blair J.A. (dissenting, but not on this point), leave to appeal refused, [1979] 2 S.C.R. vii. Because

the courts are not a political forum, proceedings brought primarily to advance a political agenda rather than to resolve a legal dispute may be abusive. Such proceedings risk undermining public confidence by blurring the lines between the judicial function and the roles of the political branches: see, e.g., *Everywoman's Health Centre Society*, at paras. 19-20; *Davidson v. British Columbia (Attorney General)*, 2005 BCSC 1765, at paras. 8-12, *aff'd* 2006 BCCA 447, 214 C.C.C. (3d) 373.

- b. Application: The Proceeding Was Abusive [26] The motion judge concluded that the claim attempted to use the court as a forum to conduct a sweeping inquiry into the scientific validity and policy wisdom of Ontario's pandemic response. I would uphold this conclusion.

[27] The motion judge explained:

I have the distinct impression from reading the Amended Claim as a whole that its object is not to vindicate the employment rights of the plaintiffs so much as it is to mount a political crusade in which the court will be used as a grandstand to conduct an inquiry into the effectiveness of vaccines and the effectiveness of government measures in response to the Covid-19 pandemic.

[28] The motion judge further observed that debates about the effectiveness of public health measures untethered from the interpretation and application of specific laws to the facts of concrete cases are better conducted by scientists, policymakers, and public health authorities than by courts.

[29] I agree with that assessment.

[30] The Amended Statement of Claim seeks to have the court determine that the pandemic was fabricated, that PCR testing was fraudulent, and that vaccines constitute crimes against humanity. These allegations are not tied to individualized facts concerning the appellants' employment circumstances. They do not answer the specific factual questions necessary for adjudication – "who did what, where, when, how, and with what motive or intent": *Danson v. Ontario (Attorney General)*, [1990] 2 S.C.R. 1086, at p. 1099, quoting Kenneth Culp Davis, *Administrative Law Treatise*, vol. 2 (St. Paul, Minn.: West Publishing Co., 1958), at para. 15.03, p. 353.

[31] Instead, the claim attempts to challenge the entirety of Ontario's pandemic response. Many of these measures have no connection whatsoever with Directive 6 or the appellants' loss of employment with the healthcare respondents.

[32] This sweeping challenge is fatally flawed because it lacks a factual foundation: *Ernst v. Alberta Energy Regulator*, 2017 SCC 1, [2017] 1 S.C.R. 3, at para. 22. The courts are institutionally unsuited to conduct such an inquiry. Public health policy requires the weighing of complex scientific evidence, economic considerations, and healthcare system capacity. Those are matters entrusted to the political branches of government.

- [33] The occasional necessity of reviewing those branches' public health decisions for constitutional compliance increases, rather than lessens, the need for focused claims supported by a proper factual foundation. To preserve judicial integrity, constitutional issues must be litigated in a disciplined manner rather than decided in an abstract factual vacuum: *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, at para. 59; Danson, at pp. 1099-1101.
- [34] The claim, therefore, goes beyond the proper purpose, recognized in *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138, at p. 151, of challenging the constitutionality of specific laws and governmental acts. Instead, it attempts to transform the courtroom into what the motion judge aptly described as a "grandstand" for political advocacy.
- [35] As I have explained, the abuse of process doctrine exists precisely to prevent this type of misuse of the judicial process. Thus, the motion judge committed no error in concluding that the action was an abuse of process which should be remedied by striking the claims with leave to amend in accordance with his reasons.
- [36] In affirming the motion judge's conclusion, I do not in any way wish to impugn the motives of the appellants or their counsel. I accept counsel's submission that the issues raised in this proceeding are significant to his clients and that he always strives to respect the courts. However, motive is not the test. "Rather than focus on the motive or status of the parties, the doctrine of abuse of process concentrates on the integrity of the adjudicative process": *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 51. As currently framed, this proceeding would violate that process's integrity by politicizing it.
2. No Reasonable Cause of Action [37] The motion judge also correctly struck the pleadings for disclosing no reasonable cause of action. I first address the appellant's arguments concerning the motion to strike test and next consider each pleaded claim.
- a. The Motion to Strike and the Administration of Justice [38] The appellants argue that the motion judge should have allowed the case to proceed so that evidence could be developed and novel legal issues could be decided on their merits. These submissions misunderstand the purpose of a motion to strike.
- [39] Rule 21.01(1)(b) of the Rules of Civil Procedure permits a court to strike a pleading that discloses no reasonable cause of action. The governing test is whether it is plain and obvious that the pleaded facts cannot support a legally viable claim – in other words, whether the claim is bound to fail as a matter of law: *Bowman v. Ontario*, 2022 ONCA 477, 162 O.R. (3d) 561, at paras. 38-39.
- [40] In its motion to strike jurisprudence, the Supreme Court has repeatedly emphasized that courts must dispose of legally untenable claims at an early stage. Doing so enhances timely access to justice, promotes certainty in the law, and ensures efficiency. It allows courts and litigants to focus on disputes that have a realistic prospect of success by preventing cases from slowly consuming judicial and party resources while their legal viability remains

uncertain: *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, [2020] 2 S.C.R. 420, at paras. 18-21; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45, at para. 20; see also *Owsianik v. Equifax Canada Co.*, 2022 ONCA 813, 164 O.R. (3d) 497, at para. 46, leave to appeal refused, [2023] S.C.C.A. No. 33.

- [41] The motion judge in this case performed precisely that function. Rather than taking what might be described as the path of least resistance – allowing the litigation to proceed despite its legal defects – he undertook the necessary analysis and resolved the legal issues raised by the pleadings. That work strengthened the administration of justice by preventing a legally unsound action from consuming years of litigation resources.
- [42] The appellants’ procedural objections to the motion judge’s approach are unfounded. Motions to strike are a form of merits resolution – they decide the merits of legal questions. Those motions are decided on pleaded facts not speculation about what evidence might later emerge. If a claim is not legally viable even where those pleaded facts are taken to be true, then it must be struck even if novel: *Owsianik*, at paras. 42, 50; *Atlantic Lottery*, at para. 19; *Imperial Tobacco*, at paras. 23, 25.
- b. Application: The Claims Are Not Legally Viable [43] Applying this test, the motion judge correctly concluded that the claims are not legally viable.
- i. Charter Claims [44] The Appellants allege violations of ss. 2, 6, 7, 9, and 15 of the Charter. The motion judge correctly struck these claims because (1) the Charter does not apply to most of the healthcare respondents, (2) and those claims are bound to fail as a matter of law.
- [45] First, the motion judge correctly concluded that the Charter did not apply to the 47 healthcare respondents which are private entities rather than public bodies.
- [46] Section 32(1) limits the application of the Charter to the federal and provincial legislatures and governments in respect of all matters within their respective legislative authority. That section provides:
- 32 (1) This Charter applies
- (a) to the Parliament and government of Canada in respect of all matters within the authority of Parliament including all matters relating to the Yukon Territory and Northwest Territories; and
- (b) to the legislature and government of each province in respect of all matters within the authority of the legislature of each province.

- [47] Because of this constitutional limit, private non-governmental activity is not subject to the Charter. This deliberate choice was made, in part, to safeguard the separation of powers. By barring judicial scrutiny of private actions for constitutional compliance, it preserves the political branches' authority to regulate private actors through more flexible instruments. This choice must be respected: *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573, at pp. 593-597; *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229, at pp. 262-263.
- [48] To uphold this careful balance, the Charter only applies to an entity if (1) it is government by nature or control, or (2) it conducts specific activities that are governmental in nature – meaning, implementing a specific governmental program or exercising powers of statutory compulsion. The first branch subjects all the entity's activities to the Charter, while the second only applies the Charter to the entity's inherently governmental activities: *Dickson v. Vuntut Gwitchin First Nation*, 2024 SCC 10, 490 D.L.R. (4th) 1, at paras. 61, 66.
- [49] The first branch does not apply in this case because, as the motion judge recognized, private healthcare institutions are not government by nature or control: *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, at para. 46, citing *Stoffman v. Vancouver General Hospital*, [1990] 3 S.C.R. 483.
- [50] The motion judge correctly concluded that the second branch does not apply either because the activity at issue – the suspension or termination of employment – is private not inherently governmental. The Directive neither governs nor mandates suspending or terminating employment. Instead, like the public-private agreement in *Sagen v. Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games*, it preserved the healthcare respondents' exclusive authority over those specific acts: 2009 BCCA 522, 313 D.L.R. (4th) 393, at paras. 46-49, leave to appeal refused, [2009] S.C.C.A. No. 459. Thus, similar to the mandatory retirement policy in *Stoffman*, those acts are internal management matters which lack a "direct and ... precisely-defined connection" to the Directive: *Stoffman*, at p. 516, quoting *Dolphin Delivery*, at p. 601.
- [51] The appellants' contrary argument that the Charter applies because healthcare is an important public function fails. The exercise of private contractual powers over internal management is not subject to the Charter simply because the entity in question performs a "public function" in the loose sense, like healthcare delivery or post-secondary education: *Eldridge*, at para. 43; see also *Lavigne v. Ontario Public Service Employees Union*, [1991] 2 S.C.R. 211, at p. 311.
- [52] Second, the motion judge correctly concluded that the pleadings fail to disclose viable Charter claims.
- [53] Beginning with s. 7, those claims are not viable. Section 7 protects the right to refuse to consent to medical treatment: *Carter v. Canada (Attorney General)*, 2015 SCC 5, [2015] 1 S.C.R. 331, at para. 67. The Directive, however, did not deprive the appellants of this right. As the motion judge observed, it did not compel them to undergo any form of medical procedure. Instead, the heart of their complaint is that they faced employment

consequences for choosing not to vaccinate or test. Those consequences do not engage s. 7 because it does not protect the right to pursue a particular occupation: *Tanase v. College of Dental Hygienists of Ontario*, 2021 ONCA 482, 156 O.R. (3d) 675, at para. 40, leave to appeal refused, [2021] S.C.C.A. No. 350.

- [54] The s. 15 claim also fails. Section 15 (1) prohibits discrimination based on enumerated or analogous grounds: *Quebec (Attorney General) v. Kanyinda*, 2026 SCC 7, 511 D.L.R. (4th) 201, at para. 48. Vaccination status is neither. It is not enumerated because 15(1) does not list it, and it is not analogous because the choice to get vaccinated or not is neither actually nor contractively immutable: *Lewis v Alberta Health Services*, 2022 ABCA 359, 61 Alta. L.R. (7th) 372, at paras. 62-70, leave to appeal refused, [2023] S.C.C.A. No. 6, citing *Corbiere v. Canada (Minister of Indian and Northern Affairs)*, [1999] 2 S.C.R. 203, at para. 13.
- [55] The ss. 2, 6, and 9 claims are not viable either. As the motion judge determined, the appellants did not plead any material facts demonstrating how Directive 6 or “vaccine passports” allegedly breached any of those rights.
- c. Tort Claims [56] The appellants’ intentional tort claims for conspiracy, misfeasance in public office, intimidation, and intentional infliction of mental anguish are also not viable. Each of these torts requires proof of intent or malice – matters which require particularized allegations. As the motion judge determined, the pleading contains none. Its bald allegations of wrongdoing are insufficient: *Gratton-Masuy Environmental Technologies Inc. v. Ontario*, 2010 ONCA 501, 101 O.R. (3d) 321, at paras. 88-89.
- d. Emergency Powers and International Law [57] The appellant’s challenge to the provincial emergency declaration under the EMCPA is doomed to fail as pleaded. As the motion judge determined, the appellants did not plead any material facts to support their argument that the statutory prerequisites were not met.
- [58] The declarations that the pandemic response violated international law and constituted crimes against humanity fail for similar reasons. These allegations are unsupported by material facts and disclose no viable cause of action. The motion judge did not err in striking these claims as they have no reasonable chance of success.
3. Judicial Notice [59] Further, I do not accept the appellants’ argument that the motion judge committed a reversible error by taking judicial notice of scientific facts concerning the pandemic.
- [60] Judicial notice is governed by the well-established test articulated by the Supreme Court of Canada in *R. v. Find*, 2001 SCC 32, [2001] 1 S.C.R. 863, at para. 48. Courts may take notice of facts that are either (1) so notorious that they are not the subject of reasonable debate, or (2) capable of immediate and accurate demonstration.

- [61] The motion judge did not err by taking judicial notice of the existence of the COVID-19 pandemic and the fact that governments enacted public health measures. This court has already recognized those facts as well-known and uncontroversial: *R. v. Morgan*, 2020 ONCA 279, at para. 8; *Taylor v. Hanley Hospitality Inc.*, 2022 ONCA 376, 80 C.C.E.L. (4th) 1, at para. 31.
- [62] It is unnecessary to address the appellants' submission that the motion judge erred by taking judicial notice of additional facts concerning the scientific and evidentiary basis for pandemic response measures. Those additional facts have no bearing on the motion judge's central conclusion – that the proceeding was an abuse of process that failed to disclose reasonable causes of action.
4. Jurisdictional Issues [63] I would also uphold the motion judge's jurisdictional rulings concerning the claims of the unionized and privileged hospital staff appellants against the healthcare respondents.
- a. No Jurisdiction Over Unionized Appellants [64] First, I agree with the motion judge that the unionized appellants must arbitrate their dispute with the healthcare respondents because labour arbitrators have exclusive jurisdiction over its subject matter.
- [65] Under s. 48(1) of the Labour Relations Act, 1995, S.O. 1995, c. 1, Sched. A., a dispute between the parties to a collective agreement must be arbitrated if that agreement covers the dispute's essential character. The facts underlying the dispute, not legal labels, determine that character: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, [2021] 3 S.C.R. 107, at para. 40.
- [66] In an earlier case concerning Directive 6, this court concluded that the core harm alleged by unionized healthcare workers who chose to remain unvaccinated was the risk of suspension or termination. That harm, this court accepted, was both fundamentally related to employment and covered by the collective agreement in question: *National Organized Workers Union v. Sinai Health System*, 2022 ONCA 802, 345 L.A.C. (4th) 424, at paras. 37-41.
- [67] The motion judge properly applied the governing principles and this court's precedent. Following *Sinai Health*, he ruled that the essential character of the dispute was the risk of suspension or termination and that the relevant collective agreements covered that matter.
- [68] The appellants' objections fail. They cannot evade the dispute's essential character through legal labels such as Charter breaches or intentional torts. Those claims must be arbitrated where, as here, the essential character of the dispute nonetheless arises from the collective agreement: *Horrocks*, at paras. 19, 36, citing *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929. Contrary to the appellant's submission, labour arbitrators can grant declarations that Charter rights have been breached if they have jurisdiction over the parties and the dispute: *Weber*, at para. 75. It is of no moment that the arbitrator cannot formally declare that the Directive is of no force or effect under s. 52(1) of the Constitution Act, 1982 – a power reserved to the superior courts[4] – because that remedy is properly sought against the

provincial Crown rather than the healthcare respondents.

- b. Staying the Claims of the Privileged Hospital Staff Appellants [69] Second, I agree with the motion judge that the eight privileged hospital staff appellants are subject to the Public Hospitals Act dispute resolution regime. Thus, their claims against the healthcare respondents should be stayed unless and until they exhaust that process.

[70] As the motion judge recognized, the Public Hospitals Act establishes a comprehensive code for determining hospital privileges. That code vests decision-making authority in each hospital's Medical Advisory Committee. Parties may appeal that committee's decisions to the HPARB, whose decisions are in turn judicially reviewable in the Divisional Court. Parties must exhaust this process before commencing an action in court if the dispute's essential character concerns the determination of hospital privileges: *Kadiri v. Southlake Regional Health Centre*, 2015 ONCA 847, 343 O.A.C. 186, at paras. 11-14, 26-29, 55, citing *Beiko v. Hotel Dieu Hospital St. Catharines*, 2007 ONCA 860, at para. 4.

[71] The motion judge properly applied this test. He concluded that the dispute's essential character concerned the determination of hospital privileges because the privileged hospital staff appellants sought the reinstatement of privileges along with declarations that those privileges were unlawfully revoked. Thus, they were required to exhaust the statutory process before seeking relief in court.

[72] I do not accept the appellants' submission that the motion judge overlooked the principles in *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, as restated in *Solgi v College of Physicians and Surgeons of Saskatchewan*, 2022 SKCA 96, 473 D.L.R. (4th) 421. *TeleZone* permits the court to stay damages claims whose essential character concerns public law rights subject to judicial review: at para. 78; see also *Manuge v. Canada*, 2010 SCC 67, [2010] 3 S.C.R. 672, at paras. 18-19. The motion judge was entitled to exercise that authority because, as he determined, this dispute's essential character concerned public law rights subject to judicial review. *Solgi* is distinguishable because there, unlike here, the dispute's essential character concerned private law damages – the plaintiff in that case did not seek to invalidate a public body's decision and the request for reinstatement was merely incidental: at paras. 82-86.

- 5. Procedural Fairness and Costs [73] Finally, I reject the appellants' procedural fairness and costs arguments. The motion judge issued comprehensive reasons addressing all issues raised by the parties. The appellants were fully heard. Further, the costs award of \$15,000 was modest given the scope of the proceeding and the number of plaintiffs involved. In my view, there is no basis to interfere with that discretionary decision.

E. Conclusion [74] Courts exist to resolve legal disputes grounded in concrete facts. They are not political forums, scientific tribunals, or commissions of inquiry into public policy. The motion judge correctly recognized that the appellants' claim sought to transform the court into a platform for a sweeping political and scientific debate about the pandemic rather than a forum for adjudicating legal rights. The abuse of process doctrine and the motion-to-strike procedure

exist precisely to prevent such misuse of the judicial process. The motion judge applied those principles carefully and correctly.

[75] Accordingly, the appeal is dismissed.

[76] The respondents are entitled to their costs of the appeal. The appellants shall pay those costs to the respondents in the agreed-on all-inclusive amounts – \$15,000 to the healthcare respondents, and \$10,000 to the government respondents.

Released: May 6, 2026 “M.T.”

“M. Tulloch C.J.O.”

“I agree. Roberts J.A.”

“I agree. George J.A.”

Schedule A – Complete List of Appellants

Michelet Dorceus, Amynah Hirani, Oana-Andreea Istoc, Shelly Moore, Carol-Anne Parsons, Anne-Marie Sherk, (Bayshore Healthcare Workers)

-and-

Alexandra Newbold, (Brant Community Healthcare System)

-and-

Melissa Betts, Catherine Frustaglio, (Cambridge Memorial Hospital Workers)

-and-

Cristina Amorim, Lisa Avarino, Chelsea D'Almeida, (Centre for Addiction and Mental Health Workers (CAMH))

-and-

Danielle Cogghe, Sonia Couto, Amber DePass, Lauren Ives, Roxanne Jones, Desirea Lamoureux, Karen Metcalfe, Mary Margaret Raaymakers, Michelle Raaymakers, Erin Robitaille, Karen Roche, Amy Simpson, Erica Sower's-Rumble, Rebecca Verscheure, Tina Waring, (Chatham Kent Health Alliance Workers)

-and-

Mike Belawetz, Jonathon Croley, Mona Hansen, Ryan Kreeft, Brittany Raymond, (City of Windsor Workers (EMS)) (The Corporation of the County of Essex)

-and-

Maria Danho, Jennifer Jarrett, Erika Marrie, Crystal Mclean, Danuta Nogal, Beata Spadafora, Moustafa Yahfoufi, (Community Living Windsor Workers)

-and-

Karen Botham, Melissa Del Greco, Katie Friesen, Connie Grossett, David Sion, Nicole Ward, (Erie Shores HealthCare Workers (Leamington hospital))

-and-

Debra Bugg, Chantal Demera, Crystal Richardson, (Georgian Bay General Hospital Workers)

-and-

Denise Allan, Hafiza Ally, Csilla Ankucza, Brian Beatty, Amy Campbell, Bojan Gagic, Michael Goddard, Jacquie Haugen, Janet Izumi, Danielle Little, Alaa Maloudi, Martin Mueller, Jody Myers, Diane Radisic, Angela Robinson, Wanda Ropp, Sarah Roussy, Sherry Roussy, Sarah Samuel, Tatjana Suserski, Erika Toth, (Grand River Hospital Workers)

-and-

Tammy Algera, Jennifer Lefebvre, Melissa Leitch, Brenda Lowe, Jennifer Miske, Vinod Nair, Nicholas Rourke, Hetty Van Halteren, Jenna Widdes, (Grey Bruce Health Services Workers)

-and-

Sarah (Diane) Acker, Marija Belas, Kathy Cherneske, Sandra Cushing, Ruth Hanusch Leclerc, Laura-Beth Hewer, Laura Holmquist, Janet Nagy, (Halton Healthcare Services Workers)

-and-

Svitlana Alyonkina, Lisa Augustino, Angelika Biljan, Gary Blake, Laura Bosch, Darla Brocklebank, Ilija Bukorovic, Ryan Cino, Alma Cootauco, Susan Davis, Erica Demers, Natalie Djurdjevic, Colleen Gair, Katharine Gamble, Loredana Gheorghe, Mario Gheorghe, Sonja Jankovic, Cheryl Jordan, RosaMaria Jorey, Catherine King, Ashley Loeffen, Denis Madjar, Merima Mahmutovic, Shirley Morin, Calvin Murphy, Kristine Osenenko, Katarina Pavlovic, Andrea Power, Naomi Quiring, Brent Scarisbrick, Jocelyn Scholtens, Sharon Schuur, Rob Shortill, Liza Sibbald, Paola Sivazlian, Bethany Stroh-Gingrich, Lori Swan, Rachel Thibault, Susan Torenvliet, Tiffany-Anne Toulouse-Sauve, Brooke Vandewater, Taylor Vanyo, Benjamin Wencel, Justine Wieczorek, Monika Zawol-Zaprzala (Hamilton Health Sciences Workers)

-and-

Melissa Conley (Erie St.Clair), Janice Fisher (South West), Danielle Nowierski (Mississauga Halton), Daria Poronik (Toronto Central), Chantelle Seguin (Erie St.Clair), Veronica Sloan (Hamilton, Niagara, Haldimand, Brant), Trisha Stansfield (Erie St.Clair), Patricia Weaver (Mississauga Halton), (Home and Community Care Support Services Workers)

-and-

Jennifer Backle, Cheryl Baldwin, Tony Best, Sonia Carneiro, Melissa DeMelo, Susan Iori, Camille Mascowe, Antonietta Mongillo Debbie Oliveira, Kristine Sandoval, Felicia Ing-Tyng Tseng, Melanie Wegera, Nicole Welsh, (Hospital for Sick Children Workers)

-and-

Shauna Carriere, Jessica Clark-Carroll, Helena Feloniuk-Coaton, Bill Gerassimou, Jane Doe #1, Biljana Ignjatic-Ovuka, Biljana Josipovic, Tara Lauzon, Aleah Marton, Mihaela Opris, Salvatore Panzica, Jennifer Pedro, Breanne Poole, Danielle Qawwas, Jonathan Sandor, Michelynne Tremblay, Kattie Westfall, (Hotel Dieu Grace Healthcare Workers)

-and-

Albrecht Schall, (Humber River Hospital Worker)

-and-

Glenda Mendoza, (Huron Lodge & Schlegel Villages Worker (Aspen Lake)) (The Corporation of the City of Windsor)

-and-

Jeanette Bellamy, Odelia DaSilva, Zsuzsanna Kerestely, Wanda MacGrandles, Georgette Marshall, Kristin Matfin, Stevan Price, Shanna Pendakis, Kathleen Stringer, Martina Vulgan, Bailey Webster, (Joseph Brant Hospital Workers)

-and-

Chelsea Graham, Deborah Hogg, Cathy Houthuys, Jacqueline Vande Pol, (Lakeridge Health Workers)

-and-

Andrew Adamyk, Andrej Bosnjak, Laurie Bowman, Olga Collins, Tonia Coyle, Mary Eastman, Chiara Marie Elliot, Cathy Lindsay, Jessica Lindsay, Stephanie Liokossis, Heather MacNally, Maria Dorothy Moore, Georgia Murphy, Anita Murray, Mark Read, Katherine Robichaud, Nancy Sawlor, Christopher Squires, Lisa Starogianie, Allison Walsh, Lisa Wolfs (London Health Sciences Centre Workers)

-and-

Sharon Addison, Maxim Avtonomov, Marlene Brouwer, Cassandra Craig, Tasha Crump, Alex D'Souza, Christine L. Ehgoetz, Alyssia Elias, Chuck Evans, Vanessa Gallant, Dawn Greer, Rachel Lambkin, Christine Pritty, Kaitlyn Raso, Zorica Savanovic, Magen Scholtens, Catherine Seguin, Ada Talbot, Lianne Tessier, Megan Tiersma, Victoria Wright (Niagara Health System Workers)

-and-

Alison Margaret Bourre, Jenny Brown, Kathleen Burns, Lynne M.S. Cheff, Krista Leckie, Susan Mary Marcotte, Kristy Palmer, Charlene Splichen, Kathy Walsh, Sarah Walter, (North Bay Regional Health Centre Workers)

-and-

Sherri Bond, Ronnie Esau, Roman Goldshmidt, Arlene Kalmbach-Pashka, Kelvin Kean, Peter Mason, Kerry Scully, Kevin Snow, Bobbi-Jo Snow, Sheivonn Thompson, Kelly Lynn Woodrow, Goran Zdravkovski, (Ontario Shores Centre for Mental Health Sciences Workers)

-and-

Wendy Baerg, Rachel Blake, Paula Burke, Brianna Grantham, Norma Smith, Andrew Wilgress, (Orillia Soldiers Memorial Hospital Workers)

-and-

Nataliya Burlakov, Gabriele Caporale, Catherine Cox, Shelley Flynn, Sirpa Joyce, Amy McNutt, Shawn Riopelle, Slaven Savic, Robert Voith, Lori Wells, (The Ottawa Hospital Workers)

-and-

Jennifer Dixon, Kim Driver, Alexander Faulkner, Holly McDonald, Mandy Parkes, Katie Jeanette Pattison, Karly Marie Stothart, Breanne Townsend, (Peterborough Regional Health Centre)

-and-

Caseymae (Casey) Brant, Beth Ann Dick, Cynthia June Jordan, Matthew Langdon, Amanda Osbourne, Jonathan Raby, Sarah Rogerson, Rachel Runions, Dr. John Doe #1, Stephanie VanderSpruit, (Quinte Health Care Workers) (Quinte Healthcare Corporation)

-and-

Gabriela Borovicanin, Kristen Garcia, Madison Kristensen-Piens, Robin Millen, Cheryl Payne, Michelle Piens, (Riverview Gardens Long Term Care Chatham-Kent Workers)

(The Corporation of the Municipality of Chatam-Kent)

-and-

Caroline Goulet, Amir Hamed Farahkhiz, (The Royal Ottawa Mental Health Care) (Royal Ottawa Health Care Group)

-and-

Merilyn Gibson, Marcela Kollarova, Bozena Lassak, Gabriela Lassak, Gracjana Lassak Justyna Lassak, Paulina Lassak, Crystal Luchkiw, Sasha McArthur, Nadia Mousseau, Jenny Ramsay, (Royal Victoria Regional Health Centre Workers)

-and-

Cecile Butt, Darlene Crang, Jocelyn Ford, Melissa Idenouye, Lisa Marie Mountney, Jennifer Rands-Grimaldi, Judith Schoutsen, Holly Tucker, (Saint Elizabeth Home Health Care Workers) (Saint Elizabeth Health Care)

-and-

Sheila Daniel, Petrina Mattison, Karleen Smith, Eric Thibodeau, Lucy Thibodeau, (Scarborough Health Network Workers)

-and-

Sean Filbey, Musette Hoepfner, Glenda Mendoza, Janet Neuts, Cindy Sorenson, Cassandra Vaseleniuck Dunbar, (Schlegel Villages Workers)

-and-

Marina Anisimov, Oleg Anisimov, Cari Bradley, James Langille, Tammy Parker, Kelly Richards, Amanda Slik, Sheila Stiles, Mary Todd, Nataliya Veremenko, Anna Zamriga, (Southlake Regional Health Centre Workers)

-and-

Jesse Gratz, Sandra Zurkan, (St. Joseph's Care Group)

-and-

Lisa Autuchiewicz, Alicia Badger, Carly Bennett, Robin de Groot, Charmaine Dupuis, Nikki Greenhow, Cheri Mitchell, Angela Stacey, Wendy Thornton, Alison Wilson, (St. Joseph's Health Care London Workers)

-and-

Byron Bolton, Michelle Cruz, Renee Daviault, Barb Fisher, Cheryl Jeffrey, Gail Magarrey, Graham Nishikawa, Jennifer Pluck, Rhonda Rohr, Brooke Simpell, Christine Vitez, Stanislaw Wroblewski (St. Joseph's Health Care Hamilton Workers)

-and-

Leigh Carroll, Vincent Cromie, Tammy Foster-Grieco, Donna Glenn, Galina Karataeva, Lorrie Poulin, Jelena Sorgic, (St. Mary's General Hospital Workers)

-and-

Joan Elizabeth Rosen (Extendicare)

-and-

Kyla Balke, Danny Budd, Susan Buob-Corbett, Judith Deschenes, Linda Fieldhouse, Darlene Freeman, Nicholas Kowalczyk, Lorena Legary, Cheri Mantel, Theresa Lynn Noyes, Denise Roy, Rhonda Michelle Rentz, Bryden C. See, Catherine H. See, Cindy Stolz, (Thunder Bay Regional Health Sciences Centre Workers)

-and-

Stephanie Bienias, Angele Bouchard, Tanya Bouvier, Carol Charters, Julie Joanisse-Gillis, Angele Samson, (Timmins and District Hospital Workers)

-and-

Derick Anderson Jr., Joanna Carabetta, Andrea R. DeVries, Juanita Diorio, Rosa Grobanopoulos, Panagiota Patricia Jovanovic, Katarzyna Kobylinski, Vanessa MacLeish, Rosemary Morgan, Veronica Pereira, Karen Rotham, Tianilla Weigert Corredoura, (Trillium Health Partners Workers)

-and-

Imelda Agustin, Jessica Boccadoro, Esther Carter, Diana de Medeiros, Bridget Doukas, LesleyAnn Faltine, Raymond Hogue, Tania Ilkiw, Nathan Le, Vincent Le, Julia Ordonez, Jenny Poon, Amedeo Popescu, Rosa Ramos, Ian Samuda, Fawn Schroeder, Sandra Silva, John Doe #2, Ageliki Tzakis, Yuriy Wankiewicz, Lorraine Welsh, (Unity Health Toronto Workers)

-and-

Cheryl Bamford, Romana Freitas, Danica Dana Jovanovic, Nadiya Kaminska, Joanna Kiwak, Magdalena Kulikowski, Anna Piri, Afrodite Vorvis, Danijela Vukovic, Elaine Walker-Esson, (University Health Network Workers (UHN))

-and-

Sarah Boyington, Corinna Gayle, Sara Hampton, Sheila Jean Mackie, Anna Pavsic, Victoria Tiessen, William Vowels, Josh Wahl, (Waypoint Centre for Mental Health Care Workers)

-and-

(WFCC Niagara Health System)

-and-

Michelle Bowler, Margaret Caminero, Jennifer Correia, Judith Dube, Jennifer Jitta, Joan Knight-Grant, Clayton Lewis, Wetshi Mbotembe, Dolores Peckham, Jolanta Pietrzykowski, Crystal Simm, Malgorzata Skrzypek-Aviles, Crestina Tolfo, Irene Veenstra, Jacqueline Watson, Sharon Yandt, (William Osler Health System Workers)

-and-

Sarah Adams, Ashley Bardsley, Diane Boin, Michelle Bourgoin, Esther Grace Bradt, Ada Chiarot, Dayna Crowder, Tommy Dang, Wendy Douglas, Nicole Faucher, Amanda Foster, Anna Maria Gelinas, Christopher Gignac, Breanne Gillen, Jessica Hebert, Nidia Ingoldsby, Edua Keresztes, Renata Kreeft, Rhonda Lamont, Kelly Loch, Jennifer Macri, Natalie Morrone, Kristina Neufeld, Alexandra Pepin, Clifford Rosen, David Sion, Lisa Trif, Elizabeth (Liz) Vaughan, Deborah Wiebe, (Windsor Regional Hospital Workers)

-and-

Kelly Ciriello, Samantha King, Leah Kittmer, (Woodstock General Hospital Workers)

Appellants (Plaintiffs)

Schedule B – Directive 6

COVID-19

Directive #6 for Public Hospitals within the meaning of the
Public Hospitals Act, Service Providers in accordance with the
Home Care and Community Services Act, 1994, Local
Health Integration Networks within the meaning of the
Local Health System Integration Act, 2006, and
Ambulance Services within the meaning of the
Ambulance Act, R.S.O. 1990, c. A.19.

Issued under Section 77.7 of the Health Protection and

Promotion Act (HPPA), R.S.O. 1990, c. H.7

WHEREAS under section 77.7(1) of the HPPA, if the Chief Medical Officer of Health (CMOH) is of the opinion that there exists or there may exist an immediate risk to the health of persons anywhere in Ontario, he or she may issue a directive to any health care provider or health care entity respecting precautions and procedures to be followed to protect the health of persons anywhere in Ontario;

AND WHEREAS, many health care workers (HCW) in higher risk settings remain unvaccinated, posing risks to patients and health care system capacity due to the potential (re) introduction of COVID-19 in those settings, placing both HCW and patients at risk due to COVID-19 infection;

AND HAVING REGARD TO the prevalence of the Delta variant of concern globally and within Ontario, which has increased transmissibility and disease severity than previous COVID-19 virus strains, in addition to the declaration by the World Health Organization (WHO) on March 11, 2020 that COVID-19 is a pandemic virus and the spread of COVID-19 in Ontario

AND HAVING REGARD TO the immediate risk to patients within hospitals and

home and community care settings who are more vulnerable and medically complex than the general population, and therefore more susceptible to infection and severe outcomes from COVID-19

I AM THEREFORE OF THE OPINION that there exists or may exist an immediate risk to the health of persons anywhere in Ontario from COVID-19;

AND DIRECT pursuant to the provisions of section 77.7 of the HPPA that:

Directive #6 for Public Hospitals within the meaning of the Public Hospitals Act, Service Providers within the meaning of the Home Care and Community Services

Act, 1994, Local Health Integration Networks within the meaning of the Local Health System Integration Act, 2006, and Ambulance Services within the meaning of the Ambulance Act, R.S.O. 1990 c. A19.

Date of Issuance: August 17, 2021

Effective Date of Implementation: September 7, 2021

Issued To: Public hospitals within the meaning of the Public Hospitals Act, service

providers within the meaning of the Home and Community Care Act, 1994 with respect to their provision of community services to which that Act applies, Local Health Integration Networks within the meaning of the Local Health System Integration Act, 2006 operating as Home and Community Care Support Services with respect to the provision of community services and long-term care home placement services, and Ambulance Services within the meaning of the Ambulance Act, with respect to paramedics (collectively the “Covered Organizations”).

Required Precautions and Procedures

1. Every Covered Organization must establish, implement and ensure compliance with a COVID-19 vaccination policy requiring its employees, staff, contractors, volunteers and students to provide:
 - a) proof of full vaccination^[1] against COVID-19; or
 - b) written proof of a medical reason, provided by a physician or registered nurse in the extended class that sets out: (i) a documented medical reason for not being fully vaccinated against COVID-19, and (ii) the effective time-period for the medical reason; or
 - c) proof of completing an educational session approved by the Covered Organization about the benefits of COVID-19 vaccination prior to declining vaccination for any reason other than a medical reason. The approved session must, at minimum address:
 - i. how COVID-19 vaccines work;

ii. vaccine safety related to the development of the COVID-19 vaccines;

- [1] For the purposes of this document, “fully vaccinated” means having received the full series of a COVID-19 vaccine or combination of COVID-19 vaccines approved by WHO (e.g., two doses of a two-dose vaccine series, or one dose of a single-dose vaccine series); and having received the final dose of the COVID-19 vaccine at least 14 days ago.

iii. the benefits of vaccination against COVID-19;

iv. risks of not being vaccinated against COVID-19; and

v. possible side effects of COVID-19 vaccination.

2. Despite paragraph 1, a Covered Organization may decide to remove the option set out in paragraph 1(c) and require all employees, staff, contractors, volunteers and students to either provide the proof required in paragraph 1 (a) or (b).
3. Where a Covered Organization decides to remove the option set out in paragraph 1(c) as contemplated in paragraph 2, the Covered Organization shall make available to employees, staff, contractors, volunteers and students an educational session that satisfies the requirements of paragraph 1(c).
4. Every Covered Organization’s vaccination policy shall require that where an employee, staff, contractor volunteer, or student does not provide proof of being fully vaccinated against COVID-19 in accordance with paragraph 1(a), but instead relies upon the medical reason described at paragraph 1(b) or the educational session at 1(c) or if applicable, the employee, staff, contractor volunteer or student shall
 - a) submit to regular antigen point of care testing for COVID-19 and demonstrate a negative result, at intervals to be determined by the Covered Organization, which must be at minimum once every seven days.
 - b) provide verification of the negative test result in a manner determined by the Covered Organization that enables the Covered Organization to confirm the result at its discretion.
5. Where the Covered Organization is a public hospital, the Covered Organization’s vaccination policy applies to any businesses or entities operating on the hospital site.
6. Every Covered Organization must collect, maintain and disclose, statistical (nonidentifiable) information as follows:
 - a) Documentation that includes (collectively, “the statistical information”):
 - i. the number of employees, staff, contractors, volunteers and students that provided proof of being fully vaccinated against COVID-19;

ii. the number of employees, staff, contractors, volunteers and students that provided a documented medical reason for not being fully vaccinated against COVID-19; and

iii. the number of employees, staff, contractors, volunteers and students that completed an educational session about the benefits of COVID-19 vaccination in accordance with 1(c), where applicable.

iv. the total number of the Covered Organization's employees, staff, contractors, volunteers and students to whom this Directive applies.

- b) Upon request of OCMOH, disclose the statistical information to the Ministry of Health in the manner and within the timelines specified in the request. The ministry may seek additional detail within the requested statistical information outlined above which will also be specified in the request. The Ministry of Health may further disclose this statistical information and may make it publicly available.

Questions

Covered Organizations may contact the ministry's Health Care Provider Hotline at 1-866-212-2272 or by email at emergencymanagement.moh@ontario.ca with questions or concerns about this Directive.

Covered Organizations are also required to comply with applicable provisions of the Occupational Health and Safety Act and its Regulations.

Kieran Moore, MD

Chief Medical Officer of Health

- [1] See Schedule A for a complete list of the appellants.
- [2] I refer to the 54 healthcare organizations as the "healthcare respondents" and describe the provincial Crown and the four government officials – Premier Ford, Ministers Jones and Calandra, and former Minister Elliot – as the "government respondents."
- [3] Directive 6 is reproduced in Schedule B.
- [4] See *R. v. Lloyd*, 2016 SCC 13, [2016] 1 S.C.R. 130, at para. 15; *Cuddy Chicks Limited v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5, at p. 17.

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Prepared on 25 October 2026 · Esheria