

**CITATION:** Daneshvar v. Her Majesty the Queen in Right of Ontario, 2021 ONSC 3186  
**DIVISIONAL COURT FILE NO.:** 223/21  
**DATE:** 20210505

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**DIVISIONAL COURT**  
**Sachs, Backhouse and Favreau JJ.**

**BETWEEN:** )  
 )  
David Daneshvar )  
 ) *David Baker and Kimberly Srivastava, for*  
Applicant ) *the Applicant*  
 )  
**– and –** )  
 ) *David Tortell and Padraic Ryan, for the*  
Her Majesty the Queen in Right of Ontario ) *Respondents*  
as Represented by the Minister of Health )  
and the Honourable Christine Elliott, )  
Minister of Health for the Province of )  
Ontario )  
 )  
Respondents )  
 )  
 )  
 )  
 ) **HEARD:** April 16, 2021

**FAVREAU J.:**

**Introduction**

[1] The applicant, David Daneshvar, is concerned that, once he is eligible for a COVID-19 vaccine, he will not be able to obtain a vaccine due to various barriers he faces. He asks this Court to make a number of broad declarations, including a declaration that the respondents, Her Majesty the Queen in Right of Ontario as Represented by the Minister of Health and the Honourable Christine Elliott, Minister of Health for the Province of Ontario (collectively referred to as “Ontario”), are responsible for the delivery of vaccines to people in the province and are thereby responsible for ensuring that vaccines are distributed equitably in accordance with the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*, R.S.O. 1990, c. H.19.

[2] The applicant’s concerns with accessing a vaccine and with ensuring that he and other Ontarians have equitable access to a vaccine are understandable and likely shared by many people

in the province. However, the applicant has not established that the Divisional Court has jurisdiction to grant the broad declaratory relief he seeks.

[3] Under s. 2(1)2 of the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1., declaratory relief is limited to the exercise, refusal to exercise or proposed exercise of a statutory power. The only statutory power the applicant has identified in the relief he seeks is the Minister of Health's power to conduct assessments and issue written directions to public health units under ss. 82 and 83 of the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7 ("*HPPA*"). However, s. 83 is premised on the exercise of the Minister's discretionary power under s. 82 to appoint assessors. She has not appointed any assessors nor has anyone requested that she appoint assessors. The rest of the application seeks broad declaratory relief that is not tied to any specific statutory power.

[4] For the reasons that follow, the application for judicial review is dismissed because the Divisional Court has no jurisdiction to grant the requested relief. In doing so, I make no comment on whether a differently structured proceeding could be brought in another forum challenging Ontario's involvement in COVID-19 vaccination on the basis of an alleged failure to comply with human rights legislation and *Charter* obligations.

### **Background and evidence on the application for judicial review**

[5] At the outset, it is important to note that the COVID-19 pandemic and government response to the pandemic are dynamic and evolving. The review of the evidence below is based on the evidence put forward by the parties on the application. It does not necessarily reflect what is occurring at the time the decision is released.

### **Mr. Daneshvar's circumstances and other evidence put forward by the applicant**

[6] Mr. Daneshvar is 28 years old. He arrived in Canada in 2013 as a refugee from Iran. While in Iran, he was a soldier with the military for eight years. He experienced torture in that context.

[7] Due to the torture and a recent car accident, Mr. Daneshvar has a number of serious physical and mental health medical issues that affect his mobility, vision and other aspects of his daily life. He does not work and currently collects Ontario Disability and Support Program benefits. Mr. Daneshvar's first language is not English. He requires assistance in some aspects of his daily life, which he receives from friends and neighbours.

[8] In his evidence, Mr. Daneshvar indicates that he does not know whether he is currently eligible for a COVID-19 vaccine and that he has not yet taken steps to obtain a vaccine. He also expresses uncertainty over whether he will get the vaccine given his health issues. However, he is concerned that, if he seeks the vaccine, he will face certain barriers in booking and attending an appointment. He states that his computer skills and ability to use the telephone are limited. In addition, his ability to get himself to a medical appointment for the vaccine is limited.

[9] Besides Mr. Daneshvar's own circumstances, he has put forward affidavits sworn by three affiants who provide opinions on how, in their view, Ontario is failing to distribute COVID-19 vaccines equitably to vulnerable populations throughout the province.

[10] Dr. Michael Rachlis is a medical doctor who specializes in public health. In his affidavit, Dr. Rachlis describes the authority and obligations of public health units in the province. He states that Ontario has published the Health Equity Guideline, 2018, that all public health units are required to follow. He notes that Ontario has delegated COVID-19 vaccine distribution to public health units. He expresses concern that Ontario has not imposed any specific equity standards on the way public health units distribute COVID-19 vaccines. He also expresses concern that Ontario has not monitored whether vaccines are being distributed equitably across the different public health units. He then gives instances of a number of disparities between different regions and between different populations in the distribution of vaccines. For example, he states that, while Toronto and Ottawa have plans for vaccinating homeless people, York Region does not have a plan for doing so. He concludes with some suggestions over how Ontario could impose and monitor the equitable distribution of vaccines across all public health units.

[11] Dr. Arjumand Siddiqi is a Professor and the Head of Epidemiology at the University of Toronto's Dalla Lana School of Public Health. Dr. Siddiqi is also a member of the Ontario Science Table for COVID-19. In that capacity, he co-authored a memo on equity considerations for COVID-19 vaccination in the province. In his affidavit, Dr. Siddiqi states that, in his view, the Ontario government has failed to give sufficient guidance to the public health units to ensure that vaccines are distributed equitably to racialized communities, people with disabilities and people in lower income neighbourhoods.

[12] Dr. Jutta Treviranus is a Professor and the Director of the Inclusive Design Research Centre operating out of OCAD University. She works on issues related to the accessibility of technology, including access to online systems. In her affidavit, Dr. Treviranus expresses concerns with the accessibility of current booking systems for COVID-19 vaccines. She states that they do not account for various barriers that marginalized people experience. She provides suggestions for how vaccine appointments could be made more accessible.

### **Ontario's evidence on the distribution of COVID-19 vaccines in the province**

[13] In response to the application, Ontario filed an affidavit sworn by Jodi Melnychuk. Ms. Melnychuk is the Director of Vaccine Planning and Engagement with Ontario's Ministry of Health. In her affidavit, Ms. Melnychuk describes Ontario's COVID-19 Vaccination Plan and Ontario's activities related to the distribution of vaccines in the province. She also describes the public health units' responsibility for vaccine distribution in the province. The paragraphs below provide an overview of Ms. Melnychuk's evidence.

[14] In March 2020, the COVID-19 outbreak was declared a global pandemic. On December 9, 2020, Health Canada authorized the first COVID-19 vaccine for use. Before this authorization, on November 23, 2020, Ontario passed Order in Council 1546/2020, creating the COVID-19 Vaccine Distribution Task Force. Ms. Melnychuk states that the Task Force is an advisory body with no statutory or legal powers.

[15] Ontario relies on Canada for access to vaccines, which Ontario then distributes. The Task Force worked with both the federal National Advisory Committee on Immunization and the

Ontario COVID-19 Science Advisory Table to advise Ontario on how to prioritize populations for vaccine access.

[16] Ontario developed a three-phase COVID-19 Vaccination Plan. The phased approach was meant to prioritize vaccines for those who are most at risk of severe illness and their caregivers. On December 7, 2020, Ontario identified the priority groups for Phase 1, which included, among others, those over 80 years of age and “[a]dult recipients of chronic home health care”. Phase 2 began in April 2021, and includes older adults, essential frontline workers and people with certain chronic conditions. Phase 3 is expected to begin in July 2021, at which time the balance of the adult population in the province will become eligible for COVID-19 vaccines.

[17] In conjunction with the Vaccination Plan, Ontario released the Ethical Framework for COVID-19 Vaccine Distribution. The Ethical Framework sets out ethical principles that are to guide COVID-19 vaccine prioritization decisions, distribution decisions, and decision-making processes. One of the ethical principles is equity, which lists protected groups under the *Human Rights Code*.

[18] Under the *HPPA*, public health units are responsible for providing health programs and services to people who reside in the areas the units serve. This includes immunization services to children and adults. There are 34 public health units in the province. Every public health unit is an independent corporation with complete fiscal independence and is required to appoint a full-time medical officer of health.

[19] Public health units are subject to the mandatory public health standards and guidelines published by the Minister of Health, including the Ontario Public Health Standards and the Health Equity Guideline. The Health Equity Guideline provides that public health units “shall develop and implement strategies to engage priority populations in the planning, implementation, and evaluation of public health programs and services, in order to advance health equity.” The Guideline states that health equity “means that all people can reach their full health potential without disadvantage due to social position or other socially determined circumstance, such as ability, age, culture, ethnicity, family status, gender, language, race, religion, sex, social class, or socioeconomic status”.

[20] In accordance with the Vaccination Plan, Ontario distributes COVID-19 vaccines to the public health units, which are responsible for administering vaccines and implementing a vaccine rollout suitable to their local populations. The public health units are currently administering vaccinations through mass immunization clinics, hospital immunization clinics, primary care settings including physician offices, pharmacies, through mobile clinics/teams, and in the homes of individuals. Ontario is funding a portion of the public health units’ costs and has entered into agreements with the public health units related to the cost sharing.

[21] The Ministry of Health first met with the public health units on January 9, 2021, to discuss their planning for the vaccination rollout. On January 18, 2021, the Ministry invited the public health units to submit their plans. The Ministry then provided informal feedback and other documentation to assist the public health units with preparing their plans. Ms. Melnychuk states that Ontario did not approve the public health units’ plans but only provided informal feedback.

She also refers to a number of guidance documents, such as the Ethical Framework and the Public Health Playbook for the COVID-19 Vaccination Program, that are meant to emphasize the importance of prioritizing various vulnerable populations. However, she states that it is ultimately up to the public health units to determine how to distribute the vaccines in their own regions.

[22] Besides providing guidance to the public health units, the Ministry has also entered into contracts with pharmacies that administer COVID-19 vaccines.

[23] In addition, on March 15, 2021, Ontario launched a provincial appointment booking system for mass immunization clinics. The booking system is meant to assist the public health units, which may not have the capacity to respond to mass requests from individuals who are eligible to book a vaccine. The booking system has two components: an online booking system and a province-wide call center. As of March 29, 2021, twenty public health units have chosen to accept appointments through the online booking system and the call centre. Ms. Melnychuk states that the Ministry has never communicated to the public health units, nor has any public health unit advised the Ministry, that the online booking system and call centre are to be the only methods of providing access to vaccinations.

### **Positions of the parties**

[24] Overall, the applicant alleges that Ontario has failed to ensure that COVID-19 vaccines are being distributed equitably in the province. He suggests that people in wealthier neighbourhoods have had easier access to vaccines and that the distribution of vaccines has not taken account of the various equity barriers some people face. These equity barriers include the inability to leave home for a vaccine, technological barriers in booking vaccine appointments and access to the information necessary to overcome vaccine hesitancy. The applicant asserts that these barriers have disproportionately affected people of colour, people with disabilities, people who do not speak English and people in less wealthy neighbourhoods. It is important to note that the applicant does not challenge the priority criteria that have been set for who is eligible for a vaccine (for example, eligibility based on age or employment as a frontline worker). Rather, he raises issues about whether the vaccine is being distributed equitably amongst people who are eligible for the vaccine.

[25] The applicant's overarching position is that Ontario is responsible for the equitable distribution of vaccines and for ensuring that public health units and pharmacies distribute vaccines equitably to all people in the province. The specific relief sought by the applicant has evolved over the course of the proceeding. The relief originally sought in the notice of application for judicial review is different from the relief sought in the applicant's factum. However, what is clear is that the applicant does not seek relief related to his own specific circumstances. Rather, he seeks broad declaratory relief that is meant to confirm Ontario's responsibility for the equitable distribution of vaccines.

[26] At the hearing, the applicant's lawyer confirmed that he is seeking the relief set out in the factum, which is as follows:

- a. A declaration that Ontario “monitor, by means that include mandatorily collecting and publicly disclosing timely vaccine equity data, both its own vaccine equity program and that of its sub-contractors and further that it appoints assessors pursuant to s. 82(3)(a) of the HPPA and provide necessary direction pursuant to s. 83(1)(a) of the HPPA”;
- b. A declaration that Ontario “remain ultimately responsible for ensuring the provision of vaccine equity”.
- c. An order quashing Ontario’s Ethical Framework and confirming that the Health Equity Guideline, s. 1 of the *Human Rights Code* and ss. 7 and 15 of the *Charter* continue to define the vaccine equity rights of Ontarians; and
- d. A declaration “that vaccine equity based on science remains an obligation, and to the extent that it decides to contract with any other entities, it must impose upon them mandatory public health standards by referencing the Health Equity Guideline pursuant to s. 7(5) of the [HPPA] and requiring the relevant amendments of vaccination plans and contracts”.

[27] In response to the application, Ontario argues that the application has no merit for a number of reasons, including the following:

- a. The applicant’s evidentiary record is insufficient to support the relief he seeks. With respect to Mr. Daneshvar’s own circumstances, he has not established that he is unable to access a vaccine. With respect to the issue of whether the vaccine is being distributed inequitably within the province, the applicant has put forward nothing more than anecdotal and inadmissible evidence such as newspaper articles.
- b. The applicant has failed to identify the exercise of a statutory power or the refusal to exercise a statutory power that gives rise to this application for judicial review. The failure to do so means that this Court does not have jurisdiction over the issues raised on this matter.
- c. Ontario is not responsible for the distribution of vaccines. Rather, the responsibility for vaccine distribution in the province lies entirely with public health units pursuant to the *HPPA*. Therefore, Ontario is not a proper respondent on the application for judicial review; the public health units would be the appropriate respondents.
- d. Even if this matter were properly before the Divisional Court and Ontario was an appropriate respondent, the applicant could not establish a breach of his ss. 7 and 15 *Charter* rights because Ontario does not have a positive obligation to provide health care, including vaccines, to Ontarians.

### **Issues and analysis**

[28] In my view, it is not necessary to decide each of the issues raised by Ontario in response to the application for judicial review. Rather, the application for judicial review can be dismissed on the basis that the Divisional Court does not have jurisdiction to grant the relief sought because the declarations requested by the applicant do not arise from the exercise or refusal to exercise a statutory power. I first start with a review of the Divisional Court's jurisdiction on an application for judicial review, followed by an analysis of why the Divisional Court does not have jurisdiction to grant the specific relief sought by the applicant.

### **General principles regarding the Divisional Court's jurisdiction to grant declarations on an application for judicial review**

[29] The Divisional Court is a statutory court. Its jurisdiction is limited to those matters conferred by statute.

[30] The *Judicial Review Procedure Act* sets out this Court's jurisdiction over applications for judicial review. Subsection 2(1) of the Act gives the Court its powers to grant relief. Subsection 2(1)1 gives the Court jurisdiction to make orders in the nature of mandamus, prohibition or certiorari, which are not at issue here, with the possible exception of the applicant's request that the Court make an order quashing the Ethical Framework, which is addressed further below. Subsection 2(1)2 deals with declaratory relief, which is what the applicant primarily seeks on this application for judicial review. Specifically, subsection 2(1)2 gives the Court the authority to make a declaration in relation to the "exercise, refusal to exercise or proposed or purported exercise of a statutory power".<sup>1</sup> This provision does not give the Court broad powers to make declarations about government action, including desired government action. Rather, this provision limits the Court's power to grant declaratory relief to circumstances where the government or public body has exercised, refuses to exercise or proposes to exercise a statutory power.

[31] This means that there are at least two preconditions before the Divisional Court can grant a declaration on an application for judicial review. First, the declaratory relief sought must arise from a statutory power. Second, there must be an actual exercise, refusal to exercise or proposed exercise of that statutory power. In other words, the Divisional Court does not have jurisdiction to make declarations about abstract questions regarding government action or inaction. Unfortunately, the applicant's application for judicial review suffers from defects that arise from both of these requirements. For the most part, the relief sought does not relate to the exercise of any statutory powers. In addition, to the extent that it does relate to the exercise of statutory powers, there has been no exercise, refusal to exercise or proposed exercise of a statutory power.

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<sup>1</sup> S. 1 of the *Judicial Review Procedure Act* defines "statutory power as:  
"statutory power" means a power or right conferred by or under a statute,  
(a) to make any regulation, rule, by-law or order, or to give any other direction having force as subordinate legislation,  
(b) to exercise a statutory power of decision,  
(c) to require any person or party to do or to refrain from doing any act or thing that, but for such requirement, such person or party would not be required by law to do or to refrain from doing,  
(d) to do any act or thing that would, but for such power or right, be a breach of the legal rights of any person or party.

[32] These concerns are not affected by the fact that the applicant purports to advance *Charter* arguments. The Divisional Court will only have jurisdiction to grant declaratory relief on an application for judicial review in the context of a *Charter* challenge where the government action relates to the exercise, refusal to exercise or proposal to exercise a statutory authority: *Di Cienzo v. Attorney General of Ontario*, 2017 ONSC 1351, at paras. 19-22, citing *Falkiner v. Ontario Ministry of Community and Social services* (1996), 140 D.L.R. 115 (Ont. Div. Ct.).

[33] With these principles in mind, the following sections address the specific relief sought by the applicant. As referred to above, during the argument of the application, the applicant's counsel confirmed that he sought the relief set out in the factum, which can be summarized as follows:

- a. A declaration that Ontario appoint assessors under s. 82 of the *HPPA* and give directions pursuant to s. 83 of the *HPPA*;
- b. A declaration that Ontario is responsible for ensuring that public health units distribute vaccines equitably in the province;
- c. A declaration that public health units are required to comply with the Health Equity Guideline and an order quashing the Ethical Framework; and
- d. A declaration that Ontario is required to impose compliance with the Health Equity Guideline, *Charter* and human rights legislation on pharmacies and other entities with which it enters into contracts for the distribution of vaccines.

#### **Relief under ss. 82 and 83 of the *HPPA***

[34] The only declaration the applicant seeks that explicitly arises from a statutory provision relates to ss. 82 and 83 of the *HPPA*. In the Notice of Application for Judicial Review, the applicant sought a declaration that Ontario violated its statutory duty at s. 83(1) of the *HPPA* by approving the public health units' plans because they allegedly failed to provide for equitable access to vaccines. As reviewed above, in his factum, the declaration sought in relation to the Minister's powers under ss. 82 and 83 of the *HPPA* is that Ontario is required to monitor the public health units' equitable distribution of vaccines and appoint "assessors pursuant to s. 82(3)(a) of the *HPPA* and provide necessary direction pursuant to s. 83(1)(a) of the *HPPA*". In my view, while there is reference to ss. 82 and 83 of the *HPPA*, this Court does not have the authority to grant these broad declarations because they do not arise from the exercise, proposed exercise or refusal to exercise a statutory power.

[35] Under the *HPPA*, public health units are responsible for providing health programs and services to people within the regions they serve. Pursuant to s. 5.2, the mandatory health services public health units are required to provide include the control of infectious diseases "of public significance" and the "provision of immunization services to children and adults".

[36] The *HPPA* gives the Minister of Health powers to ensure that public health units are meeting their obligations, including the powers in ss. 82 and 83. Subsection 82(1) of the Act gives the Minister the discretion to appoint assessors. Pursuant to s. 82(3), the assessors have the power

to ascertain whether a public health unit is complying with the Act, including with its obligations to provide immunization services.

[37] Subsection 83(2) of the *HPPA* gives the Minister broad powers to give directions to public health units. However, those directions are to arise from an assessment conducted pursuant to s. 82 of the *HPPA*. This is evident from the wording of s. 83(1), which provides as follows:

83 (1) The Minister may give a board of health a written direction described in subsection (2) **if he or she is of the opinion, based on an assessment under section 82**, that the board of health has,

- (a) failed to provide or ensure the provision of a health program or service in accordance with section 5, 6 or 7, the regulations or the public health standards;
- (b) failed to comply in any other respect with this Act or the regulations; or
- (c) failed to ensure the adequacy of the quality of the administration or management of its affairs. [Emphasis added.]

[38] In this case, there is no evidence that the Minister has exercised, proposed to exercise or refused to exercise her powers under ss. 82 and 83 of the *HPPA*. There is no evidence that the applicant or anyone acting on his behalf has asked the Minister to appoint an assessor for the purpose of ascertaining whether public health units are complying with any obligations they may have in distributing COVID-19 vaccines equitably. In the absence of an assessment, the Minister has no power to make directions under s. 83 of the *HPPA*. In any event, there is no evidence that anyone has asked the Minister to exercise her discretion to make directions and that she has refused to do so. In other words, ss. 82 and 83 are simply not engaged by the issues raised by the applicant on this application for judicial review because there has been no exercise, refusal to exercise or proposal to exercise a statutory power.

[39] The applicant appears to rely on ss. 82 and 83 of the *HPPA* as avenues for requiring Ontario to ensure that public health units distribute COVID-19 vaccines equitably. Given that these sections give the Minister powers to give directions to public health units, the applicant seems to suggest that they may be a conduit through which this Court can direct the Minister to ensure that public health units distribute vaccines equitably throughout the province. However, these provisions do not give the Divisional Court any such powers. They are clearly directed at giving the Minister powers to assess and direct public health units that are not complying with their obligations. This Court has no jurisdiction to make any declarations arising from these sections in the absence of an exercise, refusal to exercise or proposed exercise of power under these sections.

[40] This finding is not meant to suggest that all that would be required to open the gate for relief under these sections is for the applicant, or some other members of the public, to ask the Minister to exercise her powers to appoint an assessor under s. 82 and to give directions under s. 83. Even if such a request had been made and been refused, the applicant may face other barriers to invoking these sections, such as standing and the fact that the Minister's powers are discretionary. But, at a minimum, on the record on this application, this Court does not have the

jurisdiction to grant the relief sought because it does not arise from the exercise, refusal to exercise or proposed exercise of a statutory power.

### **Request for a declaration that Ontario is responsible for the equitable distribution of vaccines in the Province**

[41] During the argument of the application for judicial review, the primary focus of the relief sought by counsel for the applicant was the request for a broad declaration that Ontario is ultimately responsible for the equitable distribution of COVID-19 vaccines in the province. The focus on this argument seemed to arise from Ontario's position in its factum that public health units, and not Ontario, are ultimately responsible for determining how COVID-19 vaccines are to be distributed to individuals in the province.

[42] Despite the focus on this issue, the applicant's counsel was not able to identify a specific statutory provision that gives the Divisional Court the authority to make this declaration. This request for declaratory relief cannot be tied to the exercise, refusal to exercise or proposed exercise of a statutory power. Notably, the proposed declaration is contradicted by s. 5.2 of the *HPPA* that gives public health units responsibility for immunization in the province.

[43] This does not mean that no relief is available against Ontario or the Minister in relation to any aspect of the distribution of COVID-19 vaccines. Such relief may be available on a proper legal basis, before a court or tribunal with jurisdiction over the issue and on a proper evidentiary record. However, this Court does not have the jurisdiction to make the broad declaration sought. In any event, regardless of jurisdiction issues, it is not the role of this Court or the Superior Court to make broad abstract declaratory pronouncements of this nature: *Godin v. Sabourin*, 2016 ONSC 770.

### **Relief sought in relation to the Health Equity Guideline and the Ethical Framework**

[44] The applicant asks this Court for a declaration that public health units are required to comply with the Health Equity Guideline in distributing COVID-19 vaccines and for an order quashing the Ethical Framework. These requests are tied because the applicant suggests that the Health Equity Guideline would offer vulnerable Ontarians stronger assurance that vaccines will be distributed equitably than provided for by the Equitable Framework.

[45] Again, this Court has no authority to grant the declaratory relief sought. In any event, the request for this relief rests on a false premise that the Framework has replaced the Guideline and that the Framework is inferior to the Guideline in ensuring equitable access to COVID-19 vaccines.

[46] Public health units are subject to the mandatory public health standards and guidelines published by the Minister under s. 7 of the *HPPA*, including the Ontario Public Health Standards and the Health Equity Guideline. Therefore, public health units are required to comply with the Guideline. Even if this Court had the power to make a broad declaration that public health units are required to comply with the Guideline, they are already required to do so by the *HPPA*. This is a statutory requirement. There is no need for a declaration that the public health units are required to comply with the Guideline.

[47] More importantly, for the purpose of this analysis, the declaration sought in relation to the Guideline does not arise from the Minister's exercise, refusal to exercise or proposed exercise of a statutory power. The Minister has already promulgated the Guideline. Public Health Units are required to comply with the Guideline in accordance with s. 7 of the *HPPA*. There is no evidence of a directive to public health units that they are not comply with the Guideline.

[48] The order sought quashing the Ethical Framework is notionally within this Court's jurisdiction because it amounts to a request for an order in the nature of certiorari. However, this request is also based on a false premise. The Framework is a policy document. It does not have any legal status nor is there any evidence that it replaces the Guideline or takes precedence over the Guideline. Most significantly, reviewing the Framework, it is hard to see how it reduces any obligations public health units may have to ensure the equitable distribution of vaccines in the regions. The Ethical Framework is a one-page document that sets out various principles for COVID-19 vaccine distribution. There are five boxes setting out different principles titled "Minimize harms and maximize benefits", "Equity", "Fairness", "Transparency" and "Legitimacy". Under the "Equity" box, there is reference to distributing vaccines "without stigma, bias, or discrimination", with explicit reference to the *Human Rights Code*. Under the "Fairness" box, there is a reference to ensuring that "every individual within an equally prioritized group (and for whom vaccines have been found safe and effective) has an equal opportunity to be vaccinated" and to ensure "inclusive, consistent, and culturally safe and appropriate processes of decision-making, implementation and communications".

[49] Accordingly, there is no jurisdiction or legal basis for the relief sought by the applicant in relation to the Health Equity Guideline or the Ethical Framework.

### **Relief sought in relation to the contracts Ontario enters into for COVID-19 vaccine distribution**

[50] Ontario has entered into contracts with public health units and pharmacies related to the distribution of COVID-19 vaccines. The applicant seeks a declaration that Ontario is required to include a term in such contracts that public health units and pharmacies be required to comply with the Health Equity Guideline, the *Charter* and human rights legislation in distributing vaccines to the public.

[51] During the argument of the application, when asked how this declaratory relief arises from the exercise, refusal to exercise or proposed exercise of a statutory power, the applicant relied on the general powers given to the Minister in the *Ministry of Health and Long-Term Care Act*, R.S.O. 1990, c. M.26, to enter into contracts for the provision of health care services.

[52] In my view, these broad statutory powers are not a gateway to the broad declaratory relief sought by the applicant. Otherwise, any decision by a Minister or government official empowered by statute to enter into a contract would be subject to an application for judicial review.

[53] In any event, even if there are circumstances where it may be appropriate to challenge a Minister's decision to enter into a contract by way of an application for judicial review, this is not such a case. Government entities, such as public health units, are required to comply with the

*Charter*, and all Ontario corporations, including public health units and pharmacies are required to comply with the *Human Rights Code*. With respect to the Health Equity Guideline, as reviewed above, it binds public health units. While the Guideline does not apply to pharmacies, it is not the role of this Court or the Superior Court to make broad abstract declaratory pronouncements of the nature sought by the applicant.

**Additional issues raised on the application for judicial review**

[54] Before concluding, I wish to briefly address some of the arguments made by Ontario to emphasize what this Court has not decided in the context of this application for judicial review.

[55] First, Ontario argues that it is not responsible for deciding how people in the province will receive COVID-19 vaccines. According to Ontario, public health units are entirely responsible for this and therefore the public health units, not Ontario, would be the proper respondent on any challenge to the deployment of vaccines. We have not decided this issue. It is evident from the *HPPA* and the record before us that public health units have primary responsibility for distributing vaccines in the province. However, as one would expect in the context of a pandemic, Ontario has been heavily involved in vaccine distribution, both in securing vaccines and by setting policies for their distribution. Whether there may be remedies available against Ontario in the future would depend on the specific issue raised. In the same way as it would not be appropriate for this Court to make a broad declaration that Ontario is responsible for the equitable distribution of vaccines in the province, it would not be appropriate for this Court to make a broad finding that Ontario has no legal responsibility for the equitable distribution of vaccines in the province. We do not need to decide this issue and we have not decided this issue.

[56] Second, Ontario argues that the distribution of vaccines could not give rise to a valid *Charter* challenge because the government does not have a positive obligation to provide health care services. We have not decided this issue. Ontario has put together a plan that is designed to eventually make COVID-19 vaccines accessible to all adults in the province. If some Ontarians face barriers in obtaining vaccines based on enumerated or analogous *Charter* grounds or on protected *Human Rights Code* grounds, it will be up to a future court or the Ontario Human Rights Tribunal to decide whether there has been a *Charter* or *Code* breach. However, it is neither necessary, nor appropriate, to make an abstract finding that the *Charter* does not impose any obligations on Ontario in the context of COVID-19 vaccine distribution. Again, we do not need to decide this issue and we have not decided this issue.

[57] Third, Ontario argues that the applicant has not put forward a sufficient evidentiary basis for the relief he seeks. Ontario argues that Mr. Daneshvar has not demonstrated that he faces any barriers in obtaining a vaccine because he has not sought to obtain a vaccine and he is not even certain that he wants to obtain a vaccine. While Ontario frames this as an insufficient evidentiary record issue, this is really an issue of standing. Since Mr. Daneshvar has not yet been affected by the issues he raises and since he does not seek public interest standing, what standing does he have? These are legitimate questions. However, given that the questions raised generally do not fall within this Court's jurisdiction and are impermissible abstract legal questions, no one has standing to raise these issues. However, if Mr. Daneshvar ultimately faces barriers in accessing the

vaccine, he may have a valid claim against Ontario, a public health unit, a pharmacy, or even all three. This decision should not be seen as precluding Mr. Daneshvar from advancing such a claim.

**Conclusion**

[58] The applicant raises important issues about the ability of vulnerable Ontarians to access vaccines during the pandemic. However, the specific legal issues raised are not properly before the Divisional Court and the application for judicial review is therefore dismissed.

[59] Ontario does not seek costs, however it argues that this Court should make an order that the applicant’s lawyers not be entitled to obtain payment for any legal fees, including from Legal Aid Ontario, because the “[a]pplication was ill-advised from the outset” and the Ontario public should not be required to fund this litigation. This request is unprecedented and certainly not warranted in this case. While the legal grounds for the application for judicial review may have been unfounded for the reasons set out above, the broader issues raised by the applicant are important and pressing issues. There is nothing frivolous and vexatious about the issue of vaccine equity in the context of a global deadly pandemic. The application is dismissed because the applicant has not advanced these issues through available legal avenues; not because the underlying issues are without any merit. Accordingly, I make no order as to costs.

  
\_\_\_\_\_  
Favreau J.

I agree

  
\_\_\_\_\_  
Sachs J.

I agree

  
\_\_\_\_\_  
Backhouse J.

**Released:** May 5, 2021

**CITATION:** Daneshvar v. Her Majesty the Queen in Right of Ontario, 2021 ONSC 3186  
**DIVISIONAL COURT FILE NO.:** 223/21  
**DATE:** 20210505

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**DIVISIONAL COURT**  
**Sachs, Backhouse and Favreau JJ.**

**BETWEEN:**

David Daneshvar

Applicant

– and –

Her Majesty the Queen in Right of Ontario as  
Represented by the Minister of Health and the  
Honourable Christine Elliott, Minister of Health for  
the Province of Ontario

Respondents

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**REASONS FOR JUDGMENT**

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**FAVREAU J.**