



COURT OF APPEAL OF ALBERTA

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REGISTRY OFFICE: CALGARY

PLAINTIFF/APPLICANT: REBECCA MARIE INGRAM and CHRISTOPHER SCOTT, carrying on business as THE WHISTLE STOP CAFÉ

STATUS ON APPEAL RESPONDENTS

DEFENDANT/RESPONDENT: HIS MAJESTY THE KING IN RIGHT OF ALBERTA

STATUS ON APPEAL: APPELLANT

DOCUMENT SUPPLEMENTAL WRITTEN SUBMISSIONS

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Introduction

1. On April 16, 2026 the Court of Appeal for Ontario (“ONCA”) released its decision in *Hartman v Canada (Attorney General)*, which upheld a decision striking both a negligence cause of action and a misfeasance in public office cause of action against Canada relating to its response to the Covid-19 pandemic.¹

2. The claim in *Hartman* alleged Canada was negligent in approving and promoting Covid-19 vaccines, which caused the death of Sean Hartman.² The claim further alleged that Canada was recklessly indifferent or willfully blind in discharging their statutory responsibilities in approving, regulating, and promoting the Covid-19 vaccine and as such were liable for misfeasance in public office.³

3. When reviewing the pleadings in *Hartman*, the ONCA considered whether the motion judge was correct to find it was plain and obvious the facts (assumed to be true) did not disclose a reasonable cause of action and cannot possibly succeed.⁴

4. This striking standard is the same as applied in this appeal to the Plaintiff’s pleadings when considering the cause of action analysis at the certification test pursuant to section 5(1)(a) of the *Class Proceedings Act*.

5. While the claim in *Hartman* related to the Covid-19 vaccine, it more broadly articulated and applied the principles governing a negligence claim against public authorities and the pleading requirements for a claim in misfeasance in public office arising during the Covid-19 public health emergency.

6. The ONCA’s decision in *Hartman* supports the conclusion that the Chambers Justice was incorrect in certifying the Plaintiff’s negligence and misfeasance in public

¹ *Hartman v Canada (Attorney General)*, [2026 ONCA 270](#) (“*Hartman*”)

² *Hartman*, at [para 18](#)

³ *Hartman*, at [para 21](#)

⁴ *Hartman*, at [para 28](#)

office claims. On the reasoning in *Hartman*, it is plain and obvious that the causes of action in the Plaintiff's claim are bound to fail.

The Negligence Claim is Bound to Fail

7. The ONCA began its negligence analysis by confirming that a plaintiff must plead sufficient facts to establish a *prima facie* duty of care, which requires the relationship between the parties to disclose both sufficient foreseeability and proximity. If a *prima facie* duty of care exists, it can be negated on residual policy concerns.⁵

8. Proximity, when considered in the context of a claim against a public authority, can be established through the statutory scheme or from specific interactions between the parties. In cases where the statute is aimed at public goods and broad policy goals (as opposed to imposing duties on the public authority with respect to particular individuals), "it will be difficult to infer that the legislature intended to create private law tort duties towards the plaintiff."⁶

9. It is not alleged, and the Chambers Justice did not find, that proximity in this case is established through any specific interactions. Instead, the Chambers Justice found the *Alberta Bill of Rights*, but not the *Public Health Act*, arguably established proximity. The *Alberta Bill of Rights* is clearly a statute aimed at the public good and at broad policy goals. It is equally clear that it does not impose duties on Alberta with respect to any particular individual, including the Plaintiff or the proposed class in this action.⁷

10. The preamble and section 1 of the *Alberta Bill of Rights* recognize the existence of broad rights and freedoms to all Albertans on matters within the legislative authority of Alberta. The *Alberta Bill of Rights* itself deals with the construction and interpretation of other laws and does not impose any particular duties to an identifiable group.⁸

⁵ *Hartman*, at [para 31](#) citing the *Anns/Cooper* test

⁶ *Hartman*, at [para 33](#)

⁷ *Alberta Bill of Rights*, [RSA 2000, c A-14](#)

⁸ *Alberta Bill of Rights*, at [ss 1 and 2](#)

11. On the same reasoning as in *Hartman*, it is plain and obvious the legislature did not intend to establish a private law duty of care towards any class of individual through the *Alberta Bill of Rights*.

12. Given the nature of the Plaintiff's claim, the *Public Health Act* cannot be ignored. As held in *Hartman*, it will be especially difficult to establish proximity and a private law duty of care to a plaintiff where such a duty would conflict with the public authority's duty to the public as a whole.⁹ In this case, a private law duty towards the class (alleged under either the *Public Health Act* or the *Alberta Bill of Rights*) would conflict with Alberta's public health duties, owed to the public as a whole, set out in the *Public Health Act*.

13. Relying on a number of previous decisions,¹⁰ the ONCA found that public health statutory schemes do not establish a private law duty of care to any class of individuals. Instead, the statutory schemes are directed at the public as a whole and "involve difficult trade-offs between competing interests which often necessarily involve making decisions adverse to some individuals in the pursuit of the broader public interest."¹¹

14. As in *Hartman*, in responding to the Covid-19 pandemic Alberta had the difficult responsibility of balancing the myriad (and competing) interests when issuing the CMOH Orders.¹² Alberta had to determine what was in the best interest of Albertans as a whole in the face of a public health emergency. Imposing a private law duty towards a specific class of Albertans would conflict with Alberta's duties under the *Public Health Act* to act in the best interest of all Albertans.

⁹ *Hartman*, at [para 33](#)

¹⁰ Including *Williams v Ontario*, [2009 ONCA 378](#); *Eliopoulos (Litigation Trustee of) v Ontario (Minister of Health and Long Term Care)* [2006 CanLII 37121](#) (ONCA); *Abarquez v Ontario*, [2009 ONCA 374](#); and *Adam, Abudu v Ledesma-Cadhiti et al.*, [2014 ONSC 5726](#)

¹¹ *Hartman*, at [para 41](#)

¹² *Hartman*, at [para 48](#)

15. The ONCA also held that any finding of proximity in *Hartman* would be negated on residual policy grounds at the second stage of the *Anns/Cooper* test.¹³ Those same residual policy concerns apply in this action to negate any proximity that may be found.

16. The first residual policy concern identified in *Hartman* that applies equally here is that of good governance. This concern applies here because, as held in *Hartman*:

imposing private law duties towards individuals would impair the ability of government decision-makers to make difficult but necessary decisions that advance the general public interest, out of fear that in doing so they might incur civil liability in relation to persons who might be adversely affected.¹⁴

17. The second residual policy concern identified in *Hartman* is that of indeterminate liability. This arises here as no matter what Alberta decided with respect to the CMOH Orders “it was inevitable that some members of the public would be adversely affected... and it was impossible to predict in advance the extent or severity of these adverse impacts.”¹⁵

The Misfeasance in Public Office is Bound to Fail

18. The ONCA held it was plain and obvious that the misfeasance in public office cause of action advanced by the plaintiff in *Hartman* was bound to fail. The pleadings contained only bald allegations of the required elements that the defendant was subjectively aware their conduct was unlawful and would likely harm the plaintiff.¹⁶

19. The ONCA confirmed a misfeasance claim requires an element of bad faith and can only arise where an officer blatantly disregards his or her official duty and demonstrates a conscious disregard for the interests of those who will be affected.¹⁷

¹³ *Hartman*, at [paras 53 and 54](#)

¹⁴ *Hartman*, at [para 53](#)

¹⁵ *Hartman*, at [para 53](#)

¹⁶ *Hartman*, at [para 55](#)

¹⁷ *Hartman*, at [para 58](#)

20. The ONCA in *Hartman* acknowledged that it is all too easy for a plaintiff to baldly plead that an officer “knowingly” acted without authority or “intended” to harm the plaintiff. Such pleadings, without material facts, are not sufficient to establish the officers were actually aware their conduct was unlawful and exhibited bad faith or dishonesty.¹⁸

21. The Plaintiff in this action at best pleads bald allegations that Cabinet was aware their conduct was unlawful – with the only fact supporting such a claim being that Cabinet “issues orders on a regular basis.”¹⁹ This alleged fact does not establish that members of Cabinet were subjectively aware their impugned actions in response to the Covid-19 pandemic were unlawful.

22. Similarly, the Plaintiff pleads no material facts to establish Cabinet acted in bad faith or for a dishonest purpose in responding to the Covid-19 pandemic. Without such pleadings the mere fact that the class was adversely affected by the CMOH Orders is insufficient to ground a claim for misfeasance in public office. As the ONCA held “the mere fact a public officer is aware that a decision may cause harm to certain individuals does not, in itself, give rise to a claim of misfeasance since ‘in a democracy, public officers must retain the authority to make decisions that, where appropriate, are adverse to the interest of certain citizens.’”²⁰

23. As in *Hartman*, a review of the pleadings in this action confirms the Plaintiff makes only bald allegations. There are no material facts establishing the required elements of the tort of misfeasance in public office.

24. In conclusion, the ONCA decision in *Hartman* confirms the Chambers Justice was incorrect in finding the disclosed a cause of action in negligence and misfeasance in public office.

¹⁸ *Hartman*, at [paras 60, 61](#) and [64](#)

¹⁹ Amended Statement of Claim, at para 109

²⁰ *Hartman*, at para 58, quoting *Odhavji Estate v Woodhouse*, [2003 SCC 69](#) at [para 28](#)

Table of Authorities

Legislation and Acts	
1.	<i>Alberta Bill of Rights</i> , RSA 2000, c A-14
Case Law	
2.	<i>Hartman v Canada (Attorney General)</i> , 2026 ONCA 270
3.	<i>Williams v Ontario</i> , 2009 ONCA 378
4.	<i>Eliopoulos (Litigation Trustee of) v Ontario (Minister of Health and Long Term Care)</i> 2006 CanLII 37121 (ONCA)
5.	<i>Abarquez v Ontario</i> , 2009 ONCA 374
6.	<i>Adam, Abudu v Ledesma-Cadhit et al.</i> , 2014 ONSC 5726
7.	<i>Odhavji Estate v Woodhouse</i> , 2003 SCC 69