Court of Appeal File No: C69230
Superior Court File No.: CV-21-85478

COURT OF APPEAL FOR ONTARIO

BETWEEN:

STACY AMIKWABI, SHAWN BRENNAN, GEORGE FAYAD,
JOSHUA ALAS-WILSON, ALISA TOJCIC, JANE DOE, JOHN DOE

Plaintiffs/Appellants

-and-

POPE FRANCIS, THE HOLY SEE, THE STATE OF THE VATICAN, THE SOCIETY OF JESUS, HM QUEEN ELIZABETH II, THE ORDER OF THE GARTER, THE HOUSE OF WINDSOR (FORMERLY SAXE COBOURG GOTHA), GLOBAL VACCINE ALLIANCE (GAVI), the UN's WORLD HEALTH ORGANIZATION/PUBLIC HEALTH ORGANIZATION OF CANADA, BILL AND MELINDA GATES FOUNDATION, PRIME MINISTER JUSTIN TRUDEAU, DR. THERESA TAM, PREMIER DOUG FORD, CHRISTINE ELLIOTT, MAYOR JIM WATSON, ATTORNEY GENERAL OF CANADA, THE ATTORNEY GENERAL FOR ONTARIO

Defendants/Respondents

Proceeding under the *Class Proceedings Act, 1992*

Notice of Appeal of the Plaintiffs

The Plaintiffs herein Appeal to the Ontario Court of Appeal from the Endorsement and Final Judgement of Justice Corthorn dated February 10th, 2021 made at Ottawa, Ontario.

THE APPELLANTS ASK that the February 10th, 2021 Endorsement/Judgement dismissing the action in its entirety be set aside and ask that an Order be granted as follows:

a) An Order granting the appeal and allowing the action to continue as pleaded;

b) In the alternative, overturn the decision of Justice Corthorn and allow the Plaintiffs to amend their pleadings to continue the action;

c) An order for an expedited appeal;

d) Costs of this appeal; and

e) Such further remedy as this Court may appear just.

THE GROUNDS OF THE APPEAL are as follows:

A. Overriding and Palpable Error

1. The learned trial judge made overriding and palpable error in concluding that the Plaintiffs were "querulous litigants". The dictionary definition of querulous is: "Habitually complaining, petulant, or whining". There is no evidence before the Court to allow for this conclusion as against the class members who have come forward in this claim.
2. The learned trial judge made overriding and palpable error in concluding that the allegations amounted to vexatious and frivolous litigation, as follows:
    a. There were no allegations of broad and sweeping violations of fundamental rights – they were specific and pointed directly to a constitutional crisis based on the legal principles of constitutional paramountcy. The pleading may be lengthy and may contain footnotes, but that does not make it quarrelsome or frivolous and vexatious. The pleading and footnotes are designed to demonstrate the lack of frivolous and vexatious observations; they provide a factual foundation for the basis of the claim.
    b. The learned trial judge made overriding and palpable error in concluding that the substantive allegations are repetitive and rambling. The historical facts in the pleading are not irrelevant but in fact add context to the constitutional challenges as expressed.

c. The learned trial judge made overriding and palpable error in concluding that the review of historical facts, including references to significantly dated, foreign, or otherwise irrelevant legislation in this case amounted to frivolous and vexatious pleadings. This is plain wrong. The Plaintiffs reproduced legal principles at pargraph 58 of the Statement of Claim wherein the Supreme Court of Canada in *Reference re Succession of Quebec*, 1998 CarswellNat 1299*,* considered the "irrelevant legislation" referred to by the learned trial judge, and upheld them as law in Canada.

d. The learned trial judge made overriding and palpable error in concluding at paragraph 40, that the core complaint of the claim was the Plaintiffs' dissatisfaction and disagreement with the manner in which the federal, provincial and municipal governments have responded and continue to respond to the Covid-19 pandemic. This is also plain wrong. The Appellants core complaint is a constitutional challenge to the legislative authority of all levels of government to implement the draconian measures which are depriving people of their constitutional rights as expressed in national and international instruments.

e. The learned trial judge made overriding and palpable error in concluding at paragraph 41, that nowhere in the pleading did the Plaintiffs identify a specific statutory or regulatory provision and connect that provision to an infringement of one or more rights under the *Charter of Rights and Freedoms*. This is plain wrong as well. At paragraph 43 of the Statement of Claim, an Order-in-Council, dated March 18, 2020 (PC 2020-0157) is clearly identified and tied specifically to the constitutional challenge. Furthermore, paragraphs 89 and 90 of the Statement of

Claim set out specifically the impugned legislation sections. Finally, paragraph 132 of the Statement of Claim sets out the connection to the constitutional challenge and the specific legislation involved.

f. The learned trial judge made overriding and palpable error in not applying the principles enunciated in the Supreme Court of Canada's decision, *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5. By dismissing the claim in its entirety, the learned trial judge failed to apply the legal maxim, "*ubi jus ibi remedium* – for every wrong, the law provides a remedy." The Supreme Court of Canada in *Nevsun* observed at paragraph 129, "A good argument can be made that appropriately remedying these violations requires different and stronger responses than typical tort claims, given the public nature and importance of the violated rights involved, the gravity of their breach, the impact on the domestic and global rights objectives, and the need to deter subsequent breaches." This is one such case.

B. Breach of Procedural Fairness

3. The learned trial judge erred in law by rendering the decision under appeal without giving notice to the Plaintiffs. Without notice, the Plaintiffs were not able to invoke their right to provide written submissions responding to the notice as provided for in the *Rules of Civil Procedure*, Rule 2.1.01(2) and 2.1.01(3):

> *Summary Procedure*
>
> (2) The court may make a determination under subrule (1) in a summary manner, subject to the procedures set out in this rule. O. Reg. 43/14, s. 1.
>
> (3) Unless the court orders otherwise, an order under subrule (1) shall be made on the basis of written submissions, if any, in accordance with the following procedures:

> 1. The court shall direct the registrar to give notice (Form 2.1A) to the plaintiff or applicant, as the case may be, that the court is considering making the order.
>
> 2. The plaintiff or applicant may, within 15 days after receiving the notice, file with the court a written submission, no more than 10 pages in length, responding to the notice.
>
> 3. If the plaintiff or applicant does not file a written submission that complies with paragraph 2, the court may make the order without any further notice to the plaintiff or applicant or to any other party.
>
> 4. If the plaintiff or applicant files a written submission that complies with paragraph 2, the court may direct the registrar to give a copy of the submission to any other party.
>
> 5. A party who receives a copy of the plaintiff's or applicant's submission may, within 10 days after receiving the copy, file with the court a written submission, no more than 10 pages in length, responding to the plaintiff's or applicant's submission, and shall give a copy of the responding submission to the plaintiff or applicant and, on the request of any other party, to that party. O. Reg. 43/14, s.

C. Deference

4. The Appellants submit that due to the above grounds, the learned trial judge's decision should not be afforded deference.

5. The Appellants also rely on such further and other grounds as counsel may advise and this Honourable Court may permit.

THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:

1. Section 6(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

2. The order appealed from is a final order.

3. Leave to appeal is not required for this appeal.

4. The Appellants plead and rely upon:

a. *Class Proceedings Act*, 1992, S.O. 1992, c. 6

b. Sections 6(1)(b) and 16 of the *Courts of Justice Act*, R.S.O. 1990, C 43.

c. Rule 61.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

d. Section 12.1 of the *Practice Direction Concerning Civil Appeals at the Court of Appeal for Ontario*.

5. The Appellants seek costs for this appeal.

6. Such further and other relief that this Court may permit.

Date: March 22, 2021

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Defendants

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NOTICE OF APPEAL
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