

SUPERIOR COURT OF JUSTICE

BETWEEN:

Sgt. Julie Evans (Active Toronto Police Service Officer), **Christopher Vandembos** (Active York Regional Police Officer), **Sgt. Gregory Boltyansky** (Active Toronto Police Service Officer), **Adrienne Gilvesy** (Active Toronto Police Service Officer) **Matthew Blacklaws** (Active Toronto Police Service Officer), **Vilika Zafirides** (Active Hamilton Police Service Officer), **John Doe #1** (Active Toronto Police Service Officer), **John Doe #2** (Active Ontario Provincial Police Officer), **John Doe #3** (Active Toronto Police Service Officer), **John Doe #4** (Active Toronto Police Service Officer), **John Doe #5** (Active Toronto Police Service Officer), **John Doe #6** (Active Niagara Regional Police Service Officer), **John Doe #7** (Active Niagara Regional Police Service Officer), **John Doe #8** (Active Niagara Regional Police Service Officer), **Jane Doe #1** (Active Ottawa Police Service Officer), **Len Faul** (Retired Inspector, Toronto Police Service), **Wendy Suzanne Long** (Retired Corporal, Royal Canadian Mounted Police), **James Robert Tallevi** (Retired Police Constable, Niagara Regional Police Service) **Robert Stocki** (Retired Police Sgt., Ottawa Police Service)

Applicant(s)

-and-

Attorney General for Ontario, Premier Doug Ford, Her Majesty The Queen In Right of Canada, James Ramer (Chief of Police, Toronto Police Service), **Jim MacSween** (Chief of Police, York Regional Police), **Bryan MacCulloch** (Chief of police, Niagara Regional Police), **Peter Sloly** (Chief of Police, Ottawa Police Service), **Eric Girt** (Chief of Police, Hamilton Police Service), and **Attorney General of Canada**

Respondent(s)



NOTICE OF APPLICATION

(Pursuant to rule 14.05(3)(g.1) of the **Rules of Civil Procedure**)

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicants appears on the following page.

THIS APPLICATION will come on for a hearing:

- In person
- By telephone conference
- By video conference

at the following location: **330 University Ave, 8th Floor, Toronto, Ontario, M5G 1R7 on a day to be set by the registrar.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Diane Rhoden

Digitally signed by Diane Rhoden
DN: cn=Diane Rhoden, o=ov, email=Diane.Rhoden@ontario.ca, c=US
Date: 2021.04.26 16:48:39 -0400

Issue Date: April 20, 2021

Issued by _____
Local registrar

Address of Local Office: 330 University Ave.
8th Floor
Toronto, Ontario
M5G 1R7

TO: Attorney General for Ontario
McMurtry-Scott Building
720 Bay street, 11th floor
Toronto, ON M7A 2S9
Tel: 416-326-2220
Fax: 416-326-4007
attorneygeneral@ontario.ca

AND TO: James Ramer
Chief of Police
Toronto Police Service
40 College Street
Toronto, ON M5G 2J3
Tel: 416-808-2222
Email: officeofthechief@torontopolice.on.ca

AND TO: Jim MacSween
Chief of Police
York Regional Police
47 Don Hillock Dr.
Aurora, ON L4G 0S7
Tel: 1-866-876-5423
Email: chief@yrp.ca

AND TO: Bryan MacCulloch
Chief of Police
Niagara Regional Police
5700 Valley Way
Niagara Falls, ON L2E 1X8
Tel: 905-688-4111 ext.1025002

AND TO: Eric Girt
Chief of Police
Hamilton Police Service
155 King William Street
Box 1060, LCD1
Hamilton, ON L8N 4C1
Tel: 905-546-4710
Fax: 905-546-4752

AND TO: Peter Soly
Chief of Police
Ottawa Police Service
P.O. Box 9634 Station T
Ottawa, ON K1G 6H5
Tel: 613-236-1222
Email: info@ottawapolice.ca

AND TO: Premier Doug Ford
Queen's Park, Legislative Building
Toronto, ON M7A 1A1
Tel: 416-325-1941
Fax: 416-325-3745
Email: premier@ontario.ca

AND TO: Attorney General of Canada
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West, Suite #400
Toronto, Ontario M5H 1T1
Telephone: 416-973-0942
Fax: 416-954-8982
Email: Tor.leadadmissions@justice.gc.ca

APPLICATION

1) The Applicant makes application for:

(a) A Declaration that s.22 of the *Crown Liability and Proceedings Act*, 2019, S.O. 2019

c.17:

- (i) is unconstitutional and of no force and effect as it violates the Supreme Court of Canada's ruling(s) that judicial review is a constitutional right as enunciated Pre-*Charter* in, *inter alia*, *A.G. of B.C. v. Air Canada*, and post-*Charter* in, *inter alia*, *Dunsmuir* and in, thus constituting a "privative clause" against the constitutional right to judicial review, further violates the constitutional right to "no right without remedy" as declared by the Supreme Court of Canada, in *inter alia*, *R v. Mills* [1986] SCR 863, *Nelles v. Ontario* [1989] 2 SCR 170, *Doucet Boudeau v. NS* [2003] SCJ 63, and further constitutes a legislative override of s.24 and s.52 of the *Constitution Act, 1982* which cannot be altered, constricted nor over-ridden except by way of constitutional amendment pursuant to section 38 of Part V of the *Constitution Act, 1982*;
- (ii) a Declaration (order), striking, pursuant to s.24 and 52 of *The Constitution Act, 1982*, section 22 of the *Crown Liability and proceedings Act* as of no force and effect.

(b) A Declaration that the “Covid-measures” and declaration of an “emergency” invoked by the Provincial Respondents;

(i) do not meet the prerequisite criteria of any “emergency” as prescribed by s.7.0.1(3) of the *Emergency Management Civil Protection Act, R.S.O. 1990, c. E.9* and further contravenes s.7.0.2(1) and (3) of that *Act*;

(ii) that the invocation of the measures, dealing with health and public health, breach the Applicants’ right to consult, both in procedure, and substance, both, under administrative law, and, under section 7 of the *Charter*;

(iii) that, in any event, if the pre-requisites of an “emergency” are met, as declared to be a national and international “emergency”, the jurisdiction, and constitutional duty, to deal with this “national emergency” is with the Federal Parliament, under the *Federal Emergencies Act* and *Quarantine Act*, pursuant to s. 91 of the *Constitution Act, 1867* under the “Peace, Order, and Good Government (“POGG”) Power, as well as s.91(11) with respect to Quarantine; and not the provincial legislature;

(iv) that quarantine is Federal jurisdiction;

(v) that “lock-downs”, and “stay at home orders”, and any “curfews” are forms of Martial law, the strict and exclusive jurisdiction of the Federal

Parliament pursuant to S. 91(7) of the *Constitution Act, 1867* and the Emergency Branch of “*Peace, Order, and Good Government*” (“*POGG*”), and outside the Province’s jurisdiction under s. 92 of the *Constitution Act, 1867*;

(c) A Declaration that:

(i) the Municipal COVID Measures ordered and taken by the Medical Officers, such as Eileen De Villa (Toronto), Lawrence Loh (Peel), purportedly under s.22 of the *Health Protection and Promotion Act*, are *ultra vires* the *Emergency Management and Civil Protection Act* and its *Regulations* thereunder;

(ii) A Declaration that, in any event, the evidentiary burden required by s.22, “reasonable and probable grounds”, is neither present nor met by the Covid measures imposed and therefore ultra vires;

(d) A Declaration that the measures of masking, social distancing, PCR testing, and lockdowns, “stay at home orders”, and any form of “curfew” imposed by the Respondents, are:

(i) not scientifically, or medically, based;

(ii) based on a false, and fraudulent, use of the PCR test, using a threshold cycle of 43-45 cycles in that once used above the 35 threshold cycles, of all the positives it registers, 96.5%, are “false positives”, resulting in an accuracy rate, **as a mere screening test**, of 3.5% accuracy;

(iii) that all measures of masking, social distancing, “lockdowns” (closures) are a sole and direct result of the mounting, or “rising” “cases”, being cases, which are 96.5% false;

(iv) that the PCR test cannot distinguish between dead (non-infectious) vs. live (infectious) virus fragments;

(v) That (solitary confinement) isolation/quarantine constitutes violations under s.7, 12 and 15, of the *Constitution Act, 1982* as violating the physical and psychological integrity, contrary to s. 7 of the *Charter*, and further constitutes cruel and unusual treatment under s. 7 of the *Charter*; and further violates s.7, by way of the International Law, and that the enforcement of such illegal provisions, by way of police action, constitutes a further violation of the *Charter* and violation of the Applicants' office, as police constables, and their oath to uphold the *Constitution*;

(e) A Declaration that the science, and preponderance of the scientific world community, is of the consensus that:

(i) masks are completely ineffective in avoiding or preventing transmission of an airborne, respiratory virus such as SARS-CoV-2 which leads to COVID-19;

(ii) that prolonged use of mask results, especially for children, in irreparable physical, neurological, psychological, language development, and social development harms, some of which are irreversible;

(iii) that “lockdowns”, “stay at home orders” and curfews, in whole or in part, are ineffective and cause more damage than they prevent;

(f) A Declaration that none of the *Charter* violations set out herein, in this application, are saved by s.1 of the *Charter*, as they fail to meet the test, thereunder, as enunciated in, inter alia, the *Oakes* decision, as the measures:

A/ Not pursuant to valid statutory objective;

B/ The measures are not rational;

C/ The measures are not tailored for minimal impairment of the Charter rights;

D/ The measures dilatory effects far outweigh their beneficial effects;

2. The Applicants, with respect to enforcements measures, as police officers further seek:

(a) A Declaration that “an organized public event” or “other gathering”, under s.3(1) of *Regulation 8/21*, pursuant to the *Emergency Management and Civil Protection Act*, as well as s.9 to the *Reopening Ontario Act, 2020, S.O. 2020, c. 17* does **not** include a gathering whose obvious purpose is to assemble, associate and otherwise gather to exercise freedom of speech, expression and/or assembly and religion as constitutionally recognized under the *Constitution Act, 1867* as well as s.2 of the *Charter*;

(b) A Declaration that, with respect to the masking:

- (i) that no police officer has the jurisdiction to apply the *Trespass to Property Act, R.S.O. 1990, c. T.21* to a person who declares a legal exemption to a mask, and who enters a public place; and
- (ii) that owners of places of business who refuse to comply with lawful exemptions may be charged with an offence pursuant to the *Emergency Management and Civil Protection Act* and *Regulations* thereunder;
- (iii) that Police Officers are equally entitled to masking exemptions and to be free from coercion by their superiors to take a Covid vaccine, or PCR test contrary to their constitutional right to refuse based on informed consent;
- (iv) That Police officers, like any other citizen, are constitutionally entitled, as ruled by the *Supreme Court of Canada* and *Ontario Court of Appeal*, to refuse medical treatment without informed consent, including vaccines, and that Police officers should be free from coercion by superiors to be vaccinated;

(c) A Declaration that police, with respect to an individual who fails and/or refuses to comply with either s.2 and/or 4 of *Regulation 8/21, Regulation 294/21* and/or s.9(2) and (3) of the *Reopening Ontario Act, 2020, S.O. 2020, c. 17* do not have the powers of arrest against that individual under Provincial *Regulations*;

(d) A Declaration that ss 2 and/or 4 of *Regulation 8/21, Regulation 294/21* and s.9(2) and (3) of the *Reopening Ontario Act, 2020, S.O. 2020, c. 17* direct a Police officer to breach s.8 of the *Charter* and engage in unreasonable seizure and further conduct warrantless searches;

- (e) A Declaration that ss. 2.1(2)(3) and 4 of *Regulation 294/21* pursuant to the *Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9*, granting Police, and other Provincial Officers the authority to arbitrarily stop pedestrians and motorists, and compel personal information and data, without any reasonable and probable grounds of the Commission of an offence, are unconstitutional and of no force and effect, in violating s.7 of the *Charter* (liberty, and right to remain silent), s.8 of the *Charter* (reasonable search and seizure), and s.9 of the *Charter* (arbitrary detention) and thus compels the Police officer to breach their oath to uphold the Constitution;
- (f) That the bar of entry across “Provincial Borders” by residents/citizens coming from Quebec and Manitoba, without probable grounds of an offence being committed, violates s.7 of the *Charter (Liberty)*, as well as s.6 of the *Charter*, and thus compels the Police officer to breach their oath to uphold the Constitution and further, that the OPP has no jurisdiction to set up roadblocks at Ontario’s “borders” and refuse passage into Ontario;
- (g) That the measures and enforcement of the measures under *ss. 2.1(2)(3) of Regulation 294/21*, as set out above in subparagraphs (e) and (f) constitute Martial Law, Police State measures outside the scope of the Province’s jurisdiction under s.92 of the *Constitution Act, 1867*, and are within, subject to constitutional restraints, the jurisdiction of the Federal Parliament under s.91(7) and (1) and the “Peace, Order, and Good Government “(POGG)” Power on s.91 of the *Constitution Act, 1867*, and thus further compels the Police officer to breach their oath to uphold the Constitution;
- (h) A Declaration that failure and/or refusal to comply with Provincial Covid Measures does not constitute a “common nuisance” contrary to s.180 of the *Criminal Code* or constitute “obstruct peace officer” contrary to s. 129 of the *Criminal Code* thus granting the power

of arrest to a police officer in the enforcement of a regulatory and/or municipal by-law as enunciated by the *SCC* in *R v. Sharma [1993] 1 S.C.R. 650*;

- (i) A Declaration that, in any event s.2 of *Regulation 8/21* and *Regulation 294/21* are void for vagueness, as well as overbreadth, and impossible to enforce, in that it is nearly impossible to ascertain, while respecting an individual's *Charter* right to remain silent, and right against arbitrary detention and questioning, to determine whether that person has, "on reasonable and probable grounds" committed an offence under s.7.0.11 of the *Act*;
- (j) A Declaration that a police constable cannot, by way of general, blanket order(s), from his/her administrative supervisors, be directed how, when and in what circumstance, to lay a charge against an individual and thus dictate the discretion of that Police officer;
- (k) A Declaration that no politician should be directing nor commenting on how, whom or in what circumstances any police officer should enforce nor apply the applicable law;
- (l) A Declaration that the Covid emergency measures violate a police constable's duty, as office-holder to Her Majesty the Queen, to his/her office and oath which reads:

I, _____
(First name, Last name. (Badge))
Solemnly, swear/affirm that I will be loyal to Her Majesty the Queen and to Canada, **that I will uphold the Constitution of Canada** and that I will, to the best of my ability, preserve the peace, prevent offences and discharge my other duties as Police Constable, faithfully, impartially and according to law.

in that the enforcement of the provision set out in ss.7.0.11, and the enforcement provision(s) set out in the *Regulation 8/21*, and *Regulation 294/21* pursuant to the *Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9*, as well as s.9 of the *Reopening Ontario Act, 2020, S.O. 2020, c. 17* are of no force and effect and

unconstitutional in allowing, and being directed by superiors, to violate a citizen's constitutional rights under the *Constitution Act 1867*, as well as the *Charter*, as follows:

(i) Violation of freedom of expression, speech, association, assembly and religion contrary to those unwritten constitutional rights recognized by the Supreme Court of Canada through the Preamble to the *Constitution Act, 1867*, as well as s.2 of the *Charter*;

(ii) Violation of the right to liberty and security of the person through the arbitrary and unreasonable detention, arrest, and interference with the physical liberty and movement of citizens, contrary to the Liberty of the Subject under *Habeas Corpus*, as well as ss. 7, 9, and 10(c) of the *Charter*;

(iii) Violation of the protection against unreasonable search and seizure contrary to s.8 of the *Charter*;

(iv) Placing police officers in the potential violation, with respect to religious gatherings and services, of committing an offence contrary to s. 176 of the *Criminal Code*;

(m) Costs of this application and such further and other relief as counsel may advise, and this Honourable Court grant;

3. Order(s), (in the nature of) **Prohibition** to:

(a) all police administrative supervisor(s) to cease and desist in interfering with a police constable's discretion as to how to apply and enforce the law, following the investigation by that individual police constable;

- (b) all publicly elected politicians to cease and desist in interfering with a police constable's discretion as to how to apply and enforce the law, following the investigation by that individual police constable;
- (c) all "public health officers" to cease and desist in interfering with a police constable's discretion as to how to apply and enforce the law, following the investigation by that individual police constable;
- (d) All Police administrative superiors to cease and desist from coercive and illegal conduct, directions, and/or orders geared to denying masking exemptions of officers, PCR testing and vaccines contrary to the Police officer's constitutional rights to refuse any medical procedure and/or treatment with informed consent as enunciated and ruled by the *Supreme Court of Canada*;

4. Costs of this Application and such further and other relief as counsel may advise and this Honorable Court grant.

5. **The grounds for the application are:**

- (a) Rule 14.05(3)(g.1) of the *Rules of Civil Procedure*;
- (b) s. 2,7, 15, 24, and 52 of the *Constitution Act, 1867*;
- (c) the Pre-amble to the *Constitution Act, 1867*;
- (d) the unwritten rights under the *Constitution Act, 1867*;
- (e) the constitutional right(s) to judicial review and the Supreme Court of Canada jurisprudence against privative clauses;
- (f) International treaties and law;

- (g) that s.22 of the *Crown Liability and Proceedings Act*, 2019, S.O. 2019 c.17:
- (i) is unconstitutional and of no force and effect as it violates the Supreme Court of Canada’s ruling(s) that judicial review is a constitutional right as enunciated Pre-*Charter* in, *inter alia*, *A.G. of B.C. v. Air Canada*, and post-*Charter* in, *inter alia*, *Dunsmuir* and in, thus constituting a “privative clause” against the constitutional right to judicial review, further violates the constitutional right to “no right without remedy” as declared by the Supreme Court of Canada, in *inter alia*, *R v. Mills* [1986] SCR 863, *Nelles v. Ontario* [1989] 2 SCR 170, *Doucet Boudeau v. NS* [2003] SCJ 63, and further constitutes a legislative override of s.24 and s.52 of the *Constitution Act, 1982* which cannot be altered, constricted nor over-ridden except by way of constitutional amendment pursuant to section 38 of Part V of the *Constitution Act, 1982*;
 - (ii) that pursuant to s.24 and 52 of *The Constitution Act, 1982*, section 22 of the *Crown Liability and proceedings Act* is as of no force and effect.
- (h) that the “Covid-measures” and declaration of an “emergency” invoked by the Provincial Respondents;
- (i) do not meet the prerequisite criteria of any “emergency” as prescribed by s.7.0.1(3) of the *Emergency Management Civil Protection Act, R.S.O. 1990, c. E.9* and further contravenes s.7.0.2(1) and (3) of that *Act*;

(ii) that the invocation of the measures, dealing with health and public health, breach the Applicants' right to consult, both in procedure, and substance, both, under administrative law, and, under section 7 of the *Charter*;

(iii) that, in any event, if the pre-requisites of an "emergency" are met, as declared to be a national and international "emergency", the jurisdiction, and constitutional duty, to deal with this "national emergency", subject to constitutional review and constraints is with the Federal Parliament, under the *Federal Emergencies Act* and *Quarantine Act*, pursuant to s. 91 of the *Constitution Act, 1867* under the "Peace, Order, and Good Government ("POGG") Power, as well as s.91(11) with respect to Quarantine; and not the provincial legislature;

(iv) that quarantine is Federal jurisdiction;

(v) that "lock-downs", and "stay at home orders", and any "curfews" are forms of Martial law, the strict and exclusive jurisdiction of the Federal Parliament, subject to constitutional review and constraints pursuant to S. 91(7) of the *Constitution Act, 1867* and the Emergency Branch of "*Peace, Order, and Good Government*" ("*POGG*"), and outside the Province's jurisdiction under s. 92 of the *Constitution Act, 1867*;

(i) that:

(i) the Municipal COVID Measures ordered and taken by the Medical Officers, such as Eileen De Villa (Toronto), Lawrence Loh (Peel), purportedly under s.22 of the *Health Protection and Promotion Act*, are *ultra vires* the *Emergency Management and Civil Protection Act* and its Regulations thereunder;

(ii) in any event, the evidentiary burden required by s.22, “reasonable and probable grounds”, is neither present nor met by the Covid measures imposed and therefore ultra vires;

(j) that the measures of masking, social distancing, PCR testing, and lockdowns, “stay at home orders”, and any form of curfew by the Respondents, are:

(i) not scientifically, or medically, based;

(ii) based on a false, and fraudulent, use of the PCR test, using a threshold cycle of 43-45 cycles in that once used above the 35 threshold cycles, of all the positives it registers, 96.5%, are “false positives”, resulting in an accuracy rate, **as a mere screening test**, of 3.5% accuracy;

(iii) that all measures of masking, social distancing, and “lockdowns” (closures) are a sole and direct result of the mounting, or “rising” “cases”, being cases, which are 96.5% false;

(iv) that the PCR test cannot distinguish between dead (non-infectious) vs. live (infectious) virus fragments;

(v) that (solitary confinement) isolation/quarantine constitutes violations under s.7, 12 and 15, of the *Constitution Act, 1982* as violating the physical and psychological integrity, contrary to s. 7 of the *Charter*, and further constitutes cruel and unusual treatment under s. 7 of the *Charter*; and further violates s.7, by way of the International Law, and that the enforcement of such illegal provisions, by way of police action, constitutes a further violation of the *Charter* and violation of the Applicants' office, as police constables, and their oath to uphold the *Constitution*;

(k) that the science, and preponderance of the scientific world community, is of the consensus that:

(i) masks are completely ineffective in avoiding or preventing transmission of an airborne, respiratory virus such as SARS-CoV-2 which leads to COVID-19;

(ii) that prolonged use of mask results, especially for children, in irreparable physical, neurological, psychological, language development, and social development harms, some of which are irreversible;

(iii) that “lockdowns”, “stay at home orders” and curfews, in whole or in part, are ineffective and cause more damage than they prevent;

(l) that none of the *Charter* violations are saved by s.1 of the *Charter*, as they fail to meet the test, thereunder, as enunciated in, inter alia, the *Oakes* decision, as the measures:

A/ Not pursuant to valid statutory objective;

B/ The measures are not rational;

C/ The measures are not tailored for minimal impairment of the Charter rights;

D/ The measures dilatory effects far outweigh their beneficial effects;

(m) that “an organized public event” or “other gathering”, under s.3(1) of *Regulation 8/21*, pursuant to the *Emergency Management and Civil Protection Act*, as well as s.9 to the *Reopening Ontario Act, 2020, S.O. 2020, c. 17* does **not** include a gathering whose obvious purpose is to assemble, associate and otherwise gather to exercise freedom of speech, expression and/or assembly and religion as constitutionally recognized under the *Constitution Act, 1867* as well as s.2 of the *Charter*;

(n) that, with respect to the masking:

(i) that no police officer has the jurisdiction to apply the *Trespass to Property Act, R.S.O. 1990, c. T.21* to a person who declares a legal exemption to a mask, and who enters a public place; and

- (ii) that owners of places of business who refuse to comply with lawful exemptions may be charged with an offence pursuant to the *Emergency Management and Civil Protection Act* and *Regulations* thereunder;
- (iii) that Police Officers are equally entitled to masking exemptions and to be free from coercion by their superiors to take a Covid vaccine, or PCR test contrary to their constitutional right to refuse based on informed consent;
- (iv) That Police officers, like any other citizen, are constitutionally entitled as ruled by the *Supreme Court of Canada* and *Ontario Court of Appeal*, to refuse medical treatment without informed consent, including vaccines, and that Police officers should be free from coercion by superiors to be vaccinated;
- (o) that police, with respect to an individual who fails and/or refuses to comply with either s.2 and/or 4 of *Regulation 8/21*, *Regulation 294/21* and s.9(2) and (3) of the *Reopening Ontario Act* do not have the powers of arrest against that individual under Provincial *Regulations*;
- (p) that ss 2 and/or 4 of *Regulation 8/21*, *Regulation 294/21* and/or s.9(2) and (3) of the *Reopening Ontario Act, 2020, S.O. 2020, c. 17* direct a Police officer to breach s.8 of the *Charter* and engage in unreasonable seizure and further conduct warrantless searches;
- (q) that ss. 2.1(2)(3) and 4 of *Regulation 294/21* pursuant to the *Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9*, granting Police, and other Provincial

Officers the authority to arbitrarily stop pedestrians and motorists, and compel personal information and data, without any reasonable and probable grounds of the Commission of an offence, are unconstitutional and of no force and effect, in violating s.7 of the *Charter* (liberty, and right to remain silent), s.8 of the *Charter* (reasonable search and seizure), and s.9 of the *Charter* (arbitrary detention) and thus compels the Police officer to breach their oath to uphold the Constitution;

(r) that the bar of entry across “Provincial Borders” by residents/citizens coming from Quebec and Manitoba, without probable grounds of an offence being committed, violates s.7 of the *Charter* (**Liberty**), as well as s.6 of the *Charter*, and thus compels the Police officer to breach their oath to uphold the Constitution and further, that the OPP has no jurisdiction to set up roadblocks at Ontario’s “borders” and refuse passage into Ontario;

(s) that the measures and enforcement of the measures under *ss. 2.1(2)(3) of Regulation 294/21*, as set out above in subparagraphs (e) and (f) constitute Martial Law, Police State measures outside the scope of the Province’s jurisdiction under s.92 of the *Constitution Act, 1867*, and are within, subject to constitutional restraints, the jurisdiction of the Federal Parliament under s.91(7) and (1) and the “Peace, Order, and Good Government “(POGG)” Power on s.91 of the *Constitution Act, 1867*, and thus further compels the Police officer to breach their oath to uphold the Constitution;

(t) that failure and/or refusal to comply with Provincial Covid Measures does not constitute a “common nuisance” contrary to s.180 of the *Criminal Code* or constitute “obstruct

peace officer” contrary to s. 129 of the *Criminal Code* thus granting the power of arrest to a police officer in the enforcement of a regulatory and/or municipal by-law as enunciated by the *SCC* in *R v. Sharma [1993] 1 S.C.R. 650*;

(u) that in any event s.2 of *Regulation 8/21* and *Regulation 294/21* are void for vagueness, as well as overbreadth, and impossible to enforce, in that it is nearly impossible to ascertain, while respecting an individual’s *Charter* right to remain silent, and right against arbitrary detention and questioning, to determine whether that person has, “on reasonable and probable grounds” committed an offence under s.7.0.11 of the *Act*;

(v) that a police constable cannot, by way of general, blanket order(s), from his/her administrative supervisors, be directed how, when and in what circumstance, to lay a charge against an individual and thus dictate the discretion of the Police officer;

(w) that no politician should be directing nor commenting on how, whom or in what circumstances any police officer should enforce nor apply the applicable law;

(x) that the Covid emergency measures violate a police constable’s duty, as office-holder to

Her Majesty the Queen, to his/her office and oath which reads:

I, _____
(First name, Last name, (Badge))
Solemnly, swear/affirm that I will be loyal to Her Majesty the Queen and to Canada, **that I will uphold the Constitution of Canada** and that I will, to the best of my ability, preserve the peace, prevent offences and discharge my other duties as Police Constable, faithfully, impartially and according to law.

in that the enforcement of the provision set out in ss.7.0.11, and the enforcement provision(s) set out in the *Regulation 8/21* and *Regulation 294/21* pursuant to the *Emergency Management and Civil Protection Act, R.S.O. 1990, c. E.9*, as well as s.9 of the *Reopening Ontario Act, 2020, S.O. 2020, c. 17* are of no force and effect and unconstitutional in allowing, and being directed by superiors, to violate a citizen's constitutional rights under the *Constitution Act 1867*, as well as the *Charter*, as following a:

- i) Violation of freedom of expression, speech, association, assembly and religion contrary to those unwritten constitutional rights recognized by the Supreme Court of Canada through the Preamble to the *Constitution Act, 1867*, as well as s.2 of the *Charter*;
 - ii) Violation of the right to liberty and security of the person through the arbitrary and unreasonable detention, arrest and interference with the physical liberty and movement of citizens, contrary to the Liberty of the Subject under *Habeas Corpus*, as well as ss. 7, 9, and 10(c) of the *Charter*;
 - iii) Violation of the protection against unreasonable search and seizure contrary to s.8 of the *Charter*;
 - iv) Placing police officers in the potential violation, with respect to religious gatherings and services, of committing an offence contrary to s. 176 of the *Criminal Code*;
- (y) such further and other grounds as counsel may advise and this Honourable Court entertain;

6. The following documentary evidence will be used at the hearing of the application:

- (a) the Affidavit of [REDACTED] [masking expert];
- (b) the Affidavit of [REDACTED], DM, DClin, MRCPath, Diagnostic Pathologist and Dr. Tanya Klimenko, PhD, FHEA, FRCMG, Senior Lecturer, Sheffield Hallam [REDACTED] [PCR experts];
- (c) the Affidavits of the Applicants, and other [Expert] Affidavits;
- (d) such further or other evidence as counsel may advise and this Honorable Court

permit.

20TH

Dated this 18th day of April, 2021.


ROCCO GALATI LAW FIRM
PROFESSIONAL CORPORATION
Rocco Galati, B.A., LL.B., LL.M.
1062 College Street, Lower Level
Toronto, Ontario M6H 1A9
TEL: (416) 530-9684
FAX: (416) 530-8129
Email: rocco@idirect.com
LSO No. 29488Q

Sgt. Julie Evans, et al.
Applicant(s)

-AND-

Attorney General of Ontario, et al.
Respondent(s)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

NOTICE OF APPLICATION

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PROFESSIONAL CORPORATION**

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LSUC: 29488Q

Lawyer for the Applicants