

Clerk's Stamp

COURT FILE NO.

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

PLAINTIFFS

DR. ERIC T. PAYNE, DR. JOANNA J. MOSER, DR.  
DAVID LOEWEN and DR. GREGORY CHAN

DEFENDANTS

ALBERTA HEALTH SERVICES and DR. VERNA YIU  
IN HER CAPACITY AS CHIEF EXECUTIVE OFFICER  
OF ALBERTA HEALTH SERVICES

DOCUMENT

**STATEMENT OF CLAIM**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT

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**NOTICE TO DEFENDANTS:**

You are being sued. You are a Defendant.

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

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

**Statements of facts relied on:**

1. The Plaintiff, Dr. Eric T. Payne ("**Dr. Payne**"), is a pediatric neurologist and epileptologist, and resides in Calgary, in the Province of Alberta ("**Alberta**"). Dr. Payne is under contract with Alberta Health Service ("**AHS**") to provide physician services at the Alberta Children's Hospital, and under contract with the University of Calgary as a Clinical Assistant Professor. In his capacity as a Clinical Assistant Professor, he is tasked both with teaching and research.
2. The Plaintiff, Dr. Joanna J. Moser ("**Dr. Moser**"), is an anesthesiologist and resides in Calgary, Alberta. Dr. Moser is under contract with AHS and the University of Calgary. Dr.

Moser holds the position of Staff Anesthesiologist and Site Research Lead at the South Health Campus (“**SHC**”) in Calgary, Clinical Assistant Professor at the University of Calgary, and a Staff Locum at Red Deer Regional Hospital (“**RDRH**”).

3. The Plaintiff Dr. Gregory Keen-Wai Chan, MD, CCFP (“**Dr. Chan**”) is a Family Physician providing AHS service at the Ponoka Hospital and Care Centre Family Health Clinic in Ponoka, Alberta.
4. Dr. Chan provides AHS contracted maternity and emergency health care services in the Ponoka Hospital area of service.
5. The Plaintiff, Dr. David Loewen (“**Dr. Loewen**”), resides in Sexsmith, Alberta. Dr. Loewen is currently a resident and provides AHS contracted services in Family Medicine in Grande Prairie, Alberta.
6. Dr. Payne, Dr. Moser, Dr. Chan and Dr. Loewen are collectively henceforth referred to as the “Plaintiffs”.
7. The Defendant, AHS, is the single health authority for Alberta. AHS delivers medical care on behalf of the Government of Alberta’s Ministry of Health and employs or contracts nurses, physicians, and other healthcare personnel.
8. The Defendant, Dr. Verna Yiu (“Dr. Yiu”), is the current Chief Executive Officer (“CEO”) of AHS. As the CEO of AHS, Dr. Yiu is responsible for, inter alia, the implementation of AHS policies, including the AHS Immunization of Workers for COVID-19 Policy (the “Policy”), as they apply to AHS and Covenant Health.
9. The Defendant Covenant Health (“Covenant Health”) is a Catholic health care provider in Alberta. Covenant Health has in place a Cooperation and Services Agreement with AHS, and at all material times adopts or complies with AHS policies and regulations.
10. AHS and Dr. Yiu are collectively henceforth referred to as the “Defendants”.
11. The Plaintiffs oppose being forced against their will to be vaccinated without their informed consent as mandated by AHS. Further, the Plaintiffs are opposed to disclosing their private health information or have disclosed their private health information with respect to their vaccination status against their will under threat of termination or unpaid long-term leave.

### **The Virus**

12. Severe acute respiratory syndrome coronavirus 2 (“**SARS-CoV-2**” or “**COVID-19**”) is a novel form of the coronavirus, which causes respiratory distress and only causes death in a very small portion of the general population with the largest proportion of deaths occurring to people over the age of 75 with multiple comorbidities.
13. Both the common cold and COVID-19 are subsets of coronavirus.

14. Government of Alberta statistics indicate that a significant proportion of deaths attributed to COVID-19 occur within 10 – 14 days of people being vaccinated with their second vaccine dose of either the Moderna or Pfizer vaccines.
15. Strains of COVID-19 that have been found in Alberta to date include the native strain of COVID-19, the B.1.1.7 United Kingdom variant (“**Alpha**”), the B.1.351 South African Variant (“**Beta**”), the B.1.617 India variant (“**Delta**”), and the P.1 Brazilian variant (“**Gamma**”).
16. Disclosed public data and statements made by the Chief Medical Officer of Health, Dr. Deena Hinshaw, indicate that the Delta variant is currently the predominant strain of COVID-19 in Alberta.
17. The current science indicates that the Delta variant, which is currently the predominate strain of COVID-19 in Alberta, is as transmissible by those considered to be fully vaccinated (i.e., persons with two doses) as those who are unvaccinated.

### **The Vaccines**

18. Prior to any vaccines being made available to Canadian citizens, medical staff and health professionals relied upon personal protective equipment (“PPE”), and the implementation of screening protocols for symptoms of COVID-19 or contact with an individual who has tested positive for COVID-19. These were deemed an appropriate and sufficient risk mitigation procedure in all medical care facilities in Alberta prior to the rollout of “vaccines”.
19. At all material times, there were four COVID-19 “vaccines” approved by Health Canada for use amongst Canadians, which include the Moderna Spikevax COVID-19 vaccine (“Moderna”), the Pfizer-BioNTech Comirnaty COVID-19 vaccine (“Pfizer”), the AstraZeneca Vaxzevria COVID-19 vaccine (“AstraZeneca”), and the Janssen (Johnson & Johnson) COVID-19 vaccine (“Janssen” and together with Moderna, Pfizer and AstraZeneca, the “COVID-19 Vaccines”).
20. To date, three of these COVID-19 products have been administered in Alberta, being Moderna, Pfizer and AstraZeneca. However, on or about May 11, 2021, the Government of Alberta announced that AstraZeneca would no longer be made available as a first dose and the remaining stock in the province would be used up for second doses. This decision was based on safety concerns based on observations that the AstraZeneca vaccine causes thrombosis in 1 out of 58,000 patients over the age of 80.
21. Current data from Ontario indicates that the Moderna vaccine has been observed to cause myocarditis in 1 in 5,000 patients. Observed data indicates that the Pfizer vaccine causes myocarditis in 1 in 28,000 patients. On this basis, these vaccines are less safe than the AstraZeneca vaccine.
22. The Plaintiffs assert that the COVID-19 Vaccines are experimental and have not undergone sufficient long-term safety observation. Nor have these vaccines been subject to the stringent and rigorous scientific approval process that previous vaccines and medications

have endured by Health Canada. Commonly, the approval process lasts years in order to properly assess the benefits and risks from clinical data, including any potential long-term side-effects.

23. The Plaintiffs further claim that the ingredients in these vaccines have never been fully disclosed publicly such that any person would know if they had a potentially fatal allergy to any of the ingredients or if they were unsafe to a given person.
24. The current COVID-19 vaccines approved by Health Canada were developed and approved in under a year under President Donald Trump's "Operation Warp Speed" program.
25. Moderna and Pfizer are mRNA vaccines and are the only COVID-19 vaccines currently being administered in and available to the citizens of Alberta.
26. The AstraZeneca is a viral vector-based vaccine. Due to its lesser efficacy, the potential risks, and negative side-effects recorded worldwide in the first half of 2021, its use was discontinued in Alberta and it is no longer being made available or administered to Albertans due to serious safety concerns, such as thrombosis.
27. Prior to its use being discontinued in Alberta, the Government of Alberta recommended against the use of AstraZeneca in older individuals due to vaccine-induced immune thrombotic thrombocytopenia ("VITT"), a blood clot disorder.
28. mRNA vaccines are a new type of vaccine technology and this is the first time that such vaccines are being administered to humans without widespread and lengthy clinical trials first being conducted. There is no long-term data to develop any safety studies or safety history with respect to the mRNA vaccine technology. As such, any potential long-term side effects are currently unknown.
29. The vaccination program in Canada is being adjusted on the fly as adverse effects manifest themselves, necessitating the need for constant amendments of guidelines for "safety". This underlines the experimental nature of these vaccines.
30. On or about September 29, 2021, the Government of Ontario recommended that people between the ages of 18 and 24 receive Pfizer instead of Moderna due to an observed increase in cases of myocarditis and death in young adults. Other jurisdictions around the world, such as Denmark, Finland, Iceland and Sweden, have either made similar recommendations or enacted regulations banning the administration of Moderna for those below 30 years of age because of the risk of heart inflammation as a potential side effect. The Government of Alberta has not followed this safety protocol nor has it provided an explanation for ignoring these concerns to the public.
31. Janssen is a viral vector-based vaccine that was approved by Health Canada, but has not been made available to the general population in Alberta. In actuality, the availability of Janssen in Alberta or Canada is currently unknown.
32. The COVID-19 Vaccines do not provide full immunity to COVID-19 or its known variants. They merely provide some "benefits" or "protection" that in certain circumstances at best

lessens the severity of symptoms or potentially reduces the risk of hospitalization. The “benefits” or “protection” of the COVID-19 Vaccines vary depending on numerous factors that are still being observed and studied, including any underlying health conditions, the individual’s age, and when the COVID-19 vaccine was administered in relation to any variant of concern.

33. It is because these experimental vaccines do not provide immunity, that the United States of America (“USA”) Center for Disease Control amended, on or about September 1, 2021, its published definition of vaccine, from “produce immunity” to “provide protection”.
34. Neither Moderna nor Pfizer prevent a vaccinated individual from being infected with the Delta variant, or prevent a vaccinated individual from being infectious to others.
35. It is common knowledge and scientifically proven that the vaccines’ efficacy deteriorates or wanes over approximately 4 - 6 months.
36. Individuals who are considered to be fully vaccinated, i.e. individuals who have received at least two doses of the COVID-19 vaccines, can still be infected and transmit the virus (“Breakthrough Cases”) to unvaccinated or vaccinated individuals at similar rates to unvaccinated people. Further, third doses or “boosters” are now being contemplated with little thought to their efficacy against mutated variants of COVID-9.
37. Fully vaccinated individuals are regularly admitted to hospitals, including the Intensive Care Unit (the “ICU”) or have died from COVID-19.
38. The Government of Alberta, AHS, Dr. Hinshaw and Dr. Yiu routinely present misleading statistics, conclusions, or information concerning vaccines.
39. As the efficacy of the COVID-19 Vaccines wanes, Breakthrough Cases, transmission and deaths among fully vaccinated individuals are observably increasing.
40. COVID-19 vaccines kill people. The Public Health Agency of Canada has admitted that 165 people have died in Canada as a result of the COVID-19 Vaccines. The Plaintiffs are aware of the evidence that indicates that the number of people killed in Canada by the COVID-19 Vaccines are substantially higher.
41. The Pfizer and Moderna emergency use authorization in the USA specifically state that “sudden death” is a known side effect of the vaccines. The VAERS system in the USA attributes 44,000 deaths to COVID-19 vaccines. The number of deaths in Canada is likely proportional to that number on the basis of population but is not being honestly acknowledged by Dr. Yiu who continually falsely claims that “vaccines are safe and effective”.
42. Deaths and hospitalization from COVID-19 vaccines in children and young adults are likely a greater risk than death and hospitalization from COVID-19 itself.
43. Despite high vaccine compliance, the Delta wave exceeded the preceding third wave in Israel. Furthermore, in the United Kingdom and Israel, hospitalization for fully vaccinated

individuals now exceed hospitalization for unvaccinated individuals, and in fact may even exceed their national vaccination rates on a proportional basis when compared to the unvaccinated.

44. The purchase contracts for the vaccines are not publicly available. These contracts state that the vaccines are experimental, continue to be studied, possess unknown long-term effects and efficacy, and that any adverse effects are unknown. Furthermore, the contracts state that the manufacturers of the vaccines accept no liability whatsoever for any injuries that arise from individuals being injected with these products. Notwithstanding, requests for the ingredients of these vaccines being made public, Dr. Yiu, AHS and Dr. Hinshaw have failed either negligently or wilfully in their duty of care with respect to obtaining copies of these contracts, and to disclose these contracts and vaccine ingredients publicly so that the Plaintiffs could make a fully informed decision as to whether or not to consent to the injection of these products into their bodies.
45. All of the Plaintiffs have suffered vilification and extreme ill-will being directed at them as “unvaccinated” people as a result of Dr. Yiu, Premier Kenney, and other Government of Alberta representatives, making false public statements and promulgating policies which have the effect of stating that the: unvaccinated are to blame for the pandemic and hospital over crowding; the unvaccinated are spreading COVID-19; that natural immunity from COVID-19 recovery is inferior to the vaccines; and actively promulgate policies that make the unvaccinated “sub-humans” with restricted rights to access society.
46. The Plaintiffs in being placed on unpaid leave of absence are being held up to public opprobrium, ridicule, hatred, maltreatment, discrimination, detestation, contempt, enmity, extreme ill-will, denigration, abuse, or delegitimization on the basis of their vaccine status. This violates s. 3(1)(2) of the Alberta Human Rights Act – Code of Conduct and s. 319(2) of the Criminal Code of Canada.

### **The Policy**

47. On or about August 31, 2021, AHS or Dr. Yiu announced the Policy, which requires that all AHS, Alberta Precision Laboratories, CareWest, CapitalCare and Covenant Health employees, members of the medical and midwifery staffs, students, volunteers and other persons acting on their behalf must be fully immunized against COVID-19 by October 31, 2021.
48. On October 22, 2021, following numerous resignations from AHS and chaos being created by Dr. Yiu’s illegal vaccine mandate program, Dr. Verna Yiu announced that the deadline would be extended to November 30, 2021.
49. The Policy alleges that “Immunization against COVID-19 is the most effective means to prevent the spread of COVID-19, to prevent outbreaks in AHS facilities, to preserve workforce capacity to support the healthcare system, and to protect our workers, patients, visitors, and others accessing AHS sites.”
50. Proponents of vaccine mandates typically claim that everyone who can be vaccinated has a moral or ethical obligation to do so for the sake of those who cannot be vaccinated, or in

the interest of “public health”. These assertions are false. There is neither a moral obligation to vaccinate nor a sound ethical basis to mandate vaccination under any circumstances, even for hypothetical vaccines that are medically risk free. Personal autonomy with respect to self constitution has absolute normative priority over reduction or elimination of the associated risks to life. In practical terms, mandatory vaccination amounts to discrimination against healthy, innate biological characteristics, which completely violate established ethical norms. Under the present circumstances, when the science clearly demonstrates that the so-called vaccines do not provide either complete sterilizing immunity or prevent the fully “vaccinated” from infecting others, the grossly unethical nature of vaccine mandates under these circumstances are even more observably manifested.

51. That statement is at best only theoretically true insofar as the mandated vaccines do not provide complete immunity or sterilizing “immunization”.
52. The Plaintiffs plead that this statement is untrue, false, and materially misleading.
53. There is no scientific basis upon which the Policy’s statement is rooted. Breakthrough cases and the transmission of the virus amongst fully vaccinated individuals are widely reported, especially with respect to Delta variant.
54. Scientific studies now show no significant difference in the viral load between vaccinated and unvaccinated individuals who tested positive for Delta variant.
55. The current COVID-19 vaccines approved by Health Canada and being administered in Alberta do not prevent transmission of COVID-19. In actuality, the COVID-19 vaccines dampen symptoms of COVID-19 and therefore have the potential to increase asymptomatic transmission. Consequently, with muted symptoms, the risk of transmission may increase from peer to peer amongst healthcare professionals, and between patients and their treating healthcare professionals.
56. Furthermore, the narrative with respect to COVID-19 vaccines that the Government of Alberta, Dr. Hinshaw and Dr. Yiu have perpetuated have created a false sense of security. This rhetoric has resulted in a large portion of the population of Alberta believing that if they are fully vaccinated, they are safe from the virus and cannot become infected or infect others.
57. The vaccinated with “vaccine passports” can attend restaurants, bars, concerts, sport venues including hockey games, and elsewhere under the mistaken guidance of Dr. Yiu and the Alberta Government that they are not able to “spread” COVID-19, while they actually can and do spread COVID-19 as efficiently as an “unvaccinated” individual.
58. The Policy allegedly provides for accommodations for those who are unable to be immunized due to a medical reason, or for another protected ground under the Alberta Human Rights Act, and purports that they will be reasonably accommodated, up to the point of undue hardship, in accordance with the AHS Workplace Accommodation Policy.

59. Accommodation of the Exception Panel is illusory. None of the Plaintiffs have been granted an exception and, in some cases, can not even get a physician to write an exception letter due to doctors being threatened by the College of Physicians and Surgeons (CPSA) if they write such letters.
60. Unlike other vaccine mandates, such as the one being implemented by the Government of Alberta for Alberta Public Service, the Policy expressly does not provide accommodation in the form of rapid testing as an alternative to being injected against one's will.
61. Further, the Policy is not being administered on published factors that are applied consistently. Dr. Moser has medical conditions that form the basis of a legitimate medical concern supported by diagnoses by medical professionals necessitating a medical exemption. AHS has dismissed these medical concerns and has ignored this Plaintiff's application for a medical exemption, instead stating that more evidence is necessary before it can consider the application.
62. Further, the Policy violates the most basic standard of care of the CPSA, which requires "informed consent" for any medical treatment or procedure.
63. The fact that the majority of the ingredients have not been disclosed means that informed consent has not been obtained or cannot be obtained from anyone. Additionally, no one in Alberta is being advised of the risks of death from the vaccines. Instead, they are being lied to by being told the vaccines are "safe and effective" notwithstanding that the Pfizer and Moderna monograms for these products acknowledge the risk of death and numerous other side effects including Bell's palsy and myocarditis.
64. AHS should be imposing the least restrictive means to protect the public interest in interim situations and under unproven or unreliable scientific information, which they have either failed to do or wilfully refused to do.
65. The Policy is not in the public interest. By placing physicians and others on "Leave of Absence" without pay, they are removing caring professionals from public service in a random and disruptive manner that will irreparably harm patients in the Province of Alberta.

### **The Claim**

66. Any medical procedure performed on a patient without their informed consent amounts to assault.
67. To the extent that the Policy seeks to coerce employees to be vaccinated against their will, without informed consent, the Policy amounts to an expressed intention to engage in a conspiracy to commit assault.
68. The Policy fails the test for a legitimate workplace policy: it is inconsistently applied and unreasonable.

69. The Policy is contrary to and a breach of the Plaintiffs' right to security of the person guaranteed under section 7 of the Canadian Charter of Rights and Freedoms (the "Charter"). There is no more basic right to security of the person than to have control and physical autonomy over one's own body.
70. Premier Kenny, Dr. Yiu and Dr. Hinshaw have all personally violated s. 3(1)(b) of the Alberta Human Rights Act by repeatedly making false public statements concerning the "unvaccinated" being the cause of the need for lockdowns and other human rights violations of the Government of Alberta; have continually spread misinformation concerning the transmissibility of the Delta variant by unvaccinated as opposed to vaccinated individuals; and by falsely claiming that individuals who have recovered from COVID-19 have inferior immunity to persons who were injected with the Pfizer or Moderna products.
71. The Policy as drafted and promulgated amounts to an attempted assault under common law as the Policy violates the Plaintiffs' right to bodily autonomy and vitiates medical consent.
72. The Policy breaches the Plaintiffs' express or implied contracts with AHS. No reasonable interpretation of those contracts can create a requirement to be physically assaulted or to obtain a medical treatment below the minimum medical standard of informed consent as a condition of employment. Such an interpretation would render it a contract for an illegal or immoral purpose not enforceable at law.
73. In the alternative, the Policy amounts to constructive dismissal as it fundamentally alters the Plaintiffs' contracts under threat of termination or unpaid suspension.
74. The Policy is unethical and unlawful.
75. The Policy effectively subjects the Plaintiffs to the Pfizer and Moderna mRNA vaccines which are unproven, unsafe and with undetermined long-term side effects. Currently, no other vaccine choices are being made available.
76. The Policy violates the College of Physicians and Surgeons of Alberta Standards of Practice on informed consent.
77. With respect to the demand for the Plaintiffs' vaccination status, the Policy breaches the Freedom of Information and Protection of Privacy Act, in that it is devoid of the source of legal authority for the collection of the information or the contact information of an officer or employee at AHS who can answer individuals' questions about the collection.
78. The collection of vaccine status is not confidential. The minute a physician is placed on unpaid leave, their status is immediately apparent.
79. As a result of these breaches, the Plaintiffs have suffered the following damages:
  - a. Infliction of psychological harm as will be proven at trial;
  - b. Damage to their professional reputation as will be proven at trial;

- c. Lost wages in an amount to be proven at trial;
  - d. And other such damages as will be proven at the trial of this action.
80. The Plaintiffs plead provisions of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11, the Freedom of Information and Protection of Privacy Act, RSA 2000, c F-25, the Health Professions Act, RSA 2000, c H-7, the Alberta Human Rights Act, RSA 2000, c A-25.5, the Criminal Code of Canada, RSC 1985, c. C-46 s. 319(2) and any further and other such legislation as may become relevant during the trial of this action.
81. The Plaintiff proposes that the trial of this action take place at the Calgary Court Centre.
82. The Plaintiff states that the trial will take no longer than twenty-five (25) days.

**Remedy sought:**

83. The Plaintiff seeks the following remedies against the Defendants in this action:
- a. An Order abridging the time for service of this Statement of Claim;
  - b. An Order for interim and permanent injunctive relief:
    - i. declaring that the Policy is unlawful; and
    - ii. staying or enjoining the Policy until the matter can be properly adjudicated before this Honourable Court.
  - c. A Declaration that the Policy is overbroad and unreasonable;
  - d. An interim and permanent Declaration that the Policy violates s. 7 of the *Charter*;
  - e. A Declaration that the AHS vaccine exception tribunal, the Exception Review Panel, is not handling the exception applications consistently and in an appropriate manner subject to procedural fairness;
  - f. Costs of this action on a solicitor and client full indemnity basis; and
  - g. Such further and other relief as this Honourable Court may deem just and appropriate having regard to all the circumstances.

**NOTICE TO THE DEFENDANT(S)**

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

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

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

**WARNING**

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