Form 27
[Rules 6.3 and 10.52(1)]

COURT FILE NUMBER	2401-05557
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	CARRIE SAKAMOTO
DEFENDANTS	ATTORNEY GENERAL OF CANADA and HIS MAJESTY THE KING IN RIGHT OF ALBERTA
	***Brought under the Class Proceedings Act,* SA 2003, c C-16.5**
DOCUMENT	**APPLICATION BY PLAINTIFF**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Rath & Company Barristers and Solicitors 282050 Highway 22 W Foothills, AB T0L 1W2 **Attention: Jeffrey R.W. Rath/Eva Chipiuk** Phone: Facsimile: Email: Email:

Clerk's Stamp

NB

C90674

CMH
Oct 16, 2024

NOTICE TO RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the judge.

To do so, you must be in Court when the application is heard as shown below:

Date:	**TBD**
Time:	**9:00 a.m.**
Where:	**Calgary Courts Centre, 601 5 St SW, Calgary, AB T2P 5P7**
Before Whom:	**The Honourable Ms. Justice N. Dilts**

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

Remedy Claimed or Sought

1. Certifying this action as a class proceeding against the Defendants, the Attorney General of Canada ("**Canada**") and His Majesty the King in Right of Alberta ("**Alberta**") pursuant to the *Class Proceedings Act*, S.A. 2003 c. C-16.5.

2. Defining the class as follows:

> All individuals who received Covid-19 vaccines (the "**Covid Vaccine"** or **"Covid Vaccines**") marketed or manufactured by Pfizer-BioNTech, AstraZeneca PLC, Moderna Inc., Janssen Inc. and Novavax Inc. (the "**Vaccine Manufacturers**") in the Province of Alberta between December 9, 2020 and the date of certification of this action as a class proceeding, or such other date determined to be appropriate by the Court (the "**Class Period**") and suffered injuries, damages or losses as a result (the "**Class**" or "**Class Members**").

3. The nature of the claim is as follows:

   a. The contract between Pfizer-BioNTech ("**Pfizer**") and Canada for the supply of the Covid Vaccines explicitly states that Pfizer did not warrant the Covid Vaccines for safety or efficacy:

   > [Canada] further acknowledges that **the long-term effects and efficacy of the Vaccine are not currently known and that there may be adverse effects** of the Vaccine that are not currently known.[1] [emphasis added]

   Notwithstanding the above disclaimer and in the face of vaccine mandates imposed by the Defendants, the Defendants routinely warranted to the public that the Covid Vaccines were "safe and effective."

   b. Pfizer's Covid Vaccine product monograph dated December March 21, 2023, states:

   > **There are currently no data available from Pfizer and BioNTech clinical trials on the interchangeability** of COMIRNATY with other COVID-19 vaccines to complete the primary vaccination series or for a booster dose.[2] [emphasis added]

   c. AstraZeneca PLC ("**AstraZeneca**") Covid Vaccine product monograph dated November 19, 2021, states:

[1] Affidavit of Tracey Bradley, Exhibit "C" at Section 5.5, on page 18.
[2] Affidavit of Tracey Bradley, Exhibit "E", at paragraph 4.2 under "Recommended Dose and Dosage Adjustment".

There are no safety, immunogenicity or efficacy data to support interchangeability of VAXZEVRIA with other non-ChAdOx1-S (recombinant) COVID-19 vaccines.[3] [emphasis added]

d. The National Advisory Committee on Immunization states that the Covid Vaccines were to be administered based on the Vaccine Manufactures product monograph.[4]

e. All the Vaccine Manufacturers product monographs contain similar warranties, representations and cautions which explicitly do not allow for the interchangeability between different Covid Vaccines.

f. Canada's agreements with the Vaccine Manufacturers uniformly include clauses that do not guarantee the vaccines' safety, effectiveness, or interchangeability. These contracts explicitly acknowledge a lack of data to support claims of safety or efficacy at the time of agreement.

g. Moreover, both the Covid Vaccine contracts and the accompanying product monographs from the outset listed potential adverse events such as myocarditis, pericarditis, severe allergic reactions, thromboembolic events, and neurological disorders.[5] These documents from the Vaccine Manufacturers repeatedly cautioned and warned about inherent uncertainties and risks associated with the Covid Vaccines from the time of their initial distribution.

h. Despite the Vaccine Manufacturers warnings and cautions detailed in the Covid Vaccine contracts and product monographs, Canada and Alberta's servants—including Prime Minister Justin Trudeau, the Chief Public Health Officer of Canada, Dr. Teresa Tam, Premier Jason Kenney, and the Chief Medical Officer of Health for Alberta, Dr. Deena Hinshaw (the "**Defendants' Servants**") — repeatedly assured the public that the Covid Vaccines were safe, effective, and interchangeable without disclosing the risks and dangers that had been made known to them by the Vaccine Manufactures.

i. The Defendants' servants knew or ought to have known that representing the Covid Vaccines as "safe and effective" and "interchangeable" were materially false, misleading, negligent and contrary to the representations made by the Covid Vaccine Manufacturers in the Covid Vaccine contracts and the product monographs.

j. The Defendants also implemented coercive measures that infringed upon civil liberties, including:

    i. Canada's servants issued travel mandates that restricted unvaccinated individuals to travel within and outside of Canada, effectively pressuring

[3] Affidavit of Tracey Bradley, Exhibit "F" at page 7 under "Warnings and Precautions".
[4] Affidavit of Tracey Bradley, Exhibit "G"; Archived 1: Recommendations on the use of COVID-19 vaccine(s) [2020-12-12] - Canada.ca.
[5] Affidavit of Tracey Bradley, Exhibit "E" at paragraph 8, pages 31-53; and Exhibit "F" at pages 4 and 6-8.

the public to get vaccinated to retain their freedom of movement.

ii. Alberta's servants issued health orders that restricted unvaccinated individuals from accessing certain establishments and participating in various activities. These measures, which were later deemed unlawful in Alberta by the Court of King's Bench, were intended to increase Covid Vaccine uptake.

iii. Alberta's servants also provided financial incentives to encourage vaccination, effectively using economic leverage to boost Covid Vaccine uptake.

k. The Defendants would not have been able to implement such extreme and coercive measures if they disclosed that the Covid Vaccines were not warranted for safety or efficacy, or interchangeability.

l. The coercion and duress resulting from these tactics not only pressured individuals into compliance but also compromised their ability to provide informed consent to such medical treatement. By creating an environment of fear and urgency, the Defendants undermined the autonomy required for informed consent, thereby invalidating the legitimacy of the decision-making process and stripping individuals of their right to make informed healthcare choices.

m. Alberta Health Service's Policy on Informed Consent for treatment and procedures requires that individuals have the right to determine what happens to their own bodies based on the principle of informed consent. Alberta Health Service's Policy on Informed Consent defines the principles for obtaining informed consent from an individual receiving health care services:

- requires capacity;
- shall be informed;
- shall be specific;
- shall be voluntary;
- requires understanding; and
- shall be documented.[6]

n. The College of Physicians and Surgeons of Alberta mandates that a patient's informed consent must include, but is not limited, to:

i. Be free of undue influence, duress, or coercion when making the consent

[6] Affidavit of Tracey Bradley, Exhibit "I" at pages 1-2; Alberta Health Services – Policy on Informed Consent.

decision; and

ii. Based on a proper explanation that includes, but is not limited to, common risks and significant risks.[7]

o. The Defendants misrepresented the Covid Vaccines as safe, effective and interchangeable without adequately warning the public of the potential health risks and dangers that lead to serious, life-threatening, and even fatal consequences to individuals who receive those vaccines.

p. The Defendants misrepresentation mirrors the horrific case of thalidomide, which was initially marketed as safe for various minor ailments, including morning sickness in pregnant women, when it was launched in 1957.[8]

q. The claim that thalidomide was safe was pivotal to its approval in Canada and its widespread use in 1960.[9] However, concerns about its safety were emerging and by 1961 thalidomide was definitively connected to severe birth defects prompting its dramatic withdrawal from the market worldwide in 1961-1962.[10] This tragic outcome directly contradicted the initial assertions that it was safe, leading to one of the most significant pharmaceutical disasters in history, with thousands of babies born with severe malformations.

r. The thalidomide tragedy led to a major overhaul of Canada's regulatory framework "to improve safety requirements and, for the first time, to require evidence of efficacy."[11] This reform highlighted the critical role of regulatory bodies in pharmaceutical oversight, acknowledging that initial claims about a drug's safety and effectiveness could be contradicted by subsequent evidence, and emphasized the responsibility of these bodies to respond to such findings. It also reinforced that the duty of care and public trust in these agencies are not merely procedural but are essential in ensuring that Defendants' actions are taken in the public interest and for the safety for all Canadians.

s. The Defendants' claims regarding the safety, effectiveness, and interchangeability of the Covid Vaccines, without adequate disclosure of potential health risks, parallel the initial misrepresentations seen with thalidomide. These misrepresentations by the Defendants led to unforeseen health complications and have undermined public trust in health regulatory systems, further eroding confidence in public health and regulatory frameworks.

t. In the wake of the thalidomide scandal, the United Kingdom introduced significant regulatory changes through the *Medicines Act,* 1968, fundamentally reshaping how

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[7] Affidavit of Tracey Bradley, Exhibit "J", at para. 5; Standards of Practice of the College of Physicians & Surgeons.
[8] *Celgene Inc. v. Canada (Health)*, 2012 FC 154 (CanLII).
[9] *Ibid*., at para. 4.
[10] *Ibid*., at para. 5.
[11] *Ibid*., at para. 44.

pharmaceuticals were marketed and established strict licensing requirements for all medicines.[12]

u. This class action arises from the injuries and harms caused by Covid Vaccines due to the Defendants' unlawful, negligent, deceptive, and coercive practices in their warnings, marketing, promotion, and distribution of the Covid Vaccines which undermined informed consent of the Class.

v. This class action also arises from the Defendants' misrepresentations and the failure to provide accurate and complete information, required for obtaining the Class Members informed consent, thereby violating the trust and duty of care expected from public health and regulatory bodies in ensuring the safety and efficacy of medical interventions.

w. The Defendants' servants assumed roles typically reserved for healthcare practitioners by making authoritative public statements about the safety, efficacy, interchangeability, and necessity for the mass medical intervention of the Covid Vaccines. In doing so, the Defendants infringed on the fundamental principle of informed consent between individuals and their medical professionals, which is cornerstone of the doctor-patient relationship. As a result of this interference, the Defendants assumed a heightened duty of care by stepping into the role as medical advisors. Consequently this placed an elevated responsibility on the Defendants to ensure that their advice was not only accurate but was also free from any coercion or manipulation.

x. The integrity of the requirement for informed consent is paramount in safeguarding the individuals' right to make informed and voluntary health decisions free from coercion. Public health authorities bear a significant responsibility to ensure that the public receives accurate, transparent, and complete information about medical interventions. By failing to uphold this standard, the Defendants compromised public trust and potentially exposed individuals to unnecessary risks. This breach of trust is not just a matter of misinformation but represents a failure in the duty of care that the Defendants are expected to uphold. This is even more important when their statements influence millions of individuals to undergo a specific medical procedure.

y. Specifically, the Defendants servants, Dr. Theresa Tam and Dr. Deena Hinshaw, through their public statements as public health officials and by referring to the public as their "patients," positioned themselves as trusted medical advisors to the public, thereby assuming a duty of care. This positioning was not merely symbolic. It carried with it the legal and ethical obligations associated with providing medical advice, including the duty to not mislead or withhold critical information.

z. The Defendants' duty of care required them not to mislead or make false and unqualified statements regarding the safety, efficacy and interchangeability of the

[12] Affidavit of Tracey Bradley, Exhibit "K" at para 3.1.13; Medicines legislation and regulation in the United Kingdom 1500-2020.

Covid Vaccines.

aa. The Defendants established a relationship of trust with the public during a global health crisis but misled the public though the following actions:

i. Canada's servants approved the Covid Vaccines, knowing that the Vaccines Manufacturers did not, and could not, warrant their products for safety, efficacy or interchangeability. This was done while publicly representing the Covid Vaccines as "safe and effective" and promoted their interchangeability. Canada's servants concurrently suppressed information about the risks and dangers associated with the Covid Vaccines and at various times falsely claimed that the Covid Vaccines stopped or reduced transmission or prevented Covid infection contrary to express denials of such properties by the Vaccine Manufacturers.

ii. Alberta's servants administered the Covid Vaccines while representing them as "safe and effective", promoting their interchangeability, and suppressing information about the risk and dangers associated with the Covid Vaccines.

bb. Collectively, the Defendants conspired to promote the safety, efficacy and interchangeability of the Covid Vaccines while actively suppressing information regarding their risks and dangers. This concerted effort, characterized by the repetition of specific slogans, suppressing information on dangers, coercing and incentivizing individuals into undergoing medical treatment without full disclosure of the associated risks, violated the public's right to informed consent and constitutes a conspiracy to commit assault and battery.

cc. The Defendants' actions caused harm to the Class Members due to negligence, negligent misrepresentation, breach of public duty, and conspiracy, or any claim this Honourable Court deems appropriate.

dd. The scale of this misconduct impacted millions of individuals. Thus, underscoring the severity of the breach of trust and the duty of care that public health officials owe to the public that they serve. This case reveals not just isolated errors but systemic failures of the Defendants that allowed such misrepresentations and harms to occur. It underscores the critical need for government accountability in managing public health crises and in how the Defendants communicate with the public, emphasizing the paramount importance of transparency and integrity in public health directives.

Issues

4. Defining the following issues as common issues for trial, either jointly or severally:

a. Did the Defendants represent the Covid Vaccines as "**safe**"?

b. Did the Defendants represent the Covid Vaccines as "**effective**"?

c. Did the Defendants represent that the Covid Vaccines could be **interchanged**?

d. Did the Vaccine Manufacturers warrant the Covid Vaccine for **safety**?

e. Did the Vaccine Manufacturers warrant the Covid Vaccines for **effectiveness**?

f. Did the Vaccine Manufacturers represent that the Covid Vaccines could be **interchanged**?

g. Did the Defendants suppress information about the risks or dangers of the Covid Vaccines from the public?

h. Did the Defendants publicly correct any of their representations about the safety, efficacy or interchangeability of the Covid Vaccines?

Misrepresentation

i. Did the Defendants misrepresent the **safety** of the Covid Vaccines?

ii. Did the Defendants misrepresent the **effectiveness** of the Covid Vaccines?

iii. Did the Defendants misrepresent the **safety of the interchangeability** of the Covid Vaccines?

iv. Did the Defendants misrepresent the **effectiveness** of the Covid Vaccines **once they were interchanged**?

v. Is it a proper function of Public Health for the Defendants to misrepresent safety or efficacy, of a vaccine to the public? If yes, is such misrepresentation authorized by the *Public Health Act*, RSA 2000, c. P-37, and *Public Health Agency of Canada Act*, SC 2006, c5 *or Canada Health Act, RSC 1985*, c C-6?

Duty of Care

i. Did the Defendants owe a duty care to Class Members when making representations to the public about the **safety** of Covid Vaccines?

ii. Did the Defendants owe a duty of care to Class Members when making representations to the public about the **efficacy** of the Covid Vaccines?

iii. Did the Defendants owe a duty of care to Class Members when making representations to the public about the **interchangeability** of the Covid Vaccines?

iv. Did the Defendants owe a duty to care to Class Members to inform them about the warranties and representations made by the Covid Vaccine Manufacturers about the Covid Vaccines?

v. Did the Defendants owe a duty of care to Class Members to inform them about the risks and dangers of the Covid Vaccines?

vi. Did the Defendants owe a duty of care to Class Members when mandating, coercing or incentivizing the public to take the Covid Vaccines?

Negligence

i. Were the Defendants negligent by failing to ensure the accuracy of their claims about the **safety** of the Covid Vaccines?

ii. Were the Defendants negligent by failing to ensure the accuracy of their claims about the **effectiveness** of the Covid Vaccines?

iii. Were the Defendants negligent by failing to ensure the accuracy of their claims about the **interchangeability** of the Covid Vaccines?

iv. Were the Defendants negligent by failing to inform Class Members about the warranties and representations made by the Covid Vaccine Manufacturers about the Covid Vaccines?

v. Were the Defendants negligent by suppressing known risks and dangers of the Covid Vaccines?

vi. Were the Defendants negligent by mandating, coercing or incentivizing the public to take the Covid Vaccines?

Informed Consent

i. Were the Defendants' representations about the safety, efficacy and interchangeability of the Covid Vaccines misleading or incomplete, thus compromising informed consent?

ii. Were Class Members fully informed of potential side effects, both short-term and long-term, associated with the Covid Vaccines?

iii. Did the Defendants' public representations about the Covid Vaccines vitiate informed consent of some Class Members?

iv. Were Class Members coerced, either directly or indirectly, by the Defendants in a way that undermined their ability to provide informed consent?

i. Did some Class Members rely on the Defendants representations about the **safety** of the Covid Vaccines?

j. Did some Class Members rely on the Defendants representations about the **efficacy** of the Covid Vaccines?

k. Did some Class Members rely on the Defendants representations about the **interchangeability** of the Covid Vaccines between Covid Vaccine Manufacturers?

l. Have some Class Members been injured by the Covid Vaccines?

m. Are the Defendants liable to Class Members for negligence?

n. Are the Defendants liable to Class Members for negligent misrepresentation?

o. Did the Defendants breach their duty of care by not ensuring that Class Members were provided with all relevant information to make an informed decision about vaccination?

p. Did the Defendants conspire, one with the other and with persons unknown, to deceive the Class Members about the safety, efficacy or interchangeability of the Covid Vaccines?

q. Did the Defendants conspire, one with the other and with persons unknown, to deceive the Class Members about the risks and dangers of the Covid Vaccines?

r. Did the Defendants coordinated actions amount to a conspiracy to commit assault and battery on the Class Members?

s. Did the Defendants place other interests ahead of public health and safety of the Class Members?

    i. If yes, did the Defendants have a fiduciary duty to Class Members in respect of representations made about the Covid Vaccines?

    ii. If yes, did the Defendants breach that duty?

t. Can the court assess damages in the aggregate, in whole or in part, for the Class?

u. Should one or more of the Defendants pay punitive damages to the Class?

and any other common issues disclosed by the Statement of Claim.

5. Appointing Carrie Sakamoto as Representative Plaintiff for the Class Members.

6. Appointing Rath & Company, Barristers and Solicitors, as Class Counsel.

7. Approving the Notice of Certification to the Class Members in the form attached as Schedule "A", or in such form as approved by the Court.

8. Directing that any preliminary issues and motions be heard during the certification hearing.

9. Directing that the Notice of Certification be issued as follows:

a. By posting a notice on Class Counsel's website;

b. By forwarding the Notice of Certification to any Class Member who requests it;

c. By publishing the Notice of Certification across Alberta including in the Edmonton Journal, the Calgary Sun, The Globe and Mail, and the National Post;

d. By releasing a News Release to a wide range of news sources regarding the Claim and appearing on news broadcasts to direct Class Members to Class Counsel's website; and

e. By such other notice as counsel may request, and the Court directs.

10. Directing that the expense of the Notice of Certification in paragraphs 7 and 8 shall be borne by the Defendants, subject to review and readjustment by agreement or order at the termination of this proceeding.

11. Directing that Class members may opt out of this class provided by delivering a signed opt out coupon, in the form attached as "Schedule B" (the "**Opt Out Form**") by a date to be determined (the "**Opt Out Deadline**") to Class Counsel by e-mail, mail, or facsimile and must be received, or post marked, if delivered by mail, by the Opt Out Deadline.

12. No Class Member may opt out of the class proceeding after the Opt Out Deadline, except with leave of the Court.

13. Class Counsel may make non-material changes to the Notice of Certification and the Opt Out Form as are necessary.

14. Approving the Litigation Plan in the form attached as "Schedule C", or such form as approved by the Court.

15. The Notice of Certification shall commence on the date of the certification order and conclude four months later, unless otherwise ordered by the Court.

16. Costs of this application, payable forthwith in any event of the cause.

17. Such further and other relief as this Honourable Court may permit.

Grounds for Making This Application

18. Section 5(1) of the *Class Proceedings Act* outlines five requirements for certifying a proposed class action:

a) The pleadings disclose a cause of action.

b) There is an identifiable class of two or more persons.

c) The claims of the prospective class members raise a common issue, even if the common issue does not predominate over individual issues.

d) A class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues.

e) There is a person eligible to be appointed as representative plaintiff.[13]

19. If these certification requirements are met, the Court must grant the certification order; there is no residual discretion to deny it.

20. A class action is a procedural tool that allows one or more persons to bring an action on behalf of, or for the benefit of, numerous persons who suffered a common wrong. It is intended to provide an efficient mechanism to achieve redress for widespread harm or injury.

21. The certification motion is procedural in nature. It plays a screening role, but it is limited in scope.[14] It focuses on ensuring that the claims advanced are appropriate for resolution using the mechanism of a class proceeding.

22. The pleadings herein disclose a cause of action against the Defendants.

23. There is an identifiable class of two or more persons.

24. The claims of the class members raise common issues respecting the within litigation.

25. A class action will be preferable procedure for resolution of the common issues.

26. The Plaintiff, Carrie Sakamoto is appropriate to be appointed as Representative Plaintiff:

a) will fairly and adequately represent the interests of the class;

b) had produced a plan that sets out a workable method of advancing the action; and

c) does not have, on the common issues, an interest that is in conflict with the interest of other class members.

27. The certification stage focuses on whether the suit is appropriately prosecuted as a class action.[15] The certification motion does not involve an assessment of the merits, viability or strength of the claims.[16]

28. The Supreme Court of Canada set out the key principles of class actions in the seminal class action case of *Hollick v. Toronto*.[17] Chief Justice McLachlin highlighted the goals of class action legislation and cautioned that if such goals are to be achieved, the courts must

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[13] *Class Proceedings Act*, SA 2003, c C-16.5 at section 5(1).
[14] *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 (CanLII), [2013] 3 SCR 477, ("***Pro-Sys***") at para. 10; *Jensen v. Samsung Electronics Co. Ltd.*, 2021 FC 1185 (CanLII), [2022] 3 FCR 34 ("***Jensen***"), at paras. 60-62.
[15] *Hollick*, SCC 68 (CanLII), [2001] 3 SCR 158, at para. 16; *Pro-Sys*, at para. 103.
[16] *Pro-Sys*, at para. 102.
[17] *Hollick*, SCC 68 (CanLII) ("***Hollick***"), [2001] 3 SCR 158.

construe class proceeding legislation generously and must not take an overly restrictive approach.[18] Further, the test for certification should be applied in a purposive and generous manner to achieve the main goals of class actions: providing access to justice for litigants, promoting the efficient use of judicial resources, and sanctioning wrongdoers to encourage behavior modification.[19]

29. The decision of whether to hear a motion before the certification of a class action is a discretionary matter that must be evaluated on a case-by-case basis, considering the specific circumstances presented before the court. Courts are vested with broad discretion under the class proceedings acts, which allows them to hear pre-certification motions in appropriate situations. Section 13(1) of the *Class Proceedings Act* grants this authority, stating:

> The Court may at any time make any order it considers appropriate respecting the conduct of a class proceeding to ensure the fair and expeditious determination of the proceeding and, for that purpose, may impose on one or more of the parties any terms or conditions that the Court considers appropriate.[20]

30. Courts have traditionally declined to hear pre-certification motions when the issues raised in the motion would benefit from the comprehensive evidentiary record available at the certification hearing. Similarly, if the motion involves issues that overlap significantly with the certification analysis, such as the determination of a reasonable cause of action or the commonality of issues, courts generally prefer to address these matters concurrently with, or subsequent to, the certification hearing. This approach helps avoid duplicative litigation and ensures that all relevant evidence is considered together.

31. The Supreme Court has repeatedly called for a cultural shift towards promoting timely and affordable access to justice. [21] This shift emphasizes streamlining pre-trial procedures and prioritizing proportionality in legal processes. As a result, courts have in favor of more efficient procedures that can achieve fair and just outcomes and do not favour Defendants engaging in delay by bifurcating pre-trial hearings.

32. The certification analysis inherently requires the plaintiff to demonstrate a reasonable cause of action. Consequently, it is often more appropriate to address challenges to the cause of action during the certification motion itself. Although certain motions to strike may be resolved prior to certification to streamline the litigation process, considering these challenges concurrently with certification promotes consistency in judicial findings and prevents unnecessary procedural delays. This approach ensures that the court can comprehensively evaluate all relevant issues, thus upholding the principles of judicial economy and the fair administration of justice.

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[18] *Hollick*, at para. 15.
[19] *Hollick*, at paras. 15 and 16; *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 (CanLII), [2001] 2 SCR 534, at paras. 26-29; *Pro-Sys*, at paras. 137-141.
[20] *Class Proceedings Act,* at section 13(1).
[21] *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 (CanLII), [2020] 2 SCR 420, at para. 18.

33. In the present case, the Defendants have stated that a proposed motion to strike is based on an alleged lack of a reasonable cause of action. This issue is inherently linked to the certification analysis, where the Plaintiff is required to demonstrate that the pleadings disclose a reasonable cause of action. Considering this, it is sensible to address a motion to strike within the context of the certification motion, allowing the court to assess all relevant issues together comprehensively.

34. Addressing the motion to strike and other preliminary issues during the certification hearing promotes judicial economy by avoiding unnecessary duplication of effort and resources. Conducting separate hearings on overlapping issues could lead to fragmented proceedings, increased litigation costs, and delays, all of which run contrary to the principles of class action litigation intended to offer a more efficient and streamlined adjudicative process, and ensuring expeditiously and justly access to justice.

35. Hearing a motion to strike at the certification stage avoids bifurcation and ensures that the court has access to a more comprehensive evidentiary record, which is essential for assessing the viability of the claims. This approach minimizes the risk of inconsistent findings and avoids piecemeal adjudication, which could undermine the fair and effective administration of justice. It also aligns with the intent behind class proceedings to facilitate access to justice, improve judicial efficiency, and promote behavior modification by enabling plaintiffs to pursue claims that impact broader societal interests.

36. The Supreme Court of Canada underscored the importance of fair and efficient access to court resources stating:

> Access to justice depends on the efficient and responsible use of court resources. Frivolous lawsuits, endless procedural delays, and unnecessary appeals increase the time and expense of litigation and waste these resources. To preserve meaningful access, courts must ensure that their resources remain available to the litigants who need them most — namely, those who advance meritorious and justiciable claims that warrant judicial attention.[22]

37. Reflecting these principles, *Facchini v. The Attorney General of Canada* established that the federal government should act as a model litigant and stated:

> **The federal government, considering its status, should be a model litigant**. It should therefore have in place appropriate systems to timely search for, identify, and preserve relevant documents for civil actions wherever located amongst its many departments and employees. While I appreciate that this may sometimes be a gargantuan task, and while I sympathize with the difficult task of lawyers acting for the government, a party to a civil action exercising a proportional effort cannot be allowed to rely on its size as an excuse for failing to meet its production obligations. Efficient training of its staff about their obligations and systems must be

[22] *British Columbia (Attorney General) v. Council of Canadians with Disabilities*, 2022 SCC 27 (CanLII), at para. 1.

> instituted and maintained. Here, it became apparent from the evidence that the government failed to produce all relevant documents, which lengthened the trial."[23] [emphasis added]

38. Given their significant position and authority, governments have a duty to conduct themselves with responsibility, fairness, and integrity in legal proceedings. Acting as model litigants is crucial for maintaining public confidence in the justice system and demonstrating the government's commitment to transparency and justice. Misusing their power and resources to delay proceedings or disadvantage opponents can undermine public trust.

39. Considering their extensive resources and position of power, governments are expected to uphold a higher standard of conduct. This includes promoting judicial efficiency, handling claims promptly and avoiding unnecessary litigation. They should not exploit their position to overwhelm less-resourced parties, ensuring a level playing field and reinforcing that justice should be fair and accessible to all, regardless of one's resources or position.

40. By acting as model litigants, governments not only enhance judicial efficiency but also contribute to fair and equitable outcomes. Upholding these high standards of conduct aligns with broader objectives of justice, where the goal is fairness rather than merely winning an adversarial contest.

41. Governments must ensure their actions with the public interest, prioritizing citizens' rights and welfare over bureaucratic interests. This is especially critical in cases like this where the public was vulnerable and relied on government information in dealing with the Covid pandemic management. In cases like this, the government's duty of care and public trust are central, demanding that the government maintains exemplary conduct.

42. Inappropriate attempts to manipulate case management proceedings, causing delays or complications, are not in the public interest and constitute an abuse of process.[24] Courts have criticized government representatives for unnecessary applications and delays that impede the judicial process.[25] The high standard expected of government officials is summarized by the Supreme Court of Canada in the *R. v. Currach* case below.[26] While the referenced case pertains to criminal matters, its principles are crucial here due to the seriousness of the allegations. This case demands not only the appearance of justice but also fair play by the government to ensure the public is properly represented.

> …When the Crown allows its actions to be influenced by public pressure the essential fairness and legitimacy of our system is lost. We sink to the level of a mob looking for a tree.
>
> The present case is not simply about Crown non-disclosure. This case is

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[23] *Facchini v. The Attorney General of Canada*, 2019 ONSC 6559 (CanLII), at para 20.
[24] *Blencoe v. British Columbia (Human Rights Commission)*, 2000 SCC 44 (CanLII), [2000] 2 SCR 307, at para. 178.
[25] *R. v. Curragh Inc.*, 1997 CanLII 381 (SCC), [1997] 1 SCR 537, at para. 87.
[26] *R. v. Curragh Inc.*, 1997 CanLII 381 (SCC), [1997] 1 SCR 537.

> about the appearance of justice. Throughout the proceedings the Crown bent and broke rules, and attempted to cover up when it was caught. The Crown actively misled the court, on a number of occasions. The Crown ignored or failed to obey court orders. It is unnecessary to repeat the litany of abuses that have already been described. The entire proceedings were tainted by prosecutors who were playing to an enraged public, and playing to win. That this is apparent can be seen from the internal memo that passed between prosecutors referred to by the trial judge and in these reasons. To win is not the role of the prosecutor; to win at all costs is an affront to the Canadian justice system. Courts should not tolerate activities which demonstrate this attitude. The conduct of Crown counsel at the trial violates the fundamental principles that underlie the community's sense of fair play and decency and constitutes an abuse of the court's process.[27]

43. A "win at all costs" approach is an affront to the Canadian justice system and undermines the public's sense of fair play and decency. Courts must not tolerate conduct that violates these fundamental principles.

44. The Plaintiff and Class Members in this case are individuals who sustained Covid Vaccine related injuries. This class action seeks to determine whether the Defendants are liable for these injuries and whether damages are owed. Given the significance of the issues involved, it is imperative that the Defendants act as model litigants, serving the public interest and ensuring judicial economy.

45. Any attempts to bifurcate case management proceedings over disputed causes of action, given this issue is subsumed within the certification motion, are unwarranted and inappropriate. The procedural nature of class action certification requires only a minimal evidentiary burden from the Plaintiff to meet statutory requirements. It is inappropriate for the Defendants to employ tactics to prolong, obstruct, or abuse the Court's process.

46. The certification motion's procedural nature requires only a "minimum evidentiary basis"[28] from the party seeking certification. The representative plaintiff must show "some basis in fact" for each of the statutory requirements, other than the requirement that the pleading disclose a cause of action.[29] This means a pleading should only be dismissed for failing to show a cause of action if it is clear and obvious that no valid claim exists.[30]

47. At this stage, the Court is not required to resolve conflicting facts and evidence regarding the merits at this stage, as it is ill-equipped to engage in "finely calibrated assessments of evidentiary weight" at this stage of the proceeding.[31]

48. Judges have wide discretion to modify proposed class actions to ensure efficient and

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[27] *R. v. Curragh Inc.*, 1997 CanLII 381 (SCC), [1997] 1 SCR 537, at para 120 and para. 121.
[28] *Kirk v. Executive Flight Centre Fuel Services Ltd., 2019*, BCCA 111 (CanLII) at para. 20; and *Hollick*, at paras. 24 and para. 25.
[29] *Hollick*, at para. 25.
[30] *Fisher v Richardson GMP Limited*, 2022 ABCA 123 (CanLII), ("***Fisher***") at para. 33 and para. 34; *Pro-Sys*, at para. 63 and para. 99; and *Hollick*, at para. 25.
[31] *Pro-Sys*, at para. 102; and *AIC Limited v. Fischer*, 2013 SCC 69 (CanLII), [2013] 3 SCR 949, at para. 40.

effective proceedings. This flexibility allows for suggesting amendments to the class, common issues, litigation plan, or representative plaintiff to ensure the proceedings work efficiently. Class action statutes allow for flexibility in adjusting the certification order as the matter proceeds to adapt to evolving circumstances.[32]

49. The broad powers of judges in the certification process are both administrative and supervisory in nature. This is supported by class action legislation, which provides the courts with "generous discretion to make orders and impose terms as necessary to ensure a fair and expeditious resolution of class actions."[33] This discretion, however, is guided by the goals of certification, aiming for efficiency and cost-effectiveness rather than perfection in justice.[34]

50. Given this context, it is appropriate for the certification hearing to address all relevant issues, including any motions to strike, to maintain efficiency, coherence and consistency in adjudication.

51. The claims raised in this action justify the certification of this class action, as they involve common issues that affect a large segment of the population and warrant judicial consideration to ensure justice, enforce government accountability, and safeguard public health.

Material or Evidence to be Relied Upon

52. The Plaintiff relies upon the following materials in support of this Application:

a) The pleadings filed in the within action;

b) *Ingram v. Alberta (Chief Medical Officer of Health*), 2023 ABKB 453 Decision;

c) The Affidavit(s), if any, filed in support of this Application;

d) The materials and authorities set out in the brief to be filed in support of this Application; and

e) Such further and other materials as counsel may advise and this Honourable Court may permit.

Applicable Rules

53. *Alberta Rules of Court*, AR 124/2010, Rules 1.2, 1.4, 2.9, 3.68, 6.2, 6.3, 10.32, and 13.11.

54. Such further and other Rules of the *Alberta Rules of Court* as counsel may advise.

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[32] *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1, at paras. 45–47.
[33] *Canada (Attorney General) v. Fontaine*, 2017 SCC 47 (CanLII), [2017] 2 SCR 205, at para. 31.
[34] *Newfoundland and Labrador v Chiasson*, 2020 NLCA 28 (CanLII), at para. 14; *Endean v. Canadian Red Cross Society* (1997), 1997 CanLII 2079 (BC SC), at para. 58.

Applicable Acts and Regulations

55. *Alberta Health Act,* SA 2010, c A-19.5;

56. *Alberta Health Care Insurance Act,* RSA 2000, c A-20;

57. *Canada Health Act, RSC 1985, c C-6;*

58. *Class Proceedings Act*, SA 2003, c C-16.5;

59. *Contributory Negligence Act,* RSA 2000, c C-27;

60. *Crown Liability and Proceedings Act,* RSC 1985, c C-50;

61. *Food and Drugs Act,* RSC 1985, c F-27;

62. *Health Agency of Canada Act,* SC 2006, c5;

63. *Public Health Act,* RSA 2000, c P-37; and

64. Such further and other material as counsel may advise and this Honourable Court may permit.

Any Irregularity Complained of or Objection Relied Upon

65. None.

How the Application is Proposed to be Heard or Considered

66. In person, with one, some or all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.