

No. \_\_\_\_\_  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

SARAH WEBB and LEIGH ANNE ELIASON

PETITIONERS

AND:

ATTORNEY GENERAL OF BRITISH COLUMBIA and  
BRITISH COLUMBIA MINISTER OF HEALTH

RESPONDENTS

**PETITION TO THE COURT**

**ON NOTICE TO:**

Attorney General of British Columbia and British Columbia Minister of Health

**This proceeding is brought for the relief set out in Part 1 below, by**

[X] The persons named as petitioners in the style of proceedings above

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner(s)
  - (i) 2 copies of the filed response to petition, and
  - (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

**Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.**

## Time for response to petition

A response to petition must be filed and served on the petitioners,

- (a) if you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) if you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the petition anywhere else, within 49 days after that service, or
- (d) if the time for response has been set by order of the court, within that time.

(1)	The address of the registry is:  The Law Courts 800 Smithe Street Vancouver, British Columbia V6B 0M3
(2)	The ADDRESS FOR SERVICE of the petitioners is:  Jensen Shawa Solomon Duguid Hawkes LLP Robert Hawkes, QC, William M. Katz, and Sarah Miller 800, 304 8 Ave SW, Calgary, Alberta, T2P 1C2 (403) 571-1544, (403) 571-1541 or (403) 571-1051 E-mail address: hawkesr@jssbarristers.ca and katzw@jssbarristers.ca and millers@jssbarristers.ca
(3)	The name and office address of the petitioner's lawyer is:  Jensen Shawa Solomon Duguid Hawkes LLP Robert Hawkes, QC, William M. Katz, and Sarah Miller 800, 304 8 Ave SW, Calgary, Alberta, T2P 1C2 (403) 571-1544, (403) 571-1541 or (403) 571-1051 E-mail address: hawkesr@jssbarristers.ca and katzw@jssbarristers.ca and millers@jssbarristers.ca

Claim of the Petitioner(s)

**Part 1: ORDER(S) SOUGHT**

1. The Petitioners seek judicial review and challenge the constitutional validity of the Public Health Orders announced by the Provincial Health Officer on August 23, 2021 and published on September 10, 2021 (the Food and Liquor Serving Premises Order and Gatherings and Events Order) or any subsequent or substantially similar orders which may arise (collectively, the “**Vaccine Card Orders**”), which are the most recent of a number of orders previously announced under the *Public Health Act*, SBC 2008, c 28 (the “**Public Health Act**”) in response to the existence of COVID-19 pandemic in British Columbia.
2. The Vaccine Card Orders are an unjustifiable violation of the freedoms enumerated in *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982* being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 (the “**Charter**”) and as a result, the Petitioners, Sarah Webb and Leigh Eliason (collectively, the “**Petitioners**”), seek:
  - (a) An interlocutory injunction staying the legal effect or enforcement of the Vaccine Card Orders, pending the final determination of this Application;
  - (b) Further, or in the alternative, an Order for a permanent injunction staying the legal effect of the Vaccine Card Orders;
  - (c) Further, or in the further alternative, an Order or declaration pursuant to section 52(1) of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), c. 11 that the Vaccine Card Orders are unconstitutional for infringing upon, among others, sections 2(c), 2(d), 6(2)(b), 7, and 15(1) of the *Charter*, and are not justified under section 1 of the *Charter*, and are therefore of no force or effect;
  - (d) A declaration that the Vaccine Card Orders are inconsistent with and contrary to sections 1(a), 1(b) and 1(e) of the *Canadian Bill of Rights*, SC 1960, c 44 (the “**Bill of Rights**”) and as such are of no force or effect;
  - (e) An order or declaration that the Vaccine Card Orders are invalid and unlawful and are therefore of no force or effect;
  - (f) Costs of this Application; and
  - (g) Such further and other relief as counsel may request and that this Honourable Court may permit.

## Part 2: FACTUAL BASIS

### The Parties

3. The Petitioner, Sarah Webb (“**Sarah**”), is an individual residing in both Alberta and British Columbia. Sarah operates and manages a hotel located in Victoria, British Columbia.
4. The Petitioner, Leigh Anne Eliason (“**Leigh**”), is an individual resident of the Town of Maple Ridge in the Province of British Columbia.
5. The Respondent is Her Majesty the Queen in Right of British Columbia, as represented by the Attorney General of British Columbia and the British Columbia Minister of Health.

### Sarah Webb

6. The Petitioner, Sarah, is 39 years old, married, with two children. Sarah currently lives and works in hotel management in Victoria, British Columbia and Calgary, Alberta. She spends roughly 50% of her time in each province respectively.
7. Sarah has maintained a healthy and active lifestyle her whole life with no known underlying health conditions. Sarah has received each of her standard vaccinations, as required and prescribed under the Canadian Immunization Guide (“**CIG**”) and even some additional vaccinations in advance of various travels she has taken throughout her lifetime.
8. In or around the end of April of 2021, Sarah became eligible to receive her COVID-19 vaccination (the “**COVID-19 Vaccine**”). On or around this date, Sarah took steps to book her vaccination in accordance with the prescribed guidelines in Alberta and British Columbia at that time.
9. On Sunday, May 2, 2021, Sarah received her first COVID-19 Vaccine shot and was given the vaccine produced by ModernaTX, Inc., colloquially known as the Moderna vaccine.
10. On Saturday, May 8, 2021, Sarah had an adverse reaction to the COVID-19 Vaccine which included fatigue, cramping, heart arrhythmias, swollen lymphs, severe pain, and a rash which engulfed her arm. Sarah attended at the emergency department of a local hospital (the “**Rockyview Hospital**”) for treatment where she received antibiotics and was discharged later that evening.
11. The following day, on Sunday, May 9, 2021, Sarah awoke with further complications arising from the COVID-19 Vaccine and was once again admitted by the emergency department of a local hospital (the “**Foothills Hospital**”). At or around that time, Sarah was expressly advised by the attending emergency physician at the Foothills Hospital that this reaction was likely an infection and a further response that Sarah’s body was experiencing as an adverse reaction to the COVID-19 Vaccine. The Attending physician advised Sarah that, given her adverse reaction to the COVID-19 Vaccine, she should not

receive the second vaccination shot otherwise recommended by the CIG and National Advisory Committee on Immunization (“**NACI**”).

12. Since receiving the COVID-19 Vaccine, Sarah has, on average, multiple times per week, experienced significant and ongoing side-effects of the COVID-19 Vaccine including, without limitation, rashes, hives, fatigue, cramping, tachycardia, and other heart arrhythmias.
13. On September 3, 2021, Sarah’s physician confirmed, in writing, that as a result of her severe and adverse reaction to the COVID-19 Vaccine, Sarah was to avoid further doses of the COVID-19 Vaccine, no matter the brand or manufacturer.

### **Leigh Eliason**

14. The Petitioner, Leigh, is 41 years old, married, with two children. Leigh has a complicated and difficult medical history including, among other things, a neuro-vestibular disorder, atrial fibrillation, and Wenckebach Syndrome.
15. Leigh has received each of her standard vaccinations, as required and prescribed under the Canadian Immunization Guide (“**CIG**”).
16. In or around the end of April of 2021, Leigh became eligible to receive her first dose of the COVID-19 Vaccine. On or around that date, she took steps to meet with her family physicians to determine whether, given her medical history, the COVID-19 Vaccine was safe for her.
17. In May of 2021, she attended the medical office of her physician who advised her that, given her medical conditions, the risk of receiving the COVID-19 Vaccine, and the potential for side-effects were significant. Leigh was expressly advised by her physician not to receive the COVID-19 Vaccine, no matter the brand or manufacturer.
18. As a result of the advice received from their respective physicians, Sarah and Leigh have physical disabilities which give them a medical exemption from receiving further vaccine injections.
19. As a result of the advice received from their respective physicians, Sarah and Leigh have each received notes requiring a medical exemption from receiving further vaccine injections.
20. Each respective physician expressly raised concerns that neither the government nor any of the provincial medical associations have provided guidelines or information as to how to properly write an exemption letter in these circumstances, or what information should be included in such a letter.

## The BC Vaccination Requirement

21. On March 17, 2020, the Public Health Officer provided notice under section 52(2) of the *Public Health Act* that the transmission of the infectious agent SARS-CoV-2, which has caused cases, clusters and outbreaks of a serious communicable disease known as “**COVID-19**” among the population of the Province of British Columbia, constituted a regional event, as defined in section 51 of the *Public Health Act*.
22. The Vaccine Card Order is the most recent of a number of orders issued under the *Public Health Act* by the Dr. Bonnie Henry (the “**Provincial Health Officer**”) in response to COVID-19 in British Columbia.
23. On Monday, August 23, 2021, British Columbia’s Premier John Horgan (“**Premier Horgan**”), the Provincial Health Officer, and Adrian Dix, British Columbia’s Minister of Health (“**MoH**”) announced that, starting September 13, 2021, proof of Vaccination will be required in British Columbia for all people attending certain business, social, and recreational settings, and events (the “**Vaccine Card Announcement**”).
24. The Vaccine Card Announcement states, among other things, that:
  - (a) As of September 13, people in British Columbia will be required to be partially vaccinated with at least one dose of a COVID-19 Vaccine to access certain businesses and events;
  - (b) As of October 24, people in British Columbia will be required to be fully immunized, which requires that at least seven days have passed after receiving the second dose of an approved COVID-19 Vaccine, to access the same list of businesses and events;
  - (c) In the interim, in areas where community transmission has increased significantly or where there are outbreaks, the requirements to be fully vaccinated to access these events and activities may be required at the direction of the local medical health officer; and
  - (d) Proof of vaccination will also be required for people visiting from outside of British Columbia.(collectively, the “**Vaccination Requirements**”)
25. In addition, the Vaccine Card Announcement provides a list of settings where proof of vaccination will be required which includes, without limitation:
  - (a) indoor ticketed sporting events;
  - (b) indoor concerts;

- (c) indoor theatre/dance/symphony events;
  - (d) restaurants (indoor and patio dining);
  - (e) night clubs;
  - (f) casinos;
  - (g) movie theatres;
  - (h) fitness centres/gyms (excluding youth recreational sport);
  - (i) businesses offering indoor high-intensity group exercise activities;
  - (j) organized indoor events (e.g., weddings, parties, conferences, meetings, workshops); and
  - (k) discretionary organized indoor group recreational classes and activities
- (collectively, the “**Vaccination Restrictions**”).

26. Importantly, while the Vaccine Card Orders have been announced, press released and the subject of a press conference by the Premier and the MoH, aspects of the Vaccine Card Orders enumerated in the Vaccine Card Announcement have not been published. This is particularly concerning in consideration of the fact that businesses and the public were required to comply with the unpublished portions of the Vaccine Card Announcement starting on September 13, 2021.

27. In the Vaccine Card Announcement Premier Horgan stated, among other things that:

“There is no reason why those who are anxious to participate in the social and economic life of our community can’t take that next step and get that safe effective vaccine.”

28. In the Vaccine Card Announcement, the MoH claimed, among other things that:

“[G]etting vaccinated is the best choice to protect yourself, the people you love and to ensure you can continue to participate in these public and private events and settings. Our B.C. vaccine card is an essential interim action until we transition to a federally compliant proof of vaccine.”

29. These statements, among others, made by representatives of the government of British Columbia in the Vaccine Card Announcement fail to consider the many members of the public, like the Petitioners, whose health and physical disabilities preclude them from receiving two injections of the COVID-19 Vaccine.

30. For the Petitioners and others, getting vaccinated is not the “best choice” as suggested by Premier Horgan but could result in severe and adverse reactions.
31. On September 10, 2021, the MoH published the Vaccine Card Orders which encompass only portions of the Vaccination Restrictions enumerated in the Vaccine Card Announcement suggesting that additional and future Vaccine Card Orders will be forthcoming.

### **Impact of the Vaccine Card Orders**

32. The Petitioners have, to date, followed each of the recommended physical distancing, hand washing, and mask wearing procedures outlined by the Provincial Health Officer and MoH.
33. Neither Petitioner has ever tested positive for COVID-19 and have attempted to be responsible in reducing the spread of COVID-19.
34. There is no evidence to suggest, that the Attorney General of British Columbia or British Columbia MoH have considered individuals like the Petitioners in making the Vaccine Card Announcement or in crafting the Vaccine Card Orders.
35. The Vaccine Card Orders are a substantial change in restrictions imposed on the Petitioners, residents of British Columbia, and citizens of Canada. The Vaccine Card Orders, as described in the Vaccine Card Announcement, require the Petitioners to choose between their own physical health and well being and their civil liberties. Either choice has negative consequences on their families as well as themselves.
36. The Vaccine Card Orders actively deprive the Petitioners of their *Charter* protected rights and freedoms. Any enforcement of the Vaccine Card Orders unjustly impair the Petitioners’ and other members of the public’s rights and freedoms to gather and engage in public life, to join together for common goals, to pursue a livelihood in the Province of British Columbia, and to generally participate in the social and economic life of British Columbia and their community.
37. Enforcement of the Vaccine Card Orders or any subsequent orders will unjustly preclude the Petitioners from engaging in employment and participating in the social and economic life of British Columbia with their families and their community.

### **The Ambiguity and Invalidity of Requests for Reconsideration**

38. Within the Vaccine Card Announcement, Premier Horgan, the Provincial Health Officer, and MoH announced that the Vaccine Card Orders would be enforceable against all members of the public in British Columbia without exception.
39. The Vaccine Card Orders published on the afternoon of Friday September 10, 2021 (and enforceable as of Monday September 13, 2021), purport to contain a provision allowing



for reconsideration of the Vaccine Card Orders pursuant to section 43 of the *Public Health Act* (the “**Reconsideration Provisions**”).

40. The Reconsideration Provisions, on its face, are vague, ambiguous, and lack the clarity necessary to be sufficiently complied with in any meaningful or material manner and certainly not within the prescribed timelines enumerated in the Vaccine Card Orders.
41. Procedurally, there is no reference within the Vaccine Card Orders to the appropriate infrastructure to provide guidelines or information as to how to properly write or submit a “request for reconsideration”, what information should be included within such a request, or how comprehensive the requirement for “each portion of the person’s health record relevant to [a request]” would be.
42. Notably, there is no reference or guidelines within the Reconsideration Provisions as to who may qualify for reconsideration or under what circumstances an individual may qualify for reconsideration leaving the Petitioners without any clarity as to whether any request for reconsideration will even be entertained or reviewed.
43. Most notably, there is no reference to any prescribed timelines as to when a request for reconsideration would be reviewed, determined, or ultimately responded to leaving the Petitioners without any clarity as to how or when they may be able to continue to participate in the social and economic life of British Columbia with their families and community. In the interim, the Petitioners are subject to the adverse effects caused by the Vaccine Card Orders and Vaccine Card Announcements, while they attempt to obtain a reconsideration.
44. In essence, the Vaccine Card Orders strip the Petitioners of their fundamental freedoms and rights protected by the *Charter* and then require that the Petitioners proceed through a vague, ambiguous, arbitrary, onerous, and indeterminate process to retrieve them.

### **Part 3: LEGAL BASIS**

45. The Petitioners assert that any enforcement of the Vaccine Card Orders is improper and unconstitutional as the MoH and Public Health Officer does not or cannot believe, on reasonable grounds, that the restrictions set out in Vaccine Card Announcement are not overly restrictive or necessary to eliminate the risk to health presented by COVID-19 in British Columbia.
46. In addition, the Vaccine Card Orders unjustifiably infringe upon fundamental freedoms and rights protected by the *Charter* and to that extent should be of no force and effect. Specifically, the Vaccine Card Orders:
  - (a) Unjustifiably and unreasonably impairs the fundamental freedom and right to gather and engage in public life, contrary to section 2(c) of the *Charter* for the freedom of assembly;

- (b) Unjustifiably and unreasonably impairs the mobility rights of each Canadian citizen or permanent resident of Canada to pursue a livelihood in the Province of British Columbia contrary to section 6(2)(b) of the *Charter*;
  - (c) Unjustifiably and unreasonably infringes on the legal right of life, liberty, and security of the person contrary to section 7 of the *Charter* and is contrary to the principles of fundamental justice; and
  - (d) Unjustifiably and unreasonably discriminates on the basis of physical disabilities and infringes on section 15(1) of the *Charter* and the equality rights that each individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination, including to be free of discrimination by physical disability.
47. There are several reasonable alternatives which are just as, if not more, effective than the Vaccine Card Orders in minimizing the spread of COVID-19, which would not violate the Petitioners' *Charter* rights.
48. The Vaccine Card Orders are not rationally connected to its legislative purpose, do not minimally impair fundamental freedoms and rights protected by the *Charter* and are not a proportionate response to the public health situation in British Columbia. Therefore, the Vaccine Card Orders are not reasonable or justifiable and can not be saved by section 1 of the *Charter*.
49. Moreover, there is currently no data proving that measures akin to the Vaccine Card Orders have any impact on minimizing the spread of COVID-19. Any actual impact on vaccination rates that vaccine passports or the Vaccine Card Orders have has not been studied by the Public Health Agency of Canada to reasonably justify the impairment of fundamental freedoms and rights protected by the *Charter*.
50. Finally, the Vaccine Card Orders also unjustifiably infringe upon the freedoms of life, liberty, security of the person, equality before the law, and the freedoms of assembly and association as protected by sections 1(a), 1(b), and 1(e) respectively of the *Bill of Rights*.

**Part 4: MATERIAL TO BE RELIED ON**

27. The Affidavit of Sarah Webb, sworn September 11, 2021;
28. The Affidavit of Leigh Eliason to be filed; and
29. Such further and other materials as counsel may advise and this Honourable Court may permit.

The Petitioners estimate that the hearing of the Petition will take 90 minutes.

Date: 15/09/2021



Signature of  Petitioner  
 Lawyer for Petitioners

Robert Hawkes, QC

To be completed by the Court only:

Order made

in the terms requested in paragraphs \_\_\_\_\_ of Part 1 of this Notice of Application

with the following variations and additional terms:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

Signature of  Judge  Master