Court File No. CV-14-4360-00

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

LIESA CIANCHINO

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO and THE REGIONAL MUNICIPALITY OF PEEL

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.
If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local legal aid office.

Date: September 25, 2014 Issued by _____
Local registrar

Address of court office:
7755 Hurontario Street
Brampton, ONL6W 4T6

Samantha Moeller

TO:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO
Crown Law Office – Civil Law
720 Bay Street, 8th Floor
Toronto, ON M5G 2K1

REGIONAL MUNICIPALITY OF PEEL
10 Peel Centre Drive
Suite A and B
Brampton, ON L6T 4B9

CLAIM

1. The plaintiff Liesa Cianchino (hereinafter, the "Plaintiff") claims:

(i) a declaration that the *Fluoridation Act*, R.S.O. 1990, c. F.22 violates s. 7 of the *Canadian Charter of Rights and Freedoms* and is of no force or effect under s. 52(1) of the *Constitution Act, 1982*;

(ii) a declaration that the Regional Municipality of Peel's artificial water fluoridation program violates s. 7 of the *Canadian Charter of Rights and Freedoms*;

(iii) a declaration that the Regional Municipality of Peel's artificial water fluoridation program violates the *Safe Drinking Water Act, 2002*, S.O. 2002, c. 32;

(iv) a declaration that the Regional Municipality of Peel's artificial water fluoridation program violates the *Food and Drugs Act,* R.S.C., 1985, c. F-27;

(v) a declaration that the Regional Municipality of Peel was negligent in its failure to ensure the safety of municipal drinking water;

(vi) a permanent injunction prohibiting and restraining the Regional Municipality of Peel from artificially fluoridating drinking water in municipal water supplies;

(vii) damages for negligence in the amount of $500,000;

(viii) damages under s. 24(1) of the *Canadian Charter of Rights and Freedoms* in the amount of $100,000;

(ix) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act,* R.S.O. 1990, c.C-43, as amended;

(x) costs of this action, together with applicable Harmonized Sales Tax thereon; and

(xi) such further and other relief as this Honourable Court may deem just.

OVERVIEW

2. This is an action to end the artificial fluoridation of municipal drinking water in the Regional Municipality of Peel (the "Region") and in Ontario.

3. Fluoride is the anionic or reduced form of fluorine and is the thirteenth most abundant element in the Earth's crust. Given that fluorine is so abundant, it is not surprising that fluoride compounds are components of minerals in rocks and soil. Due to these components, and the action of ground water acting upon them, fluoride is released into the groundwater and is the major contributor to the small amounts of fluoride present in most water sources. In general, most ground water contains low concentrations of fluoride, typically less than 0.5 mg/L.

4. "Fluoridation" or "artificial fluoridation" is the controlled addition of fluoride ions to drinking water that has a low fluoride concentration. The purpose of artificial fluoridation is to improve dental health.

5. Approximately 45% of Canadians drink fluoridated drinking water. However, the figures vary significantly across the country. In Quebec, less than 3% of the population drinks fluoridated water. Only approximately 3.7% of residents of British Columbia drinks fluoridated water. By contrast, over 70% of Ontario residents drinks fluoridated drinking water.

6. Canada's rate of fluoridation puts it squarely in the global middle among the Organization of Economic and Cooperative Development ("OECD") countries. Approximately 69% of U.S. residents live in communities with fluoridated water. By contrast, only approximately 3% of the population in Western Europe currently consumes

fluoridated water. Despite this fact, the available evidence does not suggest that tooth decay rates are higher in unfluoridated Western European countries than in the United States or other fluoridated countries.

7. While artificial fluoridation was initially believed to be an important contributor in reducing tooth decay, more recent evidence shows that the benefits of fluoridation — to the extent they exist at all — are grossly disproportionate to the potential deleterious effects. There is significant scientific evidence of harm caused by fluoridation, including dental fluorosis, muskoskeletal fluorosis, adverse cognitive and behavioural effects, and bone cancer.

THE PARTIES

8. The Plaintiff Liesa Cianchino has been a resident of Mississauga, Ontario for over 35 years. She is a cancer survivor. She is presently the Chairperson of Concerned Residents of Peel to End Water Fluoridation, a Founding Member of the Worldwide Alliance to End Fluoridation, and a Board Member of Mothers Against Fluoridation.

9. The defendant, Her Majesty the Queen in Right of the Province of Ontario, is named in these proceedings pursuant to the provisions in the *Proceedings Against the Crown Act*, R.S.O. 1990, C. P. 27, and amendments thereto.

10. The defendant Region is a regional municipality in Southern Ontario. It consists of three municipalities to the west and northwest of Toronto: the City of Brampton, the City of Mississauga, and the Town of Caledon.

11. The Region is the operating authority of the municipal drinking water supply for the City of Brampton, the City of Mississauga, and the Town of Caledon. It is licensed by the

Province of Ontario to supply drinking water to the residents of Peel pursuant to the *Safe Drinking Water Act, 2002*, S.O. 2002, c. 32.

WATER FLUORIDATION IN THE REGIONAL MUNICIPALITY OF PEEL

12. In 1961, the Province of Ontario enacted the *Fluoridation Act*, R.S.O. 1990, c. F.22, which specifically provided for the establishment and maintenance of fluoridation of drinking water within the Ontario waterworks system. The *Fluoridation Act* was the Ontario Legislature's response to the Supreme Court of Canada's 1957 opinion in *Toronto (Metro) v. Forest Hill (Village)*, [1957] S.C.R. 569. In that decision, the Supreme Court held that a by-law authorizing fluoridation of the municipality's drinking water was *ultra vires* the municipality's authority because the municipality's enabling statute only permitted the municipality to ensure an "abundant supply of pure and wholesome water", whereas the addition of fluoride was a form of mass medication.

13. The *Fluoridation Act* does not require municipalities to fluoridate drinking water. Under the Act, municipalities were given the discretionary authority, by way of the passing of a by-law "...to establish, maintain and operate, or require that the local board establish, maintain and operate, a fluoridation system in connection with the waterworks system."

14. Under the *Fluoridation Act*, cities that already had a fluoridation program in place at the time the Act was enacted were not required to pass a new by-law; the *Fluoridation Act* permitted the continuation of those programs.

15. Accordingly, the *Fluoridation Act* permitted the continuing fluoridation of the water supplies of the City of Mississauga and City of Brampton, which already had fluoridation

programs in place in 1961. In 2007, the Region passed a by-law establishing a fluoridation program in the Town of Caledon.

16. On June 26, 2014, the Plaintiff made submissions to Peel Regional Council concerning the dangers of artificial water fluoridation and advised the Council that she would seek judicial relief if the Council did not address this issue. The Council voted to adjourn consideration of the matter to September 11, 2014 pending legal advice from the Region's Solicitor.

17. On September 11, 2014, the Council received the opinion of its Solicitor during an *in camera* session of Council. Subsequently, during an open session of Council, the Peel Regional Council voted to defer dealing with the question of water fluoridation until after the municipal elections in October 2014.

HARM CAUSED BY ARTIFICIAL WATER FLUORIDATION

18. There is significant scientific and medical evidence of harm caused by fluoridation.

Dental Fluorosis

19. Fluoridation causes "dental fluorosis", which is a dose-related mottling of the enamel of the teeth that can range from mild discoloration of the tooth surface to severe staining and pitting. The condition is permanent after it develops in children during tooth formation. Severe fluorosis can lead to enamel loss, leaving the dentin open to decay and infection and causing structural damage to the tooth.

Muskoskeletal Effects

20. Skeletal fluorosis is a bone and joint condition associated with prolonged exposure to high concentrations of fluoride. Fluoride increases bone density and exacerbates the growth of osteophytes present in the bone and joints, resulting in joint stiffness and pain. Fluoride also increases the risk of bone fractures.

Neurobehavioural Effects

21. Fluorides increase the production of free radicals in the brain through several different biological pathways. These changes can increase the risk of developing Alzheimer's disease and other neurological diseases.

Genotoxicity and Carcinogenicity

22. Osteosarcoma is cancer of the bone. Peer-reviewed studies show that fluoride increases the risk of Osteosarcoma, particularly among children who are exposed to fluoride at a young age.

THE USE OF FLUOROSILICIC ACID

23. The Region uses fluorosilicic acid to fluoridate its drinking water. Fluorosilicic acid is a waste product that is created in the manufacture of wet-process phosphoric acid and other phosphate fertilizers. When fluorosilicic acid is in its gaseous form, it is a highly toxic substance.

24. Fluorosilicic acid contains numerous contaminants, including heavy metals such as lead and chromium, nonmetals such as arsenic, and even trace amounts of radioactive isotopes.

25. The U.S. Environmental Protection Agency sets the ideal safety goal for arsenic in drinking water at zero because arsenic is a known human carcinogen.

26. There are no known toxicological studies regarding the safety of using fluorosilicic acid to fluoridate water.

LACK OF EVIDENCE OF BENEFITS OF WATER FLUORIDATION

27. The purpose of fluoridation is to reduce dental caries (tooth decay). The Plaintiff pleads, however, that other factors, including diet, modern dental care, regular trips to the dentist and the availability of fluoridated toothpaste, are more meaningful means of reducing tooth decay and that water fluoridation is both harmful and unnecessary.

28. Fluoride's predominant mechanism of action is topical, not systemic. To the extent that fluoride works, it does so via direct exposure to the tooth and not from inside the body, rendering ingestion through drinking water unnecessary.

DUTY OF CARE OWED BY THE REGION OF PEEL TO THE PLAINTIFF

29. At all material times, the Region owed duties to the Plaintiff which include, but are not limited to, a duty to ensure the safety of the Region's drinking water supply.

30. In addition to owing a common law duty of care to the Plaintiff, the *Safe Drinking Water Act, 2002* imposes a statutory duty of care. Under this standard, municipalities must

exercise the level of care, diligence and skill in respect of a municipal drinking water system that a reasonably prudent person would be expected to exercise in a similar situation.

31. Further, section 20 of the *Safe Drinking Water Act, 2002* provides that "[n]o person shall cause or permit any thing to enter a drinking water system if it could result in ... a drinking water health hazard...." or "is a contravention of a prescribed standard."

32. Section 4 of the *Food and Drugs Act* prohibits the sale of articles of food or drink that "has in or on it any poisonous or harmful substance."

33. The provisions of the Ontario *Safe Drinking Water Act, 2002* and the federal *Food and Drugs Act* inform the common law duty of care.

34. The reasonable standard of care expected in the circumstances required the Region to:

(a) engage in meaningful consultation with experts concerning the safety and risks of water fluoridation;

(b) conduct or commission a toxicological study on fluorosilicic acid to ensure its safety;

(c) ensure that the fluoridating agent used to fluoridate municipal drinking water supplies does not contain contaminants;

(d) ensure that information about water fluoridation provided to the public is accurate and balanced; and

(e) exercise the level of care, diligence and skill in respect of a municipal drinking water system that a reasonably prudent person would be expected to exercise in a similar situation.

BREACH OF THE STANDARD OF CARE

35. By failing to perform the duties enumerated in paragraph 34, the Region has breached the standard of care.

SECTION 7 OF *CHARTER* – NO CONSENT TO MEDICATION

36. Section 7 of the *Canadian Charter and Rights and Freedoms* provides that "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

37. The right not to be subject to medical treatment without informed consent is protected under s. 7 of the *Charter*. Section 7 protects the right to be free from unwanted medical treatment.

38. Artificial fluoridation infringes the s. 7 right to security of the person of the Plaintiff in a manner that is inconsistent with the principles of fundamental justice. Artificial fluoridation of drinking water is a form of mass medication imposed by the defendants. Without informed consent, the Region's fluoridation program violates s. 7 of the *Charter*.

SECTION 7 OF THE *CHARTER* – GROSS DISPROPORTIONALITY

39. It is a principle of fundamental justice that a law which engages life, liberty or security of the person must not be grossly disproportionate. A law is grossly disproportionate where its benefits are grossly disproportionate to its potential harm.

40. The risk of significant harm caused by fluoridation is grossly disproportionate to the speculative benefit of reduced dental caries. Claimed reduction in tooth decay over the past several decades is more likely attributable to improved dental care rather than fluoridated water. As such, the benefits of fluoridated water are, at best, marginal, or, at worst, non-existent.

41. By contrast, the negative effects of fluoridation appear to be real and substantial, including, *inter alia*, dental fluorosis, adverse cognitive developmental effects, muskoskeletal fluorosis, and osteosarcoma.

42. It is reckless to expose residents to the risk of these serious adverse health effects for the marginal benefit of reduced tooth decay, particularly given that it is doubtful that fluoridated drinking water is even a significant contributor to reduced tooth decay.

DAMAGES SUFFERED BY THE PLAINTIFF

43. The defendants knew, or ought to have known, that as a consequence of their negligence, the Plaintiff would suffer damages as a result of being exposed to the risk of serious health effects.

44. In addition, an award of damages under s. 24(1) of the *Charter* ("*Charter* damages") is appropriate and just in the circumstances.

45. An award of *Charter* damages would vindicate the rights of the Plaintiff and would provide a measure of compensation for having exposed the Plaintiff to the risk of serious adverse health effects of drinking fluoridated drinking water.

46. An award of *Charter* damages would also achieve the goal of deterring municipalities from: (a) engaging in forms of mass medication of residents without informed consent; and (b) adopting public health measures where the potential adverse consequences are grossly disproportionate to the benefits.

47. The Plaintiff pleads that there are no countervailing factors weighing against an award of *Charter* damages. No other remedies will adequately meet the need for compensation, vindication and deterrence.

48. The Plaintiff proposes that this action be tried at Brampton.

Date: September 25, 2014

RUBY SHILLER CHAN HASAN
Barristers
11 Prince Arthur Avenue
Toronto ON M5R 1B2

Nader R. Hasan (LSUC #54693W)

T: (416) 964-9664
F: (416) 964-8305
E: nhasan@rubyshiller.com

Counsel for the Plaintiff

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STATEMENT OF CLAIM

RUBY SHILLER CHAN HASAN
Barristers
11 Prince Arthur Avenue
Toronto, ON M5R 1B2

Nader R. Hasan (LSUC #54693W)

T: (416) 964-9664
F: (416) 964-8305
E: nhasan@rubyshiller.com

Counsel for the Plaintiff