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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	**REPLY OF THE PLAINTIFF**

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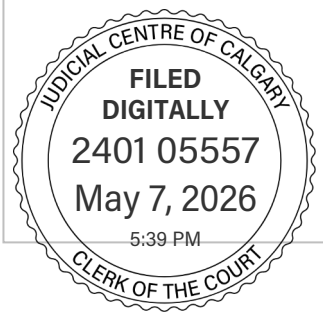

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I. INTRODUCTION

1. This class action arises from the Defendants' coordinated promotion and implementation of a Covid Vaccine framework aimed at increasing vaccine uptake through authoritative public representations and state-directed measures, while simultaneously acknowledging foreseeable harm within their own reporting and compensation systems. The Plaintiff and Class Members were injured, and the very systems created to respond to those injuries failed to operate as represented.

2. This proceeding does not challenge vaccination as a public health tool, nor does it relitigate the Covid pandemic. It concerns the Defendants' conduct and resulting harm. The Court should reject attempts to recast this claim as a broader policy debate in order to avoid scrutiny of the issues before it.

3. The Defendants exercised extraordinary state power and repeatedly assured the public that the Covid Vaccines were "safe, effective, and interchangeable," while implementing measures designed to influence compliance and increase vaccine uptake. The Defendants imposed legal consequences for non-compliance, structured incentives to increase uptake, and maintained systems that acknowledged vaccine injury as a known and foreseeable risk. Despite that knowledge, they failed to adequately monitor, disclose, and respond to those harms. The Defendants cannot avoid responsibility for a system they designed, controlled, promoted, and failed to properly operate.

4. The Plaintiff's claim is grounded in the Defendants' conduct, including that:

   a) The Defendants and their agents authorized or administered Covid Vaccines when they knew or ought to have known that they were not uniformly "safe, effective, and interchangeable" as represented;

   b) The Defendants provided the public with false, misleading, and incomplete information regarding vaccine safety and efficacy, thereby preventing individuals from making an informed decision regarding vaccination; and

   c) The Defendants led coercive measures and campaigns that compelled members of the public to be vaccinated.

5. This is not a policy dispute. It is a claim grounded in established causes of action: negligent misrepresentation, negligence, misfeasance in public office, breach of fiduciary duty, and conspiracy to commit assault and battery. These claims directly engage informed consent, bodily autonomy, the limits of state authority, and the integrity of public representations. The seriousness of these claims cannot be overstated.

6. It is a foundational principle that public power is constrained by legal limits and that individuals are entitled to seek remedies where that power causes harm.[1] That principle

[1] *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] SCR 121.

applies with particular force where the state exercises authority over public health decision-making, and authoritative and uniform public messaging.

7. The Defendants' conduct was disseminated through coordinated and authoritative communications campaign, including public billboards, radio advertising, direct mail delivered to individuals' homes, official statements from the Prime Minister, Premier, and public health officials, and repeated messaging across government websites and social media channels. The evidence, including what was known, what was communicated, and what was not disclosed to the public, substantially overlap across the Class.

8. The Defendants' own evidence acknowledges that individuals were injured by the Covid Vaccines when they categorically represented those same vaccines as "safe, effective, and interchangeable" and incentivized and coerced the public to take it. The systems established to monitor and respond to those harms failed to operate as represented.

9. The purpose of the *Class Proceedings Act*[2] (the "***CPA***") is to promote access to justice, judicial economy, and behaviour modification. This case engages all three objectives. Certification is not a test of the merits, but a procedural determination of whether the statutory criteria are met.

10. Without certification, individuals harmed by systemic government conduct will have no realistic means of pursuing redress. The same issues would be litigated repeatedly, if at all; and the exercise of public power would evade meaningful review. Only a class proceeding can efficiently resolve these common issues, provide meaningful access to justice for individuals unable to pursue complex litigation on their own, and ensure coordinated state conduct is subject to proper judicial scrutiny.

11. At certification, the Court is not asked to determine liability. The question is whether the pleadings disclose viable causes of action and raise common issues suitable for determination in a class proceeding. The Plaintiff has clearly met that threshold.

II. THRESHOLD FOR CERTIFICATION

12. Certification is a procedural threshold, not a determination test of the merits.[3] The Court does not weigh evidence or resolve contested facts.

13. Both Defendants improperly advance merits-based arguments, inviting the Court to weigh evidence and resolve disputed facts. That is impermissible. Certification requires only an arguable claim grounded in material facts.

14. The Plaintiff need only show that there is "some basis in fact" and does not require the Court to resolve conflicting facts and evidence at the certification stage.[4] A claim may only be struck where it is "plain and obvious" that it cannot succeed.[5]

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[2] *Class Proceedings Act*, SA 2003, c C-16.5.
[3] *Hollick v. Toronto (City)*, 2001 SCC 68 (CanLII), [2001] 3 SCR 158, at para 16.
[4] *AIC Limited v. Fischer*, 2013 SCC 69 ("***AIC***"), at para 40.
[5] *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 (CanLII), [2013] 3 SCR 477, at para 63.

15. The Defendants have not met that standard; their arguments go to disputed facts reserved for trial. Courts must not elevate the threshold in a manner that insulates state actors from accountability and must be cautious not to elevate thresholds in a manner that effectively insulates government actors from legal accountability.[6]

16. This proceeding arises from coordinated, state-directed conduct during the Covid pandemic aimed at increasing vaccine uptake, including repeated assurances that Covid Vaccines were "safe, effective, and interchangeable," without adequate disclosure of material risks. The Defendants' own programs, including adverse event reporting systems and the Vaccine Injury Support Program, acknowledge foreseeable harm and support the existence of an identifiable class and common issues.

17. These systemic features directly support certification and contradict the Defendants' position that no common issues exist. The Plaintiff alleges that informed consent was undermined by coordinated representations, omissions, and coercive measures implemented in furtherance of increased vaccine uptake.

18. The causes of action—negligence, negligent misrepresentation, misfeasance, breach of fiduciary duty, and conspiracy—arise from centralized and coordinated conduct suitable for common determination. Common issues include what the Defendants knew, what they represented, what they failed to disclose, and whether that conduct caused harm. These are inherently systemic and suitable for resolution in a class proceeding.

19. The Defendants' submissions improperly attempt to convert certification into a merits hearing by disputing facts, minimizing coordinated conduct, and reframing systemic allegations as isolated or individualized issues. These arguments only reinforce why certification is necessary: the claims arise from centralized and coordinated conduct directed at increasing vaccine uptake and require determination on a full evidentiary record within a unified class proceeding.

III. THE DEFENDANTS' POSITIONS CANNOT BE RECONCILED

A. Mere "Encouragement" Cannot Coexist with an "Unprecedented" Crisis

20. Both Defendants attempt to frame their conduct as mere "encouragement" of vaccination.[7] That characterization is inconsistent with their own evidence and cannot be sustained.

21. Alberta described the pandemic as "the single largest public health crisis in the last 100 years"[8] requiring them to "grapple with the difficult and urgent task of **developing life-saving measures**."[9] Canada similarly states that it faced with the "**unprecedented challenge** [and that vaccination] **formed a key component of Canada's efforts to protect**

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[6] *Alberta (Minister of Infrastructure) v. Nilsson*, 2002 ABCA 283 (CanLII), at para 95; and *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] SCR 121.
[7] Canada Brief, at paras 2 and 100; and Alberta Brief, at paras 5 and 41.
[8] Alberta Brief, at para 4.
[9] Alberta Brief, at para 17.

Canadians against the impact of the Covid-19 pandemic."[10] [emphasis added]

22. These positions cannot coexist. **The Defendants cannot simultaneously characterize the Covid Vaccines as central, "life saving measures" responding to the unprecedented public health crisis, while minimizing their conduct as mere "encouragement." Their own evidence reflects the extraordinary importance, urgency, and coordinated nature of the vaccination campaign. That inconsistency alone raises a triable common issue.**

23. The record reflects far more than passive encouragement. The Defendants implemented a coordinated, state-directed campaign involving mandates, restrictions on travel and participation in public life, public messaging, and financial incentives, all directed toward increasing vaccine uptake. The very existence of mandates restricting access to travel, services, employment, and participation in public life is itself evidence of conduct extending far beyond mere "encouragement." Whether those measures constituted coercion or materially affected informed consent is a core common issue.

24. The Defendants cannot invoke extraordinary powers in response to a claimed life-and-death emergency and later characterize the resulting conduct as passive or voluntary when faced with legal scrutiny. The existence of urgency does not negate legal responsibility where harm is alleged to have resulted.

25. Nor does urgency negate the pleaded allegations that the Defendants knew, or ought to have known, that harm could occur, as evidenced by the creation of the adverse event reporting systems and the Vaccine Injury Support Program. Recasting that conduct as mere "encouragement" is not a legal defence; it is an attempt to avoid the legal consequences flowing from that knowledge.

26. The impugned conduct involved the coordinated use of state authority, public funds, mandates, incentives, and public messaging to influence individual medical decision-making at scale. Characterizing that conduct as mere "encouragement" is inconsistent with both its nature and effect. This was not informal persuasion; it was the structured exercise of state power to achieve a specific outcome: increased vaccine uptake.

27. As confirmed in *Nelson (City) v Marchi*,[11] the distinction between policy and operational conduct turns on the nature of the act, not how it is later characterized. The pleaded conduct, including messaging, mandates, incentives, and program implementation, is operational in nature and cannot be immunized at certification through retrospective characterization.

28. **The Defendants reframing of their conduct does not alter the central allegations of this claim: individuals were injured as a result of the Defendants coordinate, state-directed "encouragement" campaigns designed to increase vaccine uptake.** Accepting the Defendants' position would permit governments to invoke urgency and extraordinary authority while avoiding scrutiny by later minimizing the very conduct they justified as

[10] Canada Brief, at para 7.
[11] *Nelson (City) v. Marchi*, 2021 SCC 41 (CanLII), [2021] 3 SCR 55, at para 2.

necessary and unprecedented.

29. Behaviour modification, one of the central objectives of the *CPA* is particularly engaged in this context. Where the state exercises extraordinary authority, shapes public behaviour through coordinated systems and messaging, and later attempts to minimize that conduct to avoid accountability, judicial scrutiny is required.

B. Informed Consent and State Conduct

30. Both Defendants' improperly attempt to reduce informed consent to an isolated physician-patient interaction at the point of care.[12] That framing ignores the coordinated, state-directed framework within which consent was obtained including unified public messaging, mandates, regulatory measures, and centralized public health directives implemented by Canada and Alberta.

31. **Public health in Canada is not decentralized or independent; it is a publicly funded, state-directed system shaped through government policy, regulatory frameworks, public health authorities, and centralized messaging. Both individuals and healthcare providers necessarily relied upon the information, directives, guidance, and recommendations disseminated through those systems because vaccine access, administration, and public health guidance were delivered and funded through the Defendants' own institutions and programs.**

32. The informational environment surrounding vaccination was not independently generated at the clinical level. It was authoritatively shaped by the Defendants through coordinated messaging, public health directives, and state-funded campaigns intended to increase vaccine uptake.

33. The Court may take judicial notice of the broader informational environment that existed during the pandemic, including the pervasive and centralized nature of government messaging, the marginalization of dissenting perspectives, and the pressure to conform to state-endorsed views. The Plaintiff pleads that this environment was not incidental, but actively created and reinforced by the Defendants through coordinated public messaging, mandates, directives, incentives, and institutional pressure.

34. **The Plaintiff pleads that the informational environment was materially shaped by centralized messaging, constraints on dissenting perspectives, sustained pressure to conform, and repeated advancement of a singular, state-endorsed narrative by elected officials and state actors. Whether informed consent could be meaningfully obtained within that environment is a common issue.**

35. The Defendants assert that contrary information was available.[13] However, they did not produce any evidence of a meaningful alternative informational landscape. To the contrary, the treatment of Dr. Davidson's Affidavit and the Alberta Government Covid Task Force, demonstrates the rejection and marginalization of contrary perspective. The Defendants

[12] Canada Brief, at para 93; and Alberta Brief, at paras 23-27.
[13] Canada Brief, at para 167; and Alberta Brief, at para 45.

cannot rely on the existence of alternative information while providing no evidentiary foundation for it.

36. The Defendants cannot now distance themselves from the informational environment they created and controlled, and which directly shaped the decisions individuals were asked to make. This was a coordinated, state-direction framework experienced designed to increase vaccine uptake, and its impact on consent is properly assessed on a common basis.

37. The Defendants' representations also directly informed clinical guidance, professional standards, and vaccine administration. **Healthcare providers operated within a system materially shaped by the Defendants' directives, messaging, mandates, and programs**. The Defendants' own evidence confirms this:

> The National Advisory Committee on Immunization ("NACI") is a committee that advises PHAC on immunization program recommendations… The advice is provided to general health care professionals caring for individual patients, to inform them of evidence-based immunization recommendations.[14]
>
> Alberta provides guidance to Health Care Professionals on which populations are recommended to be immunized and those whom immunization may be contraindicated…[15]

38. The administration of vaccines did not occur in a vacuum. Vaccination occurred within an integrated, state-directed framework involving approval, procurement, eligibility criteria, funding, delivery systems, compensation programs, adverse event reporting, and coordinated public messaging. **The Defendants cannot construct and control that framework, influence the information available to the public, and shape the conditions under which individuals received treatment, while disclaiming responsibility by isolating consent at the point of care.**

39. Informed consent requires both full, accurate disclosure of risks and benefits, and a genuine freedom of choice. Here, the Defendants structured a system in which access to travel, services, and participation in public life was conditioned on vaccination status, while simultaneously promoting a singular, state-endorsed narrative regarding safety and necessity. Consent obtained in that environment cannot be separated from the systemic pressures and informational limitations imposed by the Defendants.

40. This coordinated conduct goes directly to the Plaintiff's claim. Where the state, through unified messaging and policy directives, influences both the information provided and the conditions under which medical treatment is administered, it necessarily engages legal responsibility for the validity of the consent obtained and the consequences that follow. The Plaintiff pleads that the Defendants acted in concert through aligned messaging, mandates, and implementation measures designed to secure widespread compliance with vaccination.

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[14] Canada Brief, at para 10.
[15] Alberta Brief, at para 26.

41. The conspiracy to commit assault and battery is grounded in the systemic and coordinated nature of the Defendants' conduct. Where consent is alleged to have been materially compromised through incomplete disclosure, coercive pressures, and a state-controlled informational framework, the validity of that consent is directly in issue.

42. These issues are inherently systemic, raise common issues across the proposed class, and require determination on a full evidentiary record through a class proceeding. A class action is the only procedural mechanism capable of addressing the Defendants coordinated conduct and achieving meaningful behaviour modification.

C. The Position Regarding the Davidson Affidavit and Task Force is Untenable

43. The positions advanced by both Defendants regarding Dr. Davidson's affidavit and the Alberta Government Covid Task Force are untenable. The Alberta Government Covid Task Force was a government-commissioned review of government conduct. The Defendants now attempt to disavow it because its findings are inconvenient.

44. Dr. Davidson was not tendered as an expert. He was tendered as the Author, Review Lead, and Chair of the Alberta Government Covid Task Force.[16] The report confirmed:

> This review might be one of the few being conducted by Canada's provinces. It examines the quality, use, interpretation, and flow of information and data that informed Alberta's pandemic response to COVID-19…
>
> …the Premier of Alberta issued a mandate requesting the establishment of a Task Force... to conduct a data review of the last several years of health information with a view of offering recommendations on how to better manage a future pandemic...
>
> This report also delves into the types of information that influenced COVID-19 response decisions...
>
> By examining who made key decisions, what information those decisions were based upon, and how information was disseminated and utilized, the Task Force aims to provide a clearer understanding of Alberta's response strategies...
>
> By scrutinizing the sources and reliability of the data used, we can assess the extent to which evidence-based decision-making was employed and identify gaps or limitations in the information landscape....[17]

45. The Alberta Government Covid Task Force conducted a comprehensive review of Alberta's response, focusing on governance, the flow of information and decision making. The review revealed challenges in communication and coordination between different government bodies and stakeholders. It found that Alberta relied on national and international sources of information and had close collaboration with federal partners. However, there were concerns about transparency and timeliness of decision-making. The

[16] Dr. Davidson Affidavit, filed June 12, 2025, Exhibit "A" at PDF page 9.
[17] Dr. Davidson Affidavit, filed June 12, 2025, Exhibit "A" at PDF pages 7 and 16-21.

abandonment of existing pandemic response plan and the lack of engagement with available evidence raised questions about the rationale behind decisions.

46. The Defendants cannot rely on government authority, coordinated frameworks, and public health systems when it supports their position, while disavowing a government-commissioned review when it identifies systemic deficiencies in those same systems.

47. Canada's attempt to characterize the report as inadmissible hearsay,[18] and Alberta's submission that it carries no legal significance because it was not enacted into legislation,[19] both misconceive the evidentiary threshold at certification. At certification, the Court does not determine admissibility on a strict trial standard The question is whether there is "some basis in fact" supporting the proposed common issues.

48. Alberta's attempt to dismiss the report on the basis that it was not adopted into legislation is particularly misplaced.[20] The issue is not only whether Alberta was legally bound to implement the report's recommendations. The issue is whether the report evidences systemic failures in governance, coordination, transparency, and decision-making relevant to the Plaintiff's claims. Plainly, it does.

49. The Plaintiff does not advance the report as creating a standalone legal obligation. It is relied upon as evidence of what the Defendants knew, how decisions were made, how information was disseminated, and how the systems relied upon by the Defendants allegedly failed. Its relevance derives from its probative value, not from legislative enactment.

50. Canada reliance on external criticisms, including the Alberta Medical Association's public statement denouncing the Alberta Government Covid Task Force as "anti-science", "anti-evidence" and "fringe,"[21] while simultaneously asserting that individuals operated within an open informational environment with access to competing viewpoints. Those positions cannot be reconciled. The Defendants' response to the Alberta Government Covid Task Force itself supports the Plaintiff's allegation that approved messaging and perspectives were elevated by the state, while contrary or dissenting view were marginalized, discredited, or dismissed.

51. More fundamentally, neither Defendants chose to question Dr. Davidson. That was their opportunity to test his role, his experience, and the methodology, conclusions and recommendations of the Alberta Government Covid Task Force. Having declined to do so, the Defendants cannot now ask the Court to discount the evidence without any proper evidentiary challenge. Parties cannot bypass cross-examination and then invite the Court to perform that function for them at certification.

[18] Canada Brief, at para 51.
[19] Alberta Brief, at para 149.
[20] Alberta Brief, at para 149.
[21] Canada Brief, at para 54.

52. This is a legal proceeding. If the Defendants wished to challenge Dr. Davidson's role, methodology, experience, or conclusions, the proper course was to question him. Instead, they seek to rely on unsworn and untested public commentary from third parties who were never put forward for questioning. That approach is procedurally improper and should be rejected. Of particular significance, Dr. Davidson's affidavit indicated that the Alberta Medical Association did not respond to his invitation to discuss the concerns it publicly raised.[22]

53. The Alberta Government Covid Task Force directly supports the Plaintiff's claim and provides "some basis in fact" for certification. Its findings regarding failures in coordination, transparency, information flow, and reliance on federal collaboration go directly to the Plaintiff's allegations of coordinated and systemic conduct. Those findings reinforce the existence of common issues suitable for determination in a class proceeding.

54. The report also reinforces the Plaintiff's conspiracy claim conspiracy claim by confirming intergovernmental coordination, reliance on shared information sources, and systemic deficiencies in how decisions were made and implemented.

55. The Aberta Government Covid Task Force findings demonstrates that the Plaintiff's claims are not speculative. They identify documented, systemic issues regarding what was known, how information was managed, and how decisions were implemented. identified by the Defendants themselves. These are precisely the types of issues that require examination on a full evidentiary record through a class proceeding.

56. The Alberta Government Covid Task Force directly engages the objectives of the *CPA*, including access to justice, judicial economy, and behaviour modification. The Defendants cannot selectively rely on institutional records when favourable and reject them when they expose potential failures in governance and public health administration.

57. In these circumstances, particularly given the absence of any challenge through questioning, the Court should give appropriate weight to Dr. Davidson's affidavit and the Alberta Government Covid Task Force at certification.

D. Statutory Authority Does Not Shield *Ultra Vires* Misconduct

58. The Defendants attempt to rely on statutory authority and immunity provisions as a complete shield to liability. That position is overbroad and unsustainable at certification. Statutory authority does not provide blanket immunity for all conduct undertaken in its name, particularly where that conduct departs from the limits and purposes of the statute itself.

59. Statutory authority does immunize unlawful, misleading, reckless, or bad faith conduct. Public health legislation does not authorize the use of extraordinary state power to shape, direct, and influence individual behaviour through materially incomplete information, coercive measures, or conduct alleged to have undermined informed consent. Nor does it authorize the suppression, delay, or failure to disclose material safety information. Conduct

[22] Dr. Davidson Affidavit, filed June 12, 2025, at para 8.

alleged to have distorted public understanding, concealed known risks, or induced compliance through coordinated state action cannot automatically be shielded by statute.

60. **The Plaintiff expressly pleads, in the alternative, that the Defendants coordinated messaging, mandates, restrictions, incentives, omissions, and implementation of systems intended to increase vaccine uptake, was *ultra vires* any statutory authority and therefore falls outside any claimed statutory immunity.**

61. At a minimum, whether the Defendants acted within the lawful limits of their statutory authority, or acted beyond those limits, raises serious issues that cannot be resolved at certification. On the pleaded facts, and in light of the Defendants' own characterization of their response as "unprecedented," it is reasonably arguable that the Defendants exercised extraordinary state power in a manner that exceeded the lawful scope and purpose of their authority

62. These issues go directly to the legality of the Defendants' conduct, including the coordinated use of state authority, public messaging, mandates, incentives, and restrictions directed at influencing behaviour and increasing vaccine uptake. Such conduct requires careful judicial scrutiny on a full evidentiary record. To accept the Defendants' position would effectively place the exercise of public power beyond legal scrutiny whenever statutory authority is invoked. That is not the law.

63. The Plaintiff pleads that the impugned conduct as a whole including the alleged misrepresentations regarding safety, efficacy, and interchangeability, the failure to disclose material risks, the implementation of coercive measures, and the operation of systems alleged to have failed those who were injured, falls outside the lawful scope of any statutory authority. If proven, such conduct would not attract immunity and would instead ground liability in negligence, negligent misrepresentation, misfeasance in public office, breach of fiduciary duty, and conspiracy to commit assault and battery.

64. These issues cannot be resolved on a certification motion. Whether the Defendants' conduct fell within the scope of lawful statutory authority, or instead constituted *ultra vires*, negligent, reckless, or bad faith conduct, is a fact-driven inquiry requiring a full evidentiary record, including examination of what the Defendants knew, what they communicated, how they exercised their authority, and whether that conduct remained within the lawful limits of the powers they invoked.

E. *Taylor* Is Inapplicable to This Claim

65. Both Defendants' reliance on *Taylor v. Newfoundland and Labrador* ("***Taylor***") is fundamentally misplaced.[23] *Taylor* is a *Charter* case concerning the constitutionality of travel mandates and the balancing of rights under s. 1 during the Covid pandemic. It does not address private law duties, negligent misrepresentation, tort liability, informed consent, operational failures, or coordinated state conduct alleged to have cause harm.

66. *Taylor* also does not address a factual matrix where governments acknowledged harm

[23] Canada Brief, at paras 1-2; and Alberta Brief, at para 130.

through adverse event reporting systems and compensation programs, while simultaneously advancing categorical assurances regarding safety, efficacy, and interchangeability of the Covid Vaccines. This case concerns misrepresentations, systemic failures, and legitimate vaccine-related injuries acknowledged within the Defendants' own systems. Those issues were not before the Court in *Taylor*.

67. The Defendants' reliance on the existence of a pandemic does not make *Taylor* determinative of the issues before this Court. A public health emergency does not suspend the rule of law, extinguish private law duties, or immunize governments from scrutiny regarding how extraordinary powers were exercised. *Taylor* does not stand for the proposition that governments are insulated from liability where harm is alleged to have resulted from the manner in which those measures were implemented, communicated, and operationalized.

68. More fundamentally, the Defendants' reliance on Taylor exemplifies why this case must be certified. Rather than engaging with the pleaded allegations, including what was known, what was represented, what was not disclosed, how acknowledged harms were addressed, and the fact that individuals were legitimately injured, the Defendants repeatedly invoke the word "pandemic" as though it is itself a complete answer to the Plaintiff's claims. It is not. The invocation of a public crisis cannot become a mechanism by which governments avoid scrutiny of alleged systemic failures, unlawful conduct, or resulting harm.

69. The Defendants' position effectively asks this Court to accept that, because the pandemic was unprecedented, the legality and consequences of the Defendants' conduct should not be meaningfully examined. That is precisely the opposite of what the rule of law requires. Where governments exercise extraordinary powers over bodily autonomy, medical decision-making, mobility, employment, and participation in public life, judicial scrutiny becomes more important, not less, particularly where individuals suffered acknowledged injuries.

70. The issues before this Court are fact-driven and systemic: what the Defendants knew, what they represented, what risks were acknowledged internally, what was not disclosed, whether informed consent was undermined, whether legitimate injuries resulted, and whether the systems established to monitor and respond to harm failed to operate as represented. Those issues require a full evidentiary record and are properly determined through a class proceeding. The Defendants' repeated reliance on generalized pandemic authorities that do not engage the actual causes of action pleaded only reinforces the need for certification, particularly to advance the *CPA* objectives of access to justice, judicial economy, and behaviour modification.

F. Population-Level Framing Does Not Answer Individual Harm

71. This class action is brought on behalf of an identifiable class of individuals who were harmed by the Covid Vaccine, not the uninjured majority.

72. Both Defendants rely heavily on aggregate, population-level data to suggest that adverse

outcomes were comparatively rare and that vaccination produced boarder public benefits.[24] That framing is irrelevant to the claim as pleaded. The issue is not whether most individuals were unharmed. It is whether a defined and identifiable group suffered harm as a result of the Defendants' coordinated conduct, representations, omissions, and systems.

73. **Population-level analysis may inform public health policy, but it does not negate individual legal rights or extinguish claims arising from alleged harm. Statistical generalizations cannot displace the requirement to assess whether individuals who were in fact injured have viable legal claims arising from the Defendants' conduct.**

74. The Defendants themselves established adverse event reporting systems and compensation programs precisely because they recognized that vaccine related injury could occur. They cannot acknowledge foreseeable harm, factually and operationally, while denying it legally.

75. The Defendants' reliance on broad population-level framing, while refusing to meaningfully engage with the reality of Covid Vaccine injuries and the alleged failure of the systems created to respond to those injuries, further underscores the necessity of this proceeding.

76. Indeed, the Defendants' own reliance on population-level evidence reinforces certification: by emphasizing that not everyone was harmed, they implicitly acknowledge the existence of a distinct and identifiable group that was. That is precisely the type of defined class contemplated by the *CPA*. Those issues raise common questions capable of determination on a class-wide basis and are properly addressed through a common evidentiary record in a class proceeding.

G. The Vaccine Injury Support Program Supports Certification

77. At certification, the Court is not required to determine individual causation or prove harm on a plaintiff-by-plaintiff basis. The inquiry is whether the pleaded issues arising from the Defendants' conduct raise common questions capable of determination on a class-wide basis.

78. The claim arises from centralized, coordinated conduct that raise common issues. As recognized in *Rumley v British Columbia*, systemic wrongdoing and common causation questions are particularly suited for class-wide determination. Specifically the Supreme Court of Canada held:

> It should be remembered, however, that as the respondents have limited their claims to claims of "systemic" negligence, the central issues in this suit will be the nature of the duty owed by JHS to the class members and whether that duty was breached. Those issues are amenable to resolution in a class proceeding. While the issues of injury and causation will have to be litigated in individual proceedings following resolution of the common issue (assuming the common issue is decided in favour

[24] Canada Brief, at para 27; and Alberta Brief, at para 53.

> of the class, or at least in favour of some segment of the class), in my view the individual issues will be a relatively minor aspect of this case.[25]

79. The proper question at certification is whether the Defendants' conduct can be assessed on a common evidentiary record to determine whether it materially increased the risk of harm or contributed to the injuries alleged. That inquiry is inherently systemic. Individual differences in outcome or degree of injury do not defeat certification; they are appropriately addressed, if necessary, at a later stage of the proceeding.

80. The Defendants' own conduct undermines their position. Through the creation of adverse event reporting systems and the Vaccine Injury Support Program, they expressly acknowledged that Covid Vaccine injuries can and do occur with an identifiable group of individuals. Having created those systems, they cannot now argue that causation is too individualized to support certification while simultaneously relying on programs built on the premise that vaccine-related injury exists and requires a coordinated response.

81. Both Defendants advance contradictory position regarding the Vaccine Injury Support Program. They argue that certification is unnecessary, while simultaneously directing the Plaintiff and Class Members to rely on the Vaccine Injury Support Program as the preferred procedure for addressing vaccine-related injuries.

82. The Vaccine Injury Support Program is not a substitute for judicial determination of liability. It does not address the core issues in this proceeding, including the Defendants' knowledge, representations, omissions, coordinated conduct, or the legality of their actions.

83. The Vaccine Injury Support Program is not an answer to this claim; it is a concrete example of the operational failures alleged. The evidentiary record confirms that the Vaccine Injury Support Program was hastily established in December 2020,[26] that approximately 70% of the funding went to the administration of the program,[27] and that it has recently been completely restructured.

84. Offensively, Canada relies on the following statistics in its submission:

> Reported statistics from June 1, 2021 to December 1, 2024 showed that 3060 Vaccine Injury claims had been received, and more than $16.5 million paid to claimants.[28]

while ignoring the operational reality of the Vaccine Injury Support Program provided by the Plaintiff:

> Oxaro had received $50.6 million in taxpayer money; $33.7 million has been spent

[25] *Rumley v. British Columbia*, 2001 SCC 69 (CanLII), [2001] 3 SCR 184, at para 36.
[26] Alberta Brief, at para 46.
[27] Transcript of Gene Smith, Exhibit A for ID.
[28] Canada Brief, at para 44.

> on administrative costs, while injured Canadians received $16.9 million.[29]

85. Most concerning, Ms. Sakamoto described her experience with the program as follows:

> The VISP program has been **extremely frustrating** and, at times, feels incredibly **dismissive and even abusive**. Since March of 2023, I have been assigned to eight case managers. The case managers do not stay long and are frequently replaced. Navigating the VISP program has been a **dehumanizing experience**, particularly given my medical and psychological conditions…
>
> I have been **disheartened and I am demoralized** by the treatment I have received by both Canada and Alberta's governments. The **lack of support and the suppression** of my injury by those who should be management and providing me assistance which my health crisis, which was triggered by the vaccines they promoted, has been **profoundly demoralizing and dehumanizing**.[30] [emphasis added]

86. The evidence establishes that the Vaccine Injury Support Program has not operated as an effective or component alternative process. It has been delayed, administratively burdensome, non-transparent, and on the evidence before the Court, dehumanizing and abusive for those it was intended to assist.

87. Further, the program has since been restructured and now operates under the Public Health Agency of Canada as the "Vaccine Impact Assistance Program," which itself reflects recognized deficiencies in the original program. A recently issued letter from the Public Health Agency of Canada states:

> We recognize that people who have applied to this program have gone through a difficult time. Living with health concerns, and navigating a claims process at the same time, is challenging for individuals and their families. That's why the government of Canada is taking meaningful steps to make the program more efficient and to improve the experience for everyone who has applied. We plan to introduce these changes incrementally over the coming months.[31]

88. This restructuring itself confirms that the system failed to function as intended. There is no evidentiary basis to conclude that the revised program remedies the deficiencies identified in the record or provides an adequate alternative to judicial determination of these claims.

89. The Court is not being asked to speculate about the adequacy of an alternative scheme. The program's deficiencies are already evident on the record. As the Supreme Court of Canada confirmed in *AIC Limited v Fischer* ("***AIC Limited***"):

> … when the results or the limits on recovery of an alternative procedure are known

[29] Transcript of Gene Smith, Exhibit A for ID.
[30] Sakamoto Affidavit, filed September 16, 2024, at paras 27 and 29.
[31] Sakamoto Affidavit, filed April 28, 2026, at Exhibit "A", page 1.

at the time of the certification motion, those uncontested facts cannot be ignored.[32]

90. The Defendants ask this Court to defer to a program whose alleged inadequacies form part of the Plaintiff's claim. That is precisely what *AIC Limited* cautions against. To accept the Defendants' position would insulate alleged systemic failures from judicial scrutiny and deny the Plaintiff and Class Members a meaningful forum to advance their claims.

91. **By advancing the Vaccine Injury Support Program, which in fact no longer exists, as the "preferred procedure," the Defendants asks the Court to defer to a program whose alleged inadequacies form part of the Plaintiff's claim. That position would insulate alleged systemic failures from judicial scrutiny and deny Class Members access to a meaningful forum for determination of their claims.**

92. The program's failed, non-transparent, and individualized structure stands in stark contrast to the Plaintiff's claim for public and systemic adjudication of the Defendants conduct. A class proceeding is the only mechanism capable of addressing these issues consistently with the objectives of the *CPA*, including access to justice, judicial economy, and behaviour modification.

H. The Defendants' Coordinated Conduct Confirm Common Issues

93. Both Defendants assert that there is no identifiable class and no common issues capable of resolution in a class proceeding. Yet the uniformity and interdependence of their own positions demonstrate the opposite.

94. By advancing the Vaccine Injury Support Program as the preferable procedure, the Defendants implicitly acknowledge the existence of an identifiable class of allegedly vaccine-injured individuals and common issues arising from their injuries. That position is incompatible with their opposition to certification.

95. The Defendants rely on the same factual narrative and substantially the same defences: that their conduct amounted to mere "encouragement," that duties were owed only to the public at large, that informed consent rests solely with individual physicians, and that causation and reliance are inherently individual. Those positions arise from the same alleged course of coordinated conduct and themselves confirm the existence of common issues.

96. The Defendants' attempt to fragment the analysis into individual inquiries ignores that the impugned conduct was centralized, uniform, and systemic. Their common defence, further confirms that the issues are capable of common resolution and that certification is not only appropriate but necessary to avoid duplicative and inconsistent findings, and to ensure meaningful access to justice against resource-rich state actors.

97. At the same time, each Defendant attempts to minimize its own role by emphasizing the involvement of the other level of government. Far from defeating certification, this reinforces the Plaintiff's allegation of coordinated and interdependent conduct.

[32] *AIC Limited v. Fischer*, 2013 SCC 69 (CanLII), [2013] 3 SCR 949, at para 47.

98. Canada attempts to narrow its role to high-level regulation and generalized public messaging, despite acknowledging that vaccination was a "key component"[33] of its national response and that it actively encouraged vaccine uptake. Canada cannot simultaneously rely on the breadth of its role to justify its conduct while minimizing that same conduct to avoid scrutiny.

99. Canada's own evidence confirms that it:

    a) Approved and authorized the Covid Vaccines through its regulatory framework;[34]

    b) Established and controlled the national framework enabling vaccine rollout;[35]

    c) Established national recommendations and programs, including the adverse event reporting systems and the Vaccine Injury Support Program;[36]

    d) Directed and encouraged vaccination through national public messaging;[37]

    e) Conducted coordinated public messaging communications designed to influence individual decision-making and increase Covid Vaccine uptake;[38] and

    f) Implemented federal travel mandates conditioning mobility on vaccination status;[39]

100. These positions directly engage common issues relating to knowledge, representations, disclosure obligations, coercion, and operational implementation, all of which require determination on a common evidentiary record. Notably, Canada avoids addressing its federal travel mandates in its submissions, which directly conditioned mobility on vaccination and engaged coercive elements of the framework.

101. Alberta advances the same position, characterizing its role as mere "encouragement" despite its own evidence confirming that it:

    a) Procured vaccines and controlled eligibility and scheduling;[40]

    b) Administered Covid Vaccines through provincial immunization systems;[41]

    c) Directed public messaging through senior public officials;[42]

    d) Implemented extensive, multi-platform advertising campaigns, including financial

[33] Canada Brief, at para 7.
[34] Canada Brief, at paras 2 and 100.
[35] Canada Brief, at paras 7 and 16-17.
[36] Canada Brief, at paras 25-27 and 43-44.
[37] Canada Brief, at paras 16-18.
[38] Canada Brief, at paras 2, 7, 22, 32-36 and 167.
[39] Bradley Affidavit filed September 16, 2024, Exhibit L.
[40] Alberta Brief, at paras 21-22.
[41] Alberta Brief, at para 24.
[42] Alberta Brief, at para 10.

incentives, to increase Covid Vaccine uptake;[43] and

e) Implemented the Restriction Exemption Program, conditioning access to services and participation in public life on vaccination status.[44]

102. Alberta's characterization of the Restriction Exemption Program as "voluntary" ignores its legal and practical effect.[45] Conditioning access to services and public life on vaccination status is coercive in substance. Further, Alberta's continued reliance on a program found to be *ultra vires*, while minimizing its impact, underscores the need to certify the class to encourage behaviour modification and ensure meaningful scrutiny of unlawful exercises of state power.

103. The Defendants cannot rely on the breadth and effectiveness of their coordinated conduct while simultaneously minimizing its role to avoid legal scrutiny. They characterize vaccination as an individual choice, while acknowledging centralized systems, mandates, messaging, and restrictions specifically designed to influence that choice at scale.

104. Canada points to provincial implementation; Alberta points to federal approval, regulation, and national frameworks. This attempt to fragment responsibility does not defeat the claim; it supports the Plaintiff's theory of coordinated conduct. The adverse event reporting systems and compensation mechanisms were expressly intergovernmental.[46] This conduct cannot now be artificially separated to avoid liability.

105. Determining the respective roles, knowledge, and liability of each Defendant requires a full evidentiary record in a unified proceeding. Requiring individual plaintiffs to disentangle coordinated federal-provincial conduct through separate actions would undermine judicial economy, risk inconsistent findings, and effectively deny access to justice. This interdependence is itself a common issue and strongly supports certification.

I. Defendants' Conduct in the Litigation Process Further Supports Certification

106. Both Defendants sought to delay and fragment the certification process through proposed applications to strike. Alberta stated:

> Alberta wishes to bring a preliminary application to strike the action against it under Rule 3.68 of the Alberta Rules of Court as disclosing no reasonable cause of action.[47]

Canada's similarly stated:

> Canada intends to bring an application to strike the action as disclosing no cause of

[43] Alberta Brief, at paras 41-43.
[44] Alberta Brief, at para 13.
[45] Alberta Brief, at para 13.
[46] Alberta Brief, at para 32.
[47] *Sakamoto v Canada (Attorney General)*, 2025 ABKB 149 (CanLII), at para 5.

action.[48]

107. The Plaintiff opposed bifurcation on the basis that it would increase cost, duplication, and inefficiency. The Plaintiff's position was accepted by the Court.

108. Notwithstanding that ruling, the Defendants pursued additional procedural steps, including separate strike briefs, which materially extending the timelines and complexity of the proceeding. Yet, Canada reduced its argument on the strike motion to the following proposition:

> The test for a reasonable cause of action at certification is the same test used in a motion to strike a claim.[49]

Similarly, Alberta stated:

> The test for determining if the pleadings disclose a cause of action under section 5(1)(a) of the *Class Proceedings Act* is the same that applies to an application to strike the claim.[50]

109. This conduct is not insignificant. The Defendants invoked procedural mechanisms that delayed and fragmented the proceeding while ultimately advancing little beyond the existing certification standard. The resulting delay and increased costs are themselves significant in litigation of this nature, particularly where prolonged proceedings can materially impact the ability of individuals to continue pursuing complex claims against the state.

110. This is precisely the type of conduct that underscores the need for certification. It demonstrates the imbalance of resources between individual plaintiffs and the state, and the real risk that systemic claims will be delayed, fragmented, or effectively stalled without the structure of a class proceeding.

111. Of particular concern, both Defendants expressly acknowledge Ms. Sakamoto's harm, describing her circumstances as "undeniably tragic"[51] and "unfortunate,"[52] while simultaneously pursuing procedural steps that prolonged the litigation and increased the burden and cost of advancing her claim, including seeking costs against her. Rather than attempting to move the matter forward efficiently given the acknowledged circumstances, the Defendants adopted the opposite approach.

112. Where state actors acknowledge harm while simultaneously advancing positions that limit scrutiny, delay resolution, or increase the burden on injured individuals, certification is necessary to ensure meaningful accountability on a full evidentiary record.

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[48] *Sakamoto v Canada (Attorney General)*, 2025 ABKB 149 (CanLII), at para 7.
[49] Canada Brief, at para 56.
[50] Alberta Brief, at para 58
[51] Alberta Brief, at para 329.
[52] Canada Brief, at para 4.

113. Certification is necessary to ensure these issues are properly adjudicated and that similar conduct is subject to meaningful judicial scrutiny going forward.

J. Core Objective of Certification

114. The Defendants' conditioned refusal to engage with the seriousness of the alleged conduct, and the resulting harms reinforces the need for certification.

115. As the Supreme Court of Canada found, class actions play an important role in today's world, specifically:

> Class actions offer three important advantages over a multiplicity of individual suits. First, by aggregating similar individual actions, class actions serve judicial economy by avoiding unnecessary duplication in fact-finding and legal analysis…
>
> Second, by allowing fixed litigation costs to be divided over a large number of plaintiffs, class actions improve access to justice by making economical the prosecution of claims that would otherwise be too costly to prosecute individually. Without class actions, the doors of justice remain closed to some plaintiffs, however strong their legal claims…
>
> Third, class actions serve efficiency and justice by ensuring that actual and potential wrongdoers do not ignore their obligations to the public. Without class actions, those who cause widespread but individually minimal harm might not take into account the full costs of their conduct, because for any one plaintiff the expense of bringing suit would far exceed the likely recovery.[53]

116. This claim engages all three core objectives of the *CPA*: access to justice, judicial economy, and behaviour modification.

a) **Access to justice:** The claim arises from complex, systemic government conduct involving extensive evidence and internal decision-making largely within the Defendants' control.

b) **Judicial economy:** The central issues—what the Defendants knew, what they represented, what they failed to disclose, and how their systems operated—are common across the proposed class.

c) **Behaviour modification:** Where the state exercises coordinated authority at scale, makes uniform representations, and implements systems that ultimately failed the very individuals they were intended to assist, only a class proceeding can provide the level of scrutiny necessary to promote accountability and deter similar conduct in the future.

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[53] *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 (CanLII), [2001] 2 SCR 534, ("***Western Canadian***"), at paras27-29.

117. The Defendants' position fails on each of the *CPA*'s objectives:

a) **Access to justice:** It denies access to justice by forcing injured individuals into fragmented, impractical proceedings or inadequate administrative schemes.

b) **Judicial economy:** It undermines judicial economy by requiring the same systemic issues to be litigated repeatedly, risking duplication, inefficiency, and inconsistent, if at all.

c) **Behaviour modification:** It defeats behaviour modification by insulating coordinated state conduct from meaningful judicial scrutiny.

118. In substance, the Defendants' ask this Court to accept that the state can design, fund, and implement coordinated system to influence individual medical decision-making, acknowledge foreseeable harm within those systems, and yet avoid any legal scrutiny by characterizing the conduct as generalized policy directed only at the public at large. That position is inconsistent with the purpose of the *CPA* and the role of the courts in reviewing the exercise of public power.

119. Canda goes so far as to state:

> The attempts to facilitate vaccine uptake is similarly a policy decision, which like almost all difficult policy decisions **may result in some injury to some people**. There can be no question that Canada's vaccine policy was an attempt to help Canadians. All the bald allegations to the contrary cannot change this.[54] [emphasis added]

120. That admission is significant. Canada expressly acknowledges that its coordinated efforts to increase vaccine uptake could and did result in injury to some individuals. Yet despite acknowledging foreseeable harm, the Defendants maintain that the individuals injured by those very systems are not entitled to meaningful judicial scrutiny of how those systems were designed, implemented, operated, and ultimately failed. That position alone demonstrates why certification is necessary.

121. **Where the state exercises extraordinary authority, actively shapes public behaviour, acknowledges foreseeable harm, and then responds to resulting injuries through systems alleged to be delayed, inadequate, or ineffective, there can be no serious question that the behaviour modification objective of the *CPA* is engaged. If these pleaded facts do not warrant certification, it is difficult to conceive of a systemic government conduct case that would.**

122. Where coordinated state conduct affects individuals at scale, a class proceeding is the only realistic mechanism capable of providing meaningful access to justice, resolving common issues, and ensuring scrutiny sufficient to deter similar conduct in the future.

[54] Canada Brief, at para 138.

123. This is precisely the type of systemic case for which the *CPA* was enacted. Certification is not only appropriate; it is necessary.

IV. CAUSES OF ACTION

124. At certification, the Plaintiff is not required to prove the claim. The Court's role is limited to determining whether the pleadings disclose a reasonable cause of action, applying the "some basis in fact" test—namely, whether it is "plain and obvious" that the claim cannot succeed, assuming the pleaded facts to be true. [55]

125. It is a low threshold intended to screen out only claims that are certain to fail.

126. The Defendants have not demonstrated that it is plain and obvious that any of the Plaintiff's pleaded causes of action are bound to fail. The claim pleads material facts supporting each cause of action and the requirement that the pleadings disclose a reasonable cause of action is satisfied.

A. Negligent Misrepresentation

127. Both Defendants rely on *R. v. Imperial Tobacco Canada Ltd.* ("***Imperial Tobacco***") to deny proximity. That reliance misapplies the governing test and ignores the pleaded factual matrix. The analysis proceeds under the two-stage *Anns/Cooper* framework which was stated in *Imperial Tabacco* as follows:

> At the first stage of this test, the question is whether the facts disclose a relationship of proximity in which failure to take reasonable care might foreseeably cause loss or harm to the plaintiff. If this is established, a *prima facie* duty of care arises and the analysis proceeds to the second stage, which asks whether there are policy reasons why this *prima facie* duty of care should not be recognized.[56]

i Stage One: Proximity and Foreseeability

128. At the first stage, the question is whether the relationship between the parties is sufficiently close that a failure to take reasonable care could foreseeably cause harm. If so, a *prima facie* duty of care arises.

129. Proximity may arise either from statute or from the Defendants' conduct and interactions; however, where it is grounded in specific conduct, it will rarely be resolved at the pleadings stage. As the Supreme Court of Canada explained in *Imperial Tobacco*:

> On one hand, where the sole basis asserted for proximity is the statute, conflicting public duties may rule out any possibility of proximity being established as a matter of statutory interpretation: *Syl Apps*. **On the other, where the asserted basis for**

[55] *AIC Limited v. Fischer*, 2013 SCC 69, at para 40; and *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 (CanLII), [2013] 3 SCR 477, at para 63.
[56] *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 (CanLII), [2011] 3 SCR 45, at para 39.

> **proximity is grounded in specific conduct and interactions, ruling a claim out at the proximity stage may be difficult**.[57] [emphasis added]

130. The pleaded facts satisfy this stage. The Plaintiff relies on targeted, repeated, and authoritative representations made within a coordinated, state-directed framework, expressly intended to be relied upon by individuals making personal medical decisions, including the specific objective of vaccine uptake. Proximity arises from the Defendants' conduct and the relationship it created, including:

    a) Uniform and categorical assurances that Covid Vaccines were "safe, effective, and interchangeable";

    b) A centralized and coordinated public messaging campaign delivered through official channels;

    c) Mandates, incentives, and restrictions that structured decision-making; and

    d) The creation of adverse event reporting and compensation systems acknowledging foreseeable harm.

131. This case is fundamentally distinguishable from *Imperial Tobacco*, in that case Canada did not:

    a) Actively promote or encourage cigarette consumption;

    b) Deploy public officials, public funds, or coordinated campaigns to induce use;

    c) Condition access to services or participation in public life on consumption; and

    d) Establish a compensation or reporting regime acknowledging harm from the promoted product.

132. Here by contrast, the Defendants engaged in coordinated, state-directed conduct designed explicitly to influence, direct, and secure individual behaviour, coupled with systems that acknowledged foreseeable injury. This is not diffuse public messaging. It is targeted conduct creating a direct and foreseeable relationship with an identifiable group. That distinction is determinative for proximity.

133. Canada's position is internally inconsistent. It selectively relies on public communications, media reports, and government publications to assert transparency and informed public awareness, while simultaneously denying that those same communications could give rise to reliance or proximity.

134. The Plaintiff pleads a concrete operational failure: the national adverse event reporting system, relied upon by Canada as part of its public health farmwork, ceased to be publicly

[57] *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 (CanLII), [2011] 3 SCR 45, at para 47.

updated as of January 2024.[58] Canada represented that vaccine safety was being actively and transparently monitored, yet the system intended to communicate that information to the public was not maintained.

135. This is not an abstract allegation. It is a specific failure in the collection, analysis, and dissemination of public health information, directly tied to Canada's asserted role. Canada cannot rely on these systems to justify its conduct while avoiding the legal consequences of their failure.

136. Nor can Canada demand particularization of internal decision-making while maintaining exclusive control over the very information required to provide those particulars. That position is circular and reinforces why the claim cannot be resolved at the pleadings stage.

137. The communications either mattered or they did not. If, as Canada admits, they were intended to encourage vaccination and influence behaviour, they necessarily engage proximity and reliance. If they did not, Canada's reliance on them to justify its conduct collapses. They cannot be both legally irrelevant and operationally central.

138. To the extent the Defendants invoke statutory duties at this stage, that argument is misplaced. The Plaintiff does not rely on statute as the source of the duty. Rather, proximity arises from the Defendants' conduct, within the statutory framework, through coordinated, authoritative representations and the structuring of the conditions under which individuals made medical decisions.

139. The statutory framework provides critical context for how the Defendants exercised power; it does not negate the relationship created by that exercise of power.

140. *Imperial Tobacco* was also decided on a full evidentiary record, not at certification. At this stage, the question is not whether proximity is proven, but whether it is reasonably arguable. On the pleaded facts, it plainly is. A *prima facie* duty of care is therefore established.

ii Stage Two: Residual Policy Considerations

141. The analysis then turns to whether the Defendants have established policy reasons to negate that duty. The burden lies with the Defendants, and it must be grounded in real and substantial concerns, not speculation, broad, or unsupported assertions.

142. Both Defendants rely on generalized arguments, including statutory duties to the public at large, core policy immunity, indeterminate liability, and alleged chilling effects. None defeat the *prima facie* duty at this stage.

a. Statutory Duties Do Not Negate Private Law Duties

143. The Defendants' reliance on statutory duties framed to the "public at large" does not negate

[58] Canada Brief, at para 26-27.

a private law duty arising from their conduct.

144. *Welbridge Holdings Ltd. v. Greater Winnipeg* draws the critical distinction: while legislative acts may not ground liability:

> The situation is different where a claim for damages for negligence is based on acts done in pursuance or in implementation of legislation....[59]

145. That is precisely the Plaintiff's claim. It centres on the implementation of a coordinated, state-directed framework designed to achieve vaccine uptake.

146. The Defendants reliance on statutes including the *Department of Health Act*, the *Public Health Agency of Canada Act*, the *Food and Drugs Act*, and Alberta's *Public Health Act* and *Health Information Act* is misplaced. Those statutes define powers and responsibilities, but do not immunize how those powers are exercised.

147. The Plaintiff does not rely on statute as the source of the duty. Rather, they provide the framework within which the Defendants exercised, or in the alternative exceeded, their authority, made coordinated and authoritative representations, and shaped the relationship with the Plaintiff and Class Members to achieve a specific objective: vaccine uptake.

148. The Plaintiff relies on the following statutes for context:

a) The *Department of Health Act* and *Public Health Agency of Canada Act* establish Canada's central role in national health coordination and public messaging;

b) The *Food and Drugs Act* governs the approval and regulation of vaccines, informing what was known, when, and on what basis representations were made;

c) Alberta's *Public Health Act* structures the province's implementation, communication, and enforcement powers; and

d) The *Health Information Act* reinforces the importance of accuracy and integrity in the handling and dissemination of health-related information.

These statutes provide context for the Defendants' knowledge, authority, and operational responsibilities, and underscore the pleaded failures in how that authority was exercised.

149. While these statutes define broad public responsibilities, they do not preclude proximity arising from coordinated, authoritative representations and conduct intended to be relied upon, particularly where deployed to drive a specific outcome—here, vaccine uptake.

150. The Defendants improperly use the statutory framework as a shield, while ignoring that it simultaneously grounds the pleaded relationship.

151. Nothing in these statutory schemes displaces the pleaded relationship. On the pleaded facts,

[59] *Welbridge Holdings Ltd. v. Greater Winnipeg*, 1970 CanLII 1 (SCC), [1971] SCR 957, at page 970.

the relationship, and resulting duty, is at least reasonably arguable.

b. Core Policy Immunity Does Not Apply

152. The Defendants' attempt to characterize all impugned conduct as "core policy" is overbroad and contrary to settled jurisprudence.

153. As confirmed in *Nelson (City) v Marchi*, core policy immunity is narrow and does not extend to operational conduct. The Supreme Court of Canada held:

> While such policy decisions are exempt from claims in negligence, the operational implementation of policy may be subject to the duty of care in negligence…
>
> …there are good reasons to hold public authorities liable for negligent activities falling outside this core policy sphere where they cause harm to private parties. "Municipalities function in many ways as private individuals or corporations do" and have the ability to "spread losses" [60]

Operational implementation remains actionable where it causes harm.

154. The distinction turns on the nature of the act itself, not how it is later framed in litigation. Governments cannot retroactively insulate actionable conduct by recasting it as "policy."

155. Further, the Supreme Court of Canada recently held in *Canada (Attorney General) v. Power*:

> By shielding the government from liability in even the most egregious circumstances, absolute immunity would subvert the principles that demand government accountability…
>
> An award of damages against the state for exceeding its legal powers has long been recognized as an important requirement of the rule of law. [61]

156. The Plaintiff challenges operational conduct—what was represented, what was not disclosed, whether they exceeded their authority, and how systems were implemented and failed in the face of known risk. These are not high-level policy choices, they are the execution of those choices.

157. Even where policy considerations arise, immunity does not extend to negligent implementation, bad faith, or reckless disregard of known risks. The Plaintiff's pleadings allege precisely that.

158. The Defendants' position would effectively collapse the policy/operational distinction entirely, effectively rendering all large-scale government action immune from review. That is not the law.

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[60] *Nelson (City) v. Marchi*, 2021 SCC 41 (CanLII), [2021] 3 SCR 55, at para 22 and para 48.
[61] *Canada (Attorney General) v. Power*, 2024 SCC 26 (CanLII), at para 5 and para 41.

159. On the pleaded facts, it is at least reasonably arguable that the impugned representations and conduct is operational in nature. Core policy immunity does not apply at this stage.

c. No Indeterminate Liability

160. Indeterminate liability concerns do not arise on the pleaded facts. The proposed class, the impugned conduct, and the alleged harm are all clearly defined and bounded.

161. As confirmed in *Deloitte & Touche v. Livent Inc.*, indeterminate liability arises only where there is "liability in an indeterminate amount for an indeterminate time to an indeterminate class."[62] This is not the case.

162. The Defendants' residual policy argument improperly overstates both the scope of the claim and the governing law.[63] The Plaintiff does not allege that every public health recommendation or communication gives rise to a private law duty of care. Rather, the claim arises from a specific, coordinated, and state-directed course of conduct, including categorical representations that Covid Vaccines were "safe, effective, and interchangeable," coercive measures and mandates implemented to increase vaccine uptake, and the operation of reporting and compensation systems acknowledging foreseeable harm.

163. This is not a claim arising from generalized regulatory activity or broad public governance. It is a bounded claim arising from specific conduct directed at an identifiable class of individuals. The Plaintiff does not seek to impose liability for all vaccines, all medications, or all public health guidance. The claim concerns the Defendants' specific conduct in designing, implementing, promoting, and operationalizing the Covid vaccination framework.

164. Each element of the claim is clearly defined:

a) The class consists of individuals who received Covid Vaccines and suffered vaccine-related injury;

b) The conduct consists of the Defendants' coordinated representations, omissions, mandates, incentives, and implementation of the Covid vaccination framework; and

c) The harm consists of Covid vaccine-related injuries arising within that framework.

165. Canada's assertion that recognizing a duty of care would impair its ability to respond to future public health issues is equally unsustainable. Canada went so far as to assert:

> There is no doubt that imposing a private law duty of care would conflict with Canada's public law duties to protect the health of all Canadians, including through preventing the spread of disease.[64]

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[62] *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63 (CanLII), [2017] 2 SCR 855, at para 135.
[63] Canada Brief, at paras 107-111; and Alberta Brief, at para 138.
[64] Canada Brief, at para 107.

166. That position fundamentally misstates the Plaintiff's claim. The issue is not whether governments should respond to public health crises, but whether they may do so negligently, recklessly, in bad faith, through misleading representations, or in a manner that exceeds lawful authority without judicial scrutiny. Recognizing a duty of care does not prevent governments from fulfilling their public responsibilities; it requires that those responsibilities be carried out competently, lawfully, and with due regard for foreseeable harm.

167. Similarly, Alberta improperly reframes the claim as an attempt to "second-guess" individualized clinical assessments or physician-specific informed consent discussions.[65] The Plaintiff does not seek to impose liability on Alberta for individualized clinical assessments. Nor does the claim challenge the exercise of independent medical judgment by healthcare professionals.

168. Recognizing a duty of care in respect of the Defendants' operational conduct does not require the Court to "second guess" clinical decisions. Courts routinely distinguish between systemic governmental conduct and individualized medical judgment. The Plaintiff pleads that the Defendants controlled and shaped the informational and operational framework within which vaccination occurred, including public messaging, mandates, directives, eligibility criteria, and reporting systems.

169. Governments are not immune from liability for operational conduct merely because it occurs within a broader public policy context.[66] Liability for operational negligence does not inhibit governance; it reinforces the requirement that public power be exercised carefully, lawfully, and with due regard for foreseeable harm.

170. The Defendants' position would effectively place coordinated state conduct beyond judicial scrutiny whenever it occurs in the context of public health. That is not the law. The Plaintiff pleads a sufficiently close and direct relationship arising from the Defendants' own conduct, together with foreseeable harm acknowledged through the Defendants' own reporting and compensation systems. At certification, that is more than sufficient to disclose viable causes of action in negligence and negligent misrepresentation.

171. The Defendants' invocation of indeterminate liability attempts to recast a defined, fact-specific claim as an abstract policy concern. The jurisprudence does not support that position. Where, as here, the relationship, conduct, class, and alleged harm are all identifiable and bounded, indeterminate liability is not a bar to recognizing a duty of care.

d. "Chilling Effect" and "Good Governance" Arguments Fail

172. Generalized assertions of "good governance" or chilling effects are insufficient to negate a duty of care. Liability for operational conduct does not inhibit governance; it ensures accountability where harm results and reinforces lawful decision-making.[67]

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[65] Alberta Brief, at para 138.
[66] *Just v. British Columbia*, 1989 CanLII 16 (SCC), [1989] 2 SCR 1228, at page 1238.
[67] *Nelson (City) v. Marchi*, 2021 SCC 41 (CanLII), [2021] 3 SCR 55, at para 48.

173. Alberta's framing of "good governance"[68] is offensive and fails on the pleaded facts. **Encouraging individuals to undergo a medical intervention through categorical assurances, coercive mandates, and state-directed pressure, and then failing to adequately respond to those harms, is a far cry from good governance.**

174. Where the state exercises extraordinary power, shapes public understanding, and influences individual decision-making at scale, accountability is not a threat to governance—it is a requirement of the rule of law.

e. Response to Adam and Hartman

175. Both Defendants further rely on *Adam, Abudu v. Ledesma-Cadhit* ("***Adam***")[69] and *Hartman v. Attorney General of Canada* ("***Hartman***").[70] That reliance is equally misplaced.

176. In both cases, the court was engaged in a merits-based assessment of liability in materially different factual contexts, including where causation of the alleged injury was not established and they were not certification decisions.

177. The Defendants' reliance on these authorities to defeat certification demonstrates a fundamental misapplication of the test. Certification is not a determination of liability. By importing a merits-based analysis from *Adam* and *Hartman*, the Defendants improperly invite this Court to resolve contested factual issues that are not before it. Unlike those cases, the Plaintiff's injury here is neither speculative nor hypothetical, it is a recognized vaccine-related injury within the Defendants' own reporting and compensation frameworks. The allegations are systemic, arise from centralized conduct, and engage common issues and are particularly well-suited for a class proceeding.

178. On the pleaded facts, proximity is reasonably arguable and a *prima facie* duty of care arises. The Defendants have not established any policy basis capable of negating that duty at this stage. Their submissions improperly collapse the two-stage analysis into a merits determination. That is not the test at certification. The question is whether it is plain and obvious that the claim cannot succeed. That test is not met.

179. Certification is not a determination of the merits, but a screening exercise. The claim raises serious, novel, and fact-dependent issues that require determination on a full evidentiary record.

180. The Plaintiff has pleaded the elements of negligent misrepresentation and established "some basis in fact" for the claim. The certification threshold is met and must proceed.

B. Negligence

181. The Defendants' reliance on statutory frameworks to negate liability is misplaced. While

[68] Alberta Brief, at paras 128-130.
[69] Canada Brief, at para 72; and Alberta Brief at para 109.
[70] Canada Brief, at para 74; and Alberta Brief at para 113.

statutes define public responsibilities, they do not immunize operational conduct falling below the standard of care. The Plaintiff pleads concrete operational failures, including the failure to maintain and update adverse event reporting systems, the failure to operate a timely, transparent, and effective vaccine injury compensation program, and the failure to operationalize recommendations arising from the Alberta Government Covid Task Force.

182. As addressed in the negligent misrepresentation section, the statutory schemes provide context that underscores these operational deficiencies. As confirmed in *The Queen (Can.) v. Saskatchewan Wheat Pool*, statutory schemes inform the standard of care; they do not displace the common law of negligence nor shield deficient implementation.[71]

183. Both Defendants rely on residual policy arguments—chilling effects, indeterminate liability, and conflicts with public duties—to defeat the claim. Those arguments fail. Governments are routinely held to account where operational conduct causes harm. As confirmed in *Just v British Columbia*, liability for operational negligence does not interfere with legitimate policy-making, and that specified that:

> The manner and quality of an inspection system is clearly part of the operational aspect of a governmental activity and falls to be assessed in the consideration of the standard of care issue. At this stage, the requisite standard of care to be applied to the particular operation must be assessed in light of all the surrounding circumstances…[72]

The Defendants' position would improperly insulate coordinated, operational public health systems programs from review, even where harm is acknowledged within those systems.

184. At their core, the Defendants' submissions attempt to avoid scrutiny of the central issue: individuals were injured within a coordinated, state-directed framework that included specific representations, acknowledged risks, and operational systems that failed to respond adequately when harm materialized.

185. Alberta's reliance on statutory immunity, including s. 66.1 of the *Public Health Act*, is legally incoherent. It simultaneously asserts that the statute negates proximity while relying on it to immunize conduct. Those positions cannot coexist. If the statutory framework is engaged to ground immunity, it necessarily informs the relationship between the parties. It cannot be used both to negate proximity and shield liability arising from the same conduct. In any event, such immunity is expressly limited to good faith conduct. The Plaintiff pleads the absence of good faith. At certification, those facts must be taken as true.

186. The Defendants' own position reinforces the claim. They acknowledge that adverse events were known and monitored, yet deny any corresponding obligation arising from that knowledge, despite having created and relied upon adverse event reporting systems and compensation programs that failed to operate in a timely, transparent, and effective manner. **Those operational failures, within systems expressly designed to monitor and respond to harm, support the inference of foreseeable harm and a failure to meet the**

[71] *The Queen (Can.) v. Saskatchewan Wheat Pool*, 1983 CanLII 21 (SCC), [1983] 1 SCR 205, at pages 227-228.
[72] *Just v. British Columbia*, 1989 CanLII 16 (SCC), [1989] 2 SCR 1228, at page 1245.

applicable standard of care.

187. Alberta's submission that the negligence claim is unclear must be rejected.[73] The basis of the claim is clear:

a) The failed operation of adverse event reporting systems;

b) The failure of the Vaccine Injury Support Program to function in a timely and effective manner; and

c) The failure to operationalize the Alberta Government Covid Task Force recommendations.

d) These are not abstract policy concerns—they are concrete failures in implementation.

188. Canada adds insult to injury by stating:

> The plaintiff alleges Canada was negligent in ending reporting of Canadian Adverse Events Following Immunization and with respect to the VISP program. The plaintiff has cited no case law which would support a claimed duty of care to continue to report adverse events or respecting VISP.[74]

The absence of a case addressing these exact facts does not defeat the claim; it reflects the unprecedented nature of the coordinated response and the systems put in place. The governing principles are well-established: where a defendant undertakes to implement systems intended to monitor, communicate, and respond to risk, those systems must be operated with reasonable care.

189. Alberta similarly attempts to deflect responsibility by saying:

> Alberta does not regulate or approve the Covid-19 vaccines, which is a federal responsibility. Alberta did not manufacture or sell the Covid-19 vaccines, which was the role of the various vaccine manufactures. Alberta did not administer the Covid-19 vaccine during the pandemic, which was done by public health nurses, doctors, and pharmacists.
>
> Insofar as the claim alleges Alberta had a duty to ensure the Covid-19 vaccines were safe, effective and interchangeable, or had a duty to warn Albertans about all the possible adverse events that may follow a vaccination, this is the legislated role of the regulator– here, Canada.[75]

190. This submission attempt to isolate its role by pointing to the other level of government or vaccine administrator. The systems at issue, including adverse event reporting and the Vaccine Injury Support Program, were intergovernmental in design, coordination, and

[73] Alberta Brief, at paras 141-142.
[74] Canada Brief, at para 94.
[75] Alberta Brief, at paras 143-144.

operation. In that context, efforts to shift responsibility between Canada and Alberta do not defeat the claim; they underscore the coordinated nature of the framework and reinforce the need for a unified proceeding to determine the respective roles, responsibilities, and legal consequences of that interdependent conduct.

191. The Defendants' reliance on authorities addressing duties owed to the "public at large" is misplaced.[76] Those cases apply where the alleged duty arises solely from broad regulatory or statutory obligations owed indiscriminately to the public. That is not this case. The Plaintiff pleads direct, coordinated, and targeted conduct, coercive mandates, and integrated systems intended to influence individual decision-making and relied upon by an identifiable class. Proximity turns on the relationship created by the defendant's conduct, not the mere existence of a public duty.[77]

192. The Defendants' submission that the claim is "plain and obvious" to fail improperly collapses the certification analysis into a merits determination. The Plaintiff pleads a coherent negligence claim grounded in systemic conduct, foreseeable harm, and acknowledged operational failures falling below the applicable standard of care. At certification, the question is whether there is "some basis in fact" supporting the claim. That threshold is clearly met.

C. Misfeasance in Public Office

193. The Defendants rely on *Odhavji Estate v Woodhouse* as though it provides the complete test.[78] That is incorrect. In Alberta, the leading authority is *Alberta (Minister of Infrastructure) v Nilsson* ("*Nilsson*"), which confirms misconduct is established where there is:

a) An intentional illegal act, including the use of statutory authority for an improper purpose, actual knowledge that the act or omission is beyond statutory authority, **or** reckless indifference or wilful blindness to the lack of statutory authority; and

b) Intent to harm, which includes actual knowledge that harm will result, **or** reckless indifference or wilful blindness to foreseeable harm.[79] [emphasis added]

194. Under *Nilsson*, reckless indifference and willful blindness are sufficient. Canada's attempt to characterize misfeasance as an intentional tort, and Alberta's insistence on proof of "malice," improperly elevates the legal threshold for the misfeasance.[80] The Plaintiff is not required, at certification, to prove bad faith, intention, or malice. Under *Nilsson*, it is sufficient that the Defendants knew harm was likely, or were recklessly indifferent, to that outcome.

195. Canada seeks to defeat the claim by characterizing the pleadings as insufficiently

[76] Canada Brief, at para 110; and Alberta Brief, at paras 95 and 112.
[77] *Cooper v. Hobart*, 2001 SCC 79 (CanLII), [2001] 3 SCR 537, at para 36.
[78] Canada Brief, at paras 119-122; and Alberta Brief, at paras 153-157.
[79] *Ingram v Alberta*, 2024 ABKB 631 (CanLII), at para 54.
[80] Canada Brief, at para 132; and Alberta Brief at para 74.

particularized or incapable of meeting the threshold for the tort.[81] The Plaintiff pleads repeated and authoritative representations regarding Covid Vaccine safety, efficacy, and interchangeability; failures to disclose material and evolving risks; and the implementation of a coercive, coordinated framework that conditioned participation in public life on compliance. Taken as true, these facts support a reasonably arguable claim of unlawful conduct carried out with at least reckless indifference to foreseeable harm.

196. The Defendants further attempt to characterize the impugned conduct as lawful public health decision-making, thereby conflating the existence of statutory authority with the manner in which that authority was exercised.[82] Misfeasance arises where public officials act unlawfully, in bad faith, or with reckless indifference to their lawful limits or the foreseeable consequences of their conduct. Further, the Plaintiff expressly pleads, in the alternative, that aspects of the Defendants' conduct exceeded or were exercised outside the scope of lawful statutory authority, including measures and restrictions later found to be ultra vires. Those allegations directly engage the core principles underlying misfeasance in public office and further support the claim.

197. Alberta's assertion that "there is absolutely no basis in fact to suggest any Alberta official acted in bad faith"[83] there is absolutely no basis in fact to suggest any Alberta official acted in bad faith" mischaracterizes both the pleadings and the certification standard. The pleaded facts include:

a) Repeated and categorical assurances regarding safety, efficacy, and interchangeability of the Covid Vaccines;

b) Failures to disclose material and evolving risks of the Covid Vaccines;

c) The continued advancement of those representations in the face of known adverse events of the Covid Vaccines; and

d) The creation and reliance on reporting and compensation systems that acknowledged foreseeable harm from Covid Vaccines but failed to operate in a timely, transparent, or effective manner.

198. Read as a whole, the claim advances a sustained theory of unlawful and bad faith conduct, arising from knowledge, omission, and continued action in the face of known or foreseeable risk. The absence of the express words "bad faith" is not determinative; the substance of the pleaded conduct is.[84]

199. Alberta's position that there was "no legal obligation" to implement the recommendations arising from the Alberta Government Covid Task Force Report, and Canada's assertions that the report "is of little assistance" because it was published in 2025 misses the point.[85]

[81] Canada Brief, at para 137.
[82] Canada Brief, at para 136; and Alberta Brief, at para 165,
[83] Alberta Brief, at para 245.
[84] Alberta Brief, at para 79.
[85] Alberta Brief, at para 161; and Canada Brief, at para 137.

For one, the Covid Vaccines are still available to the public, which means foreseeably some people will be injured. Second, the Plaintiff does not plead that failure to implement those recommendations, in isolation, constitutes an unlawful. Rather, that failure is relied upon as part of the broader factual matrix demonstrating knowledge of risk, awareness of deficiencies, and a continued course of conduct in the face of that knowledge.

200. Public officials exercising statutory authority are bound to act within legal limits and for proper purposes. As recognized in *Roncarelli*, the exercise of public power in bad faith or for improper purposes is unlawful.[86] Where risks and deficiencies are identified, yet categorical assurances continue without adequate correction, disclosure, or operational response, those facts are capable of supporting an inference of reckless indifference or wilful blindness. The Plaintiff pleads precisely that.

201. Alberta's assertion that any suggestion of wrongdoing is "incapable of belief" is not a legal argument.[87] The issue at certification is not whether the Defendants accept the allegations, but whether the pleaded facts are capable of supporting the claim. At this stage, those facts must be taken as true.

202. The Defendants' own framing reinforces the pleaded inference of reckless indifference. They acknowledge that adverse events were known, monitored, and sufficiently anticipated to justify reporting systems and compensation frameworks, yet simultaneously deny that any corresponding obligation arose from that knowledge. The Defendants cannot rely on the existence of adverse event reporting systems, compensation programs, and coordinated public health measures to justify their conduct, while denying that those same systems reflect knowledge of foreseeable harm.

203. The Plaintiff further pleads that, despite knowledge of adverse events and evolving risk profiles, the Defendants continued to issue categorical and unqualified assurances while the systems created to monitor and respond to harm allegedly remained delayed, inadequate, or ineffective. This is not a case of abstract or unforeseeable risk. It is a pleaded case of foreseeable harm coupled with systemic operational failure.

204. The pleaded failure to update or correct representations, adequately respond to known deficiencies, or operationalize corrective measures supports an inference of at least reckless indifference or wilful blindness. That is sufficient under *Nilsson*.

205. The Defendants' attempt to isolate individual statements or decisions and characterize them as benign exercises of discretion ignores the systemic nature of the claim.[88] The pleaded conduct is coordinated, continuous, and interrelated. Misfeasance may arise from such systemic misuse of public power. Attempts to fragment that conduct raise evidentiary issues that cannot be resolved at certification.

206. If the Defendants maintain that no bad faith, recklessness, or unlawful conduct is even reasonably arguable on these pleaded facts, that position itself underscores the necessity of

[86] *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] SCR 121.
[87] Alberta Brief, at para 165.
[88] Canada Brief, at para 137.

certification. The claim raises precisely the type of systemic conduct that engages the behaviour modification objective of the *CPA*: the exercise of public power in the face of known risk, coupled with authoritative representations and alleged failures in responding to resulting harm.

207. The Plaintiff's misfeasance claim is grounded in material facts which, taken to be true at certification, establish deliberate unlawful exercises of public power carried out with knowledge of, or reckless indifference to, foreseeable harm. The claim plainly satisfies the certification threshold of "some basis in fact" and must proceed.

D. Breach of Fiduciary Duty

208. The Defendants' position on fiduciary duty is premised on an overly rigid and incomplete reading of the law.[89] While *Alberta v. Elder Advocates of Alberta Society* confirms that fiduciary duties in the public law context are not automatic, it expressly leaves open their recognition where the facts support such a relationship:

> Moreover, **the degree of control exerted by the government** over the interest in question must be equivalent or analogous to direct administration of that interest before a fiduciary relationship can be said to arise. The type of legal control over an interest that arises from the ordinary exercise of statutory powers does not suffice.[90] [emphasis added]

209. The Plaintiff pleads precisely that level of control—control extending beyond ordinary statutory authority into direct influence over individual decision-making, bodily integrity, and informed consent.

210. The applicable test requires an undertaking, a defined class, and a cognizable interest at risk. In determining whether such a relationship is reasonably arguable at certification, courts consider discretionary power, unilateral control, and vulnerability.[91] The Plaintiff pleads all three. The Defendants exercised broad discretion over Covid Vaccine approval, distribution, mandates, guidelines, and messaging through coordinated and centralized frameworks not subject to individual negotiation, directly affecting bodily integrity, medical decision-making, and participation in public life. This was not passive governance; it was an integrated system designed to influence vaccine uptake.

211. The Defendants' assertion that no "undertaking" is pleaded mischaracterizes the claim.[92] The Plaintiff pleads that the Defendants assumed authority and control over the informational and structural environment in which individuals made medical decisions, issued categorical assurances, and held themselves out as the authoritative source to be relied upon. The Defendants' own response to the Alberta Government Covid Task Force further reinforces this pleaded position by rejecting and marginalizing contrary perspectives while continuing to defend the centralized informational framework they

[89] Canada Brief, at paras 115-118; and Alberta Brief, at paras 170-173.
[90] *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24 (CanLII), [2011] 2 SCR 261, at para 53.
[91] *Ibid.*, at para 49.
[92] Canada Brief, at para 116; and Alberta Brief, at para 174.

created and controlled.

212. Where the state assumes such a role and induces reliance, an undertaking is at least reasonably arguable. This is not a generalized obligation owed indiscriminately to the public. It is a pleaded assumption of responsibility arising from coordinated conduct directed at an identifiable group. Whether that relationship ultimately gives rise to a fiduciary undertaking is a triable issue requiring a full evidentiary record.

213. The Defendants' submission that no cognizable private law interest is engaged cannot be sustained.[93] The claim directly implicates bodily integrity, informed consent, and the right to make medical decisions free from misrepresentation and coercion. Where the state exercises discretionary power in a manner that directly affects such fundamental interests, and individuals are rendered vulnerable to that exercise of power, fiduciary obligations are at least reasonably arguable.

214. Alberta's "public at large" argument similarly fails on the pleaded facts.[94] The class is not the public generally. It is a defined group exposed to the Defendants' coordinated conduct who allegedly suffered injury and were directed into systems created to respond to that harm, including the Vaccine Injury Support Program, which is pleaded to have failed those it was intended to serve.

215. The Plaintiff also pleads vulnerability. Individuals made decisions affecting bodily integrity in an environment where the Defendants controlled information and structured available choices. As recognized in *Frame v Smith*:

> The relationship between the parties is therefore one which gives the fiduciary a special opportunity to exercise the power or discretion to the detriment of that other person who is accordingly vulnerable to abuse by the fiduciary of his position.[95]

216. Here, vulnerability is not abstract. It is alleged to have been created and amplified by the Defendants' control over information, induced reliance, structured decision-making, and the absence of meaningful alternatives. The pleaded failure of the Vaccine Injury Support Program to provide timely or effective support further reinforces the Defendants' control over both the decision-making environment and the consequences flowing from it.

217. The Plaintiff pleads a relationship characterized by authority, reliance, vulnerability, and control over the informational and structural environment in which medical decisions were made, directly affecting core legal interests. Whether that relationship ultimately gives rise to a fiduciary duty is a matter for trial. At certification, the Plaintiff need only establish that there is "some basis in fact" supporting the claim. That threshold is met.

E. Conspiracy to Commit Assault and Battery

218. The essential elements of unlawful conduct conspiracy are an agreement, concerted action,

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[93] Canada Brief, at para 139; and Alberta Brief, at para 177.
[94] Alberta Brief, at para 174.
[95] *Frame v. Smith,* 1987 CanLII 74 (SCC), [1987] 2 SCR 99, at para 64.

knowledge of likely harm, and resulting damage.[96] The Plaintiff expressly pleads coordinated conduct between Canada, Alberta, and their respective state actors through unified messaging, shared public health frameworks, and implementation of a vaccination regime in which informed consent was compromised. That is not a bare assertion of conspiracy; itis a pleaded theory grounded in the structure and operation of the Defendants' own programs and systems.

219. Both Defendants rely on a demand for granular particulars, including exact communications, dates, and internal coordination, to argue the claim must fail.[97] This misstates the pleading requirement. At the certification stage, the Plaintiff is not required, prior to discovery, to plead the internal mechanics of intergovernmental coordination uniquely within the Defendants' knowledge and control. Requiring such particulars at this stage would effectively insulate coordinated state conduct from review.

220. It is well established that conspiracy may be proven by inference. As recognized by the Alberta Court of Appeal:

> …direct evidence of conspiracy will not be the usual case:
>
> > 81 Capital Estate correctly pointed out that direct evidence is rarely available to prove the essential agreement between the parties, so that resort must be had to circumstantial evidence. However, the evidentiary difficulty faced by the appellant does not relieve it of adducing at least some evidence from which it may be inferred that there was an intentional participation by the parties with a view to the furtherance of a common design.[98]

221. The Plaintiff pleads that the Defendants acted in concert through aligned policies, messaging, and implementation mechanisms in furtherance of a common design—namely, widespread vaccine uptake under conditions that compromised informed consent. Importantly, the Defendants themselves repeatedly characterize their conduct as directed toward increasing Covid Vaccine uptake.[99] That admission aligns directly with the pleaded common design and supports the inference of agreement. Whether ultimately proven is a matter for trial. At certification, it is sufficient that the inference is reasonably available on the pleaded facts.

222. The Defendants' argument that they have been improperly "lumped together" ignores the nature of the claim.[100] The Plaintiff alleges coordinated conduct across jurisdictions carried out through identifiable public actors operating within a unified framework. The law does not require artificial fragmentation of conduct at the pleadings stage.

223. Canada's reliance on *Sivak v Canada*, *Dorceus v Ontario et al*, and *Khan v Canada*

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[96] *Mraiche Investment Corporation v McLennan Ross LLP*, 2012 ABCA 95, at para 40.
[97] Canada Brief, at para 145; and Alberta Brief, at para 187.
[98] *Mraiche Investment Corporation v McLennan Ross LLP*, 2012 ABCA 95 (CanLII), at para 42.
[99] Canada Brief, at para 138; and Alberta Brief, at para 9.
[100] Canada Brief, at para 148.

(Attorney General) is misplaced.[101] None of those cases are analogous to the circumstances pleaded here. This claim arises from the Defendants' own "unprecedented" response to a public health crisis involving coordinated, state-directed conduct expressly designed to increase Covid Vaccine uptake. The scale, coordination, and admitted objective of that conduct have no meaningful analogue in the authorities relied upon.

224. Alberta's assertion that no agreement is pleaded ignores the structure of the claim.[102] The Plaintiff pleads a intergovernmental framework involving aligned messaging, shared systems, synchronized implementation, centralized reporting mechanisms, and coordinated public communications. At this stage, an agreement need not be formal or expressly documented; it may be inferred from coordinated conduct and a common design.[103]

225. Alberta's assertion that the claim is "incapable of belief"[104] is not a legal answer to the pleadings. The question at certification is not whether the Defendants accept the allegations, but whether the claim is reasonably arguable on the pleaded facts. The Plaintiff pleads coordinated conduct, misleading and incomplete representations, systemic failures, and *ultra vires* measures, including the Restriction Exemption Program.

226. Alberta's reliance on *Reibl v Hughes* is misplaced.[105] That case addresses informed consent in the clinical context. It does not address a systemic, state-directed misrepresentations shaping the conditions under which consent is obtained. Significantly, the Supreme Court stated:

> I can appreciate the temptation to say that the genuineness of consent to medical treatment depends on proper disclosure of the risks which it entails, but in my view, **unless there has been misrepresentation or fraud to secure consent to the treatment**, a failure to disclose the attendant risks, however serious, should go to negligence rather than to battery.[106] [emphasis added]

227. This is precisely the Plaintiff's claim: that consent was obtained through coordinated, authoritative misrepresentations and material non-disclosure within a state-directed framework designed to induce Covid Vaccine uptake. Where consent is alleged to have been obtained in that manner, the issue cannot be dismissed at the pleadings stage.

228. Similarly, reliance on judicial notice of the pandemic or vaccine effectiveness does not resolve the issues raised in this action.[107] The Plaintiff does deny the existence of the pandemic or the utility of vaccination generally. The claim concerns what was represented, what was not disclosed, and how the Defendants' system operated in practice. Judicial notice cannot be used to immunize specific alleged conduct from scrutiny or the need for a proper evidentiary record.

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[101] Canada Brief, at paras 146-150.
[102] Alberta Brief, at para 180.
[103] *Cement LaFarge v. B.C. Lightweight Aggregate*, 1983 CanLII 23 (SCC), [1983] 1 SCR 452, at page 466.
[104] Alberta Brief, at para 194.
[105] Alberta Brief, at para 189.
[106] *Reibl v Hughes*, 1980 CanLII 23 (SCC), [1980] 2 SCR 880, at pages 891-892.
[107] Alberta Brief, at para 194.

229. Ultimately, the Defendants' submissions collapse into a merits argument. They invite the Court to conclude that no conspiracy could exist because their stated purpose was to protect the public. That is not the legal test.

230. The Plaintiff pleads coordinated conduct, knowledge of likely harm, and resulting injury. Taken as true, the pleaded facts provide "some basis in fact" supporting the claim for conspiracy to commit assault and battery. Certification should be granted.

V. CONCLUSION

231. The Defendants' position is, in substance, that they can exercise coordinated state power, make authoritative representations to induce compliance, acknowledge foreseeable harm through their own systems, and then avoid legal consequence when those systems fail. That position is not legally sustainable.

232. This proceeding does not challenge vaccination as a public health tool. It concerns the Defendants' conduct, representations, and resulting harm. Attempts to recast it otherwise should be rejected.

233. At its core, this case concerns whether the Defendants' conduct and representations give rise to legal liability. The Defendants exercised sweeping authority, made categorical assurances, and failed to ensure the systems they relied upon to justify those assurances operated as represented.

234. The Plaintiff alleges the Defendants made uniform and authoritative representations regarding safety, efficacy, and interchangeability, failed to disclose material risks, and structured an environment that undermined informed consent through mandates, incentives, and restrictions. These pleaded facts must be taken as true at certification.

235. The evidence before this Court already establishes that the Representative Plaintiff, Carrie Sakamoto, suffered injury as a result a Covid Vaccine. The record demonstrates injury, acknowledged risk, and systemic failure in the reporting and compensation regimes. These are serious, systemic issues that can only be properly determined on a full evidentiary record.

236. The causes of action advanced—negligence, negligent misrepresentation, misfeasance in public office, breach of fiduciary duty, and conspiracy—are recognized causes of action and plainly meet the low certification threshold.

237. The common issues—what the Defendants knew, what they represented, and what they failed to disclose—arise from centralized conduct and are properly determined once, on a class-wide basis. Individual proceedings or the Vaccine Injury Support Program are not a realistic alternative. Certification ensures these issues are determined by the Court on a full and proper record, rather than deferred to systems shown to be inadequate.

238. For individuals such as Carrie Sakamoto and other proposed Class Members who suffered harm as a result of the Covid Vaccine within a coordinated state-directed framework, the *CPA* exists to ensure meaningful access to justice, accountability, and scrutiny of systemic

conduct that could not realistically be litigated through fragmented individual proceedings.

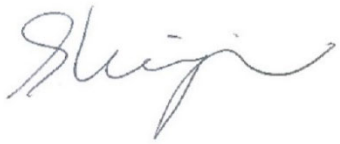
239. Denying certification would undermine the core objectives of the *CPA*—access to justice, judicial economy, and behaviour modification—prematurely foreclose serious, systemic claims. It would permit systemic exercises of public authority to evade meaningful judicial scrutiny, contrary to the rule of law.

240. To deny certification would risk insulating systemic exercises of public authority from meaningful judicial scrutiny. That result is incompatible with the rule of law.

241. The Plaintiff has met the certification threshold. The claim discloses viable causes of action, raises common issues, and a class proceeding is the preferable procedure. On any principled application of the *CPA*, this action should be certified.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of May 2026.

RATH & COMPANY BARRISTERS AND SOLICITORS



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CARRIE SAKAMOTO

VI. AUTHORITIES

STATUTES

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

CASE LAW

2. *AIC Limited v. Fischer*, 2013 SCC 69 ("***AIC***"), at para 40, and para 47.

3. *Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24 (CanLII), [2011] 2 SCR 261, at para 49 and para 53.

4. *Alberta (Minister of Infrastructure) v. Nilsson*, 2002 ABCA 283 (CanLII), at para 95.

5. *Canada (Attorney General) v. Power*, 2024 SCC 26 (CanLII), at para 5 and para 41.

6. *Cement LaFarge v. B.C. Lightweight Aggregate*, 1983 CanLII 23 (SCC), [1983] 1 SCR 452, at page 466.

7. *Cooper v. Hobart*, 2001 SCC 79 (CanLII), [2001] 3 SCR 537, at para 36.

8. *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63 (CanLII), [2017] 2 SCR 855, at para 135.

9. *Frame v. Smith*, 1987 CanLII 74 (SCC), [1987] 2 SCR 99, at para 64.

10. *Hollick v. Toronto (City)*, 2001 SCC 68 (CanLII), [2001] 3 SCR 158, at para 16.

11. *Ingram v Alberta*, 2024 ABKB 631 (CanLII), at para 54.

12. *Just v. British Columbia*, 1989 CanLII 16 (SCC), [1989] 2 SCR 1228, at page 1238.

13. *Mraiche Investment Corporation v McLennan Ross LLP*, 2012 ABCA 95, at para 40 and para 42.

14. *Nelson (City) v. Marchi*, 2021 SCC 41 (CanLII), [2021] 3 SCR 55, at para 2, para 22 and para 48.

15. *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 (CanLII), [2013] 3 SCR 477, at para 63.

16. *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 (CanLII), [2011] 3 SCR 45, at para 39 and para 47.

17. *Reibl v. Hughes*, 1980 CanLII 23 (SCC), [1980] 2 SCR 880, at page 884 and pages 891-892.

18. *Roncarelli v. Duplessis*, 1959 CanLII 50 (SCC), [1959] SCR 121.

19. *Rumley v. British Columbia*, 2001 SCC 69 (CanLII), [2001] 3 SCR 184, at para 36.

20. *Sakamoto v Canada (Attorney General)*, 2025 ABKB 149 (CanLII), at para 5 and para 7.

21. *The Queen (Can.) v. Saskatchewan Wheat Pool*, 1983 CanLII 21 (SCC), [1983] 1 SCR 205, at pages 227-228.

22. *Welbridge Holdings Ltd. v. Greater Winnipeg*, 1970 CanLII 1 (SCC), [1971] SCR 957, at page 970.

23. *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 (CanLII), [2001] 2 SCR 534, at paras 27-29.