

IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF EDMUNDSTON

B E T W E E N:

**DOCTOR JEAN-ROBERT NGOLA MONZINGA MD,**  
Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF NEW BRUNSWICK**  
and  
**CANADA (THE ROYAL CANADIAN MOUNTED POLICE),**  
Defendants

**NOTICE OF ACTION WITH  
STATEMENT OF CLAIM ATTACHED  
(FORM 16A)**

**AVIS DE POURSUITE  
ACCOMPAGNÉ D'UN EXPOSÉ  
DE LA DEMANDE  
(FORMULE 16A)**

TO: **Her Majesty the Queen in right of  
the Province of New Brunswick**  
c/o The Attorney General of NB  
Chancery Place, Room 2078  
Fredericton, NB E3B 5H1

DESTINATAIRE:

AND: **Canada (Royal Canadian  
Mounted Police)**  
c/o The Attorney General of Canada  
Atlantic Regional Office  
Department of Justice Canada  
Suite 1400, Duke Tower  
5251 Duke Street  
Halifax, NS B3J 1P3

LEGAL PROCEEDINGS HAVE BEEN COMMENCED AGAINST YOU BY FILING THIS NOTICE OF ACTION WITH STATEMENT OF CLAIM ATTACHED.

If you wish to defend these proceedings, either you or a New Brunswick lawyer acting on your behalf must prepare your Statement of Defence in the form prescribed by the Rules of Court and serve it on the plaintiff or his lawyer at the address shown below and, with proof of such service, file it in this Court Office together with the filing fee of \$50,

- (a) if you are served in New Brunswick WITHIN 20 DAYS after service on you of this Notice of Action With Statement of Claim Attached, or
- (b) if you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or
- (c) if you are served anywhere else, WITHIN 60 DAYS after such service.

If you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE.

You are advised that:

- (a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

PAR LE DÉPÔT DU PRÉSENT AVIS DE POURSUITE ACCOMPAGNÉ D'UN EXPOSÉ DE LA DEMANDE, UNE POURSUITE JUDICIAIRE A ÉTÉ ENGAGÉE CONTRE VOUS.

Si vous désirez présenter une défense dans cette instance, vous-même ou un avocat du Nouveau-Brunswick chargé de vous représenter devrez rédiger un exposé de votre défense en la forme prescrite par les Règles de procédure, le signifier au demandeur ou à son avocat à l'adresse indiquée ci-dessous et le déposer au greffe de cette Cour avec un droit de dépôt de \$50 et une preuve de sa signification:

- (a) DANS LES 20 JOURS de la signification qui vous sera faite du présent avis de poursuite accompagné d'un exposé de la demande, si elle vous est faite au Nouveau-Brunswick ou
- (b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre région du Canada ou dans les États-Unis d'Amérique ou
- (c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

Si vous omettez de le faire, vous pourrez être réputé avoir admis toute demande formulée contre vous et, sans autre avis, JUGEMENT POURRA ÊTRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

Sachez que:

- (a) vous avez le droit dans la présente instance, d'émettre des documents et de présenter votre preuve en français, en anglais ou dans les deux langues;

- (b) the plaintiff intends to proceed in the English and the French language; and
- (c) your Statement of Defence must indicate the language in which you intend to proceed.

If you pay to the plaintiff or the plaintiff's lawyer the amount of the plaintiff's claim, together with the sum of \$100 for the plaintiff's costs, within the time you are required to serve and file your Statement of Defence, further proceedings will be stayed or you may apply to the Court to have the action dismissed.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by Jean-Francois Cyr, Clerk of the Court at Edmundston, New Brunswick, on the \_\_\_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Clerk of the Court

Carrefour Assomption  
121, rue de l'Église  
CP 5001  
Edmundston NB E3V 1J9

- (b) le demandeur a l'intention d'utiliser la langue anglaise et française; et
- (c) l'exposé de votre défense doit indiquer la langue que vous avez l'intention d'utiliser.

Si, dans le délai accordé pour la signification et le dépôt de l'exposé de votre défense, vous payez au demandeur ou à son avocat le montant qu'il réclame, plus \$100 pour couvrir ses frais, il y aura suspension de l'instance ou vous pourrez demander à la cour de rejeter l'action.

CET AVIS est signé et scellé au nom de la Cour du Banc de la Reine par \_\_\_\_\_, greffier de la Cour à \_\_\_\_\_ ce \_\_\_\_\_

DRAFT

## **STATEMENT OF CLAIM**

### **The Parties**

1. The Plaintiff, Dr. Jean-Robert Ngola Monzinga, is a licensed physician that currently resides at Louiseville, in the Province of Quebec, Canada. Prior to his forced departure and banishment from the Province of New Brunswick, the Plaintiff practiced as a family physician and resided in the City of Campbellton, in the Province of New Brunswick.
2. The Defendant, Her Majesty the Queen in right of the Province of New Brunswick, is represented by the Honourable Hugh Flemming, Q.C., as Minister of Justice and Attorney General, and has an address for service at Chancery Place, Rook 2078, P.O. Box 6000, Fredericton, New Brunswick, E3B 5H1.
3. The Defendant, Canada as represented by its federal institution the Royal Canada Mounted Police (RCMP), is represented by the Attorney General of Canada and has a regional address for service at the Atlantic Regional Office for the Department of Justice Canada, at Suite 1400, Duke Tower, 5251 Duke Street, Halifax, Nova Scotia, B3J 1P3. Specifically, the Defendant RCMP is a Federal Police Service that provides provincial police services, by contract, to the Province of New Brunswick.

### **Material Facts**

4. Dr. Jean Robert Ngola Monzinga (Dr. Ngola), a Canadian citizen, was a resident of New Brunswick, who worked as a family physician, successfully practising medicine in the town of Campbellton, Restigouche County, New Brunswick, CANADA, living a private and quiet life.
5. In or about May 13<sup>th</sup>, 2020, Dr. Ngola had to travel, by car, urgently to the Province of Quebec to pick up his minor daughter, at the request and with the behest of the child's mother, who resided outside of suburban Montreal in Longueuil, Quebec. The mother,

bereaved by a sudden family tragedy, had to attend a funeral outside Canada. Dr. Ngola could not avoid the trip. He could not leave his minor child unattended and without a parent.

6. Throughout his quick sojourn of less than 24 hours, Dr. Ngola took reasonable precautions against COVID-19 exposure. He drove to pick up his child in his personal vehicle, slept a few hours at his brother's place, minimized contacts and exposure, utilizing best practices of social distancing and mask wearing, before returning home to New Brunswick.
7. Prior to leaving New Brunswick to pick up his child, Dr. Ngola called the local New Brunswick police authorities to clarify the rules relating to travel and self-isolation. At the time, the rules, regulations and directives were changing almost daily, and the regulatory framework was very unclear. The New Brunswick "Covid-19 regulatory scheme" included namely the Order as issued from time to time under the *Emergency Measures Act*, RSNB 2011, c 147, the Travelers Guidelines, the information provided through the Department of Justice and Public Safety Health toll-free help line and online information, including also information relayed by officials and various online and media information relayed by Government officials (hereinafter referred to as the "Covid-19 Regulatory Scheme").
8. Dr. Ngola wanted to make sure that he was in full compliance with provincial rules. The Police referred him to the public health authorities and he spoke with public health authorities in both New Brunswick and in Quebec as he was slated to return to New Brunswick with a Quebec resident, his daughter. Based on the information he was able to confirm during these calls, Dr. Ngola learned that he was exempt from the requirement to self-isolate upon his return to New Brunswick, which was consistent with the practice and conduct of dozens of his fellow Doctor and Nurse colleagues at the time, some of which travelled back and forth, between New Brunswick and Quebec, to Campbellton, in the midst of the Pandemic, as far away as Montreal or Ottawa as a matter of routine. Moreover, the information Dr. Ngola received regarding "persons not required to self-isolate" was and remains confirmed in a government issued document called the Travelers Guide, which clearly stipulate that shared child custody issues need to be facilitated during cross-border

and as such, individual parents as in the case of Dr. Ngola were “exempt from self-isolation”.

9. Dr. Ngola’s regional health service was understaffed, and the emergency services were very stretched. As any first responder health care worker, he had witnessed an inability for the regional health service to provide the necessary support required for first responders and health care workers, from and including sufficient staff rotation, to appropriate Personal Protection Equipment.

10. Although Dr. Ngola took all precautions, steps and conducted all inquiries with the authorities to comply with the COVID-19 Regulatory Scheme and albeit his quick sojourn to the Province of Quebec to facilitate the shared custody of his daughter was lawful in all respects, the conduct of the Defendants, through their agents and their representatives, caused Dr. Ngola’s life to be turned upside down.

*Toxic climate/comments - Political scapegoating at the May 27, 2020 press conference*

11. On May 26, 2020, Dr. Ngola was informed by the New Brunswick Public Health Service that one of his patients had tested positive for COVID-19. Dr. Ngola was asked to be tested and he complied in full cooperation with the Restigouche Public Health Service.

12. Dr. Ngola was tested immediately for COVID-19. On or about the morning of May 27, 2020, he was informed by the New Brunswick Public Health Service, on the phone, that he had tested positive for COVID-19. At the instruction of Public Health, Dr. Ngola immediately went into quarantine.

13. Almost simultaneously, in the hours that followed, New Brunswick Premier Blaine Higgs (Higgs) held a press-conference in Fredericton, where he publicly condemned Dr. Ngola as an “irresponsible individual”, who endangered the health and safety of his community. Specifically, Higgs officially announced and articulated the following:

- a. There are rules in place, and they must be followed and now, because of “one irresponsible individual” [referring to Dr. Ngola], a number of several patients at the Campbellton Regional Hospital might have been exposed to the virus.
- b. “We are still contact tracing, but we know this zone is currently at a higher risk due to actions of one irresponsible individual [...] We know we’ll see more cases connected to this.”
- c. The person [referring to Dr. Ngola], was not “forthcoming about their reasons for travel upon returning to New Brunswick.”
- d. “By pushing against restrictions, you are endangering not just yourself, but your family, friends and fellow New Brunswickers [...] Now is not the time for New Brunswick to take unnecessary risks, which could undo all the hard work it took to get us to this point.”

14. Premier Higgs’ words and actions had the impact of singling out Dr. Ngola, before both an entire nation and the entire world, as the only health care professional in all of the North Americas to be singled out by a Chief Executive of a sub sovereign jurisdiction. Higgs singled out Dr. Ngola as the one individual singularly responsible in increasing the risks of COVID-19 infection in New Brunswick, and for purportedly endangering the health and lives of others in the province. Higgs publicly shamed Dr. Ngola as an “irresponsible” and dishonest individual, who defied COVID-19 restrictions. Through these statements, Higgs implied that Dr. Ngola brought COVID-19 from Montreal to New Brunswick, as a result of the latter’s interprovincial travel.

15. Although Premier Higgs did not refer to Dr. Ngola by name at the press conference, he knew or ought to have known that Dr. Ngola’s identity and apparent health status had already been leaked to the public via social media prior to the press conference. Premier Higgs knew, or ought to have known, that the public was able to, and did identify Dr. Ngola connecting the dots between information disseminated at the press conference and information disseminated on social media.

16. The Premier and his province took no adequate precautions and steps to mitigate any damages on Dr. Ngola through carefully carving out communication points with communication specialists or through conducting a proper due diligence relating to the facts before referring to him directly at the Press Conference. The language was blunt, uncompromising and with no tempered or mitigating vocabulary. Moreover, Premier Higgs' public sharing of such information on the basis of it having been leaked through social media was in direct violation and contravention of Dr. Ngola's privacy rights, including those protected by the *Personal Health Information Privacy and Access Act*, SNB 2009, c. P-7.05.

17. Premier Higgs knew or ought to have known that his actions would be instrumental in endangering Dr. Ngola's life and the security of his person, causing him to fear not only for his safety, but also for the safety of his minor child. Premier Higgs' conduct gave legitimacy to a toxic environment that was instrumental in the incitation of public hate against Dr. Ngola, a racialized immigrant, who became, as a result, a marked man, threatened with banishment and lynching.

***Hate crimes by the general population and racial profiling by RCMP and general population***

18. Dr. Ngola was barraged with death threats (some of which called for his lynching) and racists insults. The language and social actions were reminiscent of a very dark past in "Jim Crow" North America, which included at the time regions of Canada that were segregated. Dr. Ngola was doxed and stalked by people who called him a refugee and told him to go back to Africa. He had to seek RCMP protection, and the police promised increased patrols around his home.

19. While in quarantine in his home, Dr. Ngola faced a deluge of pressures and harassments, constituting racial profiling, some of which was caused by the RCMP itself.



20. Indeed, on repeated occasions, false tips were made to the police accusing Dr. Ngola of breaching his quarantining. False sightings of Dr. Ngola, essentially of other black residents, mistakenly observed to be Dr. Ngola, would result in calls to the RCMP, and the RCMP re-attending Dr. Ngola's home to verify whether he was quarantining. There was even a false accusation of Dr. Ngola attempting to move out of the province while in quarantine.

21. On that occasion, the RCMP was told that moving vans were parked in Dr. Ngola's driveway. Upon attending his home, it was clear that Dr. Ngola was quarantining and was not trying to move. There were no moving vans.

22. The false claims and sightings were incredibly dangerous and meaningful because,

- DRAFT
- a. It belied the allegation that the RCMP was monitoring and protecting Dr. Ngola's home with increased patrols, because if they did, they would have known that:
    - i. He was not defying quarantine running around town shopping, and
    - ii. He was not trying to move out of the province.

23. During this heightened period of public trauma and public anxiety, Dr. Ngola, a single parent and Black male, could have been the likely target of a hate crime, stoked by the political and social media commentary. Many North Americans of racialized and religious backgrounds have faced terrorist attacks and hate crimes over the last few years, and there have been attacks in Canada, including in Quebec and in Ontario. The heightened anxiety caused by the Defendants were not helpful in mitigating public sentiment – quite the contrary.

24. Throughout the relevant facts of the hate crime to which Dr. Ngola was subjected to and for which no formal charges against the perpetrators were ever laid, it became apparent that all the Defendants have no processes, procedures, and training to ensure a safe space and environment for a racialized and vulnerable victim such as Dr. Ngola. Quite the contrary, their actions were instrumental in stoking the fires of hate and making things much worse for Dr. Ngola.

25. Dr. Ngola was ultimately informed by a security consultant that he would be unable – post quarantine to remain in his province and live in safety. Dr. Ngola had originally planned to remain in New Brunswick well into the year 2020, but he moved up his schedule to move out of the province out of a sincere belief that he would need to relocate to live with his minor child in safety.

26. Dr. Ngola's is the first and only modern-day experience that a Canadian has ever had in relation to having to relocate because of a social banishment that was spurred on by a Premier, his Government, a police force, and social media. A Canadian citizen is entitled constitutionally to reside in any Canadian province or territory of choice and should not be shamed and coerced into banishment because of Governmental action.

27. Dr. Ngola was a clear victim of racial profiling caused and spurred on by State action, but worse, the intensity, virulence and scope of the conduct is so severe and unprecedented that this Honourable Court is being respectfully asked to award important punitive damages to even begin to repair the grave injustice that was caused. Moreover, restorative justice is a necessary remedy that will be required in the matter at hand which will require Court oversight to ensure proper implementation.

28. Ultimately, because of the real and objective threats to his life, Dr. Ngola was forced to leave New Brunswick to seek safety and shelter in Quebec.

*Cover up – Premier's Government in possession of exculpatory evidence within hours of Premier Higg's Declaration*

29. Despite having exculpatory factual knowledge, obtained within hours of the Premier's declarations, that related to Dr. Ngola's clear innocence, which the Defendants withheld from Dr. Ngola and the public for months, the Defendants orchestrated a special campaign to interfere with Public Health's mandate, to investigate and prosecute Dr. Ngola. The Premier's Office, the Department of Justice and Public Safety and the Royal Canadian

Mounted Police (“RCMP”) all colluded with each other to orchestrate a campaign and operation that was designed to scapegoat Dr. Ngola.

30. At the time of the events, the Department of Justice and Public Health had jurisdiction over Dr. Ngola’s matter and appeared to be competently dealing with the matters at the local level. Public Health had the power to perform contact tracing and investigate all matters relating to the Pandemic Covid-19 and were dealing specifically with Dr. Ngola’s matter.

31. The Public Health authorities also had the ability to seize by Law, the Courts, if their officials needed enforcement assistance for matters where there was a lack of compliance by a citizen or resident. Public Health had no problems with Dr. Ngola and had no cause to seize the Courts or seek the assistance of Law Enforcement, quite the contrary.

32. Instead of letting Public Health do its job, the Premier, his Office, the Department of Justice and Public Safety officials and the RCMP circumvented the provincial legislative system and the provincial health authorities such as the New Brunswick Public Health Service, and the Restigouche Public Health Service, which were the appropriate entities authorized to deal with the public health pandemic under the *Public Health Act*, SNB 1998, c P-22.4.

33. As early as on or about May 26, 2020, in the Dr. Ngola saga, the Chief Medical Officer of the Restigouche Public Health Service, made the RCMP and the New Brunswick Government aware that Dr. Ngola was cooperating fully with the Chief Medical Officer’s office and was in compliance with the Law. There was no criminal activity.

34. The local public health service confirmed by representations made by the Chief Medical Officer took the position that there were no factual grounds based on science and their public health investigation to form the basis that any criminal conduct had occurred.

35. Nevertheless, the RCMP engaged in a campaign of pestering and harassing the Chief Medical Officer and continuously demanded information from that office. But, the Chief Medical Officer did not require any assistance from the RCMP, quite the contrary. The Chief would get calls from the RCMP checking in to make sure that a task had been

performed, and the Chief Medical Officer would confirm that the department was already on the job completing or having completed the task in question. This was a classic case of inter-agency backseat driving by the RCMP.

36. The Chief Medical Officer resisted the RCMP's continued encroachments, on the express basis that Public Health did not seek nor require the RCMP's intervention to fulfill its mandate, and that the RCMP could only legally intervene when so requested by Public Health—a request Public Health never made, nor a Court ever made.

37. The RCMP refused to get a warrant to obtain the Public Health investigation files as they had no legal basis to support the obtention of a warrant. The Chief Medical Officer had no evidence or basis of a crime and told the RCMP as much. The RCMP wanted the files without subjecting themselves to judicial scrutiny and had the Department of Justice and Public Safety lobby the Department of Public Health to do an end run on both provincial (Public Health Act) and federal legislation (Criminal Code warrants provisions).

38. Ultimately the highest levels of the New Brunswick Department of Public Health confirmed in writing that the RCMP had no right to unilaterally access Public Health's investigation and work product, without proper judicial authorization.

***The RCMP's negligent investigation in partnership with Premier, Premier Office, and Public Safety***

39. Despite the Chief Medical Officer's expressed desire against the criminalization of Dr. Ngola, the RCMP pressed on, with the support of Public Safety, the Premier's Office and the Premier, with the investigation and prosecution of Dr. Ngola, in service of the Defendants' arbitrary political desire to target a racialized minority citizen, who was already being besieged, publicly shamed and harmed by Premier Higgs' adverse public comments made against Dr. Ngola on or about May 27, 2020.

40. In the interim, irrespective of Public Health, the RCMP conducted its own independent investigation, which did not go well for them.

41. Indeed, the RCMP, operating in Partnership with the Premier, his office and Public Safety did not give up; they all colluded in their concerted and contorted attempts to lay blame on Dr. Ngola for the COVID outbreak in Campbellton by suggesting through their negligent investigative process that the good doctor would have committed wrongful death.

42. On or about May 29, 2020, an RCMP special task force from the J-Division, assembled specifically to investigate Dr. Ngola, convened a meeting at the Best Western hotel, in the city of Bathurst. Members at the meeting confirmed that they were operating at the behest of Premier Higgs' Office, and Jacques Babin, the Chief Executive Director of the New Brunswick Department of Justice and Public Safety was appointed to act as their liaison with the Premier's Office.

43. The deployed task force would investigate every aspect of Dr. Ngola's movements and activities, including Dr. Ngola's interactions at the border.

44. At the border, on entry into New Brunswick, Dr. Ngola received contradictory information by the provincial official controlling his entry pertaining to the rules. Prior to receiving all of the relevant facts, officer Pierre Arsenault, check point officer, mentioned to Dr. Ngola that he and his daughter would have to self-isolate; however after further exchanges pertaining namely to the fact that Dr. Ngola was an essential worker and that he was proceeding under the exception pertaining to facilitating shared custody of his daughter, it became clear that there would not be a requirement to self-isolate based on the COVID-19 Regulatory Scheme. This was Dr. Ngola's understanding that he would not be required to self-isolate and undergo quarantine. Officer Arsenault acknowledged the exception pertaining namely to parents that did not require to self-isolate because it was their basic fundamental right to access their children in shared-access situations as in the case of Dr. Ngola.

45. Officer Arsenault did however describe Dr. Ngola in stereotypically racialized terms, pointing out and singling out the quality of his French and his demeanour – basically the racial stereotype of a black person with education – being “uppity”. This official was not a

member of the RCMP and was at the time of the checkpoint, served as an employee of the Department of Justice and Public Safety of the Province of New Brunswick in his capacity as Deputy Sheriff for the Court House in Miramichi.

46. All Defendants were made aware, very early on in the investigation, of what had occurred and transpired at the border with Dr. Ngola as well as the content of the applicable regulations and guidelines as provided for in the Covid-19 Regulatory Scheme. Not only was there no criminal conduct by Dr. Ngola, but more importantly, all the Defendants were within hours of Premier Higgs' running comments in a position to ascertain that there was also no conduct by Dr. Ngola that was in contravention of provincial guidelines and regulations.

47. Worse yet, when Premier Higgs announced that Dr. Ngola was the subject of a criminal investigation, no such inquiry was in fact underway. At the time, there was no complaint that would have triggered an investigation.

48. The complainant, the initiator of the process to criminalize Dr. Ngola was in essence the Premier and his Government. Indeed, it was decided pursuant to a meeting that involved the Premier, that the Premier's liaison had to assume the role of a legal complainant by filing a complaint against Dr. Ngola with the RCMP, to retroactively enable a RCMP operation that was already under way. Initially, it was contemplated that Jacques Babin would be the "complainant" to allow the RCMP to conduct its criminal investigation. However, the role of the complainant would later be handed over to the Chief Executive Officer of the Vitalité Health Network, the former employer of Dr. Ngola, who assumed that role at the request of an RCMP Officer.

49. Consequently, because of the Premier's public and official statements and the lead role he took in instigating the criminal investigation, the RCMP and the provincial government worked in tandem to orchestrate and bring a complainant onboard, and as such, proceed with what ultimately became a negligent and unconstitutional investigation.

50. Senior and veteran RCMP officials in charge of the Major Crimes Unit at the RCMP's "J" Division in Bathurst and Fredericton, were taken aback by the Premier's announcement, as it was their team that would apparently have had to initiate the criminal investigation.

51. Indeed, when the Premier mentioned in the media that the RCMP was taking over the investigation, at that time, none of the RCMP members were even aware they were getting involved, causing the RCMP's initial concern that they did not even know who their complainant was.

52. Even though there was no legal basis for such a mobilization, the RCMP's "J" Division notified the RCMP's Ottawa headquarters that it was actively involved in the case, looking for possible charges of criminal negligence including namely that of wrongful death. Ultimately, the force mobilized and assigned 21 members to the case, thereby, causing more risk of pandemic spread, human contact and danger in the Restigouche area that was already under seize by the Covid-19 outbreak.

53. As the RCMP was organizing its mobilization in the Restigouche, senior officials of the Department of Justice and Public Safety, in tandem with the Premier's Office as well as the Premier instructed the RCMP to investigate and launch the criminal proceedings.

54. These same Provincial officials in liaison with the RCMP reversed course soon after in respect to having one of their own assume the function of complainant and decided to approach and convince the then CEO of the Vitalité Health Service to act as a complainant.

55. The RCMP took the position that police services needed a complainant before they could begin an investigation and asked the Vitalité CEO to occupy that function.

56. The then CEO of Vitalité was also told by the RCMP that Premier Higgs was angry and demanded an inquest. Even though the RCMP now had an official complainant, they had the difficulty of squaring the backdating issue in so far as they were unable to reconcile the Premier's May 28 announcement of an investigation with the complainant's timing, which came two days later.

57. While one RCMP official advanced that they should go with the date they got the complainant, May 30th, another RCMP official reminded a colleague that it was believed Premier Higgs announced the RCMP were investigating on or about Thursday May 28 and was unsure how to deal with that.

58. The RCMP, after turning every proverbial rock and stone, would itself come to the institutional conclusion that no crime had been committed by Dr. Ngola, a conclusion that was clearly not satisfactory to its provincial partners and co-defendants.

59. In mid-July 2020, the RCMP wrote to Dr. Ngola's lawyers to tell him he would not be criminally charged with an offence. When the media announced that Dr. Ngola would not be criminally charged, to advance the political interests of the Premier, their partner, who was gearing up for an early fall election, the RCMP reversed course and informed the public that it was continuing to criminally investigate Dr. Ngola. It took for the media to confront the RCMP with its own correspondence for the RCMP to confirm that Dr. Ngola was not going to be charged with breaching a provision of the Criminal Code of Canada.

60. Given the serious aggressive attacks and racial slurs suffered by Dr. Ngola, agreement was reached between counsel for the good doctor and the Crown Attorney that no public announcement would be made regarding the eventual laying of charges pertaining to the Covid-19 Regulatory Scheme. Eventually, this agreement was breached by the RCMP J-Division who made the public announcement of the laying of charges with the view of advancing Premier Higgs' political agenda as aforementioned in the previous paragraph.

61. Nevertheless, even though the RCMP and the Government of New Brunswick knew or ought to have known, at the time, in August 2020 that:

- i. Dr. Ngola had not breached any criminal or provincial law or regulation
- ii. Dr. Ngola had properly abided by all the requirements from Public Health



- iii. Dr. Ngola listened to the directions given to him by Public Health officials before traveling, and listened to the directions of the local provincial border official,
- iv. there was no scientific evidence to single out Dr. Ngola as a patient zero,

on or about August 2020, Dr. Ngola was charged by the Provincial Crown under section 24(1)(b) of the *Emergency Measures Act*, RSNB 2011, c 147, for failing to quarantine when he returned from Montreal to New Brunswick in May 2020.

62. It took over a year into the ordeal perpetrated on Dr. Ngola for the provincial authorities to finally reverse course and on or about June 4, 2021, the charges against Dr. Ngola were withdrawn by the Provincial Crown. The evidence of compliance with the COVID-19 Regulatory Scheme has been with the Provincial Crown from point of inception, as evidenced by its own disclosure documentation. However, it took costly and protracted legal proceedings to eventually have the Provincial Crown to realize that Dr. Ngola had complied with the COVID-19 Regulatory Scheme and more importantly, that the good doctor had taken the time to make inquiries in order to understand the rules and to comply with them.

63. In sum, the RCMP, acting in concert/partnership with the Public Safety Department, Vitalité Health Network, and under the instructions of Premier Higgs's Office, engaged in a campaign that ran roughshod over the legal process that was in place to deal with COVID-19, while constantly seeking to obviate the provincial health authorities' obligations of confidentiality—all to punish Dr. Ngola, a racialized minority citizen, who has shown by the evidence to be innocent, which the Defendants chose not to disclose to the public.

64. The media would reveal that Vitalité had not been forthcoming or transparent with the public about their many dozens of medical professionals that had entered New Brunswick on a routine basis without self-quarantining. Vitalité's policies on the border matched their need to keep their services running including their emergency department staffing requirements, which desperately needed health care workers to be available for work. The

Premier and his Office was constantly delivering a political message of successfully tackling the pandemic and continued to blame the outbreak on Dr. Ngola, wanting to deflect any systemic failure in their systems. Hence, the Defendants had an interest in singling out Dr. Ngola.

65. All the above actions by the Defendants, which devastated Dr. Ngola's reputation, personal security and well-being, were calculated for political benefit. By pinning the increase in COVID-19 cases on Dr. Ngola, the Defendants shifted the blame for their management of COVID-19 to him. The Defendants' witch-hunt against Dr. Ngola allowed Premier Higgs's minority government to promote a political agenda and score political points, at a time when they were four months away from what became a prematurely called political election.

66. The perpetration of the Premier's canard that Dr. Ngola's conduct did not merit apology by himself and his government, over many continued months, culminating in more than a year of obstinacy by the Premier of New Brunswick on the issue, perpetrated and increased the quantum of the damages that are deserved by the Plaintiff Ngola.

*Tort of Misfeasance in public office*

67. The Defendants are liable to Dr. Ngola for tort of misfeasance in public office.

68. The Defendants abused their office and have engaged in deliberately and unlawful conduct in their capacities as public officials, while they were aware that such conduct was unlawful and was likely to and did cause harm to Dr. Ngola.

69. In particular, the Defendants exercised their powers to prosecute Dr. Ngola, and to defame and attack Dr. Ngola in public fora, in apparent discharge of their statutory functions, in bad faith and for an improper purpose, namely, to harm Dr. Ngola in exchange for political gain.

70. The Defendants intentionally and knowingly acted to destroy Dr. Ngola's reputation and personal security through their actions, and Dr. Ngola suffered in consequence damages including, but not limited to, reputational harm, mental distress, depression, segregation and anxiety, for which the Defendants are jointly and severally liable.

### *Negligence*

71. The Defendants are liable to Dr. Ngola for negligence. The Defendants owed Dr. Ngola a duty to, among others, take reasonable steps and care in investigating Dr. Ngola's conduct and his alleged responsibility for the increase in COVID-19 cases in New Brunswick (in particular, Zone 5), before publicly humiliating and targeting Dr. Ngola.

72. The Defendants have breached that duty of care, and damages resulted from that breach. Dr. Ngola suffered damages including, but not limited to, reputational harm, mental distress, depression and anxiety, because of the Defendant's breach.

### *Defamation*

73. The Defendants are liable to Dr. Ngola in defamation for the Premier's public statements made against Dr. Ngola at the press conferences on or about May 27, 2020, and on or about June 11 and July 8, 2020, described respectively in this Statement of Claim (the "Public Statements".)

74. These Public Statements are defamatory in that they are made about Dr. Ngola and implies or creates the innuendo that Dr. Ngola has endangered the health and safety of others in his province, by exposing them to higher risks of COVID-19 infection, for which he was responsible.

75. The Public Statements have created damaging speculation respecting Dr. Ngola and has lowered Dr. Ngola's reputation in the public.

76. As a result of these Public Statements, Dr. Ngola suffered loss and damages including the loss of public and professional reputation, and punitive, aggravated, and exemplary damages in relation to the bad faith conduct of the Defendants.

77. The Defendants have refused to retract the Public Statements or issue an apology to Dr. Ngola, despite the latter's repeated requests. As a result, the Defendants' past and continued conduct has negatively impacted and will continue to impact Dr. Ngola's public reputation and future employment and other opportunities.

*Tort of malicious prosecution and negligent investigation*

78. The Defendants are liable to Dr. Ngola for the tort of malicious prosecution. The Defendants initiated a criminal investigation and provincial offences proceeding against Dr. Ngola, as described in this Statement of Claim, that was terminated in favour of Dr. Ngola.

79. The criminal proceeding was undertaken without a proper factual and legal basis and without reasonable and probable cause, and it was motivated by malice and for primarily a political purpose other than that of carrying the law into effect.

80. The Defendants' prosecution has had a devastating impact on Dr. Ngola's life, both personally and financially, and irreparably harmed his reputation, for which the Defendants are liable. The attacks were made against a vulnerable person, a racialized minority of immigrant background to Canada, part of a minority group that has been a prime target for hate crimes and historical attack in this country, and who is afforded protection by the Charter of Rights and Freedoms.

81. The Defendants are liable to Dr. Ngola for the tort of negligent investigation. The Defendant, the RCMP, owes a duty to Dr. Ngola take reasonable care in the investigation of (i) his alleged role and responsibility in the COVID outbreak in Campbellton, (ii) whether he has committed wrongful death, and (iii) whether he has breached orders issued under the *Emergency Measures Act*, RSNB 2011, c 147 including the relevant quarantine orders.

82. The RCMP has breached this duty by, *inter alia*, devoting vastly disproportionate resources to the investigation of Dr. Ngola, without legal and evidentiary basis and without a genuine complainant, and by using inappropriate investigative means such as pressurizing the provincial health authorities to breach their duties of confidentiality, in order to obtain evidence to incriminate Dr. Ngola—all in order to retroactively legitimize a conclusion against Dr. Ngola that was reached prior to the commencement of that investigation.

83. The RCMP's breach, along with the Province's wrongdoing and misfeasance, has caused damages to Dr. Ngola which includes, but are not limited to, reputational harm, mental distress, depression and anxiety, loss of present and future employment, for which the RCMP is liable.

*Breach of Dr. Ngola's Charter rights and Abuse of Process*

84. The Defendants' law enforcement actions described in paras. 29-66 of this Statement of Claim are taken without lawful authority, and in breach of Dr. Ngola's rights under the Canadian Charter of Rights and Freedoms, *The Constitution Act, 1982*, being Schedule B to the [Canada Act 1982 \(UK\), 1982, c 11](#) (the "Charter").

85. The Defendants acted against Dr. Ngola, pursuant to special powers conferred to the Defendants as a result of the declaration of a state of emergency by the Government of New Brunswick pursuant to Section 10(1) of the Emergency Measures Act, 2011, c.147 (the "EMA"), on or about March 19, 2020.

86. In particular, the Plaintiff states that the Government of New Brunswick's declaration of a state of emergency is unlawful. The declaration is an unreasonable exercise of its discretion conferred by the EMA, as it was made without regard to the evidence, for irrelevant purposes extraneous to the purposes of the EMA, or in bad faith.

87. Further and in the alternative, the mandatory orders (as amended from time to time), the relevant supplementary directives, made pursuant to Section 10(1) of the EMA, which underpinned the investigation and prosecution of Dr. Ngola, are unconstitutional. These provisions constitute an unjustifiable breach of Dr. Ngola's fundamental rights protected by, among others, Articles 6(2), 7, 8 and 12 of the Charter. These breaches are not saved by Article 1 of the Charter, as they are disproportionate, not minimally necessary to achieve a legitimate legislative purpose, and the deleterious effects outweigh the salutary effects.

88. Further, the resulting enforcement actions taken against Dr. Ngola by the Defendants, as a result of the provisions described in para. 87 of this Statement of Claim, similarly constitutes unjustifiable breaches of Dr. Ngola's rights protected by Articles 6(2), 7, 8 and 12 of the Charter.

89. These breaches result in harm and damages to Dr. Ngola, for which the Defendants are liable to remedy pursuant to Article 24(1) of the Charter.

90. The Defendants' actions in instigating, dictating and interfering with the prosecution of Dr. Ngola, also constitutes an abuse of process, that further violates Dr. Ngola's rights under Article 7 of the Charter.

91. The Defendants' arbitrary actions in devoting enormous public resources to target Dr. Ngola, at a time when they knew or ought to know of Dr. Ngola's innocence, violates fundamental principles of justice which underlie the community's sense of fair play and decency. The resulting investigative and prosecutorial proceedings against Dr. Ngola was oppressive and vexatious.

*Remedies-*

*restorative justice*

92. This matter is unprecedented in both Canada and the commonwealth and requires adaptive orders to provide true justice. What happened to Dr. Ngola affected the Black community in New Brunswick, the rest of Canada and the world. Indigenous legal traditions often use

proactive/preventative strategies mediated through an approach to crime and conflict that brings the victim, the offender, members of the larger community, and oftentimes professional service providers together into a non-hierarchical setting to collectively address a harm that was committed and to set a path towards reconciliation between all relevant parties. Anti-Black racism is real. Therefore, restorative justice processes restore, repair, and heal those relationships through meaningful and democratic input from all parties involved. These processes are meant to produce a sense of responsibility in the perpetrators (herein the Defendants) after they have heard how their actions and behaviour have affected the victim and larger community.

93. The Court of Queen's Bench is a superior Court of Justice empowered both by the Charter and in Equity to provide constructive remedies to matters that are complex. The choices made by the Defendants are racist. Racism is a powerful word. Throughout history, many vile actions have taken place because people stopped caring about a group of people who were made to appear as 'less than human'. That was the case for Dr. Ngola. The Court has a responsibility, beyond monetary compensation, to ensure that there are lessons learned from public officials to ensure this does not happen again. This requirement can only be satisfied by order of the Court.

94. Pursuant to the breach of the rule of law, and the Charter breached in this claim, Dr. Ngola requires the province and the RCMP to engage in a process that would ensure the implementation of checks and balances that would protect any citizen, racialized or not, from suffering once again from the abuse of offices described herein.

95. Dr. Ngola does insist on a public apology from the RCMP and the Government of New Brunswick.

96. But an apology will not be enough to make sure that such an ordeal is never again visited on a vulnerable citizen.

97. Dr. Ngola's experience was a consequence of institutional anti-Black systemic racism. Anti-Black racism is rooted in their unique history and experience of enslavement and its

legacy. Anti-Black racism is deeply entrenched in Canadian organizations, institutions, to the extent that it is either functionally normalized or rendered invisible to the larger White society. Anti-Black racism is manifest in the current case of Dr. Ngola's political marginalization.

98. The Defendants hid behind a process and their institutions in order to cause great harm on Dr. Ngola, and therefore, orders are sought from this Honourable Court pursuant to the Charter of Rights and Freedoms, enjoining the Defendants to allow an examination of their processes and conduct by a group of independent experts that will have powers, bestowed by the Court, with the ability to investigate the chain of decision making as well as examine the conduct of all the officials that were involved at both the RCMP and the Government of New Brunswick.

99. The investigators are required to have the power to go deep in the chain of command to understand how an entire system was allowed to fail Dr. Ngola.

100. It is sought that the independent probe allows the discovery of how the Defendants hid behind a process that was designed to justify a particular outcome; namely the criminalization of Dr. Ngola, even though as early as June 2020, there was no doubt in law and in fact that Dr. Ngola was absolutely innocent of any crime or infraction. The probe would need to be independent and would require the ability for experts to look at the chain of decision making of all the government officials that were involved in this matter both at the RCMP, the Premier's Office, and the Department of Justice and Public Safety.

*Pecuniary damages*

101. Dr. Ngola seeks the following remedy against the Defendants:

- a. Damages in the amount of \$\_\_\_\_\_ against the Defendants.
- b. Punitive, special, and exemplary damages in the amount of \$\_\_\_\_\_ against the Defendants.
- c. The costs of this action; and



- d. Such further and other relief as counsel may advise and this Honourable Court shall allow.
102. The Plaintiff seeks trial by jury, pursuant to Rule 46 of the Rules of Court, NB Reg 82-73.
103. The Plaintiff proposes that this action be tried at the City of Moncton.

Dated at Moncton, this 10<sup>th</sup> day of June, 2021.

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-and-

Defendants  
**HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF NEW BRUNSWICK and  
CANADA (THE ROYAL CANADIAN MOUNTED POLICE)**

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**COURT OF QUEEN'S BENCH OF NEW BRUNSWICK  
TRIAL DIVISION  
JUDICIAL DISTRICT OF EDMUNDSTON**

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**STATEMENT OF CLAIM**

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