

IN THE SUPREME COURT OF CANADA
(APPEAL FROM THE FEDERAL COURT OF APPEAL)

B E T W E E N:

Karen **Adelberg**, Matthew **Anderson**, Wyatt George **Baiton**, Paul **Barzu**, Neil **Bird**, Curtis **Bird**, Beau **Bjarnason**, Lacey **Blair**, Mark **Bradley**, John **Doe #1** , Daniel **Bulford**, John **Doe #2**, Shawn **Carmen** , John **Doe #3**, Jonathan Corey **Chaloner**, Cathleen **Collins**, Jane **Doe #1** , John **Doe #4**, Kirk **Cox**, Chad **Cox**, Neville **Dawood**, Richard **de Vos**, Stephane **Drouin**, Mike **Desson**, Jane **Doe #2** , Stephane **Drouin**, Sylvie **Filteau**, Kirk **Fisler**, Thor **Forseth**, Glen **Gabruch**, Brett **Garneau**, Tracy Lynn **Gates**, Kevin **Gien**, Jane **Doe #3** , Warren **Green**, Jonathan **Griffioen** , Rohit **Hannraj**, Kaitlyn **Hardy**, Sam **Hilliard**, Richard **Huggins**, Lynne **Hunka**, Joseph **Isliefson**, Leposava **Jankovic**, John **Doe #5** , Pamela **Johnston**, Eric Jones-**Gatineau**, Annie **Joyal** , John **Doe #6** , Marty (Martha) **Klassen**, John **Doe #7** , John **Doe #8** , John **Doe #9** , Ryan **Koskela**, Jane **Doe #4**, Julians **Lazoviks**, Jason **Lefebvre**, Kirsten **Link**, Morgan **Littlejohn**, John **Doe #10**, Diane **Martin**, John **Doe #11**, Richard **Mehner**, Celine **Moreau**, Robin **Morrison**, Morton **Ng**, Gloria **Norman** , Steven **O’Doherty**, David **Obirek**, John Robert **Queen**, Nicole **Quick**, Ginette **Rochon**, Louis-Marie **Roy**, Emad **Sadr** , Matt **Silver**, Jinjer **Snider**, Maureen **Stein**, John **Doe #12**, John **Doe #13**, Robert **Tumbas**, Kyle Van de **Sype**, Chantelle **Vien**, Joshua (Josh) **Vold** , Carla **Walker**, Andrew **Wedlock** , Jennifer **Wells**, John **Wells**, Melanie **Williams**, David George John **Wiseman**, Daniel **Young**, Gratchen **Grisson** , (officers with the **Royal Canadian Mountain Police**)

(Style of cause to be continued...)

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INDEX

APPLICANTS REPLY TO RESPONDENTS.....	1
Part I – Overview and Facts	1
Part II – Issues.....	3
Part III – Law and Argument.....	4
Part IV – Submissions Concerning Cost.....	5
Part V – Order(s) Sought.....	5
Part VI – Table of Authorities.....	6
Part VII– Statutory Provisions.....	6

REPLY

In reply to the Response of the Respondents served on September 27th, 2024, the Applicants reply as set out below.

PART I - OVERVIEW AND STATEMENT OF FACTS

1. The Applicants state that both the Respondents, and the Federal Court of Appeal, exaggerate and wholly mischaracterize and misapply the fact that the listed employees on “Schedule A” of the Federal Court judgment are “core federal government employees”. This alone does not determine:

- (a) whether s.236 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2) (“*FPSLRA*”) gives them access to a tribunal with jurisdiction to grant them the remedy they seek; nor,
- (b) whether their case qualifies as an exception to the *Weber* analysis on ousting Superior Court jurisdiction.¹

The only "evidence" that would determine the above-two, required criteria, in order to apply the *Weber* analysis, is the contextual analysis of the collective bargaining agreements themselves which were **NOT** placed into evidence by the Respondents.

2. The fact that there was no evidence tendered by the Respondents with respect to the Applicants’ rights, and duties, under the agreements, was a matter of substantial argument both at the Federal Court and before the Federal Court of Appeal.
3. This is reflected in the within application record, as this was a basis of resisting the motion, and a ground of appeal. For example, paragraph 2 of the Memorandum before the Federal Court of Appeal states:

¹ *Weber v. Ontario Hydro*, [1995 CanLII 108 \(SCC\)](#), [1995] 2 SCR 929.

[2] The Appellants wish to point out that, as required under the **Weber** analysis, absolutely no evidence was tendered by the Respondents of the content(s) of the collective bargaining agreement(s) of the core administration employees.²

In the “Issues” part of the Memorandum at paragraph 5(a), the Applicants state that the Federal Court erred by:

- 5(a) By-passing the requirement in **Weber** that requires an analysis of the contents of the collective bargaining agreement(s) before deciding whether to strike for adequate alternate remedies³

The Memorandum then, from paragraph 22 to 32 delineates the **Weber** analysis and, at paragraph 27 states:

[27] There was no evidence of any collective bargaining agreement(s) before the Federal Court, and this issue was a matter of extensive submissions and argument before the Court which the Court, in the end, does not address in its reasons.⁴

Lastly, in quoting from the Ontario Court decision, in **Muirhead**, the Memorandum before the Federal Court of Appeal states⁵:

[30]The Ontario Courts, in interpreting **Weber** have further found that, **notwithstanding the existence of a labor regime in the context of a collective bargaining agreement**, this does **NOT** oust the Superior Court jurisdiction to adjudicate an action for the tort of misfeasances in public office. Thus, the Ontario Superior Court, in **Muirhead** ruled as follows:

...

[62] In **Weber**, Chief Justice McLachlin (L'Heureux-Dubé, Gonthier, and Major JJ. concurring) discussed the matter of characterizing the dispute to determine whether or not the jurisdiction of the court was ousted, and she noted that **the fact that the parties are employer and employee may not be determinative and whether the court's jurisdiction was ousted would depend on the facts of each particular case**. She stated at paras. 52-54:

² Para. 2 of the Memorandum of Fact and Law before the Federal Court of Appeal, pg. 618 of the Application Record for Leave (“**Application Record**”).

³ Para. 5(a) of the Memorandum of Fact and Law before the Federal Court of Appeal, pg. 619 of the Application Record.

⁴ Para. 27 of the Memorandum of Fact and Law before the Federal Court of Appeal, pg. 630 of the Application Record.

⁵ Para. 30 of the Memorandum of Fact and Law before the Federal Court of Appeal, pg. 631-632 of the Application Record.

52. **In considering the dispute, the decision-maker must attempt to define its "essential character", to use the phrase of La Forest J.A. in *Energy & Chemical Workers Union, Local 691 v. Irving Oil Ltd.* (1983), 148 D.L.R. (3d) 398 (N.B.C.A.). The fact that the parties are employer and employee may not be determinative. Similarly, the place of the conduct giving rise to the dispute may not be conclusive; matters arising from the collective agreement may occur off the workplace and conversely, not everything that happens on the workplace may arise from the collective agreement: ...**

.... In the majority of cases the nature of the dispute will be clear; either it had to do with the collective agreement or it did not. Some cases, however, may be less than obvious. The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement.

53. Because the nature of the dispute and the ambit of the collective agreement will vary from case to case, it is impossible to categorize the classes of case that will fall within the exclusive jurisdiction of the arbitrator.

54. This approach does not preclude all actions in the courts between employer and employee. ...

[63] The recent decision of the Court of Appeal in *George v. Anishinabek Police Services, supra*, discussed further below, makes the point that to determine whether the court's jurisdiction has been ousted will require a contextual fact-based analysis of the circumstances of each case.⁶

4. The Applicants state that all other facts, apart from jurisdictional "facts", on a motion to strike, must be taken as proven.
5. No jurisdictional facts were tendered by the Respondents, namely no facts as to the terms of the collective bargaining agreements of the core administration Applicants.

PART II - THE ISSUES

6. The Applicants re-iterate the issues set out in the Memorandum of Argument contained in the within application for leave and re-iterate that they are issue(s) of public and general importance.

⁶ *Muirhead v. York Regional Police Services Board*, [2014 ONSC 6817](#) at [para. 62-63](#).

PART III - THE LAW & ARGUMENT

7. It is submitted that when the Respondents quote paragraph 55 of the Federal Court of Appeal decision which states:

[55] **It is not disputed that the plaintiffs who were employed by organizations other than the RCMP could have filed grievances under section 208 of the FPSLRA challenging the TB Policy or its application to them. As noted, the TB Policy was a term and condition of employment...**⁷

The Applicants clearly, loudly, and extensively did dispute this. The onus was on the Respondents to place the collective agreements before the Court to establish the jurisdictional basis for permitting coercive, forced medical treatment without consent, and how that fits into the collective agreement. The Federal Court of Appeal's assumption and bald statement that the policy magically becomes part of the collective agreement is without basis whatsoever.

8. It is submitted that a unilateral Treasury Board policy enforcing non-consensual medical treatment, further presents two other constitutional questions and remedies, sought in this case, by way of declaratory relief, namely:

- a. that the Federal government has absolutely no jurisdiction under division of power in ss. 91-92 of the *Constitution Act, 1867*,⁸ to impose medical treatment, legislatively, let alone on an Executive basis; and
- b. it is in any event unconstitutional under s.7 of the *Charter*⁹ as enunciated by this, and other Courts, in, *inter alia* the *Carter* decision.¹⁰

⁷ Para. 55 of the decision of the Federal Court of Appeal, pg. 101 of the Application Record.

⁸ *The Constitution Act, 1867*, 30 & 31 Vict, c 3.

⁹ *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 (“**the Charter**”).

¹⁰ *Carter v. Canada (Attorney General)*, [2015 SCC 5 \(CanLII\)](#).

9. Such, **in rem**, declaratory relief is the very example of the exception in ousting the jurisdiction of the Superior Courts as set out in *Weber*:

[57] **It might occur that a remedy is required which the arbitrator is not empowered to grant.** In such a case, the courts of inherent jurisdiction in each province may take jurisdiction. This Court in *St. Anne Nackawic* confirmed that the New Brunswick Act did not oust the residual inherent jurisdiction of the superior courts to grant injunctions in labour matters (at p. 724). **Similarly, the Court of Appeal of British Columbia in *Moore v. British Columbia* (1988), [1988 CanLII 184 \(BC CA\)](#), 50 D.L.R. (4th) 29, at p. 38, accepted that the court's residual jurisdiction to grant a declaration was not ousted** by the British Columbia labour legislation, although it declined to exercise that jurisdiction on the ground that the powers of the arbitrator were sufficient to remedy the wrong and that deference was owed to the labour tribunal. **What must be avoided, to use the language of Estey J. in *St. Anne Nackawic* (at p. 723), is a "real deprivation of ultimate remedy".**

10. It is submitted that the same holds true for other tort and damages remedies sought by the Applicants in this claim, as well as the added dimension that over half the Plaintiffs were allowed to proceed upon amendment of their statement of claim. It is submitted that the Court of Appeal, in its treatment of the facts, and the law, misapplied the test on a motion to strike to the point of loss of jurisdiction.
11. It is submitted that, as set out, in the Applicants' Memorandum contained in the within record, that this case very much meets the test for leave and requires the clarification by this Court with respect to *Weber*, with respect to the issues raised by the Applicants.

PART IV AND PART V – SUBMISSIONS CONCERNING COSTS/ORDER SOUGHT

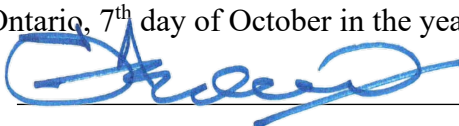
12. The Applicants seek leave and seek cost if leave is granted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Toronto, in the Province of Ontario, 7th day of October in the year 2024.



Rocco Galati, B.A., LL.B., LL.M.
Counsel for the Applicants



Yavar Hameed
Ottawa Agent for Counsel for the Applicants

PART VI – TABLE OF AUTHORITIES

Paragraphs

TAB	Para.
1. <i>Carter v. Canada (Attorney General)</i> , 2015 SCC 5 (CanLII)	8
2. <i>Muirhead v. York Regional Police Services Board</i> , 2014 ONSC 6817	3
3. <i>Weber v. Ontario Hydro</i> , 1995 CanLII 108 (SCC) , [1995] 2 SCR 929	1,9,10

PART VII– STATUTORY PROVISIONS

Federal Public Sector Labour Relations Act ([S.C. 2003, c. 22, s. 2](#)). [S.236](#)

Disputes relating to employment
<ul style="list-style-type: none"> • 236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.
<ul style="list-style-type: none"> • Marginal note:Application
(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.
<ul style="list-style-type: none"> • Marginal note:Exception
(3) Subsection (1) does not apply in respect of an employee of a separate agency that has not been designated under subsection 209(3) if the dispute relates to his or her termination of employment for any reason that does not relate to a breach of discipline or misconduct.

Canadian Charter of Rights and Freedoms, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), [1982, ss. 7](#)

Life, liberty and security of person

7 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.

The Constitution Act, [1867. s.91, 92](#)

VI. Distribution of Legislative Powers Powers of the Parliament

Legislative Authority of Parliament of Canada

91 It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

- **1.**
Repealed.⁽⁴⁴⁾
- **1A.**
The Public Debt and Property.⁽⁴⁵⁾
- **2.**
The Regulation of Trade and Commerce.
- **2A.**
Unemployment insurance.⁽⁴⁶⁾
- **3.**
The raising of Money by any Mode or System of Taxation.
- **4.**
The borrowing of Money on the Public Credit.
- **5.**
Postal Service.
- **6.**
The Census and Statistics.
- **7.**
Militia, Military and Naval Service, and Defence.
- **8.**
The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
- **9.**
Beacons, Buoys, Lighthouses, and Sable Island.
- **10.**

- Navigation and Shipping.
- **11.**
Quarantine and the Establishment and Maintenance of Marine Hospitals.
- **12.**
Sea Coast and Inland Fisheries.
- **13.**
Ferries between a Province and any British or Foreign Country or between Two Provinces.
- **14.**
Currency and Coinage.
- **15.**
Banking, Incorporation of Banks, and the Issue of Paper Money.
- **16.**
Savings Banks.
- **17.**
Weights and Measures.
- **18.**
Bills of Exchange and Promissory Notes.
- **19.**
Interest.
- **20.**
Legal Tender.
- **21.**
Bankruptcy and Insolvency.
- **22.**
Patents of Invention and Discovery.
- **23.**
Copyrights.
- **24.**
Indians, and Lands reserved for the Indians.
- **25.**
Naturalization and Aliens.
- **26.**
Marriage and Divorce.
- **27.**
The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
- **28.**
The Establishment, Maintenance, and Management of Penitentiaries.
- **29.**
Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in

the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.⁽⁴⁷⁾

Exclusive Powers of Provincial Legislatures

Subjects of exclusive Provincial Legislation

92 In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,

- **1.**
Repealed.⁽⁴⁸⁾
- **2.**
Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
- **3.**
The borrowing of Money on the sole Credit of the Province.
- **4.**
The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
- **5.**
The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
- **6.**
The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
- **7.**
The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
- **8.**
Municipal Institutions in the Province.
- **9.**
Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
- **10.**
Local Works and Undertakings other than such as are of the following Classes:
 - **(a)**
Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
 - **(b)**
Lines of Steam Ships between the Province and any British or Foreign Country:
 - **(c)**
Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
- **11.**

- The Incorporation of Companies with Provincial Objects.
- **12.**
The Solemnization of Marriage in the Province.
- **13.**
Property and Civil Rights in the Province.
- **14.**
The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
- **15.**
The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
- **16.**
Generally all Matters of a merely local or private Nature in the Province.

Non-Renewable Natural Resources, Forestry Resources and Electrical Energy

Laws respecting non-renewable natural resources, forestry resources and electrical energy

- **92A (1)** In each province, the legislature may exclusively make laws in relation to
 - (a) exploration for non-renewable natural resources in the province;
 - (b) development, conservation and management of non-renewable natural resources and forestry resources in the province, including laws in relation to the rate of primary production therefrom; and
 - (c) development, conservation and management of sites and facilities in the province for the generation and production of electrical energy.
- **Export from provinces of resources**
(2) In each province, the legislature may make laws in relation to the export from the province to another part of Canada of the primary production from non-renewable natural resources and forestry resources in the province and the production from facilities in the province for the generation of electrical energy, but such laws may not authorize or provide for discrimination in prices or in supplies exported to another part of Canada.
- **Authority of Parliament**
(3) Nothing in subsection (2) derogates from the authority of Parliament to enact laws in relation to the matters referred to in that subsection and, where such a law of Parliament and a law of a province conflict, the law of Parliament prevails to the extent of the conflict.
- **Taxation of resources**
(4) In each province, the legislature may make laws in relation to the raising of money by any mode or system of taxation in respect of

- (a) non-renewable natural resources and forestry resources in the province and the primary production therefrom, and
- (b) sites and facilities in the province for the generation of electrical energy and the production therefrom,

whether or not such production is exported in whole or in part from the province, but such laws may not authorize or provide for taxation that differentiates between production exported to another part of Canada and production not exported from the province.

- **Primary production**

(5) The expression **primary production** has the meaning assigned by the Sixth Schedule.

- **Existing powers or rights**

(6) Nothing in subsections (1) to (5) derogates from any powers or rights that a legislature or government of a province had immediately before the coming into force of this section. ⁽⁴⁹⁾

**IN THE SUPREME COURT OF CANADA
(APPEAL FROM THE FEDERAL COURT OF
APPEAL)**

B E T W E E N:

KAREN ADELBERG ET AL.

Applicants

-and-

HIS MAJESTY THE KING ET AL.

Respondents

**APPLICANTS' REPLY TO RESPONDENTS'
RESPONSE**

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