



FORM 5G

Rule 5.02(2), 56.01(2)

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMON LAW DIVISION
JUDICIAL REVIEW AND APPEALS LIST**

Case: S ECI 2021 03031
Filed on: 14/08/2021 01:03 AM

No.

B E T W E E N

JONATHAN EDWARD KINGSFORD ANDREWS

Plaintiff

-and-

PROFESSOR BRETT SUTTON
(in his capacity as Chief Health Officer
as designated under the *COVID Omnibus
(Emergency Measures) Act 2020*)

First Defendant

ASSOCIATE PROFESSOR MICHELLE GILES
(in her capacity as Deputy Health Commander
as authorised to exercise emergency powers by
Chief Health Officer under section 199(2)9(a) of
the *Public Health and Wellbeing Act 2008*)

Second Defendant

ORIGINATING MOTION FOR JUDICIAL REVIEW

Date of Document:	19 August 2021	Solicitors Code:	141108
Filed on behalf of:	Jonathan E. K. Andrews	DX:	
Prepared by:	Jonathan E. K. Andrews	Telephone:	(03) 9070 1286
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	TOK Corporate Centre, Level 1	Email:	info@bosanquets.com
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TO THE DEFENDANT

TAKE NOTICE that this proceeding by originating motion has been commenced by the plaintiff for the relief or remedy set out below.

IF YOU INTEND TO DEFEND the proceeding, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

YOU OR YOUR SOLICITOR may file the appearance. An appearance is filed by:

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the originating motion has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this originating motion.

IF YOU FAIL to file an appearance within the proper time, the plaintiff **MAY OBTAIN JUDGMENT AGAINST YOU** without further notice.

IF YOU FILE an appearance within the proper time, the plaintiff cannot obtain judgment against you except by application to the Court after further notice to you. There will first be a directions hearing of which you will receive notice by summons or otherwise.

THE PROPER TIME TO FILE AN APPEARANCE is as follows:

- (a) where you are served with the originating motion in Victoria, within 10 days after service;
- (b) where you are served with the originating motion out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the originating motion in Papua New Guinea, within 28 days after service;
- (d) where you are served with the originating motion in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the originating motion.

FILED ___ AUGUST 2021

Prothonotary

THE PLAINTIFF CLAIMS:

That the State of Victoria Government's ("state government") decision to declare as state of emergency and invoke emergency measures initially declared on 16 March 2020, under the *Emergency Management Act 1986* under the *Public Health and Wellbeing Act 2008* and state of disaster on 2 August 2020 declaration thereafter, which suspend common law, constitutional and *Victorian Charter of Human Rights and Responsibilities 2006* ["the Charter"]) rights, was invalidly exercised, due to Professor Brett Sutton the Chief Health Officer's ("CHO") and / or Michelle Giles the Deputy Health Commander's ("DHC") advice being based on erroneous, unreliable and ultimately invalid 'real time reverse transcription polymerase chain reaction (RT-PCR)' testing results ("PCR testing").¹ That PCR testing was and is still being used *en masse*, to determine the 'novel

¹ *External peer review of the RTPCR test to detect SARS-CoV-2 reveals 10 major scientific flaws at the molecular and methodological level: consequences for false positive results* (McSheehy, Angelova, Franchi et al) 30 November 2020, 10.5281 / zenodo 4298004.

severe acute respiratory syndrome Cov-2' ("SARS-CoV-2") infectivity rates and symptom onset tests within the Victoria population.²

To this end, PCR testing also known as the 'Drosten PCR test'³ has been discredited by epidemiological and virological experts by '*failing to determine virus infectivity...being poor in detecting replicative virus*',⁴ and '*false positive results are generated by this test, even under controlled laboratory conditions, making it completely unsuitable as a reliable virus screening method*'^{5 6}. Moreover, such data cannot be relied upon as sound medical data for the purposes of predicating public policy, including suspending human rights ("public policy"). Consequently, the 'Droster-Corman PCR peer review paper'⁷ and courts of overseas jurisdictions have rejected PCR testing as being reliable for the purposes of determining public policy, such as courts in Portugal (citing non-doctor conducted diagnoses as unacceptable) and Austria.⁸

It follows, that unless the state government can prove on the balance of probabilities that:

² 'A major drawback to PCR and other diagnostic approaches (including other NA "nucleic analyses"), *Predicting Infectious SARS Cov-2 from Diagnostic Samples, Clinical Infectious Diseases, 71(10), 2663-2666* (Bullard, J & Dust, K & Funk et al).

³ *Detection of 2019 novel coronavirus (2019-nCoV) by real-time RT-PCR* (Corman, Drosten et al), *Eurosurveill.* 2020;25(3):pii=2000045. <https://doi.org/10.2807/1560-7917.ES.2020.25.3.2000045>.

⁴ Such as *inter alia* significant amounts of 'false positives', especially when set at higher PCR testing 'cycle rates "*(less than) >35 (threshold) cycles only detects signals which do not correlate with infectious virus as determined by isolation in cell culture...if someone is tested by PCR as positive when a threshold of 35 cycles or higher is used (as is the case in most laboratories in Europe & the US), the probability that said person is actually infected is less than 3%, the probability that said result is a false positive is 97%*", *External peer review of the RTPCR test to detect SARS-CoV-2 reveals 10 major scientific flaws at the molecular and methodological level: consequences for false positive results* 30 November 2020 10.5281 / zenodo.4298004.

⁵ *Ibid.*

⁶ This is exemplified in complex PCR testing manual adjustment instructions regarding the proper standards of PCR testing, including 'cycle thresholds' not being '*inversely proportional to the patient's viral load*' and infection rates, as directed by the World Health Organisation. The Plaintiff contends that such results cannot be held as being practically compliable, especially via 'drive through' PCR testing sites around Victoria. '*Most PCR assays are indicated as an aid for diagnosis, therefore, health care providers must consider any result in combination with timing of sampling, specimen type, assay specifics, clinical observations, patient history, confirmed status of any contacts, and epidemiological information*', *WHO Information Notice for IVD Users 2020/05, Nucleic acid testing (NAT) technologies that use polymerase chain reaction (PCR) for detection of SARS-CoV-2, 20 January 2021, World Health Organisation.*

⁷ *Detection of 2019 novel coronavirus (2019-nCoV) by real-time RT-PCR* (Corman, Drosten et al), *Eurosurveillance* 2020.

⁸ *Tribunal da Relacao de Lisboa 3a Seccao Proc. No. 1783/20.7T8PDL.L1, 11 November 2020* (Portugal). The court noted that it is the responsibility of the individual person's DHCtor to determine whether a person is infected with SARS CoV-2 and not that of the state or its organs, *FPÖ Wien -v- Landespolizeidirektion Wien VGW-103 / 048 / 3227 / 2021-2* (Austria).

- a) PCR testing for diagnosing SARS-CoV-19 cases in the Victorian population has been competently applied as per the World Health Organisation Directive on administering such test ('the WHO Directive");⁹ and
- b) PCR testing has an accurate and reliable rate of diagnosis (within an acceptable margin of error);

then such policy decisions must be held as invalid.

Should PCR testing be held as being unreliable for the purposes of shaping public policy, the Victoria Government CHO and DHC, must demonstrate to this honourable court, another non-PCR testing method which first isolates the virus, tests the virus' lethality reliably¹⁰ to diagnose and determining accurate infection rates should they wish to rely further on emergency powers.

CONSTITUTIONAL MANDAMUS

That as the CHP and DHC have been instrumental in advice given to and relied upon by the Victoria Premier in deciding activation of emergency measures and suspension of multiple human rights under the Charter, they therefore be required under constitutional / prerogative mandamus to provide this honourable court for the purposes of 'justification of the Charter's suspension' (as per s 7[2] of the Charter) within thirty (30) days hereof, the following:

1. evidence of proper standards of PCR testing including 'cycle thresholds being *'inversely proportional to the patient's viral load'* as well as 'adjustments to predictive values' based on decreased infections¹¹ for respective sampling dates, as per the WHO Directive,¹² being practically complied with via 'drive-through' PCR testing sites around Victoria. In other words, evidence of the WHO standards in the acquisition of PCR results being

⁹ WHO Information Notice for IVD Users 2020/05, *Nucleic acid testing (NAT) technologies that use polymerase chain reaction (PCR) for detection of SARS-CoV-2*, 20 January 2021, World Health Organisation.

¹⁰ This plaintiff asserts this is presently not the case with the SARS-Cov-19 virus only ever been tested via PCR testing without proper isolation (via purification and filtration) first.

¹¹ 'This means that the probability that a person who has a positive result (SARS-CoV-2 detected) is truly infected with SARS-CoV-2 decreases as prevalence decreases, irrespective of the claimed specificity', WHO Information Notice for IVD Users 2020/05, *Nucleic acid testing (NAT) technologies that use polymerase chain reaction (PCR) for detection of SARS-CoV-2*, World Health Organisation, dated 20 January 2021.

¹² WHO Information Notice for IVD Users 2020/05, *Nucleic acid testing (NAT) technologies that use polymerase chain reaction (PCR) for detection of SARS-CoV-2*, 20 January 2021, World Health Organisation.

practically applied, particularly with regard to evidence of correct cycle threshold (namely below 35)¹³ and diseases prevalence modulations and calibrations being made in a timely manner, according to increased and decreased rates of infection as per the WHO Directive;

2. evidence of SARS-CoV-2 virus by non PCR testing (and or variant thereof such as 'Delta' et al) ("SARS-CoV-2") in the form of proof of purified isolation of SARS-CoV-2 via a credible sample size of samples (blood, sputum secretions) without contamination with other tissue or genetic material, which an accredited virologist is then to macerate, filtrate and apply an ultracentrifuge and thereafter demonstrate with electron microscopy, the isolated and purified virus ("SOVI isolation");
3. test results by SOVI isolation for a 'causative link' between the SOVI isolated SARS Cov2 and the COVID-19 disease causing death (collectively with 1. above, "hard scientific evidence"). The Plaintiff asserts that SOVI isolation is scientifically bona fide as opposed to 'alleged isolation' via PCR testing for SARS-CoV-2 test results which allegedly do not provide evidence of a causative link to death and moreover death rates, without experimentation (on healthy animals) and which the state government appears to be relying on; and
4. non-PCR testing evidence as to the necessity of the potential introduction of mandatory 'provisionally approved' vaccines by the Therapeutic Goods Administration,¹⁴ such as those produced by Astra-Zenica and Pfizer, on workers belonging to certain occupations.¹⁵

¹³ ">35 (threshold) cycles only detects signals which do not correlate with infectious virus as determined by isolation in cell culture...if someone is tested by PCR as positive when a threshold of 35 cycles or higher is used (as is the case in most laboratories in Europe & the US), the probability that said person is actually infected is less than 3%, the probability that said result is a false positive is 97%", External peer review of the RTPCR test to detect SARS-CoV-2 reveals 10 major scientific flaws at the molecular and methodological level: consequences for false positive results, 30 November 2020 10.5281 / zenodo.4298004.

¹⁴ "The TGA has engaged early with pharmaceutical companies about their vaccines and is accepting rolling data. This means that the TGA can assess clinical trial data as it becomes available, rather than at the end of the three clinical trial phases. This speeds up the review process." Is it true? Were COVID-19 vaccines rushed through approvals or given emergency use authorisations in Australia?, Department of Health, Website accessed 18 August 2021, <https://www.health.gov.au/initiatives-and-programs/covid-19-vaccines/is-it-true/is-it-true-were-covid-19-vaccines-rushed-through-approvals-or-given-emergency-use-authorisations-in-australia>.

¹⁵ COVID-19 vaccine: Pfizer Australia - COMIRNATY BNT162b2 (mRNA) - approved for use in individuals 12 years and older, Australian Government Health Department, COVID-19 Vaccines, 23 July 2021, Website accessed 18 August 2021 <https://www.tga.gov.au/covid-19-vaccine-pfizer-australia-comirnaty-bnt162b2-mrna-approved-use-individuals-12-years-and-older>.

To this end, the Plaintiff seeks that the Defendant provide hard scientific evidence of SARS-CoV-2 (as stipulated herein) by either:

- a) Obtaining documentation held within the Federal Department of Health or Victorian Department of Health, that show the evidence of SOVI isolation of SARS-CoV-2, or by obtaining certified laboratory results that show evidence of SOVI isolation of SARS-CoV-2, along with an affidavit in support by the relevant epidemiologist, virologist and / or the Defendant(s) as to the veracity of the report and attestation that the results were achieved via SOVI isolation; and
- b) Obtaining test results for a 'causative link' between the SOVI isolated SARS Cov2 and the COVID-19 disease that causes death, by means of subject experimentation upon healthy subject animals, that shall via autopsy results 'demonstrate infectivity and transmission of an infectious agent'¹⁶. The Defendant is to provide an affidavit in support by the relevant virologist and / or the Defendant as to the veracity of the report and attestation that the results were achieved via SOVI isolation.

THE GROUNDS RELIED UPON ARE:

UNRELIABLE PCR TESTING AS BASIS FOR SUSPENSION OF HUMAN RIGHTS

That the application of the Act and moreover the state government's declaration of emergency and disaster under the *Emergency Management Act 1986* and *Public Health Act and Wellbeing Act 2008* and its wanton use of powers therein based on ill-founded medical advice (extrapolated from unreliable PCR testing)¹⁷, has led to the severe and protracted encroachment of the civil liberties of the Plaintiff otherwise protected under the state and federal constitutions, as well as those otherwise enshrined in the Charter. Examples of such rights pertain to the Plaintiff's right to: protection from torture, cruel and inhumane treatment (s 9); freedom of movement (s 12), peaceful assembly and freedom of association (s 16); and a fair hearing (s 24). The Plaintiff has also suffered psychological distress, commercial damage, as well as limitations to the Plaintiff's qualitative access to justice as an Australian Legal Practitioner, by the state government's actions.

¹⁶ Dr Andrew Kaufman, 'Statement of Virus Isolation (SOVI)', Website accessed 13 August 2021, <https://andrewkaufmanmd.com/sovi>.

¹⁷ *External peer review of the RTPCR test to detect SARS-CoV-2 reveals 10 major scientific flaws at the molecular and methodological level: consequences for false positive results* (McSheehy, Angelova, Franchi et al) 30 November 2020, 10.5281/zenodo 4298004.

That under s7[2] of the Charter the state government must accede to the high judicial standard¹⁸ of demonstrating to this honourable court, evidential bases of measuring COVID-19 infection rates and how this is reliable within an acceptable margin of error, in proportionate relationship to the suspension of these rights under emergency powers.

DISASTER DECLARATION COMPLIANCE

That evidence be presented to this honourable court to demonstrate that the CHO, DHC and state government have fulfilled their lawful obligations in accordance with Ministerial Declarations vis-à-vis emergency powers and the announcements and gazetting of repeated 'states of disaster' and 'report(s) on the state of disaster to both Houses of Parliament', as stipulated in ss 23 and 24 of the *Emergency Management Act 1986* for each successive 'lockdown' characterised as extension thereof or otherwise.¹⁹

PURPOSE OF EMERGENCY POWERS ENVISAGED BY PARLIAMENT

That there is serious question as to whether the relevant emergency powers acts invoked by the state government, were envisaged by parliament to be used for: the perennial and protracted suspension of human rights [for example beyond twelve (12) months] including for lockdowns and curfews, based on viral infection death rates. Furthermore, whether parliament envisaged that the amount of deaths (that are comparable to that of deaths in Victoria resulting from influenza over a corresponding period), should serve as a proportionate basis for these emergency powers. Furthermore, whether such emergency powers shall be potentially used as a basis for mandatory vaccinations of persons belong to specific occupations, (of largely if not exclusively, provisionally approved [including MRNA genetically modifying] vaccines) whereby doctors administering such vaccines shall be indemnified against legal suit.²⁰ On the balance of probabilities this is likely not the case.

¹⁸ *The burden is on the party seeking to show that the limitation is 'demonstrably justified' having regard to the specific matters identified in s 7(2) of the Charter. The standard of proof is high' and '...in times of emergency the courts' constitutional role in keeping a weather eye on the rule of law assumes particular importance'*, *Loiolo -v- Giles* [2020] VSC 722, para. [245] and [8] citing *Borrowdale -v- Director General of Health* [2020] NZHC [290] Thomas, Venning and Ellis JJ.

¹⁹ Section 23 (4) *"..to be broadcast from a broadcasting station in Victoria and to be published (with, in the case of the making or variation of a declaration, a copy of the declaration) in the Government Gazette"; (7) "If a state of disaster has been declared under this section the Premier must report on the state of disaster and the powers exercised under section 24 to both Houses of Parliament as soon as practicable after the declaration"*, *Emergency Management Act 1986*.

²⁰ *"The scheme will support claims made against privately practising health professionals who administer a COVID-19 vaccine approved for use by the Therapeutic Goods Administration (TGA)." COVID-19 indemnity scheme to protect health professionals and patient, Ministers Department of Health, published 2 July 2021, Website accessed 18 August 2021, COVID-19 indemnity scheme to protect health professionals and patient, Ministers Department of Health, published 2 July 2021, Website accessed 18 August 2021,*

PURIFIED ISOLATION OF SARS-COV-2

The legal basis of the Act is predicated on the 'veritable existence' and demonstrable transmissibility of SARS-CoV-2 (and / or variant 'Delta' or otherwise), which according to best virological practice, needs to be isolated, characterised and demonstrated as a new 'extant' virus free from contaminants such as breakdown products from dead and dying tissue (such as via SOVI isolation).²¹ ²² Should this hard scientific evidence not exist or not be adducible, it places the validity of all Acts and powers presently invoked by the state governments into serious question. Consequently, such decisions invoking emergency powers and the Act may be subject to constitutional certiorari, namely being struck down and remitted back to state parliament, by this honourable court.

The Plaintiff therefore seeks hard scientific evidence to address the following serious justiciable controversies, which he contends serve as grounds for the judicial review, on the bases of:

- a) the state government's making of decisions based on CHO and DHC advice (as applicable) which was based on defective and unreliable PCR testing results, in terms of population infectivity rates;
- b) the state government's failure to publicly provide and disclose hard scientific evidence of SARS-CoV-2 via SOVI isolation and a tested causative link to SARS-CoV-2 disease that causes all 'SARS-CoV-2 attributed' fatalities, as a legal basis for the Act, prior to parliament's passing of the relevant Bill and invocation of emergency measures;
- c) the ongoing legal validity of the Act, should hard scientific evidence of SOVI isolation and a tested causative link to COVID-19 disease not be provided by the Defendants to this honourable court; and

<https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/covid-19-indemnity-scheme-to-protect-health-professionals-and-patients>.

²¹ *Extracellular Vesicles Derived From Apoptotic Cells: An Essential Link Between Death and Regeneration*, Maojiao Li1 et al, *Frontiers in Cell and Developmental Biology*, 2020 October
<https://www.frontiersin.org/articles/10.3389/fcell.2020.573511/full>, Website accessed 13 August 2021.

²² Should SARS-CoV-2 transmission rates not be shown it also calls into question as to whether its structure and composition and genetic sequence can be known, nor its variants cannot be known and therefore shall prove difficult to even demonstrate that SARS-CoV-2 (as purportedly isolated under PCR testing), is the virus attributable to widespread death, see Dr Andrew Kaufman, 'Statement of Virus Isolation (SOVI)', Website accessed 13 August 2021, <https://andrewkaufmanmd.com/sovi>.

- d) should hard scientific evidence of SOVI isolation and a tested causative link to COVID-19 disease, not be adducible, whether a 'constitutional certiorari' should be issued by this honourable court, declaring the Act invalid and consideration of the same with regard to the invocation of emergency measures.

The Plaintiff asserts that the state government has had ample time to obtain hard scientific evidence via SOVI isolation since the declaration of a state of disaster on 2 August 2020, and that this aspect of the controversy may be swiftly resolved and / or dispelled, by the Defendant providing or obtaining the hard scientific evidence sought to this honourable court. The Plaintiff further asserts and that it would not be particularly onerous or create a significant economic burden, given the first and second defendants' positions and duties as CHO and DHC respectively.

EXTENSION OF TIME:**

N/A.

FURTHER PARTICULARS of the claim appear in the affidavit made in support of the claim sworn 19 AUGUST 2021. A copy of the affidavit and of any exhibit to the affidavit is served with this originating motion.

1. Place of trial— Melbourne
2. This originating motion was filed—
 - (a) by the plaintiff in person, Mr Jonathan Andrews, solicitor, of Bosanquet Solicitors TOK Corporate Centre, Level 1 459 Toorak Road, Toorak VIC 3142
3. The address of the plaintiff is—

c/- Bosanquet Solicitors TOK Corporate Centre, Level 1 459 Toorak Road, Toorak VIC 3142
4. The address for service of the plaintiff is—

As above.
5. The email address for service of the plaintiff is—

info@bosanquets.com
6. The address of the defendants is—

Department of Health, 50 Lonsdale Street Melbourne, 3000.