ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

M.A. and L.A. (Minors represented by their Litigation Guardian Renata Dziak), **E.P. and R.P.** (Minors represented by their Litigation Guardian Catherine Braund-Pereira), **L.S.** (Minor represented by his Litigation Guardian Bojan Sajlovic), **N. K.** (Minor represented by his Litigation Guardian Helena Kosin) (Students at the Toronto District School Board), **Nancy O'Brien** (Toronto District School Board Teacher);
G.M., W.M., J.M., and L.M. (Minors represented by their Litigation Guardian Scarlett Martyn), **M.D.** (Minor represented by Litigation Guardian Lindsay Denike) (Students at the Durham District School Board), **Katrina Wiens** (Teacher at Durham District School Board);
M.L.J. and M.G.J. (Minors represented by their Litigation Guardian Angela Johnston), **C.V., E.W., and M.V.** (Minors represented by their Litigation Guardian Jeff Varcoe) (Students at the Halton District School Board), **David Sykes** (Teacher, Resource Consultant for the Deaf, Provincial Schools Authority);
N.M. (Minor represented by his Litigation Guardian Lorie Lewis) **J.R.B.** (Minor represented by his Litigation Guardian Jocelyne Bridle), **Children's Health Defence (Canada)**, and **Educators for Human Rights**

Applicant(s)

-and-

Eileen **De Villa**, (Chief Medical Officer, City of Toronto Public Health), **City of Toronto**, Dr. Lawrence **Loh**, (Chief Medical Officer for Peel Public Health), Hamidah **Meghani**, (Chief Medical Officer for Halton Public Health), Robert **Kyle**, (Chief Medical Officer for Durham Public Health), Dr. Nicola **Mercer**, (Chief Medical Officer for Wellington-Dufferin-Guelph Public Health), Dr. David **Williams** (Ontario Chief Medical Officer of Health), **The Attorney General for Ontario, The Minister of Education, The Minister of Health and Long-Term Care, The Toronto District School Board, The Halton District School Board, The Durham District School Board**, Robert **Hochberg**, Principal at Runnymede Public School, Superintendent Debbie **Donsky** of Toronto District School Board, **Johns and Janes Does** (Officials of the Defendants Minister of Education, Health and Long-Term Care and School Boards)

Respondent(s)

NOTICE OF APPLICATION
(Pursuant to Rule 14.05(3)(g.1) of the **Rules of Civil Procedure**)

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing:

☒ In person

☐ By telephone conference

☐ By video conference

at the following location: **330 University Ave, 8th Floor, Toronto, Ontario, M5G 1R7 on a day to be set by the registrar.**

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

APRIL 20, 2021
ISSUE Date: Issued by ____

Diane Rhoden Digitally signed by Diane Rhoden DN: cn=Diane Rhoden, o, ou, email=Diane.Rhoden@ontario.ca, c=US Date: 2021.04.27 17:23:06 -04'00'

Local registrar

Address of Local Office: 330 University Ave.
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APPLICATION

1) The Applicants make application for:

(a) A Declaration that s.22 of the ***Crown Liability and Proceedings Act***, 2019, S.O. 2019 c.17:

(i) is unconstitutional and of no force and effect as it violates the Supreme Court of Canada's ruling(s) that judicial review is a constitutional right as enunciated Pre-***Charter*** in, ***inter alia***, ***Air Canada v. B.C. (A.G.) [1989] 1 SCR 1161***, and post-***Charter*** in, ***inter alia***, ***Dunsmuir v. New Brunswick [2008] 1 SCR 190***, and in s.22 thus constituting a "privative clause" against the constitutional right to judicial review, further violates the constitutional right to "no right without remedy" as declared by the Supreme Court of Canada, in ***inter alia***, ***R v. Mills*** [1986] SCR 863, ***Nelles v. Ontario*** [1989] 2 SCR 170, ***Doucet Boudeau v. NS*** [2003] SCJ 63, and further constitutes a legislative override of s.24 and s.52 of the ***Constitution Act***, ***1982*** which cannot be altered, constricted nor over-ridden except by way of constitutional amendment pursuant to section 38 of Part V of the ***Constitution Act, 1982***;

(ii) A Declaration (order), striking, pursuant to s.24 and 52 of ***The Constitution Act, 1982***, section 22 of the ***Crown Liability and proceedings Act*** as of no force and effect.

(b) Declarations that the "Covid-measures" and declaration of the "emergency" invoked by the Respondents:

(i) do not meet the prerequisite criteria of any "emergency" as prescribed by s.7.0.1(3) of the ***Emergency Management Civil Protection Act,*** and further contravenes s.7.0.2(1) and (3) of that *Act*;

(ii) that the invocation of the measures, dealing with health and public health, breach the Applicants' right to consult and constitutional duty of the Respondents, both in procedure, and substance, both, under administrative law, and, under section 7 of the ***Charter***;

(iii) that, in any event, if the pre-requisites of an "emergency" are met, as declared to be a national and international "emergency", the jurisdiction, and constitutional duty, to deal with this "national emergency", and its measures, is with the Federal Parliament, under the ***Federal Emergencies Act*** and ***Quarantine Act,*** pursuant to s. 91 of the ***Constitution Act, 1867*** under the "Peace, Order, and Good Government ("POGG")" Power, as well as s.91(11) with respect to Quarantine, and not the jurisdiction of the provincial legislature;

(iv) that quarantine is Federal jurisdiction;

(v) that "lock-downs", and "stay at home orders", and any curfews, in whole or in part, are forms of Martial law outside the Province's jurisdiction under s. 92 of the ***Constitution Act, 1867*** and, subject to

constitutional review and constraints, matters of Federal jurisdiction under the POGG power and s. 91(7) of the ***Constitution Act, 1867;***

(c) A Declaration that;

(i) the Municipal COVID Measures ordered and taken by the Medical Officers, Eileen De Villa, Lawrence Loh, Robert Kyle and Hamidah Meghani, and Nicola Mercer purportedly under s.22 of the ***Health Protection and Promotion Act***, are ***ultra vires*** the ***Emergency Management and Civil Protection Act*** and its ***Regulations*** thereunder, and further that ordering of school lockdowns, and other "emergency" covid measures, are ***ultra vires***, and unconstitutional as they breach ss. 2, 7 and 15 of the ***Charter***;

(ii) A Declaration that, in any event, the measures purportedly made under s.22 of the ***Health Protection and Promotion Act***, are ***Ultra Vires*** because the evidentiary standard required in s.22, reasonable and probable grounds, is not met nor present;

(d) A Declaration that the measures of masking, social distancing, PCR testing, and lockdowns of schools in Ontario, by the Respondents, are:

(i) not scientifically, or medically, based;

(ii) based on a false, and fraudulent, use of the PCR test, using a threshold cycle of 43-45 cycles in that once used above the 35 threshold cycles, of all the

positives it registers, 96.5%, are "false positives", resulting in an accuracy rate, **as a mere screening test,** of 3.5% accuracy;

(iii) that all measures of masking, social distancing, and school "lockdown" (closures) are a sole and direct result of the mounting, or "rising" "cases", being cases, which are 96.5% false positive;

(iv) that the PCR test, in and by itself, as used, cannot distinguish between dead (non-infectious) vs. live (infectious) virus fragments;

(v) that (solitary confinement) isolation/quarantine of asymptomatic children, in their bedrooms, for any duration, without contact with any of their family members is abusive, and constitutes violations under s.7 and 15, of the ***Constitution Act, 1982*** as violating the physical and psychological integrity, contrary to s. 7 of the ***Charter***, and further constitutes cruel and unusual treatment under s. 7 of the ***Charter***; and further violates s.7, by way of the International Law under the ***The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Convention")*** and the ***Convention on the Rights of the Child;*** and

(vi) is particularly egregious with respect to children with special needs, suffering physical and neurological disabilities, in violating s.7 and s.15 of the ***Charter*** in that absolutely no particular or special provisions are made for them, to accommodate their disability(ies), with respect to the Covid measures;

(e) A Declaration that the science, and preponderance of the scientific world community, is of the consensus that:

(i) masks are completely ineffective in avoiding or preventing transmission of an airborne, respiratory virus such as SARS-CoV-2 which leads to COVID-19;

(ii) that prolonged use of masks results, especially for children, in irreparable physical, neurological, psychological, language development, and social development harms, some of which are irreversible;

(iii) that "lockdowns", quarantine and isolation are ineffective and cause more damage than they prevent;

(f) A Declaration that the mandatory use of masks, isolation and PCR testing violates the applicants', children's, constitutional rights under:

(i) section 7 of the ***Charter*** in infringing their rights to physical and psychological safety, and integrity, as well as, medical procedure/treatment without informed consent;

(ii) section 7 in infringing their right to education, flowing from their right to education under the ***Education Act,*** and further under section 7 of the ***Charter*** as interpreted by the Canadian Courts, as well as under section 7 by way of the ***International Convention on the Rights of the Child*** as read in as a minimal protection under section 7 of the ***Charter,*** as enunciated, ***inter alia,***

by the Supreme Court of Canada in ***Baker***, ***Hape,*** and the Federal Court of Appeal in ***De Guzman***;

(g) A Declaration that the notion of "asymptomatic" transmission, from children to adults, of an airborne respiratory virus, is "oxymoronic", without scientific, or medical basis, and hitherto scientifically and medically unknown;

(h) A Declaration that masking, social distancing and testing in school settings, particularly elementary school(s), is unscientific, non-medical, unlawful, and unconstitutional and should be halted forthwith;

(i) A Declaration that children do not pose a threat with respect to Covid-19, to their teachers;

(j) A Declaration that teachers who do not wish to mask have the statutory and constitutional right not to mask;

(k) A Declaration that the masking of children is unscientific, non-medical, physically, psychologically, neurologically, socially, and linguistically harmful to them and that the masking of children be prohibited, regardless and despite their parents' requests and/or directions, because as children have their own independent rights under the ***Education Act*** , s. 7 and 15 of the ***Charter,*** as well as s.7 of the ***Charter*** as read in, and through, the international law under the ***Convention on the rights of the Child;***

(l) A Declaration that none of the above ***Charter*** violations are saved by s.1 of the ***Charter***, as they fail to meet the test, thereunder, as enunciated in, inter alia, the ***Oakes*** decision, as the measures:

A. Are not pursuant to valid statutory objective;

B. The measures are not rational;

C. The measures are not tailored for minimal impairment of the **Charter** rights;

D. The measures dilatory effects far outweigh their beneficial effects;

(m) Orders, in (the nature of) **Prohibition**, prohibiting the Respondent(s) from:

(i) administering any PCR test that has above a 25 threshold cycle as a screening test;

(ii) registering a "case", as "positive", based on a positive PCR screen test, without following up with a culture test to determine that it is the SARS-CoV-2 virus, as well as a further con-current blood test to determine antibody activity to verify that the virus is alive (infections) and not dead (not-infections), which procedure **constitutes** scientifically accepted method to isolate, identify, and confirm the presence of an infectious virus in a person;

(iii) "locking down" any school(s);

(iv) requiring any masking or face covering of **any children;**

(v) Conducting classes and school by remote, online, distance learning over a computer which is not a statutory nor constitutionally acceptable alternative to in-person school learning, especially for children with physical and neurological disabilities and that the Respondents be prohibited from conducting remote classrooms outside the physical school setting;

(vi) requiring solitary confinement of children and barring contact with family members for any duration;

(vii) deeming of two "positive" PCR result(s) in a school as an "outbreak", which is absurd ad nauseam, and constitutes a violation of s.7 of the ***Charter*** in fraudulently creating undue panic and fear;

(n) Orders, in the nature of **mandamus,** requiring the Respondent Ministers to:

(i) reveal the source and substantive advice received, from whom, based on what specific scientific and medical evidence for the measures imposed;

(ii) reveal all data with respect to what threshold cycle rate **all** PCR tests are administered;

(iii) provide a release of all data comparing "cases" and co-relating them to "all-cause mortality", and the location(s) and ages of those purportedly

dead "**from**" as opposed to "with", Covid, as well as the demographic age groups of the deaths;

(iv) Order the re-attendance of the Applicant children to return to their school without masks, and without PCR testing, for in-person learning;

(o) Costs of this application and such other or further relief as counsel may request and this Honourable Court grant;

2. **The grounds for the application are:**

(a) Rule 14.05(3)(g.1) of the ***Rules of Civil Procedure***;

(b) s. 2,7, 15, 24, and 52 of the ***Constitution Act, 1867***;

(c) the Pre-amble to the ***Constitution Act, 1867***;

(d) the unwritten rights under the ***Constitution Act, 1867***;

(e) the constitutional right(s) to judicial review and the Supreme Court of Canada jurisprudence against privative clauses;

(f) International treaties and law, including the ***Convention on the Rights of the Child***, as well as the the ***Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Convention")***;

(g) that s.22 of the ***Crown Liability and Proceedings Act***, 2019, S.O. 2019 c.17:

(i) is unconstitutional and of no force and effect as it violates the Supreme Court of Canada's ruling(s) that judicial review is a constitutional right as enunciated Pre-***Charter*** in, ***inter alia, Air Canada v. B.C. (A.G.) [1989] 1***

SCR 1161, and post-***Charter*** in, ***inter alia***, ***Dunsmuir v. New Brunswick [2008] 1 SCR 190,*** and in s.22 thus constituting a "privative clause" against the constitutional right to judicial review, further violates the constitutional right to "no right without remedy" as declared by the Supreme Court of Canada, in ***inter alia, R v. Mills*** [1986] SCR 863, ***Nelles v. Ontario*** [1989] 2 SCR 170, ***Doucet Boudeau v. NS*** [2003] SCJ 63, and further constitutes a legislative override of s.24 and s.52 of the ***Constitution Act, 1982*** which cannot be altered, constricted nor over-ridden except by way of constitutional amendment pursuant to section 38 of Part V of the ***Constitution Act, 1982***;

(ii) that pursuant to s.24 and 52 of ***The Constitution Act, 1982***, section 22 of the ***Crown Liability and proceedings Act*** should be struck as of no force and effect.

(h) that the "Covid-measures" and declaration of the "emergency" invoked by the Respondents:

(i) do not meet the prerequisite criteria of any "emergency" as prescribed by s.7.0.1(3) of the ***Emergency Management Civil Protection Act,*** and further contravenes s.7.0.2(1) and (3) of that ***Act***;

(ii) that the invocation of the measures, dealing with health and public health, breach the Applicants' right to consult and constitutional duty of the Respondents, both in procedure, and substance, both, under administrative law, and, under section 7 of the ***Charter***;

(iii) that, in any event, if the pre-requisites of an "emergency" are met, as declared to be a national and international "emergency", the jurisdiction, and constitutional duty, to deal with this "national emergency", is with the Federal Parliament, under the ***Federal Emergencies Act*** and ***Quarantine Act,*** pursuant to s. 91 of the ***Constitution Act, 1867*** under the "Peace, Order, and Good Government ("POGG")" Power, as well as s.91(11) with respect to Quarantine, and not the jurisdiction of the provincial legislature;

(iv) that quarantine is Federal jurisdiction;

(v) that "lock-downs", and "stay at home orders", and any curfews, in whole or in part, are forms of Martial law outside the Province's jurisdiction under s. 92 of the ***Constitution Act, 1867*** and matters of Federal jurisdiction under the POGG power and s. 91(7) of the ***Constitution Act, 1867***

(i) that;

(i) the Municipal COVID Measures ordered and taken by the Medical Officers, Eileen De Villa, Lawrence Loh, Robert Kyle and Hamidah Meghani, and Nicola Mercer purportedly under s.22 of the ***Health Protection and Promotion Act***, are ***ultra vires*** the ***Emergency Management and Civil Protection Act*** and its ***Regulations*** thereunder, and further that ordering of school lockdowns, and other "emergency"

covid measures, are ***ultra vires***, and unconstitutional as they breach ss. 2, 7 and 15 of the ***Charter***;

(ii) that, in any event, the measures purportedly made under s.22 of the ***Health Protection and Promotion Act***, are ***Ultra Vires*** because the evidentiary standard required in s.22 is not met nor present;

(j) that the measures of masking, social distancing, PCR testing, and lockdowns of schools in Ontario, by the Respondents, are:

(i) not scientifically, or medically, based;

(ii) based on a false, and fraudulent, use of the PCR test, using a threshold cycle of 43-45 cycles in that once used above the 35 threshold cycles, of all the positives it registers, 96.5%, are "false positives", resulting in an accuracy rate, **as a mere screening test,** of 3.5% accuracy;

(iii) that all measures of masking, social distancing, and school "lockdown" (closures) are a sole and direct result of the mounting, or "rising" "cases", being cases, which are 96.5% false positive;

(iv) that the PCR test, in and by itself, as used, cannot distinguish between dead (non-infectious) vs. live (infectious) virus fragments;

(v) That (solitary confinement) isolation/quarantine of asymptomatic children, in their bedrooms, for any duration, without contact with any of their family members is abusive, and constitutes violations under s.7 and 15, of the

Constitution Act, 1982 as violating the physical and psychological integrity, contrary to s. 7 of the ***Charter***, and further constitutes cruel and unusual treatment under s. 7 of the ***Charter***; and further violates s.7, by way of the International Law under the ***The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Convention")*** and the ***Convention on the Rights of the Child;*** and

(vi) Is particularly egregious with respect to children with special needs, suffering physical and neurological disabilities, in violating s.7 and s.15 of the ***Charter*** in that absolutely no particular or special provisions are made for them, to accommodate their disability(ies), with respect to the Covid measures;

(k) that the science, and preponderance of the scientific world community, is of the consensus that:

(i) masks are completely ineffective in avoiding or preventing transmission of an airborne, respiratory virus such as SARS-CoV-2 which leads to COVID-19;

(ii) that prolonged use of masks results, especially for children, in irreparable physical, neurological, psychological, language development, and social development harms, some of which are irreversible;

(iii) that "lockdowns" are ineffective and cause more damage than they prevent;

(l) that the mandatory use of masks, isolation and PCR testing violates the applicants', children's, constitutional rights under:

(i) section 7 of the ***Charter*** in infringing their rights to physical and psychological safety, and integrity, as well as, medical procedure/treatment without informed consent;

(ii) section 7 in infringing their right to education, flowing from their right to education under the ***Education Act,*** and further under section 7 of the ***Charter*** as interpreted by the Canadian Courts, as well as under section 7 by way of the ***International Convention on the Rights of the Child*** as read in as a minimal protection under section 7 of the ***Charter,*** as enunciated, ***inter alia,*** by the Supreme Court of Canada in ***Baker***, ***Hape,*** and the Federal Court of Appeal in ***De Guzman***;

(m) that the notion of "asymptomatic" transmission, from children to adults, of an airborne respiratory virus, is "oxymoronic", without scientific, or medical basis, and hitherto scientifically and medically unknown;

(n) that masking, social distancing and testing in school settings, particularly elementary school(s) is unscientific, non-medical, unlawful, and unconstitutional and should be halted forthwith;

(o) that children do not pose a threat with respect to Covid-19, to their teachers;

(p) that teachers who do not wish to mask have the statutory and constitutional right not to mask;

(q) that the masking of children is unscientific, non-medical, physically, psychologically, neurologically, socially, and linguistically harmful to them and that the masking of

children be prohibited, regardless and despite their parents' requests and/or directions, because as children have their own independent rights under the ***Education Act***, s. 7 and 15 of the ***Charter,*** as well as s.7 of the ***Charter*** as read in, and through, the international law under the ***Convention on the rights of the Child;***

(r) that none of the above ***Charter*** violations are saved by s.1 of the ***Charter***, as they fail to meet the test, thereunder, as enunciated in, inter alia, the ***Oakes*** decision, as the measures:

A/ Are not pursuant to valid statutory objective;

B/ The measures are not rational;

C/ The measures are not tailored for minimal impairment of the Charter rights;

D/ The measures dilatory effects far outweigh their beneficial effects.

3. **The following documentary evidence will be used at the hearing of the application:**

(a) the Affidavit of [masking expert];

(b) the Affidavit of [PCR experts];

(c) the Affidavit of [Paediatric and child development expert];

(d) the Affidavit of [Children’s Literacy and Teaching expert];

(e) the Affidavit of :

(f) the Affidavits of the Applicants, by way of their parent litigation guardian(s) and other [Expert] Affidavits;

(g) such further or other evidence as counsel may advise and this Honorable Court permit.

Dated this 18th day of April, 2021.

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LSO No. 29488Q

Court File No.:______

M.A. and L.A., et al.
Applicant(s)

-AND-

Eileen De Villa, et al.
Respondent(s)

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commended at Toronto

NOTICE OF APPLICATION

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Lawyer for the Applicants