

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

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, 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 Hannsraj, Kaitlyn Hardy, Sam Hilliard, Richard Huggins, Lynne Hunka, Joseph Islielson, 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 Grison, (Officers with the Royal Canadian Mounted Police)**

*(style of cause to be continued...)*

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**APPLICATION FOR LEAVE TO APPEAL - VOL 1 of 3**  
(Pursuant to section 40 of the *Supreme Court Act*)

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Ottawa Agent for Counsel for the  
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- and -

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- and -

Stefanie **Allard**, Jake Daniel **Boughner**, Brent **Carter**, Brian **Cobb**, Laura **Constantinescu**, Sonia **Dinu**, Aldona **Fedor**, Jane **Doe #7**, Malorie **Kelly**, Matthew Stephen **MacDonald**, Mitchell **Macintyre**, Hertha **McLendon**, Marcel **Mihailescu**, Michael **Munro**, Sebastian **Nowak**, Diana **Rodrigues**, Natalie **Holden**, Adam Dawson **Winchester**, (**Canada Border Services Agency**)

-and-

Christine **Clouthier**, Debbie **Gray**, Jennifer **Penner**, Dale **Wagner**, Joseph **Ayoub**, (**Agriculture and Agri-food Canada**)

-and-

Jane **Doe #8**, (**Atlantic Canada Opportunities Agency**)

-and-

Melanie **DuFour**, (**Bank of Canada**)

-and-

#Jennifer **Auciello**, Sharon Ann **Joseph**, Eric **Munro**, (**Canada Mortgage and Housing Corporation**)

-and-

Jane **Doe #9**, (**Canada Pension Plan**)

-and-

Natalie **Boulard**, Beata **Bozek**, John **Doe #14**, Nerin **Andrea Carr**, Sara Jessica **Castro**, Debbie

(Dubravka ) **Cunko**, **Josée Cyr**, **Jane Doe #10**, **Carol Gaboury**, **Tania Gomes**, **Julita Grochocka**, **Monique Harris**, **William Hooker**, **Kirstin Houghton**, **Leila Kostyk**, **Michelle Lamarre**, **Nicolas LeBlond**, **Suana-Lee Leclair**, **Paulette Morissette**, **Jennifer Neave**, **Pierre-Alexandre Racine**, **Benjamin Russell**, **Robert Snowden**, **Aabid Thawer**, **Heidi Wiener**, **Svjetlana Zelenbaba**, **Nadia Zinck**, **Aaron James Thomas Shorrocks**, **Deirdre McIntosh**,  
(**Canada Revenue Agency**)

- and -

**Tamara Stammers**, (**Canada School of the Public Service**)

- and -

**Jasmin Bourdon**, (**Canadian Space Agency**)

- and -

**Sharon Cunningham**, **Allen Lynden**, **Rory Matheson**, (**Canadian Coast Guard**)

- and -

**Tatjana Coklin**, **John Doe #15**, **Raquel Delmas**, **Jane Doe #11**, **Chelsea Hayden**, **Helene Joannis**, **Zaklina Mazur**, **Jane Doe #12**, **Jessica Simpson**, **Katarina Smolkova**, (**Canadian Food Inspection Agency**)

- and -

**Alexandre Charland**, (**Canadian Forest Service**)

- and -

**Catherine Provost**, **Kristina Martin**, (**Canadian Heritage**)

- and -

**Jane Doe #13**, (**Canadian Institutes of Health Research**)

- and -

**Beth Blackmore**, **Roxanne Lorrain**, (**Canadian Nuclear Safety Commission**)

- and -

**Rémi Richer**, (**Canadian Radio-Television and Telecommunications Commission**)

- and –

**Octavia La Prairie, (Canadian Security Intelligence Service)**

- and –

**Robert Bestard, (City of Ottawa Garage Fed Regulated)**

- and –

**Kimberly Ann Beckert, (Core Public Service)**

- and –

**Sarah Andreychuk, Francois Bellehumeur, Pamela Blaikie, Natasha Cairns, Angela Ciglonecki, Veronika Colnar, Randy Doucet, Kara Erickson, Jesse Forcier, Valérie Fortin, Roxane Gueutal, Melva Isherwood, Milo Johnson, Valeria Luedee, Laurie Lynden, Annette Martin, Craig McKay, Isabelle Methot, Samantha Osypchuk, Jane Doe #14, Wilnive Phanord, Alexandre Richer Levasseur, Kathleen Sawyer, Trevor Scheffel, (Correctional Service of Canada)**

- and –

**Jordan St-Pierre, (Courts Administration Service)**

- and-

**Brigitte Surgue, Jane Doe #15, (Department of Canadian Heritage)**

- and-

**Ghislain Cardinal, Heather Halliday, Paul Marten, Celine Rivier, Ngozi Ukwu, Jeannine Bastarache, Jane Doe #16, Hamid Naghdian Hamid Naghdian-Vishteh, (Department of Fisheries and Oceans)**

- and –

**Ishmael Gay-Labbe, Jane Doe #17, Leanne James, (Department of Justice)**

- and –

**Danielle Barabe-Bussieres, (Elections Canada)**

- and –

**Tanya Daechert, Jane Doe #18, Francois Arseneau, Chantal Authier, Nathalie Benoit, Aerie Biafore, Rock Briand, Arnaud Brien-Thiffault, Sharon Chiu, Michel Daigle, Brigitte Daniels,**

Louise **Gaudreault**, Karrie **Gevaert**, Mark **Gevaert**, Peter **Iversen**, Derrick **Lamb**, Jane **Doe #19**, Anna **Marinic** , Divine **Masabarakiza**, James **Mendham** , Michelle Marina **Micko**, Jean **Richard**, Stephanie **Senecal** , Jane **Doe #20**, Ryan **Sewell**, Kari **Smythe**, Olimpia **Somesan**, Lloyd **Swanson**, Tyrone **White**, Elissa **Wong**, Jenny **Zambelas**, Li yang **Zhu**, Patrice **Lever**,  
**(Employment and Social Development Canada)**

-and-

Jane **Doe #21**, Brian Philip **Crenna**, Jane **Doe #22**, Bradley David **Hignell**, Andrew **Kalteck**, Dana **Kellett**, Josée **Losier**, Kristin **Mensch**, Elsa **Mouana**, Jane **Doe #23**, Jane **Doe #24**,  
Valentina **Zagorenko**, **(Environment and Climate Change Canada)**

- and –

**Pierre Trudel, (Export Development Canada)**

- and –

Stephen Alan **Colley**, **(Federal Economic Development Agency for Southern Ontario)**

- and –

**Vladimir Raskovic, (Garda Security Screening Inc)**

- and –

Mélanie **Borgia**, Jonathan Kyle **Smith**, Donna **Stainfield**, Annila **Tharakan**, Renee Michiko **Umezuki**, **(Global Affairs Canada)**

- and –

**Dennis Johnson, (Global Container Terminals Canada)**

- and –

Alexandre **Guilbeault**, Tara (Maria) **McDonough**, France **Vanier**, **(Government of Canada)**

- and –

Alex **Braun**, Marc **Lescelleur-Paquette**, **(House of Commons)**

- and –

Aimee **Legault**, **(Human Resources Branch)**

- and –

Dorin Andrei **Boboc**, Jane **Doe #25**, Sophie **Guimard**, Elisa **Ho**, Kathy **Leal**, Caroline **Legendre**, Diana **Vida**, (**Immigration, Refugees and Citizenship Canada**)

- and –

Nathalie Joanne **Gauthier**, (**Indigenous and Northern Affairs Canada**)

- and –

Christine **Bizier**, Amber Dawn **Kletzel**, Verona **Lipka**, Kerry **Spears**, (**Indigenous Services Canada**)

- and –

Sun-Ho **Paul Je**, (**Innovation, Science and Economic Development Canada**)

- and –

Giles **Roy**, (**National Film Board of Canada**)

- and –

Ray **Silver**, Michelle **Dedyulin**, Letitia **Eakins**, Julie-Anne **Kleinschmit**, Marc-Andre **Octeau**, Hugues **Scholaert**, (**National Research Council Canada**)

- and –

Felix **Beauchamp**, (**National Security and Intelligence Review Agency**)

- and –

Julia May **Brown**, Caleb **Lam**, Stephane **Leblanc**, Serryana **Whiteside**, (**Natural Resources Canada**)

- and –

Nicole **Hawley**, Steeve **L'italien**, Marc **Lecocq**, Tony **Mallet**, Sandra **McKenzie**, (**NAV Canada**)

- and –

Muhammad **Ali**, (**Office of the Auditor General of Canada**)

- and –

**Ryan Rogers, (Ontario Northland Transportation Commission)**

- and –

**Theresa Stene, Michael Dessureault, John Doe #16, (Parks Canada)**

- and –

**Charles-Alexandre Beauchemin, Brett Oliver, (Parliamentary Protective Service)**

- and –

**Carole Duford, (Polar Knowledge Canada)**

- and –

**Joanne Gabrielle de Montigny, Ivana Eric, Jane Doe #26, Salyna Legare, Jane Doe #27, Angie Richardson, Jane Doe #28, (Public Health Agency of Canada)**

- and –

**Fay Anne Barber, (Public Safety Canada)**

- and –

**Denis Laniel, (Public Sector Pension Investment Board)**

- and –

**Kathleen Elizabeth Barrette, Sarah Bedard, Mario Constantineau, Karen Fleury, Brenda Jain, Megan Martin, Jane Doe #29, Isabelle Paquette, Richard Parent, Roger Robert Richard, Nicole Sincennes, Christine Vessia, Jane Doe #30, Pamela McIntyre, (Public Services and Procurement Canada)**

- and –

**Isabelle Denis, (Registrar of the Supreme Court of Canada)**

- and –

**Jane Bartmanovich, (Royal Canadian Mint)**

- and -

Nicole **Brisson**, (**Service Canada**)

- and -

Denis **Audet**, Mathieu **Essiambre**, Alain **Hart**, Andrea **Houghton**, Natalia **Kwiatek**, Dany **Levesque**, David **McCarthy**, Pascal **Michaud**, Mervi **Pennanen**, Tonya **Shortill**, Stephanie **Tkachuk**, Marshall **Wright**, (**Shared Services Canada**)

- and -

Eve Marie **Blouin-Hudon**, Marc-Antoine **Boucher**, Christopher **Huszar**, (**Statistics Canada**)

- and -

Steve **Young**, (**Telestat Canada**)

- and -

Nathan **Aligizakis**, Stephen **Daniel**, Alain **Douchant**, Krystal **McColgan**, Debbie **Menard**, Clarence **Ruttle**, Dorothy **Barron**, Robert **McLachlan**, (**Transport Canada**)

- and -

Scott Erroll **Henderson**, Denis **Theriault**, (**Treasury Board of Canada**)

- and -

Josiane **Brouillard**, Alexandra **McGrath**, Nathalie **Ste-Croix**, Jane **Doe #31**, (**Veterans Affairs Canada**)

- and -

Olubusayo (Busayo) **Ayeni**, John **Doe #17**, Cynthia **Bauman**, Jane **Doe #32**, , Laura Crystal **Brown**, Ke(Jerry) **Cai**, Nicolino **Campanelli**, Donald Keith **Campbell**, Colleen **Carder**, Kathy **Carriere**, Melissa **Carson**, David **Clark**, Bradley **Clermont**, Laurie **Coelho**, Estee **Costa**, Antonio **Da Silva**, Brenda **Darvill**, Patrick **Davidson**, Eugene **Davis**, Leah **Dawson**, Marc **Fontaine**, Jacqueline **Genaille**, Eldon **Goossen**, Joyce **Greenaway**, Lori **Hand**, Darren **Hay**, Krista **Imiola**, Catherine **Kanuka**, Donna **Kelly**, Benjamin **Lehto**, Anthony **Leon**, Akemi **Matsumiya**, Jane **Doe #33**, Jane **Doe #34**, Jane **Doe #35**, Anne Marie **McQuaid-Snider**, Lino **Mula**, Pamela **Opersko**, Gabriel **Paquet**, Christine **Paquette**, Carolin Jacqueline **Paris** , Jodie **Price**, Kevin **Price**, Giuseppe **Quadrini**, Saarah **Quamina**, Shawn **Rossiter**, Anthony **Rush**, Anthony **Shatzko**, Charles **Silva**, Ryan **Simko**, Norman **Sirois**, Brandon **Smith**, Catharine **Spiak**, Sandra **Stroud**, Anita **Talarian**, Daryl **Toonk**, Ryan **Towers**, Leanne **Verbeem**, Eran



**Vooyoys, Robert Wagner, Jason Weatherall, Melanie Burch, Steven Cole, Toni Downie, Jodi Stammers, (Canada Post)**

- and -

**Nicolas Bell, John Doe #18, John Doe #19, Jane Doe #36, John Doe #20, Paola Di Maddalena, Nathan Dodds, John Doe #21, Jane Doe #37, Nunzio Giolti, Mario Girard, Jane Doe #38, Jane Doe #39, You-Hui Kim, Jane Doe #40, Sebastian Korak, Ada Lai, Mirium Lo, Melanie Mailloux, Carolyn Muir, Patrizia Paba, Radu Rautescu, Aldo Reano, Jacqueline Elisabeth Robinson, John Doe #22, Frederick Roy, John Doe #23, Taeko Shimamura, Jason Sisk, Beata Sosin, Joel Szostak, Mario Tcheon, Rebecca Sue Thiessen, Jane Doe #41, Maureen Yearwood, (Air Canada)**

- and -

**John Doe #24, JOSÉE Demeule, Jacqueline Gamble, Domenic Giancola, Sadna Kassin, Marcus Steiner, Christina Trudeau, (Air Canada Jazz)**

- and -

**John Doe #25, Emilie Despres, (Air Inuit)**

- and -

**Rejean Nantel, (Bank of Montreal)**

- and -

**Lance Victor Schilka, (BC Coast Pilots Ltd)**

- and -

**Elizabeth Godler, (BC Ferries)**

- and -

**John Doe #26, Jane Doe #42, Tamara Davidson, Jane Doe #43, Brad Homewood, Chad Homewood, Charles Michael Jefferson, John Doe #27, Janice Laraine Kristmanson, Jane Doe #44, Darren Louis Lagimodiere, John Doe #28, John Doe #29, Mirko Maras, John Doe #30, John Doe #31, John Doe #32, John Doe #33, John Doe #34, Jane Doe #45, John Doe #35, Kendal Stace-Smith, John Doe #36, Steve Wheatley, (British Columbia Maritime Employers Association)**

- and –

**Paul Veerman, (Brookfield Global Integrated Solutions)**

- and –

**Mark Barron, Trevor Bazilewich, John Doe #37, Brian Dekker, John Gaetz, Ernest Georgeson, Kyle Kortko, Richard Letain, John Doe #38, Dale Robert Ross, (Canadian National Railway)**

- and –

**Tim Cashmore, Rob Gebert , Micheal Roger Mailhiot, (Canadian Pacific Railway)**

- and –

**Karin Lutz, (DP World)**

- and –

**Crystal Smeenk, (Farm Credit Canada)**

- and –

**Sylvie M.F. Gelinis, Susie Matias, Stew Williams, (G4S Airport Screening)**

- and –

**Shawn Corman, (Geotech Aviation)**

- and –

**Juergen Bruschkewitz, Andre Deveaux, Bryan Figueira, David Spratt, Guy Hocking, Sean Grant, (Greater Toronto Airports Authority)**

- and –

**Dustin Blair, (Kelowna Airport Fire Fighter)**

- and -

**Hans-Peter Liechti, (National Arts Centre)**

- and –

**Bradley Curruthers, Lana Douglas, Eric Dupuis, Sherri Elliot, Roben Ivens, Jane Doe #46,  
Luke Van Hoekelen, Kurt Watson, (Ontario Power Generation)**

- and –

**Theresa Stene, Michael Dessureault, Adam Pidwerbeski, (Parks Canada)**

-and-

**John Doe #39, (Pacific Pilotage Authority)**

- and –

**Angela Gross, (Purolator Inc.)**

- and –

**Gerhard Geertsema, (Questral Helicopters)**

- and –

**Amanda Randall, Jane Doe #47, Frank Veri, (RBC Royal Bank)**

- and –

**James (Jed) Forsman, (Rise Air)**

- and –

**Jane Doe #48, (Rogers Communications Inc)**

- and –

**Jerrilynn Rebeyka, (SaskTel)**

- and –

**Eileen Fahlman, Mary Treichel, (Scotiabank)**

- and -

**Judah Gaelan Cummins, (Seaspan Victoria Docks)**

- and –

**Darin Watson, (Shaw)**

- and -

**Richard Michael Alan Tabak, (SkyNorth Air Ltd)**

- and –

**Deborah Boardman, Michael Brigham, (Via Rail Canada)**

- and –

**Kevin Scott Routly, (Wasaya Airways)**

- and –

**Bryce Sailor, (Waterfront Employers of British Columbia)**

- and –

**Joseph Bayda, Jamie Elliott, John Doe #40, Randall Mengerling, Samantha Nicastro,  
Veronica Stephens, Jane Doe #49, (WestJet)**

- and –

**Melvin Gerein, (Westshore Terminals)**

Applicants

AND:

**His Majesty The King, Prime Minister Justin Trudeau, Deputy Prime Minister and Minister  
of Finance Chrystia Freeland, Chief Medical Officer Teresa Tam, Minister of Transport Omar  
Alhabra, Deputy Minister of Public Safety Marco Mendicino, Johns and Janes Doe**

Respondents

**ORIGINAL TO:**

**SUPREME COURT OF CANADA**

The Registrar  
301 Wellington Street,  
Ottawa, ON K1A 0J1

**COPIES TO THE PARTIES:**

**Adam Gilani and Shalene Curtis-Micallef**

Ontario Regional Office  
National Litigation Sector  
Government of Canada  
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Solicitors for the Respondents

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# TAB A

**Court File No.:**

**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

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**NOTICE OF APPLICATION FOR LEAVE TO APPEAL**

---

**TAKE NOTICE** that the Applicants, all as enumerated in the style of cause herein , hereby apply for leave to appeal to the Court, pursuant s. 40(1), 58(1)(a) and 59, of the *Supreme Court Act*, and s.25 of the *Rules of the Supreme Court of Canada* under which the application for leave is made, from the judgment of the Federal Court Appeal in docket #A-67-23 made on June 7<sup>th</sup>, 2024, and for an order for:

- (a) leave to appeal the judgment of the Federal Court of Appeal dated June 7<sup>th</sup>, 2024, in A-67-23;
- (b) such further or other order as counsel may advise and this Honourable Court deems appropriate.



**AND FURTHER TAKE NOTICE** that this application for leave is made on the following grounds:

1. that the Court of Appeal erred in law, as set out and argued in the Applicants' memorandum of argument contained in the within application for leave;
2. that the errors of the Court of Appeal constitute, pursuant to s. 40(1) of the *Supreme Court Act*, issues of national and public importance;
3. such further or other grounds as counsel may advise and as may be permitted.

**DATED** at the City of Toronto, Ontario, this 30<sup>th</sup> day of August , 2024.



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Counsel for the Applicants

**TO:** The Registrar of this Court

**AND TO:**

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National Litigation Sector  
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Solicitor for the Respondents



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Ottawa Agent for Counsel for the Applicants

**NOTICE TO THE RESPONDENT:** A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days after service of the application. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration pursuant to section 43 of the Supreme Court Act.

Court File No.:

**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**

---

**NOTICE OF APPLICATION FOR LEAVE TO  
APPEAL**

---

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Ottawa Agent for Counsel for the Applicants

# TAB B

# **TAB B-1**

Federal Court



Cour fédérale

Date: 20230221

Docket: T-1089-22

Citation: 2023 FC 252

Toronto, Ontario, February 21, 2023

**PRESENT:** The Honourable Mr. Justice Fothergill**BETWEEN:**

**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, PHILIP DOBERNIGG, 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 HANNSRAJ, 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, CHANTELE VIEU, JOSHUA (JOSH) VOID, CARLA WALKER, ANDREW WEDLOCK, JENNIFER WELLS, JOHN WELLS, MELANIE WILLIAMS, DAVID GEORGE JOHN WISEMAN, DANIEL YOUNG, GRATCHEN GRISON, (OFFICERS WITH THE ROYAL CANADIAN MOUNTAIN POLICE)**

and

**NICOLE AUCLAIR, MICHAEL BALDOCK, SABRINA BARON, WILLIAM DEAN BOOTH, CHARLES BORG, MARIE-EVÉ CARON, THOMAS DALLING, JOSEPH ISRAEL MARC ERIC DE LAFONTAINE, RICARDO GREEN, JORDAN HARTWIG, RODNEY HOWES, CHRISTOPHER MARK JACOBSON, JANE DOE #5, PASCAL**

**LEGENDRE, KIMBERLY LEPAGE, KIM MACDONALD, CINDY MACKAY, KIM MARTIN MCKAY, DAVID MASON, ALEXANDRA KATRINA MOIR, JOSEPH DANIEL ERIC MONTGRAIN, RADOSLAW NIEDZIELSKI, LEANNA JUNE NORDMAN, DONALD POOLE, EDWARD DOMINIC POWER, NORMAN L. REED, JANE DOE #6, BRENDEN SANGSTER, TIMOTHY JOSEPH SEIBERT, ANN-MARIE LEE TRAYNOR, CARL BARRY WOOD, EDDIE EDMOND ANDRUKAITIS, RUBY DAVIS, JENNIFER SCHROEDER, JOSEPH SHEA EMPLOYED BY THE (DEPARTMENT OF NATIONAL DEFENCE)**

**and**

**STEFANIE ALLARD, JAKE DANIEL BOUGHNER, BRENT CARTER, BRIAN COBB, LAURA CONSTANTINESCU, SONIA DINU, ALDONA FEDOR, JANE DOE #7, MALORIE KELLY, MATTHEW STEPHEN MACDONALD, MITCHELL MACINTYRE, HERTHA MCLENDON, MARCEL MIHAILESCU, MICHAEL MUNRO , SEBASTIAN NOWAK, DIANA RODRIGUES, NATALIE HOLDEN , ADAM DAWSON WINCHESTER, (CANADA BORDER SERVICES AGENCY)**

**and**

**CHRISTINE CLOUTHIER, DEBBIE GRAY, JENNIFER PENNER, DALE WAGNER, JOSEPH AYOUB, (AGRICULTURE AND AGRI-FOOD CANADA)**

**and**

**JANE DOE #8, (ATLANTIC CANADA OPPORTUNITIES AGENCY)**

**and**

**MELANIE DUFOUR, (BANK OF CANADA)**

**and**

**JENNIFER AUCIELLO, SHARON ANN JOSEPH, ERIC MUNRO, (CANADA MORTGAGE AND HOUSING CORPORATION)**

**and**

**JANE DOE #9, (CANADA PENSION PLAN)**

**and**

**NATALIE BOULARD, BEATA BOZEK, JOHN DOE #14, NERIN ANDREA CARR, SARA JESSICA CASTRO, DEBBIE (DUBRAVKA ) CUNKO, JOSÉE CYR, JANE DOE #10, CAROL GABOURY, TANIA GOMES, JULITA GROCHOCKA, MONIQUE HARRIS, WILLIAM HOOKER, KIRSTIN HOUGHTON, LEILA KOSTYK, DIANE C LABBÉ, MICHELLE LAMARRE, NICOLAS LEBLOND, SUANA-LEE LECLAIR, PAULETTE MORISSETTE, JENNIFER NEAVE, PIERRE-ALEXANDRE RACINE,**

**BENJAMIN RUSSELL, ROBERT SNOWDEN, AABID THAWER, HEIDI WIENER,  
SVJETLANA ZELENBABA, NADIA ZINCK, AARON JAMES THOMAS  
SHORROCK, DEIRDRE MCINTOSH, (CANADA REVENUE AGENCY)**

**and**

**TAMARA STAMMIS, (CANADA SCHOOL OF THE PUBLIC SERVICE)**

**and**

**JASMIN BOURDON, (CANADA SPACE AGENCY)**

**and**

**SHARON CUNNINGHAM, ALLEN LYNDEN, RORY MATHESON, (CANADIAN  
COAST GUARD)**

**and**

**TATJANA COKLIN, JOHN DOE #15, RAQUEL DELMAS, JANE DOE #11,  
CHELSEA HAYDEN, HELENE JOANNIS, ZAKLINA MAZUR, JANE DOE #12,  
JESSICA SIMPSON, KATARINA SMOLKOVA, (CANADIAN FOOD INSPECTION  
AGENCY)**

**and**

**ALEXANDRE CHARLAND, (CANADIAN FORESTRY SERVICE)**

**and**

**CATHERINE PROVOST, KRISTINA MARTIN, (CANADIAN HERITAGE)**

**and**

**JANE DOE #13, (CANADIAN INSTITUTES OF HEALTH RESEARCH)**

**and**

**BETH BLACKMORE, ROXANNE LORRAIN, (CANADIAN NUCLEAR SAFETY  
COMMISSION)**

**and**

**RÉMI RICHER, (CANADIAN RADIO-TELEVISION AND  
TELECOMMUNICATIONS COMMISSION)**

**and**

**OCTAVIA LA PRAIRIE, (CANADIAN SECURITY INTELLIGENCE SERVICE)**



and

**ROBERT BESTARD, (CITY OF OTTAWA GARAGE FED REGULATED)**

and

**KIMBERLY ANN BECKERT, (CORE PUBLIC SERVICE)**

and

**SARAH ANDREYCHUK, FRANCOIS BELLEHUMEUR, PAMELA BLAIKIE,  
NATASHA CAIRNS, ANGELA CIGLENECKI, VERONIKA COLNAR, RANDY  
DOUCET, KARA ERICKSON, JESSE FORCIER, VALÉRIE FORTIN, ROXANE  
GUEUTAL, MELVA ISHERWOOD, MILO JOHNSON, VALERIA LUEDEE, LAURIE  
LYNDEN, ANNETTE MARTIN, CRAIG MCKAY, ISABELLE METHOT,  
SAMANTHA OSYPCHUK, JANE DOE #14, WILNIVE PHANORD, ALEXANDRE  
RICHER LEVASSEUR, KATHLEEN SAWYER, TREVOR SCHEFFEL,  
(CORRECTIONAL SERVICE OF CANADA)**

and

**JORDAN ST-PIERRE, (COURTS ADMINISTRATION SERVICE)**

and

**BRIGITTE SURGUE, JANE DOE #15, (DEPARTMENT OF CANADIAN HERITAGE)**

and

**GHISLAIN CARDINAL, HEATHER HALLIDAY, PAUL MARTEN, CELINE  
RIVIER, NGOZI UKWU, JEANNINE BASTARACHE, JANE DOE #16, HAMID  
NAGHDIAN-VISHTEH, (DEPARTMENT OF FISHERIES AND OCEAN)**

and

**ISHMAEL GAY-LABBE, JANE DOE #17, LEANNE JAMES, (DEPARTMENT OF  
JUSTICE)**

and

**DANIELLE BARABE-BUSSIERES, (ELECTIONS CANADA)**

and

**TANYA DAECHERT, JANE DOE #18, FRANCOIS ARSENEAU, CHANTA  
AUTHIER, NATHALIE BENOIT, AERIE BIAFORE, ROCK BRIAND, AMAUD  
BRIEN THIFFAULT, SHARON CHIU, MICHEL DAIGLE, BRIGITTE DANIELS,  
LOUISE GAUDREAU, KARRIE GEVAERT, MARK GEVAERT, PETER  
IVERSEN, DERRIK LAMB, JANE DOE #19, ANNA MARINIC, DIVINE**

**MASABARAKIZA, JAMES MENDHAM, MICHELLE MARINA MICKO, JEAN RICHARD, STEPHANIE SENEAL, JANE DOE #20, RYAN SEWELL, KARI SMYTHE, OLIMPIA SOMESAN, LLOYD SWANSON, TYRONE WHITE, ELISSA WONG, JENNY ZAMBELAS, LI YANG ZHU, PATRICE LEVER, (EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA)**

**and**

**JANE DOE #21, BRIAN PHILIP CRENNAN, JANE DOE #22, BRADLEY DAVID HIGNELL, ANDREW KALTECK, DANA KELLETT, JOSÉE LOSIER, KRISTIN MENSCH, ELSA MOUANA, JANE DOE #23, JANE DOE #24, VALENTINA ZAGORENKO, (ENVIRONMENT AND CLIMATE CHANGE CANADA)**

**and**

**PIERRE TRUDEL, (EXPORT DEVELOPMENT CANADA)**

**and**

**STEPHEN ALAN COLLEY, (FEDERAL ECONOMIC DEVELOPMENT AGENCY FOR SOUTHERN ONTARIO)**

**and**

**VLADIMIR RASKOVIC, (GARDA SECURITY SCREEING INC)**

**and**

**MÉLANIE BORGIA, JONATHAN KYLE SMITH, DONNA STAINFLELD, ANNILA THARAKAN, RENEE MICHIKO UMEZUKI, (GLOBAL AFFAIRS CANADA)**

**and**

**DENNIS JOHNSON, (GLOBAL CONTAINER TERMINALS CANADA)**

**and**

**ALEXANDRE GUILBEAULT, TARA (MARIA) MCDONOUGH, FRANCE VANIER, (GOVERNMENT OF CANADA)**

**and**

**ALEX BRAUN, MARC LESCELLEUR-PAQUETTE, (HOUSE OF COMMONS)**

**and**

**AIMEE LEGAULT, (HUMAN RESOURCE BRANCH)**

**and**

**DORIN ANDREI BOBOC, JANE DOE #25, SOPHIE GUIMARD, ELISA HO, KATHY LEAL, CAROLINE LEGENDRE, DIANA VIDA, (IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA)**

**and**

**NATHALIE JOANNE GAUTHIER, (INDIGENOUS AND NORTHERN AFFAIRS CANADA)**

**and**

**CHRISTINE BIZIER, AMBER DAWN KLETZEL, VERONA LIPKA, KERRY SPEARS, (INDIGENOUS SERVICES CANADA)**

**and**

**SUN-HO PAUL JE, (INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA)**

**and**

**GILES ROY, (NATIONAL FILM BOARD OF CANADA)**

**and**

**RAY SILVER, MICHELLE DEDYULIN, LETITIA EAKINS, JULIE-ANNE KLEINSCHMIT, MARC-ANDRE OCTEAU, HUGUES SCHOLAERT, (NATIONAL RESEARCH COUNCIL CANADA)**

**and**

**FELIX BEAUCHAMP, (NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY)**

**and**

**JULIA MAY BROWN, CALEB LAM, STEPHANE LEBLANC, SERRYNA WHITESIDE, (NATURAL RESOURCES CANADA)**

**and**

**NICOLE HAWLEY, STEEVE L'ITALIEN, MARC LECOCQ, TONY MALLET, SANDRA MCKENZIE, (NAV CANADA)**

**and**

**MUHAMMAD ALI, (OFFICE OF THE AUDITOR GENERAL OF CANADA)**

**and**

**RYAN ROGERS, (ONTARIO NORTHLAND TRANSPORTATION COMMISSION)**

**and**

**THERESA STENE, MICHAEL DESSUREAULT, JOHN DOE #16, (PARK CANADA)**

**and**

**CHARLES-ALEXANDRE BEAUCHEMIN, BRETT OLIVER, (PARLIMENTARY PROTECTION SERVICE)**

**and**

**CAROLE DUFORD, (POLAR KNOWLEDGE CANADA)**

**and**

**JOANNE GABRIELLE DE MONTIGNY, IVANA ERIC, JANE DOE #26, SALYNA LEGARE, JANE DOE #27, ANGIE RICHARDSON, JANE DOE #28, (PUBLIC HEALTH AGENCY OF CANADA)**

**and**

**FAY ANNE BARBER, (PUBLIC SAFETY CANADA)**

**and**

**DENIS LANIEL, (PUBLIC SECTOR PENSION INVESTMENT BOARD)**

**and**

**KATHLEEN ELIZABETH BARRETTE, SARAH BEDARD, MARIO CONSTANTINEAU, KAREN FLEURY, BRENDA JAIN, MEGAN MARTIN, JANE DOE #29, ISABELLE PAQUETTE, RICHARD PARENT, ROGER ROBERT RICHARD, NICOLE INCENNES, CHRISTINE VESSIA, JANE DOE #30, PAMELA MCINTYRE, (PUBLIC SERVICES AND PROCUREMENT CANADA)**

**and**

**ISABELLE DENIS, (REGISTRAR OF THE SUPREME COURT OF CANADA)**

**and**

**JANE BARTMANOVICH, (ROYAL CANADIAN MINT)**

**and**

**NICOLE BRISSON, (SERVICE CANADA)**

and

**DENIS AUDET, MATHIEU ESSIAMBRE, ALAIN HART, ANDREA HOUGHTON,  
NATALIA KWIATEK, DANY LEVESQUE, DAVID MCCARTHY, PASCAL  
MICHAUD, MERVİ PENNANEN, TONYA SHORTILL, STEPHANIE TKACHUK,  
MARSHALL WRIGHT, (SHARED SERVICES CANADA)**

and

**EVE MARIE BLOUIN-HUDON, MARC-ANTOINE BOUCHER, CHRISTOPHER  
HUSZAR, (STATISTICS CANADA)**

and

**STEVE YOUNG, (TELESTAT CANADA)**

and

**NATHAN ALIGIZAKIS, STEPHEN DANIEL, ALAIN DOUCHANT, KRYSTAL  
MCCOLGAN, DEBBIE MENARD, CLARENCE RUTTLE, DOROTHY BARRON,  
ROBERT MCLACHLAN, (TRANSPORT CANADA)**

and

**SCOTT ERROLL HENDERSON, DENIS THERIAULT, (TREASURY BOARD OF  
CANADA)**

and

**JOSIANE BROUILLARD, ALEXANDRA MCGRATH, NATHALIE STE-CROIX,  
JANE DOE #31, (VETERANS AFFAIRS CANADA)**

and

**OLUBUSAYO (BUSAYO) AYENI, JOHN DOE #17, CYNTHIA BAUMAN, JANE DOE  
#32, LAURA CRYSTAL BROWN, KE(JERRY) CAI, NICOLINO CAMPANELLI,  
DONALD KEITH CAMPBELL, COLLEEN CARDER, KATHY CARRIERE,  
MELISSA CARSON, DAVID CLARK, BRADLEY CLERMONT, LAURIE COELHO,  
ESTEE COSTA, ANTONIO DA SILVA, BRENDA DARVILL, PATRICK DAVIDSON,  
EUGENEDAVIS, LEAH DAWSON, MARC FONTAINE, JACQUELINE GENAILLE,  
ELDON GOOSSEN, JOYCE GREENAWAY, LORI HAND, DARREN HAY, KRISTA  
IMIOLA, CATHERINE KANUKA, DONNA KELLY, BENJAMIN LEHTO, ANTHONY  
LEON, AKEMI MATSUMIYA, JANE DOE #33, JANE DOE #34, JANE DOE #35,  
ANNE MARIE MCQUAID-SNIDER, LINO MULA, PAMELA OPERSKO, GABRIEL  
PAQUET CHRISTINE PAQUETTE, CAROLIN JACQUELINE PARIS, JODIE  
PRICE, KEVIN PRICE, GIUSEPPE QUADRINI, SAARAH QUAMINA, SHAWN  
ROSSITER, ANTHONY RUSH, ANTHONY SHATZKO, CHARLES SILVA, RYAN  
SIMKO, NORMAN SIROIS, BRANDON SMITH, CATHARINE SPIAK, SANDRA**

**STROUD, ANITA TALARIAN, DARYL TOONK, RYAN TOWERS, LEANNE VERBEEM, ERAN VOOYS, ROBERT WAGNER, JASON WEATHERALL, MELANIE BURCH, STEVEN COLE, TONI DOWNIE, AMBER RICARD, JODI STAMMIS, (CANADA POST)**

**and**

**NICOLAS BELL, JOHN DOE #18, JOHN DOE #19, JANE DOE #36, JOHN DOE #20, PAOLA DI MADDALENA, NATHAN DODDS, JOHN DOE #21, JANE DOE #37, NUNZIO GIOLTI, MARIO GIRARD, JANE DOE #38, JANE DOE #39, YOU-HUI KIM, JANE DOE #40, SEBASTIAN KORAK, ADA LAI, MIRIUM LO, MELANIE MAILLOUX, CAROLYN MUIR, PATRIZIA PABA, RADU RAUTESCU, ALDO REANO, JACQUELINE ELISABETH ROBINSON, JOHN DOE #22, FREDERICK ROY, JOHN DOE #23, TAEKO SHIMAMURA, JASON SISK, BEATA SOSIN, JOEL SZOSTAK, MARIO TCHEON, REBECCA SUE THIESSEN, JANE DOE #41, MAUREEN YEARWOOD, (AIR CANADA)**

**and**

**JOHN DOE #24, JOSÉE DEMEULE, JACQUELINE GAMBLE, DOMENIC GIANCOLA, SADNA KASSAN, MARCUS STEINER, CHRISTINA TRUDEAU, (AIR CANADA JAZZ)**

**and**

**JOHN DOE #25, EMILIE DESPRES, (AIR INUIT)**

**and**

**REJEAN NANTEL, (BANK OF MONTREAL)**

**and**

**LANCE VICTOR SCHIIKA, (BC COAST PILOTS LTD)**

**and**

**ELIZABETH GODLER, (BC FERRIES)**

**and**

**JOHN DOE #26, JANE DOE #42, TAMARA DAVIDSON, JANE DOE #43, KARTER CUTHBERT FELDHOFF DE LA NUEZ, JEFFREY MICHAEL JOSEPH GOUDREAU, BRAD HOMEWOOD, CHAD HOMEWOOD, CHARLES MICHAEL JEFFERSON, JOHN DOE #27, JANICE LARAINÉ KRISTMANSON, JANE DOE #44, DARREN LOUIS LAGIMODIERE, JOHN DOE #28, JOHN DOE #29, MIRKO MARAS, JOHN DOE #30, JOHN DOE #31, JOHN DOE #32, JOHN DOE #33, JOHN DOE #34, JANE DOE #45, JOHN DOE #35, KENDAL STACE-SMITH, JOHN DOE**

**#36, STEVE HEATLEY, (BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION)**

**and**

**PAUL VEERMAN, (BROOKFIELD GLOBAL INTEGRATED SOLUTIONS)**

**and**

**MARK BARRON, TREVOR BAZILEWICH, JOHN DOE #37, BRIAN DEKKER, JOHN GAETZ, ERNEST GEORGESON, KYLE KORTKO, RICHARD LETAIN, JOHN DOE #38, DALE ROBERT ROSS, (CANADIAN NATIONAL RAILWAY)**

**and**

**TIM CASHMORE, ROB GEBERT, MICHEAL ROGER MAILHIOT, (CANADIAN PACIFIC RAILWAY)**

**and**

**KARIN LUTZ, (DP WORLD)**

**and**

**CRYSTAL SMEENK, (FARM CREDIT CANADA)**

**and**

**SYLVIE M.F. GELINAS, SUSIE MATIAS, STEW WILLIAMS, (G4S AIRPORT SCREENING)**

**and**

**SHAWN CORMAN, (GEOTECH AVIATION)**

**and**

**JUERGEN BRUSCHKEWITZ, ANDRE DEVEAUX, BRYAN FIGUEIRA, DAVID SPRATT, GUY HOCKING, SEAN GRANT, (GREATER TORONTO AIRPORTS AUTHORITY)**

**and**

**DUSTIN BLAIR, (KELOWNA AIRPORT FIRE FIGHTER)**

**and**

**HANS-PETER LIECHTI, (NATIONAL ART CENTRE)**

and

**BRADLEY CURRUTHERS, LANA DOUGLAS, ERIC DUPUIS, SHERRI ELLIOT,  
ROBEN IVENS, JANE DOE #46, LUKE VAN HOEKELLEN, KURT WATSON,  
(ONTARIO POWER GENERATION)**

and

**THERESA STENE, MICHAEL DESSUREAULT, ADAM PIDWERBESKI, (PARKS  
CANADA)**

and

**JOHN DOE #39, (PACIFIC PILOTAGE AUTHORITY)**

and

**ANGELA GROSS, (PUROLATOR INC.)**

and

**GERHARD GEERTSEMA, (QUESTRAL HELICOPTERS)**

and

**AMANDA RANDALL, JANE DOE #47, FRANK VERI, (RBC ROYAL BANK)**

and

**JAMES (JED) FORSMAN, (RISE AIR)**

and

**JANE DOE #48, (ROGERS COMMUNICATIONS INC)**

and

**JERRILYNN REBEYKA, (SASKTEL)**

and

**EILEEN FAHLMAN, MARY TREICHEL, (SCOTIABANK)**

and

**JUDAH GAELAN CUMMINS, (SEASPAN VICTORIA DOCKS)**

and



**DARIN WATSON, (SHAW)**

**and**

**RICHARD MICHAEL ALAN TABAK, (SKYNORTH AIR LTD)**

**and**

**DEBORAH BOARDMAN, MICHAEL BRIGHAM, (VIA RAIL CANADA)**

**and**

**KEVIN SCOTT ROUTLY, (WASAYA AIRWAYS)**

**and**

**SAILOR, (WATERFRONT EMPLOYERS OF BRITISH COLUMBIA)**

**and**

**BAYDA, JAMIE ELLIOTT, JOHN DOE #40, RANDALL MENGERING,  
SAMANTHA NICASTRO, VERONICA STEPHENS, JANE DOE #49, (WESTJET)**

**and**

**MELVIN GEREIN, (WESTSHORE TERMINALS)**

**Plaintiffs**

**and**

**HIS MAJESTY THE KING, PRIME MINISTER JUSTIN TRUDEAU, DEPUTY  
PRIME MINISTER AND MINISTER OF FINANCE CHRYSTIA FREELAND, CHIEF  
MEDICAL OFFICER TERESA TAM, MINISTER OF TRANSPORT OMAR  
ALGHABRA, DEPUTY MINISTER OF PUBLIC SAFETY MARCO MENDICINO,  
JOHNS AND JANES DOE**

**Defendants**

**ORDER AND REASONS**

I. Overview

[1] The Defendants have brought a motion pursuant to Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-106 [Rules] to strike the Plaintiffs' Statement of Claim in its entirety, without leave to amend.

[2] The Statement of Claim was filed on May 30, 2022. The Plaintiffs comprise approximately 600 individuals who allege they suffered harm as a result of the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* issued by the Treasury Board of Canada on October 6, 2021 [TB Policy], and the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61* issued by Transport Canada on April 24, 2022 [Interim Order].

[3] The Plaintiffs are current or former employees of the Government of Canada, federal Crown corporations, and federally-regulated businesses or organizations. The precise circumstances of the Plaintiffs' employment are not pleaded in the Statement of Claim.

[4] Unusually, the style of cause groups the Plaintiffs by their employers. For example, the first group of Plaintiffs is identified as employed by the Royal Canadian Mounted Police; the second as employed by the Department of National Defence; the third as employed by the Canada Border Services Agency; and so on.

[5] There are numerous groups of Plaintiffs identified as employees of a wide variety of federal government institutions and Crown corporations. Other Plaintiffs are identified as employees of federally-regulated businesses or organizations such as Air Canada, Bank of Montreal, BC Ferries, Canadian National Railway, Ontario Power Generation, Purolator, and Rogers Communications.

[6] According to the Defendants, approximately two-thirds of the Plaintiffs appear to be employed within the Core Public Administration [CPA], as defined in the *Financial Administration Act*, RSC 1985, c F-11, s 11(1) and Schedules I, IV [FAA]. The Defendants say these Plaintiffs' claims are barred by s 236 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [FPSLRA].

[7] The remaining one-third of the Plaintiffs appear to fall within two other categories: employees of federal Crown corporations and employees of businesses or organizations that operate in a variety of federally-regulated sectors, principally transportation, telecommunications, logistics, finance, and courier services. The Defendants do not dispute the Court's potential jurisdiction over the claims brought by these Plaintiffs, but nevertheless maintain that the Statement of Claim fails to disclose any reasonable causes of action.

[8] With respect to those Plaintiffs who are subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety without leave to amend. With respect to those Plaintiffs who are not subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety, but with leave to amend.

## II. Issues

[9] The issues raised by the Defendants' motion are whether the Statement of Claim should be struck and, if so, whether leave should be granted to amend the pleading.

### A. *Plaintiffs Subject to the FPSLRA*

[10] The Plaintiffs who are employed within the organizations listed in Schedule A hereto are members of the CPA, as defined in the FAA. Persons employed within the CPA are subject to s 236 of the FPSLRA. This provision reads as follows:

#### **No Right of Action**

##### **Disputes relating to employment**

**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.

##### **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.

[...]

#### **Absence de droit d'action**

##### **Différend lié à l'emploi**

**236 (1)** Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

##### **Application**

**(2)** Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.

[...]

[11] The right to grieve is available to employees as defined in s 206(1) of the FPSLRA. Both unionized and non-unionized employees may file a grievance. The Defendants say that the Plaintiffs' right to grieve encompasses the allegations contained in the Statement of Claim, because they concern their "terms and conditions of employment", as that expression is used in s 208 of the FPSLRA:

**Right of employee**

**208 (1)** Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved (a) by the interpretation or application, in respect of the employee, of

(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or

(ii) a provision of a collective agreement or an arbitral award; or

(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.

**Droit du fonctionnaire**

**208 (1)** Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé a) par l'interprétation ou l'application à son égard :

(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,

(ii) soit de toute disposition d'une convention collective ou d'une décision arbitrale;

b) par suite de tout fait portant atteinte à ses conditions d'emploi.

[12] In *Hudson v Canada*, 2022 FC 694 [*Hudson*], I granted the defendant's motion to strike the statement of claim without leave to amend on the ground that the plaintiffs' claims were barred by s 236 of the FPSLRA. The analysis that follows is adapted from the one I applied in *Hudson*.

[13] Subsection 236(1) of the FPSLRA has been recognized as an “explicit ouster” of the courts’ jurisdiction (*Bron v Canada (Attorney General)*, 2010 ONCA 71 [*Bron*] at para 4). Once it is established that a matter must be the subject of a grievance, the grievance process cannot be circumvented, even for reasons of efficiency, by relying on a court’s residual jurisdiction (*Bouchard c Procureur général du Canada*, 2019 QCCA 2067).

[14] Subsection 236(1) of the FPSLRA was enacted in 2005 in direct response to the Supreme Court of Canada’s decisions in *Vaughan v Canada*, 2005 SCC 11 [*Vaughan*] and *Weber v Ontario Hydro*, [1995] 2 SCR 929 [*Weber*] (see *Attorney General of Canada, on behalf of Correctional Service of Canada v Robichaud and MacKinnon*, 2013 NBCA 3 [*Robichaud*] at para 3). *Vaughan* and *Weber* stand for the proposition that courts should usually decline to exercise any residual jurisdiction they may have to intervene in employment-related matters. Before a court will intervene in an employment-related dispute, there must be a gap in labour adjudication that causes a “real deprivation of ultimate remedy” (*Weber* at para 57).

[15] This principle was succinctly stated by the Federal Court of Appeal in *Canada v Greenwood*, 2021 FCA 186 [*Greenwood*] at paragraph 130 (leave to appeal ref’d, 2022 CanLII 19060 (SCC)):

*Vaughan* and the cases that apply it hold that, in most instances, claims from employees subject to federal public sector labour legislation in respect of matters that are not adjudicable before the FPSLREB should not be heard by the courts, as this would constitute an impermissible incursion into the statutory scheme. However, an exception to this general rule allows courts to hear claims that may only be grieved under internal grievance mechanisms if the internal mechanisms are incapable of providing effective redress.

[16] The Defendants say the effect of s 236 of the FPSLRA is to remove any residual discretion this Court may have to intervene in labour disputes involving employees with grievance rights. The Defendants argue that s 236 serves to revoke any statutory grant of jurisdiction this Court might otherwise possess.

[17] Following the enactment of s 236 of the FPSLRA, it appears that no court has intervened in a labour dispute that involves employees who possess grievance rights. The most one can find in the jurisprudence is *obiter* commentary suggesting that an exception might be found if the integrity of the grievance procedure is shown to be compromised based on the evidence presented in a particular case (*Lebrasseur v Canada*, 2007 FCA 330 [*Lebrasseur*]). The onus of establishing that there is room for the exercise of a court's residual discretion lies with a plaintiff (*Lebrasseur* at paras 18-19).

[18] In *Robichaud*, the Court of Appeal of New Brunswick suggested that if the residual discretion to hear a labour dispute continues to exist despite s 236 of the FPSLRA, it will be only in "exceptional" cases: "The truly problematic cases will be those where the grievance process is itself 'corrupt'" (at para 10).

[19] While evidence is not generally admissible on a motion to strike, it may be admitted where a jurisdictional question arises. Evidence as to the nature and efficacy of the suggested alternate processes is necessary to provide a basis for the Court's determination of whether it ought to decline jurisdiction in favour of the alternate administrative remedies (*Greenwood* at paras 95-96).

[20] The Defendants have adduced evidence in support of their motion to strike, but this consists only of an affidavit appending the relevant policy documents as exhibits. No evidence has been tendered respecting “the nature and efficacy of the suggested alternate processes”, as contemplated in *Greenwood* (at para 95).

[21] The Defendants maintain that it is sufficient for them to invoke the FAA to demonstrate that the claims of approximately two-thirds of the Plaintiffs are barred by s 236 of the FPSLRA. The Defendants note that the Plaintiffs do not allege the available internal grievance process is “corrupt” or incapable of providing redress. Indeed, the Statement of Claim is silent regarding the potential availability or adequacy of alternative remedies.

[22] It would have been helpful for the Defendants to provide evidence, or alternatively detailed legal submissions, regarding which of the Plaintiffs are subject to s 236 of the FPSLRA and which are not. Instead, considerable time was expended during the hearing of this motion reviewing the Schedules to the FAA in order to determine which groups of Plaintiffs are employed within the CPA. Following the hearing of the motion, the Court directed the parties to confirm the accuracy of the lists of employers that appear in Schedules A and B hereto. Schedules A and B were subsequently approved by the parties through their counsel. To their credit, this was done on consent.

[23] According to paragraph 6 of the Statement of Claim:

The Plaintiffs are all either:



- (a) Federal (former) Employees of various agencies and Ministries of the Government of Canada and servants, officials, and/or agents of the Crown;
- (b) Employees of Federal Crown Corporations; and
- (c) Employees of federally regulated sectors;

As set out and categorized in the style of cause in the within claim.

[24] While this manner of pleading is unorthodox, it is sufficiently clear. In effect, the categories of employment disclosed in the style of cause are incorporated by reference into the body of the pleading. For the purposes of the Defendants' motion to strike, the Plaintiffs' assertions respecting their places of employment, as identified in the style of cause, must be assumed to be true.

[25] Taken at face value, I am satisfied the pleading confirms that the majority of the Plaintiffs are employed within the CPA. Their claims are therefore barred by s 236 of the FPSLRA.

[26] Before determining whether to exercise any discretion to consider a proceeding, the Court must first be satisfied that the grievance process is not available and would not provide any remedy (*Murphy v Canada (Attorney General)*, 2022 FC 146 [*Murphy*], at para 32, citing *Public Service Alliance of Canada v Canada (Attorney General)*, 2020 FC 481). As Prothonotary (now Associate Judge) Mireille Tabib explained in *Murphy* in paragraph 33:

Consequently, and as also suggested in *Lebrasseur v Canada*, 2007 FCA 330, at para 19, once it is established that a person has recourse to a statutory grievance scheme, it is up to the applicant, and not the respondent seeking to have the application dismissed as premature, to establish that the procedure is clearly not available. That is the necessary conclusion, since concluding otherwise and allowing access to the courts whenever the admissibility of a

grievance is challenged would have the effect of bypassing the exhaustive scheme Parliament intended. It would amount to asking the Court to prejudge the admissibility of a grievance and to usurp the role of the grievance authority in respect of the interpretation and application of the provisions governing the grievance procedure.

[27] Associate Judge Tabib's ruling in *Murphy* was recently upheld by Justice Vanessa Rochester in *Murphy v Canada (Attorney General)*, 2023 FC 57 [*Murphy (Appeal)*].

[28] Even at this preliminary stage, the onus is on the Plaintiffs to establish the Court's jurisdiction over the claims advanced in the Statement of Claim (*Hudson* at para 91; *Murphy (Appeal)* at para 82). I am not persuaded that the Plaintiffs who are employed within the CPA have done so.

[29] On a motion to strike, a plaintiff will satisfy the requirement that the pleadings disclose a reasonable cause of action unless, assuming all facts pleaded to be true, it is plain and obvious that the plaintiff's claim cannot succeed (*Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57 at para 63). However, this does not mean that the Plaintiffs' assertions respecting this Court's jurisdiction must be assumed to be true. As Justice Rochester explained in *Murphy (Appeal)* at paragraph 86:

It is clear that on a motion to strike an application for judicial review, the facts asserted by the applicant in its Notice of Application must be presumed to be true (*Prairies Tubulars (2015) Inc v Canada (Border Services Agency)*, 2018 FC 991 at para 26 and the cases cited therein). This presumption does not extend to the arguments that an applicant may make or any evidence they may submit in response to a motion to strike the Notice of Application. Concluding otherwise would run counter to the teaching of the Federal Court of Appeal in [*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013

FCA 250] and have the effect of rendering such motions to strike incapable of success, thereby hampering the Court's power to restrain the misuse or abuse of its process (*JP Morgan* at para 48).

[30] Plaintiffs who enjoy statutory grievance rights and allege they have been harmed by the TB Policy or Interim Order must exhaust the grievance process before seeking redress in this Court (*Murphy (Appeal)* at paras 75-76). As I held in *Wojdan v Canada (Attorney General)*, 2021 FC 1341 at paragraph 31, permitting premature access to the Court:

[...] would have the effect of undermining the labour grievance process enacted by Parliament. The Court would be preempting the primary role of labour adjudicators in determining questions that pertain to the application of the Vaccination Policy, the extent to which it may be said to infringe employees' rights, whether any infringement can be justified on the grounds of public health, and if not, whether the Applicants are entitled to financial or other compensation. Premature judicial intervention would not be complementary to fundamental principles of labour relations, but destructive of them.

[31] The Plaintiffs argue that their claims are not barred by s 236 of the FPSLRA, because some of the remedies they seek are beyond the powers of a labour adjudicator to grant. They emphasize the declaratory relief sought in the Statement of Claim regarding the constitutional validity of the TB Policy and Interim Order, citing ss 91 and 92(10) of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5 and the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [Charter].

[32] The Plaintiffs cannot escape the operation of s 236 of the FPSLRA by pleading that their claims are not ordinary workplace disputes, or that some of the remedies they seek are not

available through the internal grievance process. As the Ontario Court of Appeal held in *Bron*, the right to grieve is “very broad” and “[a]lmost all employment-related disputes can be grieved under s 208 of the FPSLRA” (at paras 14-15).

[33] In *Ebadi v Canada*, 2022 FC 834 [*Ebadi*], the plaintiff advanced the argument (at para 35) that:

[...] *Bron* maintains the court’s residual discretion to hear a claim when a grievance procedure does not provide an adequate remedy. Further, the Court may assume jurisdiction over claims that, in the usual course, may be barred by section 236, where there is a gap in the statutory scheme, where the events produce a difficulty unforeseen by the scheme, or where “no adequate alternative remedy already exists,” as set out in *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v Canadian Pacific Ltd.*, [1996] 2 SCR 495 at para 8 [*Brotherhood*].

[34] Justice Henry Brown rejected this argument, holding that alleged Charter violations may be addressed through the grievance process under the FPSLRA (*Ebadi* at 43-44, citing *Green v Canada (Border Services Agency)*, 2018 FC 414 at paras 10-11). He also affirmed that the grievance procedure operates “in lieu of any right of action”, even when a plaintiff’s preferred remedy (in that case third-party adjudication) is not available (at paras 49-50):

In accordance with the analysis in *Green*, the Plaintiff could have challenged the Harassment Policy and Grievance Procedure themselves under sections 208 and 236 of the *FPSRLA*. In addition and in my respectful view, the statutory bar to court litigation set out in subsection 236(2) pre-empts any cause of action in this Court notwithstanding there is no access to third party-adjudication.

Here, the ONCA’s reasoning in *Bron* is again relevant:

[32] Finally, the appellant argues that a superior court must maintain an inherent jurisdiction despite whatever language may be used in s. 236. He relies on *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd.*, 1996 CanLII 215 (SCC), [1996] 2 S.C.R. 495, [1996] S.C.J. No. 42, at para. 8. As I read that case, it stands for the proposition that a superior court has inherent jurisdiction to provide a remedy where the relevant statutory scheme does not speak to the circumstances at hand. In other words, the court's inherent jurisdiction can fill remedial lacunae in legislation. There is no legislative gap here. Section 236 speaks directly to workplace complaints that are grievable under the legislation. For those complaints, even when there is no access to third-party adjudication, the grievance procedure operates "in lieu of any right of action". [Emphasis added]

[35] Canadian courts have consistently found that harms allegedly suffered by employees as a result of their employers' policies and practices in response to the COVID-19 pandemic are properly addressed by way of grievance, in both unionized and non-unionized workplaces (see *National Organized Workers Union v Sinai Health System*, 2022 ONCA 802 [*Sinai Health*] at para 39 and the cases cited therein). As the Court of Appeal for Ontario held in *Sinai Health* (at para 38):

At its core, the harm at issue was the potential for being placed on leave without pay or terminated under the Policy, if an employee chose to remain unvaccinated. The appellant's members were not being forced to be vaccinated, denied bodily autonomy, or denied the right to give informed consent to vaccination. They could choose to be vaccinated or not. If they chose not to be vaccinated, they faced being placed on unpaid leave or having their employment terminated. This potential harm is fundamentally related to employment. It is harm which an arbitrator has the tools to remedy. If the appellant were to prevail in the arbitration, an arbitrator could order reinstatement without loss of seniority and compensation for lost wages. There is no palpable and overriding error in the application judge's conclusion that there was no remedial gap in the labour relations regime that warranted the exercise of the Superior Court's residual jurisdiction.

[36] The Plaintiffs who are subject to s 236 of the FPSLRA have not demonstrated that their circumstances constitute “exceptional cases”, or that there is a gap in labour adjudication that causes a “real deprivation of ultimate remedy” (*Weber* at para 57; *Vaughan* at paras 22, 39). For these Plaintiffs, the Statement of Claim must be struck in its entirety without leave to amend.

B. *Plaintiffs Not Subject to the FPSLRA*

[37] The Plaintiffs who are employed within the organizations listed in Schedule B hereto are not members of the CPA, as defined in the FAA. The Defendants concede that these Plaintiffs’ claims potentially fall within this Court’s jurisdiction.

[38] The Defendants nevertheless maintain that the Statement of Claim is drafted so poorly that it fails to disclose any reasonable causes of action. They therefore argue that the Statement of Claim must be struck in its entirety without leave to amend, regardless of whether or not the Plaintiffs are subject to s 236 of the FPSLRA.

[39] The Rules that govern pleadings in this Court provide in relevant part:

**Form of pleadings**

**173 (1)** Pleadings shall be divided into consecutively numbered paragraphs.

**Allegations set out separately**

**(2)** Every allegation in a pleading shall, as far as is practicable, be set out in a separate paragraph.

**Modalités de forme**

**173 (1)** Les actes de procédure sont divisés en paragraphes numérotés consécutivement.

**Présentation**

**(2)** Dans la mesure du possible, chaque prétention contenue dans un

**Material facts**

**174** Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

[...]

**Particulars**

**181 (1)** A pleading shall contain particulars of every allegation contained therein, including

**(a)** particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence; and

**(b)** particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.

acte de procédure fait l'objet d'un paragraphe distinct.

**Exposé des faits**

**174** Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.

[...]

**Précisions**

**181 (1)** L'acte de procédure contient des précisions sur chaque allégation, notamment :

**a)** des précisions sur les fausses déclarations, fraudes, abus de confiance, manquements délibérés ou influences indues reprochés;

**b)** des précisions sur toute allégation portant sur l'état mental d'une personne, tel un déséquilibre mental, une incapacité mentale ou une intention malicieuse ou frauduleuse.

[40] It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and the relief sought (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 [*Mancuso*] at para 16). Pleadings play an important role in providing notice and defining the issues to be tried.

[41] The Court and defendants cannot be left to speculate as to how the facts might be variously arranged to support various causes of action. If the Court were to allow parties to plead

bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues (*Mancuso* at paras 16-17).

[42] A plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability. Plaintiffs cannot file inadequate pleadings and rely on a defendant to request particulars, nor can they supplement insufficient pleadings to make them sufficient through particulars (*Mancuso* at paras 19-20).

[43] To establish a reasonable cause of action, a statement of claim must “(1) allege facts that are capable of giving rise to a cause of action; (2) indicate the nature of the action which is to be founded on those facts; and (3) indicate the relief sought, which must be of a type which the action could produce and the court has jurisdiction to grant” (*Zbarsky v Canada*, 2022 FC 195 at para 13, citing *Bérubé v Canada*, 2009 FC 43 at para 24, aff’d, 2010 FCA 276).

[44] As Justice Beth Allen of the Ontario Superior Court of Justice observed in *Guillaume v Toronto (City)*, 2010 ONSC 5045 (at para 54):

The importance of clearly drafted and structured pleadings does not require much explanation. Pleadings should be drafted with sufficient clarity and precision so as to give the other party fair notice of the case they are required to meet and of the remedies being sought. The role of pleadings is to assist the court in its quest for the truth. Clearly, confusing, run on and poorly organized pleadings cannot accomplish those goals. Courts have held a pleading may be struck out on the grounds it is unintelligible and lacks clarity [...]



[45] The Statement of Claim in this proceeding is almost 50 pages long. Nine pages are devoted to the remedies sought. There are allegations of constitutional invalidity and criminal culpability, broad assertions of scientific knowledge regarding the COVID-19 pandemic, and a claim that some of the public health measures instituted by the Government of Canada amounted to crimes against humanity. Some of the requested remedies are unavailable in a civil action, including administrative declarations and injunctive relief.

[46] For example, the Statement of Claim seeks a declaration that “vaccine passports” violate the Plaintiffs’ right to move freely within Canada, or to enter and leave Canada, contrary to s 6 of the Charter. However, the pleading does not particularize any facts suggesting that any of the Plaintiffs were prevented from travelling either within or outside Canada.

[47] The Statement of Claim includes claims for re-instatement of lost employment, payment of back pay, and various benefits. But the pleading is devoid of any material facts pertaining to the personal circumstances of any of the Plaintiffs’ employment.

[48] The Statement of Claim alleges that the Defendants have “knowingly engaged in the misfeasance of their public office, and abuse of authority, through their public office” by “[e]xercising a coercive power to force unwanted “vaccination”” under the TB Policy and Interim Order. However, the pleading fails to engage with the substance of the TB Policy and Interim Order, which do not force vaccination and also offer various exemptions and accommodations.

[49] In *Turmel v Canada*, 2021 FC 1095, aff'd, 2022 FCA 166, Justice Russel Zinn upheld a decision of Prothonotary (now Justice) Mandy Aylen to strike a statement of claim challenging certain measures implemented by the Government of Canada to address the COVID-19 pandemic. The plaintiff in that case alleged violations of Charter rights, but neglected to plead material facts or to particularize the alleged Charter infringements. As in this case, the pleading consisted largely of bare assertions.

[50] The Defendants say the Statement of Claim in this proceeding is comparable to the one filed by the same counsel on behalf of the plaintiffs in *Action4Canada v British Columbia (Attorney General)*, 2022 BCSC 1507 [*Action4Canada*]. In that case, the plaintiffs sought damages and other relief from various government entities and employees for harms they allegedly suffered as a result of various restrictions instituted in British Columbia due to the COVID-19 pandemic (*Action4Canada* at para 1).

[51] Justice Alan Ross of the British Columbia Supreme Court granted the defendants' motion to strike the pleading in its entirety, holding as follows (*Action4Canada* at paras 45-48):

[...] the [Notice of Civil Claim [NOCC]], in its current form, is not a pleading that can properly be answered by a responsive pleading. It describes wide-ranging global conspiracies that may, or may not, have influenced either the federal or the provincial governments. It seeks rulings of the court on issues of science. In addition, it includes improper allegations, including criminal conduct and "crimes against humanity". In my opinion, it is "bad beyond argument".

[46] I further find that it is not a document that the court can mend by striking portions. I find that this NOCC is analogous to the Statement of Claim considered by Justice K. Smith (as he then

was) in *Homalco Indian Band v. British Columbia* (1998), 25 C.P.C. (4th) 107 (B.C.S.C.) [*Homalco*]. He wrote:

[11] In my view, the statement of claim is an embarrassing pleading. It contains much that appears to be unnecessary. As well, it is constructed in a manner calculated to confuse the defendants and to make it extremely difficult, if not impossible, to answer. As a result, it is prejudicial. Any attempt to reform it by striking out portions and by amending other portions is likely to result in more confusion as to the real issues. ...

[47] As was the case in *Homalco*, attempting to bring the NOCC into compliance with the Rules by piecemeal striking and amending would invite more confusion and greater expenditure of the resources of all concerned.

[48] I find that the NOCC is prolix. It is not a proper pleading that can be answered by the defendants. It cannot be mended. Given that finding, I have no hesitation in ruling that it must be struck in whole.

[52] The Statement of Claim in this proceeding is similarly “bad beyond argument”. For substantially the same reasons identified by Justice Ross in *Action4Canada*, it must be struck in its entirety.

[53] Justice Ross granted leave to the plaintiffs in *Action4Canada* to amend their pleading. However, he specified that numerous claims, some of which are also advanced in the present proceeding, are improper in a civil action (*Action4Canada* at paras 52-53). These include allegations of criminal behaviour, broad declarations respecting the current state of medical and scientific knowledge, and a declaration that administering medical treatment without informed consent is a crime against humanity.

[54] To this list of impermissible claims must be added the remedies sought in paragraph 4 of the Statement of Claim, which may be obtained only on judicial review and not by action (see *Wojdan v Canada*, 2021 FC 1244):

(a) An interim stay/injunction of the Federal “vaccine mandates” and “passports” *nunc pro tunc*, effective the day before they were announced and/or implemented;

(b) A final stay/injunction of the Federal “vaccine mandates” and “passports” *nunc pro tunc*, effective the day before they were announced and/or implemented.

[55] For those Plaintiffs who are employed outside the federal public administration, *e.g.*, with airlines, banks, transportation companies, *etc.*, any amended pleading will have to allege sufficient material facts to provide a basis for the federal Crown’s liability.

[56] The Plaintiffs who are not subject to s 236 of the FPSLRA have standing to question whether the TB Policy and Interim Order infringed their rights. There is a prospect that the Plaintiffs could put forward a valid claim that certain COVID-related health measures instituted by the Government of Canada contravened their Charter rights. It is possible that other valid claims may exist.

[57] It will be for the Plaintiffs to plead those causes of action in accordance with the Rules. The claims must be framed in a manner that is intelligible and allows the Defendants to know the case they have to meet. The claims must also be confined to matters that are capable of adjudication by this Court, and seek relief this Court is capable of granting (*Action4Canada* at para 71).

### III. Conclusion

[58] The Plaintiffs who are employed within the CPA have not established that the available internal recourse mechanisms are incapable of providing them with adequate redress. This Court is therefore without jurisdiction to determine the claims advanced in the Statement of Claim, or should decline to exercise any residual discretion it may have. For those Plaintiffs who are subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety without leave to amend.

[59] For those Plaintiffs who are not subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety, but with leave to amend. Should the Plaintiffs who are not subject to s 236 of the FPSLRA wish to proceed with a civil action respecting the TB Policy and Interim Order, they must plead their causes of action in accordance with the Rules. The claims must be framed in a manner that is intelligible and allows the Defendants to know the case they have to meet. The claims must also be confined to matters that are capable of adjudication by this Court, and seek relief this Court is capable of granting.

**ORDER****THIS COURT ORDERS that:**

1. The Statement of Claim is struck in its entirety without leave to amend in respect of all Plaintiffs who are subject to s 236 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2.
2. For the remaining Plaintiffs, the Statement of Claim is struck in its entirety with leave to amend in accordance with the Reasons that accompany this Order.
3. Costs are awarded to the Defendants, payable forthwith and in any event of the cause, in the all-inclusive sum of \$5,000.

“Simon Fothergill”

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Judge

## Schedule “A”

### PLAINTIFFS WHO ARE MEMBERS OF THE CORE PUBLIC ADMINISTRATION

Persons employed within the following organizations and who therefore have grievance rights under the *Federal Public Sector Labour Relations Act* (Schedule I, Schedule IV and Schedule V of the *Financial Administration Act*):

- Atlantic Canada Opportunities Agency
- Canada Border Services Agency
- Canada Revenue Agency
- Canada School of Public Service
- Canadian Coast Guard (Department of Fisheries and Oceans)
- Canadian Food Inspection Agency\*
- Canadian Forestry Service (Department of Natural Resources)
- Canadian Institutes of Health Research\*
- Canadian Nuclear Safety Commission\*
- Canadian Radio-television and Telecommunications Commission
- Canada Revenue Agency\*
- Canadian Security Intelligence Service\*
- Core Public Service
- Canadian Space Agency
- Correctional Service of Canada
- Courts Administration Service
- Department of Agriculture and Agri-Food
- Department of Canadian Heritage
- Department of Employment and Social Development
- Department of Fisheries and Oceans
- Department of Justice
- Department of National Defence
- Department of Natural Resources
- Department of Transport
- Department of Veterans Affairs
- Elections Canada (“Office of the Chief Electoral Officer” and “The portion of the federal public administration in the Office of the Chief Electoral Officer in which the employees referred to in section 509.3 of the Canada Elections Act occupy their positions”)
- Environment and Climate Change Canada (Department of the Environment)
- Federal Economic Development Agency for Southern Ontario
- Global Affairs Canada (Department of Foreign Affairs, Trade and Development)
- Government of Canada

- Immigration, Refugees and Citizenship Canada (Department of Citizenship and Immigration)
- Indigenous and Northern Affairs Canada (Department of Crown-Indigenous Relations and Northern Affairs)
- Indigenous Services Canada (Department of Indigenous Services)
- Innovation, Science and Economic Development Canada
- National Film Board of Canada (National Film Board)\*
- National Research Council Canada\*
- National Security and Intelligence Review Agency (National Security and Intelligence Review Agency Secretariat)\*
- Office of the Auditor General of Canada\*
- Parks Canada\*
- Polar Knowledge Canada (Canadian High Arctic Research Station)\*
- Public Health Agency of Canada
- Public Safety Canada (Department of Public Safety and Emergency Preparedness)
- Public Services and Procurement Canada
- Royal Canadian Mounted Police\*\*
- Service Canada (Department of Employment and Social Development)
- Shared Services Canada
- Staff of the Supreme Court
- Statistics Canada
- Treasury Board

NOTES:

All organizations are part of the core public administration as defined at s 11(1) of the *Financial Administration Act* (Schedules I and IV), except as noted.

\* Organizations that are portions of the federal public administration listed in Schedule V (Separate Agencies of the *Financial Administration Act*, whose employees have rights to grieve under the *Federal Public Sector Labour Relations Act*).

\*\* The RCMP is part of the core public administration and is listed in Schedule IV of the *Financial Administration Act*; RCMP members have limited rights to grieve under s 238.24 the *Federal Public Sector Labour Relations Act*, but have other grievance rights under the *Royal Canadian Mounted Police Act*.



**Schedule “B”****PLAINTIFFS WHO ARE NOT MEMBERS OF THE  
CORE PUBLIC ADMINISTRATION**

Persons employed within the following organizations:

- Air Canada
- Air Canada Jazz
- Air Inuit
- Bank of Canada
- Bank of Montreal
- BC Coast Pilots Ltd
- BC Ferries
- British Columbia Maritime Employers Association
- Brookfield Global Integrated Solutions
- Canada Mortgage and Housing Corporation
- Canada Pension Plan
- Canada Post
- Canadian National Railway
- Canadian Pacific Railway
- City of Ottawa Garage Fed Regulated
- DP World
- Export Development Canada
- Farm Credit Canada
- G4S Airport Screening
- Garda Security Screening Inc
- Geotech Aviation
- Global Container Terminals Canada
- Greater Toronto Airports Authority
- House of Commons
- Human Resources Branch, Innovation
- Kelowna Airport Fire Fighters
- National Arts Centre
- NAV Canada
- Ontario Northland Transportation Commission
- Ontario Power Generation
- Pacific Pilotage Authority
- Parliamentary Protection Service
- Public Sector Pension Investment Board
- Purolator Inc
- Questral Helicopters

- RBC Royal Bank
- Rise Air
- Rogers Communications Inc
- Royal Canadian Mint
- Sasktel
- Scotiabank
- Seaspans Victoria Docks
- Shaw
- Skynorth Air Ltd
- Telesat Canada
- Via Rail Canada
- Wasaya Airways
- Waterfront Employers of British Columbia
- Westjet
- Westshore Terminals

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1089-22

**STYLE OF CAUSE:** KAREN ADELBERG ET AL. v HIS MAJESTY THE KING ET AL.

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** JANUARY 19, 2023

**JUDGMENT AND REASONS:** FOTHERGILL J.

**DATED:** FEBRUARY 21, 2023

**APPEARANCES:**

Rocco Galati FOR THE PLAINTIFFS

Adam Gilani FOR THE DEFENDANTS  
Renuka Koilpillai

**SOLICITORS OF RECORD:**

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Professional Corporation

Attorney General of Canada FOR THE DEFENDANTS  
Toronto, Ontario

# **TAB B-2**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240607

Docket: A-67-23

Citation: 2024 FCA 106

**CORAM:** BOIVIN J.A.  
GLEASON J.A.  
LEBLANC J.A.

**BETWEEN:**

**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 HANNSRAJ, 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, CHANTELE VIEU, JOSHUA (JOSH) VOLD,  
CARLA WALKER, ANDREW WEDLOCK, JENNIFER WELLS, JOHN WELLS,  
MELANIE WILLIAMS, DAVID GEORGE JOHN WISEMAN,  
DANIEL YOUNG, GRATCHEN GRISON,  
(OFFICERS WITH THE ROYAL CANADIAN MOUNTAIN POLICE)**

**and**

**NICOLE AUCLAIR, MICHAEL BALDOCK, SABRINA BARON,**

**WILLIAM DEAN BOOTH, CHARLES BORG, MARIE-ÈVE CARON,  
THOMAS DALLING, JOSEPH ISRAEL MARC ERIC DE LAFONTAINE,  
RICARDO GREEN, JORDAN HARTWIG, RODNEY HOWES,  
CHRISTOPHER MARK JACOBSON, JANE DOE #5, PASCAL LEGENDRE,  
KIMBERLY LEPAGE, KIM MACDONALD, CINDY MACKAY,  
KIM MARTIN-MCKAY, DAVID MASON, ALEXANDRA KATRINA MOIR,  
JOSEPH DANIEL ERIC MONTGRAIN, RADOSLAW NIEDZIELSKI,  
LEANNA JUNE NORDMAN, DONALD POOLE, EDWARD DOMINIC POWER,  
NORMAN L. REED, JANE DOE #6, BRENDEN SANGSTER,  
TIMOTHY JOSEPH SEIBERT, ANN-MARIE LEE TRAYNOR,  
CARL BARRY WOOD, EDDIE EDMOND ANDRUKAITIS, RUBY DAVIS,  
JENNIFER SCHROEDER, JOSEPH SHEA EMPLOYED BY THE  
(DEPARTMENT OF NATIONAL DEFENCE)**

**and**

**STEFANIE ALLARD, JAKE DANIEL BOUGHNER, BRENT CARTER,  
BRIAN COBB, LAURA CONSTANTINESCU, SONIA DINU, ALDONA FEDOR,  
JANE DOE #7, MALORIE KELLY, MATTHEW STEPHEN MACDONALD,  
MITCHELL MACINTYRE, HERTHA MCLENDON, MARCEL MIHAILESCU,  
MICHAEL MUNRO, SEBASTIAN NOWAK, DIANA RODRIGUES,  
NATALIE HOLDEN, ADAM DAWSON WINCHESTER,  
(CANADA BORDER SERVICES AGENCY)**

**and**

**CHRISTINE CLOUTHIER, DEBBIE GRAY, JENNIFER PENNER, DALE  
WAGNER,  
JOSEPH AYOUB, (AGRICULTURE AND AGRI-FOOD CANADA)**

**and**

**JANE DOE #8, (ATLANTIC CANADA OPPORTUNITIES AGENCY)**

**and**

**MELANIE DUFOUR, (BANK OF CANADA)**

**and**

**JENNIFER AUCIELLO, SHARON ANN JOSEPH, ERIC MUNRO,  
(CANADA MORTGAGE AND HOUSING CORPORATION)**

**and**

**JANE DOE #9, (CANADA PENSION PLAN)**

**and**

**NATALIE BOULARD, BEATA BOZEK, JOHN DOE #14, NERIN ANDREA CARR,  
SARA JESSICA CASTRO, DEBBIE (DUBRAVKA) CUNKO, JOSÉE CYR,  
JANE DOE #10, CAROL GABOURY, TANIA GOMES, JULITA GROCHOCKA,  
MONIQUE HARRIS, WILLIAM HOOKER, KIRSTIN HOUGHTON,  
LEILA KOSTYK, MICHELLE LAMARRE, NICOLAS LEBLOND,  
SUANA-LEE LECLAIR, PAULETTE MORISSETTE, JENNIFER NEAVE,  
PIERRE-ALEXANDRE RACINE, BENJAMIN RUSSELL, ROBERT SNOWDEN,  
AABID THAWER, HEIDI WIENER, SVJETLANA ZELENBABA, NADIA ZINCK,  
AARON JAMES THOMAS SHORROCK, DEIRDRE MCINTOSH,  
(CANADA REVENUE AGENCY)**

**and**

**TAMARA STAMMIS, (CANADA SCHOOL OF THE PUBLIC SERVICE)**

**and**

**JASMIN BOURDON, (CANADA SPACE AGENCY)**

**and**

**SHARON CUNNINGHAM, ALLEN LYNDEN, RORY MATHESON,  
(CANADIANCOAST GUARD)**

**and**

**TATJANA COKLIN, JOHN DOE #15, RAQUEL DELMAS, JANE DOE #11,  
CHELSEA HAYDEN, HELENE JOANNIS, ZAKLINA MAZUR, JANE DOE #12,  
JESSICA SIMPSON, KATARINA SMOLKOVA,  
(CANADIAN FOOD INSPECTION AGENCY)**

**and**

**ALEXANDRE CHARLAND, (CANADIAN FORESTRY SERVICE)**

**and**

**CATHERINE PROVOST, KRISTINA MARTIN, (CANADIAN HERITAGE)**

**and**

**JANE DOE #13, (CANADIAN INSTITUTES OF HEALTH RESEARCH)**

**and**

**BETH BLACKMORE, ROXANNE LORRAIN,  
(CANADIAN NUCLEAR SAFETY COMMISSION)**

**and**

**RÉMI RICHER,  
(CANADIAN RADIO-TELEVISION AND  
TELECOMMUNICATIONS COMMISSION)**

**and**

**OCTAVIA LA PRAIRIE, (CANADIAN SECURITY INTELLIGENCE SERVICE)**

**and**

**ROBERT BESTARD, (CITY OF OTTAWA GARAGE FED REGULATED)**

**and**

**KIMBERLY ANN BECKERT, (CORE PUBLIC SERVICE)**

**and**

**SARAH ANDREYCHUK, FRANCOIS BELLEHUMEUR, PAMELA BLAIKIE,  
NATASHA CAIRNS, ANGELA CIGLENECKI, VERONIKA COLNAR,  
RANDY DOUCET, KARA ERICKSON, JESSE FORCIER, VALÉRIE FORTIN,  
ROXANE GUEUTAL, MELVA ISHERWOOD, MILO JOHNSON,  
VALERIA LUEDEE, LAURIE LYNDEN, ANNETTE MARTIN, CRAIG MCKAY,  
ISABELLE METHOT, SAMANTHA OSYPCHUK, JANE DOE #14,  
WILNIVE PHANORD, ALEXANDRE RICHER LEVASSEUR,  
KATHLEEN SAWYER, TREVOR SCHEFFEL,  
(CORRECTIONAL SERVICE OF CANADA)**

**and**

**JORDAN ST-PIERRE, (COURTS ADMINISTRATION SERVICE)**

**and**



**BRIGITTE SURGUE, JANE DOE #15,  
(DEPARTMENT OF CANADIAN HERITAGE)**

**and**

**GHISLAIN CARDINAL, HEATHER HALLIDAY, PAUL MARTEN,  
CELINE RIVIER, NGOZI UKWU, JEANNINE BASTARACHE, JANE DOE #16,  
HAMID NAGHDIAN-VISHTEH, (DEPARTMENT OF FISHERIES AND OCEAN)**

**and**

**ISHMAEL GAY-LABBE, JANE DOE #17, LEANNE JAMES,  
(DEPARTMENT OF JUSTICE)**

**and**

**DANIELLE BARABE-BUSSIERES, (ELECTIONS CANADA)**

**and**

**TANYA DAECHERT, JANE DOE #18, FRANCOIS ARSENEAU,  
CHANTAL AUTHIER, NATHALIE BENOIT, AERIE BIAFORE, ROCK BRIAND,  
ARNAUD BRIEN-THIFFAULT, SHARON CHIU, MICHEL DAIGLE,  
BRIGITTE DANIELS, LOUISE GAUDREAU, KARRIE GEVAERT,  
MARK GEVAERT, PETER IVERSEN, DERRIK LAMB, JANE DOE #19,  
ANNA MARINIC, DIVINE MASABARAKIZA, JAMES MENDHAM,  
MICHELLE MARINA MICKO, JEAN RICHARD, STEPHANIE SENEAL,  
JANE DOE #20, RYAN SEWELL, KARI SMYTHE, OLIMPIA SOMESAN,  
LLOYD SWANSON, TYRONE WHITE, ELISSA WONG, JENNY ZAMBELAS,  
LI YANG ZHU, PATRICE LEVER,  
(EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA)**

**and**

**JANE DOE #21, BRIAN PHILIP CRENNNA, JANE DOE #22,  
BRADLEY DAVID HIGNELL, ANDREW KALTECK, DANA KELLETT,  
JOSÉE LOSIER, KRISTIN MENSCH, ELSA MOUANA, JANE DOE #23,  
JANE DOE #24, VALENTINA ZAGORENKO,  
(ENVIRONMENT AND CLIMATE CHANGE CANADA)**

**and**

**PIERRE TRUDEL, (EXPORT DEVELOPMENT CANADA)**

**and**

**STEPHEN ALAN COLLEY,  
(FEDERAL ECONOMIC DEVELOPMENT AGENCY FOR SOUTHERN  
ONTARIO)**

**and**

**VLADIMIR RASKOVIC, (GARDA SECURITY SCREEING INC)**

**and**

**MÉLANIE BORGIA, JONATHAN KYLE SMITH, DONNA STAINFIELD,  
ANNILA THARAKAN, RENEE MICHIKO UMEZUKI,  
(GLOBAL AFFAIRS CANADA)**

**and**

**DENNIS JOHNSON, (GLOBAL CONTAINER TERMINALS CANADA)**

**and**

**ALEXANDRE GUILBEAULT, TARA (MARIA) MCDONOUGH, FRANCE  
VANIER,  
(GOVERNMENT OF CANADA)**

**and**

**ALEX BRAUN, MARC LESCELLEUR-PAQUETTE, (HOUSE OF COMMONS)**

**and**

**AIMEE LEGAULT, (HUMAN RESOURCE BRANCH)**

**and**

**DORIN ANDREI BOBOC, JANE DOE #25, SOPHIE GUIMARD, ELISA HO,  
KATHY LEAL, CAROLINE LEGENDRE, DIANA VIDA,  
(IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA)**

**and**

**NATHALIE JOANNE GAUTHIER,  
(INDIGENOUS AND NORTHERN AFFAIRS CANADA)**

**and**

**CHRISTINE BIZIER, AMBER DAWN KLETZEL, VERONA LIPKA,  
KERRY SPEARS, (INDIGENOUS SERVICES CANADA)**

**and**

**SUN-HO PAUL JE,  
(INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA)**

**and**

**GILES ROY, (NATIONAL FILM BOARD OF CANADA)**

**and**

**RAY SILVER, MICHELLE DEDYULIN, LETITIA EAKINS,  
JULIE-ANNE KLEINSCHMIT, MARC-ANDRE OCTEAU, HUGUES  
SCHOLAERT,  
(NATIONAL RESEARCH COUNCIL CANADA)**

**and**

**FELIX BEAUCHAMP,  
(NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY)**

**and**

**JULIA MAY BROWN, CALEB LAM, STEPHANE LEBLANC,  
SERRYNA WHITESIDE, (NATURAL RESOURCES CANADA)**

**and**

**NICOLE HAWLEY, STEEVE L'ITALIEN, MARC LECOCQ, TONY MALLET,  
SANDRA MCKENZIE, (NAV CANADA)**

**and**

**MUHAMMAD ALI, (OFFICE OF THE AUDITOR GENERAL OF CANADA)**

**and**

**RYAN ROGERS, (ONTARIO NORTHLAND TRANSPORTATION COMMISSION)**

**and**

**THERESA STENE, MICHAEL DESSUREAULT, JOHN DOE #16, (PARK  
CANADA)**

**and**

**CHARLES-ALEXANDRE BEAUCHEMIN, BRETT OLIVER,  
(PARLIMENTARY PROTECTION SERVICE)**

**and**

**CAROLE DUFORD, (POLAR KNOWLEDGE CANADA)**

**and**

**JOANNE GABRIELLE DE MONTIGNY, IVANA ERIC, JANE DOE #26,  
SALYNA LEGARE, JANE DOE #27, ANGIE RICHARDSON, JANE DOE #28,  
(PUBLIC HEALTH AGENCY OF CANADA)**

**and**

**FAY ANNE BARBER, (PUBLIC SAFETY CANADA)**

**and**

**DENIS LANIEL, (PUBLIC SECTOR PENSION INVESTMENT BOARD)**

**and**

**KATHLEEN ELIZABETH BARRETTE, SARAH BEDARD,  
MARIO CONSTANTINEAU, KAREN FLEURY, BRENDA JAIN, MEGAN  
MARTIN,  
JANE DOE #29, ISABELLE PAQUETTE, RICHARD PARENT,  
ROGER ROBERT RICHARD, NICOLE SINCENNES, CHRISTINE VESSIA,  
JANE DOE #30, PAMELA MCINTYRE,  
(PUBLIC SERVICES AND PROCUREMENT CANADA)**

**and**

**ISABELLE DENIS, (REGISTRAR OF THE SUPREME COURT OF CANADA)**

**and**

**JANE BARTMANOVICH, (ROYAL CANADIAN MINT)**

**and**

**NICOLE BRISSON, (SERVICE CANADA)**

**and**

**DENIS AUDET, MATHIEU ESSIAMBRE, ALAIN HART, ANDREA HOUGHTON,  
NATALIA KWIATEK, DANY LEVESQUE, DAVID MCCARTHY,  
PASCAL MICHAUD, MERVİ PENNANEN, TONYA SHORTILL,  
STEPHANIE TKACHUK, MARSHALL WRIGHT, (SHARED SERVICES  
CANADA)**

**and**

**EVE MARIE BLOUIN-HUDON, MARC-ANTOINE BOUCHER,  
CHRISTOPHER HUSZAR, (STATISTICS CANADA)**

**and**

**STEVE YOUNG, (TELESTAT CANADA)**

**and**

**NATHAN ALIGIZAKIS, STEPHEN DANIEL, ALAIN DOUCHANT,  
KRYSTAL MCCOLGAN, DEBBIE MENARD, CLARENCE RUTTLE,  
DOROTHY BARRON, ROBERT MCLACHLAN, (TRANSPORT CANADA)**

**and**

**SCOTT ERROLL HENDERSON, DENIS THERIAULT,  
(TREASURY BOARD OF CANADA)**

**and**

**JOSIANE BROUILLARD, ALEXANDRA MCGRATH, NATHALIE STE-CROIX,  
JANE DOE #31, (VETERANS AFFAIRS CANADA)**

**and**

**OLUBUSAYO (BUSAYO) AYENI, JOHN DOE #17, CYNTHIA BAUMAN,  
JANE DOE #32, LAURA CRYSTAL BROWN, KE(JERRY) CAI,  
NICOLINO CAMPANELLI, DONALD KEITH CAMPBELL, COLLEEN CARDER,  
KATHY CARRIERE, MELISSA CARSON, DAVID CLARK,  
BRADLEY CLERMONT, LAURIE COELHO, ESTEE COSTA,  
ANTONIO DA SILVA, BRENDA DARVILL, PATRICK DAVIDSON,  
EUGENE DAVIS, LEAH DAWSON, MARC FONTAINE, JACQUELINE  
GENAILLE,  
ELDON GOOSSEN, JOYCE GREENAWAY, LORI HAND, DARREN HAY,**

**KRISTA IMIOLA, CATHERINE KANUKA, DONNA KELLY, BENJAMIN LEHTO,  
ANTHONY LEON, AKEMI MATSUMIYA, JANE DOE #33, JANE DOE #34,  
JANE DOE #35, ANNE MARIE MCQUAID-SNIDER, LINO MULA,  
PAMELA OPERSKO, GABRIEL PAQUET, CHRISTINE PAQUETTE,  
CAROLIN JACQUELINE PARIS, JODIE PRICE, KEVIN PRICE,  
GIUSEPPE QUADRINI, SAARAH QUAMINA, SHAWN ROSSITER,  
ANTHONY RUSH, ANTHONY SHATZKO, CHARLES SILVA, RYAN SIMKO,  
NORMAN SIROIS, BRANDON SMITH, CATHARINE SPIAK, SANDRA STROUD,  
ANITA TALARIAN, DARYL TOONK, RYAN TOWERS, LEANNE VERBEEM,  
ERAN VOOYS, ROBERT WAGNER, JASON WEATHERALL, MELANIE  
BURCH,  
STEVEN COLE, TONI DOWNIE, JODI STAMMIS, (CANADA POST)**

**and**

**NICOLAS BELL, JOHN DOE #18, JOHN DOE #19, JANE DOE #36, JOHN DOE  
#20,  
PAOLA DI MADDALENA, NATHAN DODDS, JOHN DOE #21, JANE DOE #37,  
NUNZIO GIOLTI, MARIO GIRARD, JANE DOE #38, JANE DOE #39,  
YOU-HUI KIM, JANE DOE #40, SEBASTIAN KORAK, ADA LAI, MIRIUM LO,  
MELANIE MAILLOUX, CAROLYN MUIR, PATRIZIA PABA, RADU  
RAUTESCU,  
ALDO REANO, JACQUELINE ELISABETH ROBINSON, JOHN DOE #22,  
FREDERICK ROY, JOHN DOE #23, TAEKO SHIMAMURA, JASON SISK,  
BEATA SOSIN, JOEL SZOSTAK, MARIO TCHEON, REBECCA SUE THIESSEN,  
JANE DOE #41, MAUREEN YEARWOOD, (AIR CANADA)**

**and**

**JOHN DOE #24, JOSÉE DEMEULE, JACQUELINE GAMBLE,  
DOMENIC GIANCOLA, SADNA KASSAN, MARCUS STEINER,  
CHRISTINA TRUDEAU, (AIR CANADA JAZZ)**

**and**

**JOHN DOE #25, EMILIE DESPRES, (AIR INUIT)**

**and**

**REJEAN NANTEL, (BANK OF MONTREAL)**

**and**

**LANCE VICTOR SCHILKA, (BC COAST PILOTS LTD)**

and

**ELIZABETH GODLER, (BC FERRIES)**

and

**JOHN DOE #26, JANE DOE #42, TAMARA DAVIDSON, JANE DOE #43,  
BRAD HOMEWOOD, CHAD HOMEWOOD, CHARLES MICHAEL JEFFERSON,  
JOHN DOE #27, JANICE LARAINÉ KRISTMANSON, JANE DOE #44,  
DARREN LOUIS LAGIMODIERE, JOHN DOE #28, JOHN DOE #29,  
MIRKO MARAS, JOHN DOE #30, JOHN DOE #31, JOHN DOE #32, JOHN DOE  
#33,  
JOHN DOE #34, JANE DOE #45, JOHN DOE #35, KENDAL STACE-SMITH,  
JOHN DOE #36, STEVE WHEATLEY,  
(BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION)**

and

**PAUL VEERMAN, (BROOKFIELD GLOBAL INTEGRATED SOLUTIONS)**

and

**MARK BARRON, TREVOR BAZILEWICH, JOHN DOE #37, BRIAN DEKKER,  
JOHN GAETZ, ERNEST GEORGESON, KYLE KORTKO, RICHARD LETAIN,  
JOHN DOE #38, DALE ROBERT ROSS, (CANADIAN NATIONAL RAILWAY)**

and

**TIM CASHMORE, ROB GEBERT, MICHEAL ROGER MAILHIOT,  
(CANADIAN PACIFIC RAILWAY)**

and

**KARIN LUTZ, (DP WORLD)**

and

**CRYSTAL SMEENK, (FARM CREDIT CANADA)**

and

**SYLVIE M.F. GELINAS, SUSIE MATIAS, STEW WILLIAMS,  
(G4S AIRPORT SCREENING)**

and

**SHAWN CORMAN, (GEOTECH AVIATION)**

**and**

**JUERGEN BRUSCHKEWITZ, ANDRE DEVEAUX, BRYAN FIGUEIRA,  
DAVID SPRATT, GUY HOCKING, SEAN GRANT,  
(GREATER TORONTO AIRPORTS AUTHORITY)**

**and**

**DUSTIN BLAIR, (KELOWNA AIRPORT FIRE FIGHTER)**

**and**

**HANS-PETER LIECHTI, (NATIONAL ART CENTRE)**

**and**

**BRADLEY CURRUTHERS, LANA DOUGLAS, ERIC DUPUIS, SHERRI ELLIOT,  
ROBEN IVENS, JANE DOE #46, LUKE VAN HOEKELLEN, KURT WATSON,  
(ONTARIO POWER GENERATION)**

**and**

**THERESA STENE, MICHAEL DESSUREAULT, ADAM PIDWERBESKI,  
(PARKS CANADA)**

**and**

**JOHN DOE #39, (PACIFIC PILOTAGE AUTHORITY)**

**and**

**ANGELA GROSS, (PUROLATOR INC.)**

**and**

**GERHARD GEERTSEMA, (QUESTRAL HELICOPTERS)**

**and**

**AMANDA RANDALL, JANE DOE #47, FRANK VERI, (RBC ROYAL BANK)**

**and**



**JAMES (JED) FORSMAN, (RISE AIR)**

**and**

**JANE DOE #48, (ROGERS COMMUNICATIONS INC)**

**and**

**JERRILYNN REBEYKA, (SASKTEL)**

**and**

**EILEEN FAHLMAN, MARY TREICHEL, (SCOTIABANK)**

**and**

**JUDAH GAELAN CUMMINS, (SEASPAN VICTORIA DOCKS)**

**and**

**DARIN WATSON, (SHAW)**

**and**

**RICHARD MICHAEL ALAN TABAK, (SKYNORTH AIR LTD)**

**and**

**DEBORAH BOARDMAN, MICHAEL BRIGHAM, (VIA RAIL CANADA)**

**and**

**KEVIN SCOTT ROUTLY, (WASAYA AIRWAYS)**

**and**

**BRYCE SAILOR, (WATERFRONT EMPLOYERS OF BRITISH COLUMBIA)**

**and**

**JOSEPH BAYDA, JAMIE ELLIOTT, JOHN DOE #40, RANDALL MENGERING,  
SAMANTHA NICASTRO, VERONICA STEPHENS, JANE DOE #49, (WESTJET)**

**and**

**MELVIN GEREIN, (WESTSHORE TERMINALS)**

**Appellants**

**and**

**HIS MAJESTY THE KING, PRIME MINISTER JUSTIN TRUDEAU,  
DEPUTY PRIME MINISTER AND MINISTER OF FINANCE  
CHRISTIA FREELAND, CHIEF MEDICAL OFFICER TERESA TAM,  
MINISTER OF TRANSPORT OMAR ALGHABRA, DEPUTY MINISTER OF  
PUBLIC SAFETY MARCO MENDICINO, JOHNS AND JANES DOE**

**Respondents**

Heard at Toronto, Ontario, on November 8, 2023.

Judgment delivered at Ottawa, Ontario, on June 7, 2024.

REASONS FOR JUDGMENT BY:

GLEASON J.A.

CONCURRED IN BY:

BOIVIN J.A.  
LEBLANC J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240607

Docket: A-67-23

Citation: 2024 FCA 106

**CORAM:** BOIVIN J.A.  
GLEASON J.A.  
LEBLANC J.A.

**BETWEEN:**

**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 HANNSRAJ, 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, CHANTELE VIEU, JOSHUA (JOSH) VOLD,  
CARLA WALKER, ANDREW WEDLOCK, JENNIFER WELLS, JOHN WELLS,  
MELANIE WILLIAMS, DAVID GEORGE JOHN WISEMAN,  
DANIEL YOUNG, GRATCHEN GRISON,  
(OFFICERS WITH THE ROYAL CANADIAN MOUNTAIN POLICE)**

**and**

**NICOLE AUCLAIR, MICHAEL BALDOCK, SABRINA BARON,**

**WILLIAM DEAN BOOTH, CHARLES BORG, MARIE-ÈVE CARON,  
THOMAS DALLING, JOSEPH ISRAEL MARC ERIC DE LAFONTAINE,  
RICARDO GREEN, JORDAN HARTWIG, RODNEY HOWES,  
CHRISTOPHER MARK JACOBSON, JANE DOE #5, PASCAL LEGENDRE,  
KIMBERLY LEPAGE, KIM MACDONALD, CINDY MACKAY,  
KIM MARTIN-MCKAY, DAVID MASON, ALEXANDRA KATRINA MOIR,  
JOSEPH DANIEL ERIC MONTGRAIN, RADOSLAW NIEDZIELSKI,  
LEANNA JUNE NORDMAN, DONALD POOLE, EDWARD DOMINIC POWER,  
NORMAN L. REED, JANE DOE #6, BRENDEN SANGSTER,  
TIMOTHY JOSEPH SEIBERT, ANN-MARIE LEE TRAYNOR,  
CARL BARRY WOOD, EDDIE EDMOND ANDRUKAITIS, RUBY DAVIS,  
JENNIFER SCHROEDER, JOSEPH SHEA EMPLOYED BY THE  
(DEPARTMENT OF NATIONAL DEFENCE)**

**and**

**STEFANIE ALLARD, JAKE DANIEL BOUGHNER, BRENT CARTER,  
BRIAN COBB, LAURA CONSTANTINESCU, SONIA DINU, ALDONA FEDOR,  
JANE DOE #7, MALORIE KELLY, MATTHEW STEPHEN MACDONALD,  
MITCHELL MACINTYRE, HERTHA MCLENDON, MARCEL MIHAILESCU,  
MICHAEL MUNRO, SEBASTIAN NOWAK, DIANA RODRIGUES,  
NATALIE HOLDEN, ADAM DAWSON WINCHESTER,  
(CANADA BORDER SERVICES AGENCY)**

**and**

**CHRISTINE CLOUTHIER, DEBBIE GRAY, JENNIFER PENNER, DALE  
WAGNER,  
JOSEPH AYOUB, (AGRICULTURE AND AGRI-FOOD CANADA)**

**and**

**JANE DOE #8, (ATLANTIC CANADA OPPORTUNITIES AGENCY)**

**and**

**MELANIE DUFOUR, (BANK OF CANADA)**

**and**

**JENNIFER AUCIELLO, SHARON ANN JOSEPH, ERIC MUNRO,  
(CANADA MORTGAGE AND HOUSING CORPORATION)**

**and**

**JANE DOE #9, (CANADA PENSION PLAN)**

**and**

**NATALIE BOULARD, BEATA BOZEK, JOHN DOE #14, NERIN ANDREA CARR,  
SARA JESSICA CASTRO, DEBBIE (DUBRAVKA) CUNKO, JOSÉE CYR,  
JANE DOE #10, CAROL GABOURY, TANIA GOMES, JULITA GROCHOCKA,  
MONIQUE HARRIS, WILLIAM HOOKER, KIRSTIN HOUGHTON,  
LEILA KOSTYK, MICHELLE LAMARRE, NICOLAS LEBLOND,  
SUANA-LEE LECLAIR, PAULETTE MORISSETTE, JENNIFER NEAVE,  
PIERRE-ALEXANDRE RACINE, BENJAMIN RUSSELL, ROBERT SNOWDEN,  
AABID THAWER, HEIDI WIENER, SVJETLANA ZELENBABA, NADIA ZINCK,  
AARON JAMES THOMAS SHORROCK, DEIRDRE MCINTOSH,  
(CANADA REVENUE AGENCY)**

**and**

**TAMARA STAMMIS, (CANADA SCHOOL OF THE PUBLIC SERVICE)**

**and**

**JASMIN BOURDON, (CANADA SPACE AGENCY)**

**and**

**SHARON CUNNINGHAM, ALLEN LYNDEN, RORY MATHESON,  
(CANADIANCOAST GUARD)**

**and**

**TATJANA COKLIN, JOHN DOE #15, RAQUEL DELMAS, JANE DOE #11,  
CHELSEA HAYDEN, HELENE JOANNIS, ZAKLINA MAZUR, JANE DOE #12,  
JESSICA SIMPSON, KATARINA SMOLKOVA,  
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**and**

**ALEXANDRE CHARLAND, (CANADIAN FORESTRY SERVICE)**

**and**

**CATHERINE PROVOST, KRISTINA MARTIN, (CANADIAN HERITAGE)**

**and**

**JANE DOE #13, (CANADIAN INSTITUTES OF HEALTH RESEARCH)**

**and**

**BETH BLACKMORE, ROXANNE LORRAIN,  
(CANADIAN NUCLEAR SAFETY COMMISSION)**

**and**

**RÉMI RICHER,  
(CANADIAN RADIO-TELEVISION AND  
TELECOMMUNICATIONS COMMISSION)**

**and**

**OCTAVIA LA PRAIRIE, (CANADIAN SECURITY INTELLIGENCE SERVICE)**

**and**

**ROBERT BESTARD, (CITY OF OTTAWA GARAGE FED REGULATED)**

**and**

**KIMBERLY ANN BECKERT, (CORE PUBLIC SERVICE)**

**and**

**SARAH ANDREYCHUK, FRANCOIS BELLEHUMEUR, PAMELA BLAIKIE,  
NATASHA CAIRNS, ANGELA CIGLENECKI, VERONIKA COLNAR,  
RANDY DOUCET, KARA ERICKSON, JESSE FORCIER, VALÉRIE FORTIN,  
ROXANE GUEUTAL, MELVA ISHERWOOD, MILO JOHNSON,  
VALERIA LUEDEE, LAURIE LYNDEN, ANNETTE MARTIN, CRAIG MCKAY,  
ISABELLE METHOT, SAMANTHA OSYPCHUK, JANE DOE #14,  
WILNIVE PHANORD, ALEXANDRE RICHER LEVASSEUR,  
KATHLEEN SAWYER, TREVOR SCHEFFEL,  
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**and**

**JORDAN ST-PIERRE, (COURTS ADMINISTRATION SERVICE)**

**and**

**BRIGITTE SURGUE, JANE DOE #15,  
(DEPARTMENT OF CANADIAN HERITAGE)**

**and**

**GHISLAIN CARDINAL, HEATHER HALLIDAY, PAUL MARTEN,  
CELINE RIVIER, NGOZI UKWU, JEANNINE BASTARACHE, JANE DOE #16,  
HAMID NAGHDIAN-VISHTEH, (DEPARTMENT OF FISHERIES AND OCEAN)**

**and**

**ISHMAEL GAY-LABBE, JANE DOE #17, LEANNE JAMES,  
(DEPARTMENT OF JUSTICE)**

**and**

**DANIELLE BARABE-BUSSIERES, (ELECTIONS CANADA)**

**and**

**TANYA DAECHERT, JANE DOE #18, FRANCOIS ARSENEAU,  
CHANTAL AUTHIER, NATHALIE BENOIT, AERIE BIAFORE, ROCK BRIAND,  
ARNAUD BRIEN-THIFFAULT, SHARON CHIU, MICHEL DAIGLE,  
BRIGITTE DANIELS, LOUISE GAUDREAU, KARRIE GEVAERT,  
MARK GEVAERT, PETER IVERSEN, DERRIK LAMB, JANE DOE #19,  
ANNA MARINIC, DIVINE MASABARAKIZA, JAMES MENDHAM,  
MICHELLE MARINA MICKO, JEAN RICHARD, STEPHANIE SENEAL,  
JANE DOE #20, RYAN SEWELL, KARI SMYTHE, OLIMPIA SOMESAN,  
LLOYD SWANSON, TYRONE WHITE, ELISSA WONG, JENNY ZAMBELAS,  
LI YANG ZHU, PATRICE LEVER,  
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**and**

**JANE DOE #21, BRIAN PHILIP CRENNNA, JANE DOE #22,  
BRADLEY DAVID HIGNELL, ANDREW KALTECK, DANA KELLETT,  
JOSÉE LOSIER, KRISTIN MENSCH, ELSA MOUANA, JANE DOE #23,  
JANE DOE #24, VALENTINA ZAGORENKO,  
(ENVIRONMENT AND CLIMATE CHANGE CANADA)**

**and**

**PIERRE TRUDEL, (EXPORT DEVELOPMENT CANADA)**

**and**

**STEPHEN ALAN COLLEY,  
(FEDERAL ECONOMIC DEVELOPMENT AGENCY FOR SOUTHERN  
ONTARIO)**

**and**

**VLADIMIR RASKOVIC, (GARDA SECURITY SCREEING INC)**

**and**

**MÉLANIE BORGIA, JONATHAN KYLE SMITH, DONNA STAINFIELD,  
ANNILA THARAKAN, RENEE MICHIKO UMEZUKI,  
(GLOBAL AFFAIRS CANADA)**

**and**

**DENNIS JOHNSON, (GLOBAL CONTAINER TERMINALS CANADA)**

**and**

**ALEXANDRE GUILBEAULT, TARA (MARIA) MCDONOUGH, FRANCE  
VANIER,  
(GOVERNMENT OF CANADA)**

**and**

**ALEX BRAUN, MARC LESCELLEUR-PAQUETTE, (HOUSE OF COMMONS)**

**and**

**AIMEE LEGAULT, (HUMAN RESOURCE BRANCH)**

**and**

**DORIN ANDREI BOBOC, JANE DOE #25, SOPHIE GUIMARD, ELISA HO,  
KATHY LEAL, CAROLINE LEGENDRE, DIANA VIDA,  
(IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA)**

**and**

**NATHALIE JOANNE GAUTHIER,  
(INDIGENOUS AND NORTHERN AFFAIRS CANADA)**

**and**



**CHRISTINE BIZIER, AMBER DAWN KLETZEL, VERONA LIPKA,  
KERRY SPEARS, (INDIGENOUS SERVICES CANADA)**

**and**

**SUN-HO PAUL JE,  
(INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA)**

**and**

**GILES ROY, (NATIONAL FILM BOARD OF CANADA)**

**and**

**RAY SILVER, MICHELLE DEDYULIN, LETITIA EAKINS,  
JULIE-ANNE KLEINSCHMIT, MARC-ANDRE OCTEAU, HUGUES  
SCHOLAERT,  
(NATIONAL RESEARCH COUNCIL CANADA)**

**and**

**FELIX BEAUCHAMP,  
(NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY)**

**and**

**JULIA MAY BROWN, CALEB LAM, STEPHANE LEBLANC,  
SERRYNA WHITESIDE, (NATURAL RESOURCES CANADA)**

**and**

**NICOLE HAWLEY, STEEVE L'ITALIEN, MARC LECOCQ, TONY MALLET,  
SANDRA MCKENZIE, (NAV CANADA)**

**and**

**MUHAMMAD ALI, (OFFICE OF THE AUDITOR GENERAL OF CANADA)**

**and**

**RYAN ROGERS, (ONTARIO NORTHLAND TRANSPORTATION COMMISSION)**

**and**

**THERESA STENE, MICHAEL DESSUREAULT, JOHN DOE #16, (PARK  
CANADA)**

**and**

**CHARLES-ALEXANDRE BEAUCHEMIN, BRETT OLIVER,  
(PARLIMENTARY PROTECTION SERVICE)**

**and**

**CAROLE DUFORD, (POLAR KNOWLEDGE CANADA)**

**and**

**JOANNE GABRIELLE DE MONTIGNY, IVANA ERIC, JANE DOE #26,  
SALYNA LEGARE, JANE DOE #27, ANGIE RICHARDSON, JANE DOE #28,  
(PUBLIC HEALTH AGENCY OF CANADA)**

**and**

**FAY ANNE BARBER, (PUBLIC SAFETY CANADA)**

**and**

**DENIS LANIEL, (PUBLIC SECTOR PENSION INVESTMENT BOARD)**

**and**

**KATHLEEN ELIZABETH BARRETTE, SARAH BEDARD,  
MARIO CONSTANTINEAU, KAREN FLEURY, BRENDA JAIN, MEGAN  
MARTIN,  
JANE DOE #29, ISABELLE PAQUETTE, RICHARD PARENT,  
ROGER ROBERT RICHARD, NICOLE SINCENNES, CHRISTINE VESSIA,  
JANE DOE #30, PAMELA MCINTYRE,  
(PUBLIC SERVICES AND PROCUREMENT CANADA)**

**and**

**ISABELLE DENIS, (REGISTRAR OF THE SUPREME COURT OF CANADA)**

**and**

**JANE BARTMANOVICH, (ROYAL CANADIAN MINT)**

**and**

**NICOLE BRISSON, (SERVICE CANADA)**

**and**

**DENIS AUDET, MATHIEU ESSIAMBRE, ALAIN HART, ANDREA HOUGHTON,  
NATALIA KWIATEK, DANY LEVESQUE, DAVID MCCARTHY,  
PASCAL MICHAUD, MERVİ PENNANEN, TONYA SHORTILL,  
STEPHANIE TKACHUK, MARSHALL WRIGHT, (SHARED SERVICES  
CANADA)**

**and**

**EVE MARIE BLOUIN-HUDON, MARC-ANTOINE BOUCHER,  
CHRISTOPHER HUSZAR, (STATISTICS CANADA)**

**and**

**STEVE YOUNG, (TELESTAT CANADA)**

**and**

**NATHAN ALIGIZAKIS, STEPHEN DANIEL, ALAIN DOUCHANT,  
KRYSTAL MCCOLGAN, DEBBIE MENARD, CLARENCE RUTTLE,  
DOROTHY BARRON, ROBERT MCLACHLAN, (TRANSPORT CANADA)**

**and**

**SCOTT ERROLL HENDERSON, DENIS THERIAULT,  
(TREASURY BOARD OF CANADA)**

**and**

**JOSIANE BROUILLARD, ALEXANDRA MCGRATH, NATHALIE STE-CROIX,  
JANE DOE #31, (VETERANS AFFAIRS CANADA)**

**and**

**OLUBUSAYO (BUSAYO) AYENI, JOHN DOE #17, CYNTHIA BAUMAN,  
JANE DOE #32, LAURA CRYSTAL BROWN, KE(JERRY) CAI,  
NICOLINO CAMPANELLI, DONALD KEITH CAMPBELL, COLLEEN CARDER,  
KATHY CARRIERE, MELISSA CARSON, DAVID CLARK,  
BRADLEY CLERMONT, LAURIE COELHO, ESTEE COSTA,  
ANTONIO DA SILVA, BRENDA DARVILL, PATRICK DAVIDSON,  
EUGENE DAVIS, LEAH DAWSON, MARC FONTAINE, JACQUELINE  
GENAILLE,  
ELDON GOOSSEN, JOYCE GREENAWAY, LORI HAND, DARREN HAY,**

**KRISTA IMIOLA, CATHERINE KANUKA, DONNA KELLY, BENJAMIN LEHTO,  
ANTHONY LEON, AKEMI MATSUMIYA, JANE DOE #33, JANE DOE #34,  
JANE DOE #35, ANNE MARIE MCQUAID-SNIDER, LINO MULA,  
PAMELA OPERSKO, GABRIEL PAQUET, CHRISTINE PAQUETTE,  
CAROLIN JACQUELINE PARIS, JODIE PRICE, KEVIN PRICE,  
GIUSEPPE QUADRINI, SAARAH QUAMINA, SHAWN ROSSITER,  
ANTHONY RUSH, ANTHONY SHATZKO, CHARLES SILVA, RYAN SIMKO,  
NORMAN SIROIS, BRANDON SMITH, CATHARINE SPIAK, SANDRA STROUD,  
ANITA TALARIAN, DARYL TOONK, RYAN TOWERS, LEANNE VERBEEM,  
ERAN VOOYS, ROBERT WAGNER, JASON WEATHERALL, MELANIE  
BURCH,  
STEVEN COLE, TONI DOWNIE, JODI STAMMIS, (CANADA POST)**

**and**

**NICOLAS BELL, JOHN DOE #18, JOHN DOE #19, JANE DOE #36, JOHN DOE  
#20,  
PAOLA DI MADDALENA, NATHAN DODDS, JOHN DOE #21, JANE DOE #37,  
NUNZIO GIOLTI, MARIO GIRARD, JANE DOE #38, JANE DOE #39,  
YOU-HUI KIM, JANE DOE #40, SEBASTIAN KORAK, ADA LAI, MIRIUM LO,  
MELANIE MAILLOUX, CAROLYN MUIR, PATRIZIA PABA, RADU  
RAUTESCU,  
ALDO REANO, JACQUELINE ELISABETH ROBINSON, JOHN DOE #22,  
FREDERICK ROY, JOHN DOE #23, TAEKO SHIMAMURA, JASON SISK,  
BEATA SOSIN, JOEL SZOSTAK, MARIO TCHEON, REBECCA SUE THIESSEN,  
JANE DOE #41, MAUREEN YEARWOOD, (AIR CANADA)**

**and**

**JOHN DOE #24, JOSÉE DEMEULE, JACQUELINE GAMBLE,  
DOMENIC GIANCOLA, SADNA KASSAN, MARCUS STEINER,  
CHRISTINA TRUDEAU, (AIR CANADA JAZZ)**

**and**

**JOHN DOE #25, EMILIE DESPRES, (AIR INUIT)**

**and**

**REJEAN NANTEL, (BANK OF MONTREAL)**

**and**

**LANCE VICTOR SCHILKA, (BC COAST PILOTS LTD)**

and

**ELIZABETH GODLER, (BC FERRIES)**

and

**JOHN DOE #26, JANE DOE #42, TAMARA DAVIDSON, JANE DOE #43,  
BRAD HOMEWOOD, CHAD HOMEWOOD, CHARLES MICHAEL JEFFERSON,  
JOHN DOE #27, JANICE LARAINÉ KRISTMANSON, JANE DOE #44,  
DARREN LOUIS LAGIMODIERE, JOHN DOE #28, JOHN DOE #29,  
MIRKO MARAS, JOHN DOE #30, JOHN DOE #31, JOHN DOE #32, JOHN DOE  
#33,  
JOHN DOE #34, JANE DOE #45, JOHN DOE #35, KENDAL STACE-SMITH,  
JOHN DOE #36, STEVE WHEATLEY,  
(BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION)**

and

**PAUL VEERMAN, (BROOKFIELD GLOBAL INTEGRATED SOLUTIONS)**

and

**MARK BARRON, TREVOR BAZILEWICH, JOHN DOE #37, BRIAN DEKKER,  
JOHN GAETZ, ERNEST GEORGESON, KYLE KORTKO, RICHARD LETAIN,  
JOHN DOE #38, DALE ROBERT ROSS, (CANADIAN NATIONAL RAILWAY)**

and

**TIM CASHMORE, ROB GEBERT, MICHEAL ROGER MAILHIOT,  
(CANADIAN PACIFIC RAILWAY)**

and

**KARIN LUTZ, (DP WORLD)**

and

**CRYSTAL SMEENK, (FARM CREDIT CANADA)**

and

**SYLVIE M.F. GELINAS, SUSIE MATIAS, STEW WILLIAMS,  
(G4S AIRPORT SCREENING)**

and

**SHAWN CORMAN, (GEOTECH AVIATION)**

**and**

**JUERGEN BRUSCHKEWITZ, ANDRE DEVEAUX, BRYAN FIGUEIRA,  
DAVID SPRATT, GUY HOCKING, SEAN GRANT,  
(GREATER TORONTO AIRPORTS AUTHORITY)**

**and**

**DUSTIN BLAIR, (KELOWNA AIRPORT FIRE FIGHTER)**

**and**

**HANS-PETER LIECHTI, (NATIONAL ART CENTRE)**

**and**

**BRADLEY CURRUTHERS, LANA DOUGLAS, ERIC DUPUIS, SHERRI ELLIOT,  
ROBEN IVENS, JANE DOE #46, LUKE VAN HOEKELLEN, KURT WATSON,  
(ONTARIO POWER GENERATION)**

**and**

**THERESA STENE, MICHAEL DESSUREAULT, ADAM PIDWERBESKI,  
(PARKS CANADA)**

**and**

**JOHN DOE #39, (PACIFIC PILOTAGE AUTHORITY)**

**and**

**ANGELA GROSS, (PUROLATOR INC.)**

**and**

**GERHARD GEERTSEMA, (QUESTRAL HELICOPTERS)**

**and**

**AMANDA RANDALL, JANE DOE #47, FRANK VERI, (RBC ROYAL BANK)**

**and**

**JAMES (JED) FORSMAN, (RISE AIR)**

**and**

**JANE DOE #48, (ROGERS COMMUNICATIONS INC)**

**and**

**JERRILYNN REBEYKA, (SASKTEL)**

**and**

**EILEEN FAHLMAN, MARY TREICHEL, (SCOTIABANK)**

**and**

**JUDAH GAELAN CUMMINS, (SEASPAN VICTORIA DOCKS)**

**and**

**DARIN WATSON, (SHAW)**

**and**

**RICHARD MICHAEL ALAN TABAK, (SKYNORTH AIR LTD)**

**and**

**DEBORAH BOARDMAN, MICHAEL BRIGHAM, (VIA RAIL CANADA)**

**and**

**KEVIN SCOTT ROUTLY, (WASAYA AIRWAYS)**

**and**

**BRYCE SAILOR, (WATERFRONT EMPLOYERS OF BRITISH COLUMBIA)**

**and**

**JOSEPH BAYDA, JAMIE ELLIOTT, JOHN DOE #40, RANDALL MENGERING,  
SAMANTHA NICASTRO, VERONICA STEPHENS, JANE DOE #49, (WESTJET)**

**and**

**MELVIN GEREIN, (WESTSHORE TERMINALS)****Appellants****and****HIS MAJESTY THE KING, PRIME MINISTER JUSTIN TRUDEAU,  
DEPUTY PRIME MINISTER AND MINISTER OF FINANCE  
CHRYSTIA FREELAND, CHIEF MEDICAL OFFICER TERESA TAM,  
MINISTER OF TRANSPORT OMAR ALGHABRA, DEPUTY MINISTER OF  
PUBLIC SAFETY MARCO MENDICINO, JOHNS AND JANES DOE****Respondents****REASONS FOR JUDGMENT****GLEASON J.A.**

[1] The appellants appeal from the judgment of the Federal Court in *Adelberg v. Canada*, 2023 FC 252, 2023 A.C.W.S. 557 (*per* Fothergill J.).

[2] In that judgment, the Federal Court struck the claims of those plaintiffs that it found were subject to section 236 of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2 [*FPSLRA*]. The Federal Court did not grant these plaintiffs leave to amend their claims. The plaintiffs whose claims were struck in their entirety without leave to amend were those who were members of the Royal Canadian Mounted Police (the RCMP) or who were employed in the other federal departments, agencies or other portions of the public service listed in Schedule “A” to the Federal Court’s Reasons. In the judgment under appeal, the Federal Court also struck the claims of all the other plaintiffs who were employed by other organizations, but for this group granted



leave to amend their claims. The Federal Court awarded the defendants costs, fixed in the amount of \$5,000.00, payable forthwith and in any event of the cause.

[3] For the reasons that follow, I would grant this appeal in part. I would set aside the judgment of the Federal Court and would amend it to provide all of the plaintiffs leave to amend the Statement of Claim in accordance with these reasons. Because success is divided, I would grant no costs in this appeal and would set aside the Federal Court's costs award.

I. The Statement of Claim

[4] I commence by reviewing the nature of the claims made in the plaintiffs' Statement of Claim. While it is difficult to discern precisely what is being claimed given the way the Statement of Claim was drafted, it seems to me that, when fairly read in its entirety, the Statement of Claim advances two sorts of claims on behalf of all of the plaintiffs.

[5] First, the Statement of Claim alleges that the employer policies—which mandated that the plaintiffs must be vaccinated against COVID-19, failing which they would be placed on leave without pay or be subject to having their employment terminated—violated their rights under the *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.), 1982*, c. 11 [*Charter*], or otherwise gave rise to several claims. The employer policies at issue in this case are the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police*, issued by the Treasury Board (the TB Policy), and similar policies issued by other federally-regulated employers who

employed some of the plaintiffs. Among other things, the Statement of Claim alleges that the respondents are liable for these other employers adopting policies similar to the TB Policy. The bulk of the Statement of Claim is directed towards these employment-related vaccination policies, which the plaintiffs allege caused them harm and damages because they chose to decline to be vaccinated against COVID-19.

[6] Second, the Statement of Claim alleges that the limitations imposed by the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61*, issued by Transport Canada on April 24, 2022 (the Interim Order), violated the *Charter* rights of all of the plaintiffs and gave rise to a host of other claims. Because the plaintiffs chose not to be vaccinated against COVID-19, they claim they were prevented from travelling by airplane by the Interim Order. The plaintiffs also challenge comparable measures that were applicable to train travel and travel by water for similar reasons.

[7] That the latter types of claims, regarding travel impediments, were advanced on behalf of all plaintiffs appears, in particular, from paragraphs 1(f), 12, 30, 67 and 69 of the Statement of Claim. They read as follows:

I. The Plaintiffs claim:

...

(f) a further declaration that Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No.61, requiring covid “vaccination” and masking on planes, trains and boats is unconstitutional and of no force and effect in that:

(i) There is no jurisdiction under s.91 of the *Constitution Act*, 1867 to decree any medical treatment whatsoever as this lies, subject to

constitutional restraint(s), within the exclusive jurisdiction of the Provinces;

(ii) That any purported or pretended power, under the emergency branch of P.O.G.G (Peace, Order and and Good Government) can only be done by Legislation, with the invocation, subject to constitutional constraints, of the *Emergencies Act* (R.S.C., 1985, c. 22 (4th Supp.));

(iii) That the Regulations and Executive decrees mandating such “vaccine mandates” are improper delegation, and constitute “dangling” Regulations, not tied to any Act of Parliament;

(iv) That in any event, any purported mandatory, or coerced *de facto* mandatory vaccine mandates violate ss. 2, 6, 7, and 15 of the *Charter*, as enunciated, inter alia, by the Ontario Court of Appeal in *Fleming v. Reid* (1991) 4 O.R. (3d) 74 and in the Supreme Court of Canada in *Morgentaler* (1988), *Rodriguez* (1993) and *Rasouli* (2013), and *Carter* (2005);

(v) That any purported mandatory, or coerced *de facto* mandatory vaccines violate ss.2 and ss 7 of the *Charter*, as enunciated, inter alia, by the Ontario Court of *Charter* Appeal in *Fleming v. Reid*, and the Supreme Court of Canada in inter alia, *Morgentaler* (1988), *Rodriguez* (1993), and *Carter* (2005) violate international treaty norms which constitute minimal protections to be read into s. 7 of the *Charter* as ruled, inter alia, by the Supreme Court of Canada in *Hape*, and the Federal Court of Appeal in *De Guzman*;

(vi) There is no jurisdiction under s.91 of the *Constitution Act*, 1867 to decree any medical treatment whatsoever as this lies, subject to constitutional restraint(s), within the exclusive jurisdiction of the Provinces;

(vii) The Pre-*Charter* constitutional rights to freedom of conscience and religion as pronounced by the Supreme Court of Canada in, inter alia, *Switzman v Elbing* and *A.G. of Quebec*, [1957] SCR 285 and *Saumur v City of Quebec*, 2 S.C.R. 299;

(viii) violates the rights, under s.2 of the *Charter*, as well as s.1 under the *Canadian Bill of Rights* (1960) to freedom of conscience, belief, and religion;

(ix) violates s.7 of the *Charter* in violating the right to bodily and psychological integrity, as manifested in the constitutionally protected right to informed, voluntary, consent to any medical treatment and procedure. as well as violating international treaty rights, protecting the same right(s) which protections must be read in as minimal protection under s. 7 of the *Charter* in accordance with, inter alia, *Hape* (SCC) and *De Guzman* (FCA);

(x) violating ss.6 and 7 of the *Charter*;

(xi) violating s.9 of the *Charter*;

(xii) violating the pre-*Charter* recognized rights on “the liberty of the subject” remedied by way of *habeas corpus*.

...

12. All of the Plaintiffs wish to exercise their ss. 6 and 7 of the *Charter* rights to travel within Canada, as well as abroad, which is barred to them by virtue of a non- possession of a “vaccine passport”.

...

30. All of the Plaintiffs wish to exercise their ss. 6 and 7 of the *Charter* rights to travel within Canada, as well as abroad, which is barred to them by virtue of a non- possession of a “vaccine passport”, notwithstanding that airlines and foreign countries of destination do not require nor do the airlines.

...

67. The Plaintiffs further state that “vaccine passports” further violate their explicit right(s) under s.6 and 7 of the *Charter* granting them mobility of travel, domestically and internationally, which violations are arbitrary (contrary to s. 7), irrational, and disproportionate, and thus fail any s. 1 fundamental justice, or s. 1 *Charter* analysis, in that:

(a) The Defendants admit, in their public statements, and scientific data, and science confirms, that transmission of the virus as between the vaccinated-to-vaccinated and vaccinated-to-unvaccinated, and vice versa, is NOT prevented by the COVID-19 “vaccines” (inoculations);

(b) That there is NO rational connection between being unvaccinated and higher risks of transmission;

(c) That the punitive bar to travel and board planes, trains, and boats is simply an irrational, arbitrary, over-reaching punitive dispensation of *Charter* violations and part of the malicious “consequences” of simply NOT “vaccinating”.

...

69. The Plaintiffs state, and the fact is, that as a result of the “vaccine passports”, and the removal of their mobility rights, the Plaintiffs have suffered, and will continue to suffer damages, which include, but are not restricted to:

(a) An inability to travel to visit family, which family relationships, particularly between parent and child are constitutionally protected under s. 7 of the *Charter* as set out by the Supreme Court of Canada;

(b) That this restriction under Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No.61, from visiting family creates mental anguish and distress when that travel to visit family includes members facing death, medical conditions, funerals, (particularly when attendance is religiously required), weddings, confirmations, bar mitzvahs, etc;

(c) An inability to vacation which is essential to recouping physical and psychological rest and integrity, which physical and psychological integrity is protected under s. 7 of the *Charter*;

(d) Travel to attend specialized medical treatment not available locally;

(e) Restrictions to obtaining domestic medical treatment in hospital for lack of a “vaccine passport”;

(f) Prohibitions against entering domestic hospitals:

(i) When a spouse is giving birth to their child;

(ii) When a loved-one is dying, under palliative care;

All of which violate physical and psychological integrity under s. 7 of the *Charter*, by denial of the explicit mobility rights protected by s.7 of the *Charter* (liberty and security of the person) as well as the mobility (travel) rights specifically protected under s. 6 of the *Charter*.

[Emphasis omitted].

## II. The Evidence before the Federal Court

[8] I turn next to briefly review the evidence that was before the Federal Court. The defendants filed an affidavit that attached the TB Policy, the Interim Order, and other orders issued pursuant to the *Aeronautics Act*, R.S.C., 1985, c. A-2, as well as a list of all of the interim orders related to COVID-19, issued by Transport Canada. The defendants’ evidence established that the provisions in the TB Policy, the Interim Order, and related orders issued by Transport

Canada setting out vaccine requirements had been suspended by the time the defendants brought their motion to strike the plaintiffs' claims.

[9] A review of the TB Policy shows that it was issued by the Treasury Board under sections 7 and 11.1 of the *Financial Administration Act*, R.S.C., 1985, c. F-11 [*FAA*], and applied to employees in the core public administration as set out in Schedules I and IV of the *FAA*. These include the RCMP, as well as the other federal departments, agencies, and other portions of the public service listed in Schedule "A" to the Federal Court's Reasons. The TB policy required most employees to be vaccinated against COVID-19, failing which they were subject to being placed on administrative leave without pay. The vaccine requirements set out in the TB Policy were terms and conditions of employment for the employees to whom they pertained.

[10] While the foregoing policies were before the Federal Court, there was no evidence before that Court as to the nature of the grievance rights possessed by the plaintiffs. These rights could accordingly only be discerned through a review of the relevant statutory and regulatory provisions applicable to the plaintiffs and the case law interpreting such provisions.

### III. The Reasons of the Federal Court

[11] I turn next to outline the Federal Court's Reasons. As noted, for those plaintiffs whose claims were dismissed without leave to amend, the Federal Court relied on section 236 of the *FPSLRA*. That section reads as follows:

**Disputes relating to employment**

**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.

**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.

**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.

**Différend lié à l'emploi**

**236(1)** Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

**Application**

**(2)** Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.

**Exception**

**(3)** Le paragraphe (1) ne s'applique pas au fonctionnaire d'un organisme distinct qui n'a pas été désigné au titre du paragraphe 209(3) si le différend porte sur le licenciement du fonctionnaire pour toute raison autre qu'un manquement à la discipline ou une inconduite.

[12] The Federal Court held that section 236 of the *FPSLRA* barred the claims of the plaintiffs listed in Schedule “A” to the Federal Court’s Reasons, who were members of the RCMP or who worked in the other federal departments, agencies, or portions of the public service. According to the Court, these plaintiffs could have filed grievances challenging the matters to which the Statement of Claim pertained. The Court also held that there was no reason for it to exercise any discretion it might have possessed to relieve the plaintiffs from application of the bar in section 236 of the *FPSLRA*. The Federal Court therefore dismissed the claims of these plaintiffs in their entirety, without leave to amend.

[13] As for the other plaintiffs, for whom the Federal Court found that section 236 of the *FPSLRA* does not apply, the Federal Court struck the Statement of Claim because it found that the plaintiffs failed to plead the requisite material facts in support of their allegations that were potentially justiciable and that they made several non-justiciable allegations. As noted, the Federal Court granted these plaintiffs leave to amend their claims. In so concluding, the Federal Court adopted the reasoning of the British Columbia Supreme Court in *Action4Canada v. British Columbia (Attorney General)*, 2022 BCSC 1507, 2022 A.C.W.S. 3823 [*Action4Canada*], where that Court wrote as follows, at paragraphs 45-48:

[...] the [Notice of Civil Claim [NOCC]], in its current form, is not a pleading that can properly be answered by a responsive pleading. It describes wide-ranging global conspiracies that may, or may not, have influenced either the federal or the provincial governments. It seeks rulings of the court on issues of science. In addition, it includes improper allegations, including criminal conduct and “crimes against humanity”. In my opinion, it is “bad beyond argument”.

[46] I further find that it is not a document that the court can mend by striking portions. I find that this NOCC is analogous to the Statement of Claim considered by Justice K. Smith (as he then was) in *Homalco Indian Band v. British Columbia* (1998), 1998 CanLII 6658 (BC SC), 25 C.P.C. (4th) 107 (B.C.S.C.) [*Homalco*]. He wrote:

[11] In my view, the statement of claim is an embarrassing pleading. It contains much that appears to be unnecessary. As well, it is constructed in a manner calculated to confuse the defendants and to make it extremely difficult, if not impossible, to answer. As a result, it is prejudicial. Any attempt to reform it by striking out portions and by amending other portions is likely to result in more confusion as to the real issues. ...

[47] As was the case in *Homalco*, attempting to bring the NOCC into compliance with the Rules by piecemeal striking and amending would invite more confusion and greater expenditure of the resources of all concerned.

[48] I find that the NOCC is prolix. It is not a proper pleading that can be answered by the defendants. It cannot be mended. Given that finding, I have no hesitation in ruling that it must be struck in whole.



[14] The Federal Court held that identical reasoning applied to the Statement of Claim in the instant case.

[15] In addition, the Federal Court held that there were numerous claims that could not be advanced in a civil action that were pleaded in the Statement of Claim. These included allegations of criminal behaviour, broad declarations respecting the current state of medical and scientific knowledge, and a declaration that administering medical treatment without informed consent is a crime against humanity.

[16] The Federal Court added that the relief claimed in paragraph 4 of the Statement of Claim, seeking to set aside the Interim Order and TB Policy, could only be obtained via judicial review and not by way of action.

[17] I note parenthetically that, as the Interim Order is no longer in force, a claim seeking to set it aside may now be moot, as was held in *Ben Naoum v. Canada (Attorney General)*, 2022 FC 1463, 2022 CarswellNat 4608 aff'd 2023 FCA 219, 2023 CarswellNat 4443, and *Pickford v. Canada (Attorney General)*, 2023 FCA 219, 2023 CarswellNat 4442. A similar conclusion may well also pertain to a claim to set aside the TB Policy.

[18] The Federal Court granted the plaintiffs, whom it found were not subject to section 236 of the *FPSLRA*, leave to amend their claims that were potentially justiciable and the proper

subject of an action. For such plaintiffs, the Federal Court cautioned as follows, at paragraphs 55-57 of its Reasons:

[55] For those Plaintiffs who are employed outside the federal public administration, e.g., with airlines, banks, transportation companies, etc., any amended pleading will have to allege sufficient material facts to provide a basis for the federal Crown's liability.

[56] The Plaintiffs who are not subject to s 236 of the *FPSLRA* have standing to question whether the TB Policy and Interim Order infringed their rights. There is a prospect that the Plaintiffs could put forward a valid claim that certain COVID-related health measures instituted by the Government of Canada contravened their *Charter* rights. It is possible that other valid claims may exist.

[57] It will be for the Plaintiffs to plead those causes of action in accordance with the Rules. The claims must be framed in a manner that is intelligible and allows the Defendants to know the case they have to meet. The claims must also be confined to matters that are capable of adjudication by this Court, and seek relief this Court is capable of granting (*Action4Canada* at para 71).

#### IV. Relevant Statutory and Regulatory Provisions

[19] It is useful to next lay out the relevant statutory and regulatory provisions.

[20] Paragraph 7(1)(e) and sections 11 and 11.1 of the *FAA* grant the Treasury Board authority to set the terms and conditions of employment of employees employed in the public service. This includes the organizations listed in Schedules I, IV, and V to the *FAA*, which encompass the RCMP and the other federal departments, agencies, and other portions of the public service listed in Schedule "A" to the Federal Court's Reasons.

[21] Part 2 of the *FPSLRA* sets out grievance rights for certain employees employed in the federal public service, and Part 2.1 of that statute sets out a different set of grievance rights for members of the RCMP. Additional grievance and complaint rights are provided to RCMP members under the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 [*RCMP Act*], as well as the Regulations and Standing Orders under that Act.

[22] Turning first to the *FPSLRA*, Part 2 of the *FPSLRA* affords grievance rights to “employees”, as defined in the statute. For the purposes of Part 2 of the *FPSLRA*, “employee” is defined in paragraph 206(1) as follows:

#### **Definitions**

**206 (1)** The following definitions apply in this Part.

***employee*** means a person employed in the public service, other than

- (a) a person appointed by the Governor in Council under an Act of Parliament to a statutory position described in that Act;
- (b) a person locally engaged outside Canada;
- (c) a person not ordinarily required to work more than one third of the normal period for persons doing similar work;
- (d) a person who is an officer as defined in subsection 2(1) of the *Royal Canadian Mounted Police Act*;
- (e) a person employed on a casual basis;

#### **Définitions**

**206 (1)** Les définitions qui suivent s’appliquent à la présente partie.

***fonctionnaire*** Personne employée dans la fonction publique, à l’exclusion de toute personne :

- a) nommée par le gouverneur en conseil, en vertu d’une loi fédérale, à un poste prévu par cette loi;
- b) recrutée sur place à l’étranger;
- c) qui n’est pas ordinairement astreinte à travailler plus du tiers du temps normalement exigé des personnes exécutant des tâches semblables;
- d) qui est un officier, au sens du paragraphe 2(1) de la *Loi sur la Gendarmerie royale du Canada*;
- e) employée à titre occasionnel;

- |   |   |
|---|---|
| <p><b>(f)</b> a person employed on a term basis, unless the term of employment is for a period of three months or more or the person has been so employed for a period of three months or more;</p> <p><b>(g)</b> a member as defined in subsection 2(1) of the <i>Royal Canadian Mounted Police Act</i> who occupies a managerial or confidential position; or</p> <p><b>(h)</b> a person who is employed under a program designated by the employer as a student employment program. (<i>fonctionnaire</i>)</p> | <p><b>f)</b> employée pour une durée déterminée de moins de trois mois ou ayant travaillé à ce titre pendant moins de trois mois;</p> <p><b>g)</b> qui est un membre, au sens du paragraphe 2(1) de la <i>Loi sur la Gendarmerie royale du Canada</i>, et qui occupe un poste de direction ou de confiance;</p> <p><b>h)</b> employée dans le cadre d'un programme désigné par l'employeur comme un programme d'embauche des étudiants. (<i>employee</i>)</p> |
|---|---|

[23] “Public service” is also a defined term in the *FPSLRA*. Subsection 2(1) of the *FPSLRA* defines “public service” as follows:

- |  |  |
|--|--|
| <p><b>public service</b>, except in Part 3, means the several positions in or under</p> <p><b>(a)</b> the departments named in Schedule I to the Financial Administration Act;</p> <p><b>(b)</b> the other portions of the federal public administration named in Schedule IV to that Act; and</p> <p><b>(c)</b> the separate agencies named in Schedule V to that Act. (<i>fonction publique</i>)</p> | <p><b>fonction publique</b> Sauf à la partie 3, l'ensemble des postes qui sont compris dans les entités ci-après ou qui en relèvent :</p> <p><b>a)</b> les ministères figurant à l'annexe I de la Loi sur la gestion des finances publiques;</p> <p><b>b)</b> les autres secteurs de l'administration publique fédérale figurant à l'annexe IV de cette loi;</p> <p><b>c)</b> les organismes distincts figurant à l'annexe V de la même loi. (<i>public service</i>)</p> |
|--|--|

[24] As noted, at the request of the Federal Court, the parties developed a list of all the departments, agencies, or other portions of the public administration in which the plaintiffs worked. That list is appended as Schedule “A” to the Federal Court’s Reasons.

[25] It is useful to next repeat section 236 of the *FPSLRA*, which reads as follows:

### **No Right of Action**

#### **Disputes relating to employment**

**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.

#### **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.

#### **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....

### **Absence de droit d'action**

#### **Différend lié à l'emploi**

**236 (1)** Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

#### **Application**

**(2)** Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.

#### **Exception**

**(3)** Le paragraphe (1) ne s'applique pas au fonctionnaire d'un organisme distinct qui n'a pas été désigné au titre du paragraphe 209(3) si le différend porte sur le licenciement du fonctionnaire pour toute raison autre qu'un manquement à la discipline ou une inconduite.

[26] “Grievance” is a defined term in the *FPSLRA*, which separately defines “group grievances”, “individual grievances”, and a “policy grievances”. Of the foregoing, only individual grievances are relevant to the instant case. They are defined in subsection 206(1) of the *FPSLRA* as meaning either a grievance presented in accordance with section 208 of the *FPSLRA* or one presented in accordance with section 238.24 of the *FPSLRA*.

[27] Section 208 of the *FPSLRA* is contained in Part 2 (applicable to employees generally) and section 238.4 is contained in Part 2.1 of the *FPSLRA* (applicable to members of the RCMP who meet the statutory definition of employee under the *FPSLRA*).

[28] Section 208 provides, in relevant part as follows:

### **Right of employee**

**208(1)** Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved

(a) by the interpretation or application, in respect of the employee, of

(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or

(ii) a provision of a collective agreement or an arbitral award; or

(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.

### **Limitation**

(2) An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the *Canadian Human Rights Act*.

...

(4) An employee may not present an individual grievance relating to the

### **Droit du fonctionnaire**

**208(1)** Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé :

a) par l'interprétation ou l'application à son égard :

(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,

(ii) soit de toute disposition d'une convention collective ou d'une décision arbitrale;

b) par suite de tout fait portant atteinte à ses conditions d'emploi.

### **Réserve**

(2) Le fonctionnaire ne peut présenter de grief individuel si un recours administratif de réparation lui est ouvert sous le régime d'une autre loi fédérale, à l'exception de la *Loi canadienne sur les droits de la personne*.

[...]

(4) Le fonctionnaire ne peut présenter de grief individuel portant sur

interpretation or application, in respect of the employee, of a provision of a collective agreement or an arbitral award unless the employee has the approval of and is represented by the bargaining agent for the bargaining unit to which the collective agreement or arbitral award applies.

(5) An employee who, in respect of any matter, avails himself or herself of a complaint procedure established by a policy of the employer may not present an individual grievance in respect of that matter if the policy expressly provides that an employee who avails himself or herself of the complaint procedure is precluded from presenting an individual grievance under this Act.

l'interprétation ou l'application à son égard de toute disposition d'une convention collective ou d'une décision arbitrale qu'à condition d'avoir obtenu l'approbation de l'agent négociateur de l'unité de négociation à laquelle s'applique la convention collective ou la décision arbitrale et d'être représenté par cet agent.

(5) Le fonctionnaire qui choisit, pour une question donnée, de se prévaloir de la procédure de plainte instituée par une ligne directrice de l'employeur ne peut présenter de grief individuel à l'égard de cette question sous le régime de la présente loi si la ligne directrice prévoit expressément cette impossibilité.

[29] Section 238.02 of the *FPSLRA* provides that section 208 does not apply to RCMP members. It reads in relevant part as follows:

**Inconsistency with Part 1 or 2**

**238.02 (1)** In the event of an inconsistency between a provision of this Part and a provision of Part 1 or 2, the provision of this Part prevails to the extent of the inconsistency.

**Inconsistency — clarification**

(2) Without limiting the generality of subsection (1), section 58, subsections 208(1) and 209(1) and (2) and section 209.1 are inconsistent with this Part.

**Clarification**

(3) For greater certainty,

**Incompatibilité**

**238.02 (1)** Les dispositions de la présente partie l'emportent sur les dispositions incompatibles des parties 1 et 2.

**Précision sur l'incompatibilité**

(2) Pour l'application du paragraphe (1), sont notamment incompatibles avec la présente partie, l'article 58, les paragraphes 208(1) et 209(1) et (2) et l'article 209.1.

**Précision**

(3) Il est entendu que :

**(a)** the provisions of Part 1, in so far as they are applicable, apply to employees who are RCMP members or reservists unless there is an indication to the contrary; and

**(b)** the provisions of Part 2, in so far as they are applicable, apply to employees who are RCMP members, as defined in subsection 238.01(2), or reservists unless there is an indication to the contrary.

**a)** les dispositions de la partie 1, dans la mesure où elles sont applicables, s'appliquent aux fonctionnaires qui sont des membres de la GRC ou des réservistes, à moins d'indication contraire;

**b)** les dispositions de la partie 2, dans la mesure où elles sont applicables, s'appliquent aux fonctionnaires qui sont des membres de la GRC, au sens du paragraphe 238.01(2), ou des réservistes, à moins d'indication contraire.

[30] Section 238.24 of the *FPSLRA* sets out the grievance rights of RCMP members under the *FPSLRA*. Those grievance rights only extend to grievances filed under a collective agreement.

Section 238.24 of the *FPSLRA* provides as follows:

**238.24** Subject to subsections 208(2) to (7), an employee who is an RCMP member is entitled to present an individual grievance only if they feel aggrieved by the interpretation or application, in respect of the employee, of a provision of a collective agreement or arbitral award.

**238.24** Sous réserve des paragraphes 208(2) à (7), le fonctionnaire membre de la GRC a le droit de présenter un grief individuel seulement lorsqu'il s'estime lésé par l'interprétation ou l'application à son égard de toute disposition d'une convention collective ou d'une décision arbitrale.

[31] Under the *FPSLRA*, only some of the matters that may be grieved can be referred to adjudication before the Federal Public Sector Labour and Employment Board (the FPSLREB).

[32] For employees generally, subsection 209(1) of the *FPSLRA* provides:



## Reference to Adjudication

### Reference to adjudication

**209 (1)** An employee who is not a member as defined in subsection 2(1) of the *Royal Canadian Mounted Police Act* may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

**(a)** the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;

**(b)** a disciplinary action resulting in termination, demotion, suspension or financial penalty;

**(c)** in the case of an employee in the core public administration,

**(i)** demotion or termination under paragraph 12(1)(d) of the *Financial Administration Act* for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or

**(ii)** deployment under the Public Service Employment Act without the employee's consent where consent is required; or

**(d)** in the case of an employee of a separate agency designated under subsection (3), demotion or

## Renvoi à l'arbitrage

### Renvoi d'un grief à l'arbitrage

**209 (1)** Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, le fonctionnaire qui n'est pas un membre, au sens du paragraphe 2(1) de la *Loi sur la Gendarmerie royale du Canada*, peut renvoyer à l'arbitrage tout grief individuel portant sur :

**a)** soit l'interprétation ou l'application, à son égard, de toute disposition d'une convention collective ou d'une décision arbitrale;

**b)** soit une mesure disciplinaire entraînant le licenciement, la rétrogradation, la suspension ou une sanction pécuniaire;

**c)** soit, s'il est un fonctionnaire de l'administration publique centrale :

**(i)** la rétrogradation ou le licenciement imposé sous le régime soit de l'alinéa 12(1)d) de la *Loi sur la gestion des finances publiques pour rendement insuffisant*, soit de l'alinéa 12(1)e) de cette loi pour toute raison autre que l'insuffisance du rendement, un manquement à la discipline ou une inconduite,

**(ii)** la mutation sous le régime de la Loi sur l'emploi dans la fonction publique sans son consentement alors que celui-ci était nécessaire;

**d)** soit la rétrogradation ou le licenciement imposé pour toute raison autre qu'un manquement à

termination for any reason that does not relate to a breach of discipline or misconduct.

la discipline ou une inconduite, s'il est un fonctionnaire d'un organisme distinct désigné au titre du paragraphe (3).

[33] For members of the RCMP, section 238.25 provides:

**Limited right to refer to adjudication**

**238.25 (1)** An employee who is an RCMP member may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction only if the grievance is related to the interpretation or application, in respect of the employee, of a provision of a collective agreement or arbitral award.

**Agreement required**

**(2)** Before referring an individual grievance to adjudication, the employee must obtain the approval of their bargaining agent to represent the employee in the adjudication proceedings.

**Grievance related to accessibility**

**(3)** If a grievance referred to in subsection (1) is related to the contravention of a provision of regulations made under subsection 117(1) of the *Accessible Canada Act*, an employee who is an RCMP member may refer the grievance to adjudication only if the employee has suffered physical or psychological harm, property damage or economic loss as a result of — or has otherwise

**Droit limité de renvoyer un grief à l'arbitrage**

**238.25 (1)** Le fonctionnaire membre de la GRC peut, après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, renvoyer un grief individuel à l'arbitrage seulement si celui-ci porte sur l'interprétation ou l'application à son égard de toute disposition d'une convention collective ou d'une décision arbitrale.

**Approbation requise**

**(2)** Pour que le fonctionnaire puisse renvoyer à l'arbitrage le grief individuel, il faut que son agent négociateur accepte de le représenter dans la procédure d'arbitrage.

**Grief relatif à l'accessibilité**

**(3)** Si le grief visé au paragraphe (1) est relatif à une contravention à une disposition des règlements pris en vertu du paragraphe 117(1) de la *Loi canadienne sur l'accessibilité*, le fonctionnaire membre de la GRC peut seulement le renvoyer à l'arbitrage que s'il a subi des préjudices physiques ou psychologiques, des dommages matériels ou des pertes économiques

been adversely affected by — the contravention.

— ou a été autrement lésé — par suite de cette contravention.

[34] As noted, RCMP members also possess grievance rights under the *RCMP Act* and Regulations and Standing Orders under that Act.

[35] More specifically, section 31 of the *RCMP Act* provides in relevant part as follows:

**Member’s right**

**31(1)** Subject to subsections (1.01) to (3), if a member is aggrieved by a decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner’s standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.

**Limitation**

**(1.01)** A grievance that relates to the interpretation or application, in respect of a member, of a provision of a collective agreement or arbitral award must be presented under the *Federal Public Sector Labour Relations Act*.

**Limitation**

**(1.1)** A member is not entitled to present a grievance in respect of which an administrative procedure for redress is provided under any

**Règle**

**31(1)** Sous réserve des paragraphes (1.01) à (3), le membre à qui une décision, un acte ou une omission liés à la gestion des affaires de la Gendarmerie causent un préjudice peut présenter son grief par écrit à chacun des niveaux que prévoit la procédure applicable aux griefs prévue par la présente partie dans le cas où la présente loi, ses règlements ou les consignes du commissaire ne prévoient aucune autre procédure pour réparer ce préjudice.

**Réserve**

**(1.01)** Tout grief qui porte sur l’interprétation ou l’application à l’égard d’un membre de toute disposition d’une convention collective ou d’une décision arbitrale doit être présenté sous le régime de la *Loi sur les relations de travail dans le secteur public fédéral*.

**Réserve**

**(1.1)** Le membre ne peut présenter de grief si un recours administratif de réparation lui est ouvert sous le régime d’une autre loi fédérale, à

other Act of Parliament, other than one provided for in the *Canadian Human Rights Act*.

**Limitation**

**(1.2)** Despite subsection (1.1), a member is not entitled to present a grievance in respect of the right to equal pay for work of equal value.

**Limitation**

**(1.3)** A member is not entitled to present a grievance relating to any action taken under any instruction, direction or regulation given or made by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.

l'exception d'un recours administratif prévu par la *Loi canadienne sur les droits de la personne*.

**Réserve**

**(1.2)** Malgré le paragraphe (1.1), le membre ne peut présenter de grief relativement au droit à la parité salariale pour l'exécution de fonctions équivalentes.

**Réserve**

**(1.3)** Le membre ne peut présenter de grief portant sur une mesure prise en vertu d'une instruction, d'une directive ou d'un règlement établis par le gouvernement du Canada, ou au nom de celui-ci, dans l'intérêt de la sécurité du pays ou de tout État allié ou associé au Canada.

[36] A grievance process for RCMP members is prescribed in Part 2 of the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281, and the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289. This legislation also contains provisions allowing members to file complaints where they have been disciplined under the RCMP's Code of Conduct.

V. Analysis

[37] I turn now to discuss the various issues that arise in this appeal. The appellate standard of review applies to the Federal Court's judgment. Errors of law are reviewable for correctness, whereas errors of fact or of mixed fact and law, which do not disclose an extricable legal issue, are reviewable for palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2

S.C.R. 235; *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157, [2018] 2 F.C.R. 344 at para.72, leave to appeal to SCC refused, 37793 (17 May 2018), citing *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 F.C.R. 331 at paras. 28 and 71–72, leave to appeal to SCC refused, 37342 (22 June 2017); *Decor Grates Incorporated v. Imperial Manufacturing Group Inc.*, 2015 FCA 100, [2016] 1 F.C.R. 246 at para. 18.

[38] In striking the claims for which no leave to amend was granted, the Federal Court held that certain claims disclosed no cause of action because they did not exist at law. These determinations are legal in nature and thus fully reviewable by this Court for correctness: *Jensen v. Samsung Electronics Co. Ltd.*, 2023 FCA 89, 482 D.L.R. (4th) 504 at paras. 32-36, leave to appeal to SCC refused, 40807 (11 January 2024) [*Samsung*], citing *Pioneer Corp. v. Godfrey*, 2019 SCC 42, [2019] 3 S.C.R. 295 at para. 27, aff'd 2019 SCC 42, [2019] 3 S.C.R. 295. The Federal Court's interpretation of the relevant statutory provisions also raises legal issues reviewable for correctness.

[39] Conversely, the Federal Court's conclusions as to the adequacy of the material facts pleaded are reviewable under the palpable and overriding standard of review: *Samsung* at para. 38. Likewise, its determination to not exercise its residual discretion to allow the action to advance is reviewable under the palpable and overriding error standard of review: *Canada v. Greenwood*, 2021 FCA 186, [2021] 4 F.C.R. 635 at paras. 119-120, leave to appeal to SCC refused, 39885 (17 March 2022) [*Greenwood*].

[40] A pleading may be struck for disclosing no reasonable cause of action only where this is plain and obvious: *Berenguer v. Sata Internacional - Azores Airlines, S.A.*, 2023 FCA 176, 2023 CarswellNat 2983 at para. 23, leave to appeal to SCC refused, 40949 (11 April 2024) [*Berenguer*], citing *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, [2020] 1 S.C.R. 166 at para. 64; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45 at para. 17. The plain and obvious test applies to both the discernment of whether a claim pleaded is justiciable and to the discernment of whether it falls within the jurisdiction of the Federal Court: *Berenguer* at para. 24; *Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54, [2016] 2 S.C.R. 617 at para. 24. Where the issue is a jurisdictional one, evidence is admissible and, indeed, may be required: *Berenguer* at para. 26; *Greenwood* at para. 95; *MIL Davie Inc. v. Société d'Exploitation et de Développement d'Hibernia Ltée (1998)*, 226 N.R. 369, 1998 CanLII 7789 (FCA) at paras. 7-8.

[41] Bearing the foregoing general principles in mind, I turn next to assess the issues that arise in this appeal. In my view, they may be usefully broken down as follows:

1. Did the Federal Court err in determining that the plaintiffs employed by the RCMP were subject to the bar in section 236 of the *FPSLRA*?
2. Did the Federal Court err in determining that the bar in section 236 of the *FPSLRA* forecloses the right of action for claims in respect of the Interim Order and other travel related restrictions?
3. Did the Federal Court err in striking, without leave to amend, the claims related to the TB Policy made by the plaintiffs who were employed by the organizations listed in Schedule "A" to the Federal Court's Reasons?

4. Did the Federal Court err in finding certain other claims to be non-justiciable?
  5. Did the Federal Court err in striking the Statement of Claim due its being generally improper and failing to plead necessary material facts?
- A. *Did the Federal Court err in determining that the plaintiffs employed by the RCMP were subject to the bar in section 236 of the FPSLRA?*

[42] On the first issue, I conclude that the Federal Court erred in finding that the bar in section 236 of the *FPSLRA* applies to the plaintiffs who were members of the RCMP.

[43] It will be recalled that subsection 236(1) of the *FPSLRA* provides that 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”.

[44] To recall, the relevant definition of what constitutes a grievance is set out in subsection 206(1) of the *FPSLRA*. That section states that a grievance is one that may be filed under either section 208 or 238.4 of the *FPSLRA*. Thus, the bar in section 236 applies only to those who could seek redress via a grievance under section 208 or 238.4 of the *FPSLRA*.

[45] Yet, section 238.4 of the *FPSLRA* applies only to grievances arising under a collective agreement applicable to RCMP members who meet the statutory definition of “employee” in the *FPSLRA*. Based on the materials that were before the Federal Court and that are now before this

Court, it is impossible to ascertain whether any collective agreement has been negotiated for RCMP members. The National Police Federation was certified as the bargaining agent for RCMP members in 2019 by the FPSLREB in *National Police Federation v. Treasury Board*, 2019 FPSLREB 74. However, it is unclear if a collective agreement has been achieved and, if so, whether a challenge to the TB Policy could be the subject of a grievance under any such agreement. Given this lack of information, it is not plain and obvious that the plaintiffs who were members of the RCMP possessed rights to grieve the TB Policy under a grievance to which section 238.24 of the *FPSLRA* pertains.

[46] Further, section 208 of the *FPSLRA* is inapplicable to RCMP members by virtue of section 238.02 of that Act. Indeed, the FPSLREB recently confirmed in *Frémy v. Royal Canadian Mounted Police*, 2021 FPSLREB 47 that the only grievance rights RCMP members possess under the *FPSLRA* arise under section 238.24 of the *FPSLRA* and thus only pertain to alleged violations of a collective agreement.

[47] I note that many actions have proceeded against the RCMP for workplace issues, including class actions for matters that could have been the subject of grievances under the *RCMP Act* or Regulations or Standing Orders issued under that Act: see e.g. *Greenwood* at paras. 81, 160; *Tiller v. Canada*, 2019 FC 895, 307 A.C.W.S. (3d) 470; *Merlo v. Canada*, 2017 FC 533, 281 A.C.W.S. 3(d) 702; *Davidson v. Canada (Attorney General)*, 2015 ONSC 8008, 262 A.C.W.S. (3d) 648. There was no suggestion by the respondent in any of the foregoing cases that the bar in section 236 of the *FPSLRA* applied.



[48] I therefore conclude that the Federal Court erred in finding that section 236 of the *FPSLRA* foreclosed the action by the plaintiffs who were members of the RCMP as it is not plain and obvious that the provision applies to them.

B. *Did the Federal Court err in determining that the bar in section 236 of the FPSLRA forecloses the right of action for claims in respect of the Interim Order and other travel related restrictions?*

[49] I turn now to the second issue in this appeal and conclude that the Federal Court erred in determining that the bar in section 236 of the *FPSLRA* applied to the claims related to the Interim Order or the other travel impediments faced by the plaintiffs. These claims should not have been struck without leave to amend.

[50] The Interim Order and related measures could not be the subject of a grievance under either the *FPSLRA*, the *RCMP Act* or Regulations or Standing Orders promulgated under the latter Act.

[51] The *FPSLRA* grants grievance rights only in respect of employment-related matters and the bar in section 236 applies only to disputes “relating to an employee’s terms and conditions of employment”. The Interim Order and related travel measures were general measures that applied to all Canadians and were not imposed on the plaintiffs as a result of their employment. Thus, they could not be grieved under the *FPSLRA* and section 236 of the *FPSLRA* does not apply to them.

[52] Likewise, the Interim Order and related travel measures impugned by the plaintiffs could not be the subject of a grievance under the *RCMP Act* or the Regulations or Standing Orders promulgated under that Act. The Interim Order and other travel-related measures applied to RCMP members like all Canadians, irrespective of their employment and were not “a decision, act or omission in the administration of the affairs” of the RCMP, within the meaning of section 31 of the *RCMP Act*.

[53] The Federal Court therefore erred in finding that the plaintiffs’ claims related to the Interim Order and other travel-related measures could have been grieved or were subject to section 236 of the *FPSLRA*. While these claims suffer from the lack of proper pleadings and a failure to plead the necessary material facts that characterize the Statement of Claim generally, they should not have been struck without leave to amend. If properly pleaded, it may perhaps be possible for the plaintiffs to raise a claim that could come within the jurisdiction of the Federal Court. Without seeing an amended pleading, however, it is impossible to discern whether or not a valid claim might be advanced. The plaintiffs therefore should have been granted leave to amend the claims related to the Interim Order and other travel-related measures on the same basis as the Federal Court allowed other claims to be amended.

C. *Did the Federal Court err in striking, without leave to amend, the claims related to the TB Policy made by the plaintiffs who were employed by the organizations listed in Schedule “A” to the Federal Court’s Reasons?*

[54] On the third issue, I conclude that the Federal Court did not err in striking, without leave to amend, the claims related to the TB Policy made by the plaintiffs who were employed by the

organizations listed in Schedule “A” to the Federal Court’s Reasons, other than the RCMP.

However, the Federal Court erred in striking the claims of RCMP members related to the TB Policy.

[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 and thus subject to grievance under section 208 of the *FPSLRA*, which allows the employees of the organizations listed in Schedule “A” to the Federal Court’s Reasons other than the RCMP to file grievances relating to their terms and conditions of employment. That said, the FPSLREB recently held in *Rehibi v. Deputy Head (Department of Employment and Social Development)*, 2024 FPSLREB 47, that a grievance challenging the application of the TB Policy could not be referred to adjudication due to the fact that only a subset of matters that may be grieved under the *FPSLRA* may be referred to adjudication under subsection 209(1) of the *FPSLRA*.

[56] The bar in section 236 of the *FPSLRA* applies to matters that may be grieved as opposed to those that may be adjudicated. In determining whether an issue is one that may be grieved, what matters is the essence of the claim made and not the way the claim is characterized in the Statement of Claim. Thus, it matters not that the plaintiffs allege a *Charter* breach or various tort claims; one must instead look to the essential character of the dispute to determine if it raises a matter that could have been the subject of a grievance: *Vaughan v. Canada*, 2005 SCC 11, [2005] 1 S.C.R. 146 at para. 13; *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, 1995 CanLII 108 at para. 52 [*Weber*]; *Ebadi v. Canada*, 2024 FCA 39, [2024] F.C.J. No. 380 at para. 24 [*Ebadi*].

[57] Here, compliance with the TB Policy was a term and condition of employment for the plaintiffs employed by the organizations listed in Schedule “A” to the Federal Court’s Reasons. The requirement to have been vaccinated against COVID-19 or face a leave without pay could therefore have been grieved under section 208 of the *FPSLRA* by those employed in the organizations listed in Schedule “A” to the Federal Court’s Reasons, other than the RCMP.

[58] The case law interpreting section 236 of the *FPSLRA* recognizes that the section is a complete bar to a right of action for any matter that may be the subject of a grievance, subject to the possible caveat that a court may possess the discretion to hear the claim if the internal grievance process does not or cannot provide an adequate remedy or, perhaps, if the case is otherwise exceptional: *Ebadi*, at para. 47; *Bron v. Canada (Attorney General)*, 2010 ONCA 71, 99 O.R. (3d) 749 at paras. 29 and 32; *Robichaud v. Canada (Attorney General)*, 2013 NBCA 3, 225 A.C.W.S. (3d) 430 at para.10.

[59] Here, the Federal Court had no evidence before it as to the efficacy of the grievance process. I therefore conclude that the Federal Court did not err in striking the claims related to the TB Policy made by the plaintiffs who were employed by the organizations listed in Schedule “A” to the Federal Court’s Reasons other than the RCMP by virtue of section 236 of the *FPSLRA*. It was incumbent on the plaintiffs to have filed evidence about the efficacy of the grievance process if they wished the Court to exercise its discretion to hear the claim, as the plaintiffs did in *Greenwood*. In the absence of any such evidence pointing to any inefficacy of the grievance procedure, it was open to the Federal Court to have reached the conclusion that it did and to have struck, without leave to amend, the claims related to the TB Policy made by the

plaintiffs employed by the organizations listed in Schedule “A” to the Federal Court’s Reasons other than the RCMP.

[60] For the plaintiffs employed by the RCMP, on the other hand, it is unclear whether they possessed rights to grieve the TB Policy under the *RCMP Act* or the Regulations and Standing Orders under that Act. And, for the reasons already noted above, it is not plain and obvious that they could have grieved under the *FPSLRA*.

[61] The TB Policy was not adopted by the RCMP, but rather by the Treasury Board. It is not plain and obvious that its application would be “a decision, act or omission in the administration of the affairs of the Force” that would be grievable under section 31 of the *RCMP Act*. Somewhat similar policies have been found not to be subject to grievance under the *RCMP Act* because they are not decisions, acts or omissions made in the administration of the affairs of the Force.

[62] For example, in *Pasic v. Canada (Attorney General)*, 2022 FC 1171, 2022 CarswellNat 3030, the Federal Court upheld a decision of the Final Level Adjudicator in the RCMP grievance process. The Adjudicator dismissed the applicant’s grievance challenging where he was placed on the pay grid because pay was fixed by Treasury Board not the RCMP and therefore the grievance could not be dealt with under the *RCMP Act*.

[63] To similar effect, in Commissioner of the RCMP’s grievance decision G-335, dated April 14, 2005, an RCMP member sought to challenge a decision made by an employee of Treasury Board Secretariat to decline to declare the community in which the member resided prior to

being transferred a “depressed housing market”. The Commissioner found that he had no jurisdiction to hear a grievance that was based solely on a decision which was rendered by Treasury Board and adopted the External Review Committee’s finding that “the mere fact that the relocation benefits which are at issue in this grievance pertain to the performance of the member’s duties as an RCMP member cannot suffice to subject the decision made by an employee of another government department to a grievance process that is internal to the RCMP”: see RCMP External Review Committee, “Grievance Case Summary - G-335”, online: <<https://www.canada.ca/en/rcmp-external-review-committee/services/case-summaries/grievance/g-335.html>>. Similarly, in grievance decision G-255, dated March 28, 2001, an RCMP member, stationed in an Isolated Post, contested a decision declaring him ineligible to receive an allowance for fuel and utilities expenses, which was available only under certain conditions (not met by the member), through the Isolated Posts Directive, issued by the Treasury Board. The Commissioner similarly found that he had no jurisdiction to hear the grievance because the RCMP had no authority to pay a fuel and utilities allowance in light of the Treasury Board’s Isolated Posts Directive: see RCMP External Review Committee, “Grievance Case Summary - G-255”, online: <<https://www.canada.ca/en/rcmp-external-review-committee/services/case-summaries/grievance/g-255.html>>. Likewise, in grievance decision G-484, dated November 6, 2012, an RCMP member grieved the Vacation Travel Assistance rate for his isolated post, which was fixed by the Treasury Board. The Commissioner again found that the member did not have standing to grieve this issue because it was not a decision, act or omission made in the administration of the affairs of the Force: see RCMP External Review Committee, “Grievance Case Summary - G-484”, online: <<https://www.canada.ca/en/rcmp-external-review-committee/services/case-summaries/grievance/g-484.html>>.

[64] Since the defendants sought to strike the Statement of Claim based on the fact that a grievance process was available, it was incumbent on the defendants to establish that the TB Policy could have been grieved by RCMP members. However, no evidence was tendered on this issue and the statutory scheme is not sufficiently clear to definitively establish that the TB Policy could have been grieved by RCMP members. I therefore conclude that the Federal Court erred in striking the claims of RCMP members related to the TB Policy without leave to amend. The plaintiffs who were members of the RCMP should have been granted leave to amend their claims related to the TB Policy on the same basis as the plaintiffs who were employed by organizations other than those listed in Schedule “A” to the Federal Court’s Reasons were granted leave to amend.

D. *Did the Federal Court err in finding certain other claims to be non-justiciable?*

[65] I see no error in the Federal Court’s determination that allegations of criminal behaviour, broad declarations respecting the current state of medical and scientific knowledge, and a declaration that administering medical treatment without informed consent is a crime against humanity, are not justiciable in a civil action.

[66] As for the validity of the TB Policy and the Interim Order, it would appear that those issues may now well be moot. In addition, while it might have been possible to argue that the policies at issue were invalid in the context of a justiciable claim for relief on some other basis in accordance with the decision of the Supreme Court of Canada in *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, the Federal Court did not err in holding that

an order setting aside the TB Policy and the Interim Order could only be obtained by way of an application for judicial review.

[67] I accordingly see no basis for setting aside any of the foregoing rulings made by the Federal Court.

E. *Did the Federal Court err in striking the Statement of Claim due to its being generally improper and failing to plead necessary material facts?*

[68] Finally, I see no error in the Federal Court's finding that the Statement of Claim was improperly pleaded and lacked the necessary material facts. As noted in *Mancuso v. Canada (National Health and Welfare)* 2015 FCA 227, [2015] F.C.J. No. 1245 at para. 16, a plaintiff must plead, in summary form, but with sufficient detail, the constituent facts to support the relief sought. As the Federal Court rightly noted in this case, for the claims in respect of which leave to amend is granted, the plaintiffs must set out with sufficient particularity the facts they rely on in support of their claim, including details of how they were specifically impacted by the policies they impugn and the bases for and all material facts necessary to ground the claims advanced. The Statement of Claim, as drafted, is entirely devoid of these necessary material facts.

[69] I therefore see no reviewable error in the decision to strike the Statement of Claim in its entirety. However, leave to amend it should be granted to all the plaintiffs in accordance with these reasons.



VI. Proposed Disposition

[70] I would therefore allow this appeal in part and grant the plaintiffs leave to amend their Statement of Claim in accordance with these reasons. Since success is divided before this Court and before the Federal Court, I would set aside the Federal Court’s costs award and award no costs in respect of this appeal.

“Mary J.L. Gleason”

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J.A.

“I agree.

Richard Boivin J.A.”

“I agree.

René LeBlanc J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-67-23

**STYLE OF CAUSE:** KAREN ADELBERG ET AL. v.  
HIS MAJESTY THE KING ET  
AL.

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 8, 2023

**REASONS FOR JUDGMENT BY:** GLEASON J.A.

**CONCURRED IN BY:** BOIVIN J.A.  
LEBLANC J.A.

**DATED:** JUNE 7, 2024

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# TAB C

**IN THE SUPREME COURT OF CANADA**  
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

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, Mike Desson, Jane Doe #2, Stephane Drouin, Sylvie Filteau, Kirk Fidler, Thor Forseth, Glen Gabruch, Brett Garneau, Tracy Lynn Gates, Kevin Gien, Jane Doe #3, Warren Green, Jonathan Griffioen, Rohit Hannsraj, Kaitlyn Hardy, Sam Hilliard, Richard Huggins, Lynne Hunka, Joseph Islietson, Leosava 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 Grison, (Officers with the Royal Canadian Mounted Police)**

*(style of cause to be continued...)*

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**MEMORANDUM OF ARGUMENT**

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- and -

Stefanie **Allard**, Jake Daniel **Boughner**, Brent **Carter**, Brian **Cobb**, Laura **Constantinescu**, Sonia **Dinu**, Aldona **Fedor**, Jane **Doe #7**, Malorie **Kelly**, Matthew Stephen **MacDonald**, Mitchell **Macintyre**, Hertha **McLendon**, Marcel **Mihailescu**, Michael **Munro**, Sebastian **Nowak**, Diana **Rodrigues**, Natalie **Holden**, Adam Dawson **Winchester**, (**Canada Border Services Agency**)

-and-

Christine **Clouthier**, Debbie **Gray**, Jennifer **Penner**, Dale **Wagner**, Joseph **Ayoub**, (**Agriculture and Agri-food Canada**)

-and-

Jane **Doe #8**, (**Atlantic Canada Opportunities Agency**)

-and-

Melanie **DuFour**, (**Bank of Canada**)

-and-

#Jennifer **Auciello**, Sharon Ann **Joseph**, Eric **Munro**, (**Canada Mortgage and Housing Corporation**)

-and-

Jane **Doe #9**, (**Canada Pension Plan**)

-and-

Natalie **Boulard**, Beata **Bozek**, John **Doe #14**, Nerin **Andrea Carr**, Sara Jessica **Castro**, Debbie

(Dubravka ) **Cunko**, **Josée Cyr**, **Jane Doe #10**, **Carol Gaboury**, **Tania Gomes**, **Julita Grochocka**, **Monique Harris**, **William Hooker**, **Kirstin Houghton**, **Leila Kostyk**, **Michelle Lamarre**, **Nicolas LeBlond**, **Suana-Lee Leclair**, **Paulette Morissette**, **Jennifer Neave**, **Pierre-Alexandre Racine**, **Benjamin Russell**, **Robert Snowden**, **Aabid Thawer**, **Heidi Wiener**, **Svjetlana Zelenbaba**, **Nadia Zinck**, **Aaron James Thomas Shorrock**, **Deirdre McIntosh**,  
(**Canada Revenue Agency**)

- and –

**Tamara Stammers**, (**Canada School of the Public Service**)

- and –

**Jasmin Bourdon**, (**Canadian Space Agency**)

- and –

**Sharon Cunningham**, **Allen Lynden**, **Rory Matheson**, (**Canadian Coast Guard**)

- and –

**Tatjana Coklin**, **John Doe #15**, **Raquel Delmas**, **Jane Doe #11**, **Chelsea Hayden**, **Helene Joannis**, **Zaklina Mazur**, **Jane Doe #12**, **Jessica Simpson**, **Katarina Smolkova**, (**Canadian Food Inspection Agency**)

- and –

**Alexandre Charland**, (**Canadian Forest Service**)

- and –

**Catherine Provost**, **Kristina Martin**, (**Canadian Heritage**)

- and –

**Jane Doe #13**, (**Canadian Institutes of Health Research**)

- and –

**Beth Blackmore**, **Roxanne Lorrain**, (**Canadian Nuclear Safety Commission**)

- and –

**Rémi Richer**, (**Canadian Radio-Television and Telecommunications Commission**)

- and –

**Octavia La Prairie, (Canadian Security Intelligence Service)**

- and –

**Robert Bestard, (City of Ottawa Garage Fed Regulated)**

- and –

**Kimberly Ann Beckert, (Core Public Service)**

- and –

**Sarah Andreychuk, Francois Bellehumeur, Pamela Blaikie, Natasha Cairns, Angela Ciglonecki, Veronika Colnar, Randy Doucet, Kara Erickson, Jesse Forcier, Valérie Fortin, Roxane Gueutal, Melva Isherwood, Milo Johnson, Valeria Luedee, Laurie Lynden, Annette Martin, Craig McKay, Isabelle Methot, Samantha Osypchuk, Jane Doe #14, Wilnive Phanord, Alexandre Richer Levasseur, Kathleen Sawyer, Trevor Scheffel, (Correctional Service of Canada)**

- and –

**Jordan St-Pierre, (Courts Administration Service)**

- and-

**Brigitte Surgue, Jane Doe #15, (Department of Canadian Heritage)**

- and-

**Ghislain Cardinal, Heather Halliday, Paul Marten, Celine Rivier, Ngozi Ukwu, Jeannine Bastarache, Jane Doe #16, Hamid Naghdian Hamid Naghdian-Vishteh, (Department of Fisheries and Oceans)**

- and –

**Ishmael Gay-Labbe, Jane Doe #17, Leanne James, (Department of Justice)**

- and –

**Danielle Barabe-Bussieres, (Elections Canada)**

- and –

**Tanya Daechert, Jane Doe #18, Francois Arseneau, Chantal Authier, Nathalie Benoit, Aerie Biafore, Rock Briand, Arnaud Brien-Thiffault, Sharon Chiu, Michel Daigle, Brigitte Daniels,**

Louise **Gaudreault**, Karrie **Gevaert**, Mark **Gevaert**, Peter **Iversen**, Derrick **Lamb**, Jane **Doe #19**, Anna **Marinic** , Divine **Masabarakiza**, James **Mendham** , Michelle Marina **Micko**, Jean **Richard**, Stephanie **Senecal** , Jane **Doe #20**, Ryan **Sewell**, Kari **Smythe**, Olimpia **Somesan**, Lloyd **Swanson**, Tyrone **White**, Elissa **Wong**, Jenny **Zambelas**, Li yang **Zhu**, Patrice **Lever**,  
**(Employment and Social Development Canada)**

-and-

Jane **Doe #21**, Brian Philip **Crenna**, Jane **Doe #22**, Bradley David **Hignell**, Andrew **Kalteck**, Dana **Kellett**, Josée **Losier**, Kristin **Mensch**, Elsa **Mouana**, Jane **Doe #23**, Jane **Doe #24**,  
Valentina **Zagorenko**, **(Environment and Climate Change Canada)**

- and –

**Pierre Trudel, (Export Development Canada)**

- and –

Stephen Alan **Colley**, **(Federal Economic Development Agency for Southern Ontario)**

- and –

**Vladimir Raskovic, (Garda Security Screening Inc)**

- and –

Mélanie **Borgia**, Jonathan Kyle **Smith**, Donna **Stainfield**, Annila **Tharakan**, Renee Michiko **Umezuki**, **(Global Affairs Canada)**

- and –

**Dennis Johnson, (Global Container Terminals Canada)**

- and –

Alexandre **Guilbeault**, Tara (Maria) **McDonough**, France **Vanier**, **(Government of Canada)**

- and –

Alex **Braun**, Marc **Lescelleur-Paquette**, **(House of Commons)**

- and –

Aimee **Legault**, **(Human Resources Branch)**



- and –

Dorin Andrei **Boboc**, Jane **Doe #25**, Sophie **Guimard**, Elisa **Ho**, Kathy **Leal**, Caroline **Legendre**, Diana **Vida**, (**Immigration, Refugees and Citizenship Canada**)

- and –

Nathalie Joanne **Gauthier**, (**Indigenous and Northern Affairs Canada**)

- and –

Christine **Bizier**, Amber Dawn **Kletzel**, Verona **Lipka**, Kerry **Spears**, (**Indigenous Services Canada**)

- and –

Sun-Ho **Paul Je**, (**Innovation, Science and Economic Development Canada**)

- and –

Giles **Roy**, (**National Film Board of Canada**)

- and –

Ray **Silver**, Michelle **Dedyulin**, Letitia **Eakins**, Julie-Anne **Kleinschmit**, Marc-Andre **Octeau**, Hugues **Scholaert**, (**National Research Council Canada**)

- and –

Felix **Beauchamp**, (**National Security and Intelligence Review Agency**)

- and –

Julia May **Brown**, Caleb **Lam**, Stephane **Leblanc**, Serryna **Whiteside**, (**Natural Resources Canada**)

- and –

Nicole **Hawley**, Steeve **L'italien**, Marc **Lecocq**, Tony **Mallet**, Sandra **McKenzie**, (**NAV Canada**)

- and –

Muhammad **Ali**, (**Office of the Auditor General of Canada**)

- and –

**Ryan Rogers, (Ontario Northland Transportation Commission)**

- and –

**Theresa Stene, Michael Dessureault, John Doe #16, (Parks Canada)**

- and –

**Charles-Alexandre Beauchemin, Brett Oliver, (Parliamentary Protective Service)**

- and –

**Carole Duford, (Polar Knowledge Canada)**

- and –

**Joanne Gabrielle de Montigny, Ivana Eric, Jane Doe #26, Salyna Legare, Jane Doe #27, Angie Richardson, Jane Doe #28, (Public Health Agency of Canada)**

- and –

**Fay Anne Barber, (Public Safety Canada)**

- and –

**Denis Laniel, (Public Sector Pension Investment Board)**

- and –

**Kathleen Elizabeth Barrette, Sarah Bedard, Mario Constantineau, Karen Fleury, Brenda Jain, Megan Martin, Jane Doe #29, Isabelle Paquette, Richard Parent, Roger Robert Richard, Nicole Sincennes, Christine Vessia, Jane Doe #30, Pamela McIntyre, (Public Services and Procurement Canada)**

- and –

**Isabelle Denis, (Registrar of the Supreme Court of Canada)**

- and –

**Jane Bartmanovich, (Royal Canadian Mint)**

- and –

Nicole **Brisson**, (**Service Canada**)

- and –

Denis **Audet**, Mathieu **Essiambre**, Alain **Hart**, Andrea **Houghton**, Natalia **Kwiatek**, Dany **Levesque**, David **McCarthy**, Pascal **Michaud**, Mervi **Pennanen**, Tonya **Shortill**, Stephanie **Tkachuk**, Marshall **Wright**, (**Shared Services Canada**)

- and –

Eve Marie **Blouin-Hudon**, Marc-Antoine **Boucher**, Christopher **Huszar**, (**Statistics Canada**)

- and –

Steve **Young**, (**Telestat Canada**)

- and –

Nathan **Aligizakis**, Stephen **Daniel**, Alain **Douchant**, Krystal **McColgan**, Debbie **Menard**, Clarence **Ruttle**, Dorothy **Barron**, Robert **McLachlan**, (**Transport Canada**)

- and –

Scott Erroll **Henderson**, Denis **Theriault**, (**Treasury Board of Canada**)

- and –

Josiane **Brouillard**, Alexandra **McGrath**, Nathalie **Ste-Croix**, Jane **Doe #31**, (**Veterans Affairs Canada**)

- and -

Olubusayo (Busayo) **Ayeni**, John **Doe #17**, Cynthia **Bauman**, Jane **Doe #32**, , Laura Crystal **Brown**, Ke(Jerry) **Cai**, Nicolino **Campanelli**, Donald Keith **Campbell**, Colleen **Carder**, Kathy **Carriere**, Melissa **Carson**, David **Clark**, Bradley **Clermont**, Laurie **Coelho**, Estee **Costa**, Antonio **Da Silva**, Brenda **Darvill**, Patrick **Davidson**, Eugene **Davis**, Leah **Dawson**, Marc **Fontaine**, Jacqueline **Genaille**, Eldon **Goossen**, Joyce **Greenaway**, Lori **Hand**, Darren **Hay**, Krista **Imiola**, Catherine **Kanuka**, Donna **Kelly**, Benjamin **Lehto**, Anthony **Leon**, Akemi **Matsumiya**, Jane **Doe #33**, Jane **Doe #34**, Jane **Doe #35**, Anne Marie **McQuaid-Snider**, Lino **Mula**, Pamela **Opersko**, Gabriel **Paquet**, Christine **Paquette**, Carolin Jacqueline **Paris** , Jodie **Price**, Kevin **Price**, Giuseppe **Quadrini**, Saarah **Quamina**, Shawn **Rossiter**, Anthony **Rush**, Anthony **Shatzko**, Charles **Silva**, Ryan **Simko**, Norman **Sirois**, Brandon **Smith**, Catharine **Spiak**, Sandra **Stroud**, Anita **Talarian**, Daryl **Toonk**, Ryan **Towers**, Leanne **Verbeem**, Eran

**Vooyoys, Robert Wagner, Jason Weatherall, Melanie Burch, Steven Cole, Toni Downie, Jodi Stammers, (Canada Post)**

- and -

**Nicolas Bell, John Doe #18, John Doe #19, Jane Doe #36, John Doe #20, Paola Di Maddalena, Nathan Dodds, John Doe #21, Jane Doe #37, Nunzio Giolti, Mario Girard, Jane Doe #38, Jane Doe #39, You-Hui Kim, Jane Doe #40, Sebastian Korak, Ada Lai, Mirium Lo, Melanie Mailloux, Carolyn Muir, Patrizia Paba, Radu Rautescu, Aldo Reano, Jacqueline Elisabeth Robinson, John Doe #22, Frederick Roy, John Doe #23, Taeko Shimamura, Jason Sisk, Beata Sosin, Joel Szostak, Mario Tcheon, Rebecca Sue Thiessen, Jane Doe #41, Maureen Yearwood, (Air Canada)**

- and -

**John Doe #24, JOSÉE Demeule, Jacqueline Gamble, Domenic Giancola, Sadna Kassin, Marcus Steiner, Christina Trudeau, (Air Canada Jazz)**

- and -

**John Doe #25, Emilie Despres, (Air Inuit)**

- and -

**Rejean Nantel, (Bank of Montreal)**

- and -

**Lance Victor Schilka, (BC Coast Pilots Ltd)**

- and -

**Elizabeth Godler, (BC Ferries)**

- and -

**John Doe #26, Jane Doe #42, Tamara Davidson, Jane Doe #43, Brad Homewood, Chad Homewood, Charles Michael Jefferson, John Doe #27, Janice Laraine Kristmanson, Jane Doe #44, Darren Louis Lagimodiere, John Doe #28, John Doe #29, Mirko Maras, John Doe #30, John Doe #31, John Doe #32, John Doe #33, John Doe #34, Jane Doe #45, John Doe #35, Kendal Stace-Smith, John Doe #36, Steve Wheatley, (British Columbia Maritime Employers Association)**

- and –

**Paul Veerman, (Brookfield Global Integrated Solutions)**

- and –

**Mark Barron, Trevor Bazilewich, John Doe #37, Brian Dekker, John Gaetz, Ernest Georgeson, Kyle Kortko, Richard Letain, John Doe #38, Dale Robert Ross, (Canadian National Railway)**

- and –

**Tim Cashmore, Rob Gebert , Micheal Roger Mailhiot, (Canadian Pacific Railway)**

- and –

**Karin Lutz, (DP World)**

- and –

**Crystal Smeenk, (Farm Credit Canada)**

- and –

**Sylvie M.F. Gelinis, Susie Matias, Stew Williams, (G4S Airport Screening)**

- and –

**Shawn Corman, (Geotech Aviation)**

- and –

**Juergen Bruschkewitz, Andre Deveaux, Bryan Figueira, David Spratt, Guy Hocking, Sean Grant, (Greater Toronto Airports Authority)**

- and –

**Dustin Blair, (Kelowna Airport Fire Fighter)**

- and -

**Hans-Peter Liechti, (National Arts Centre)**

- and –

**Bradley Curruthers, Lana Douglas, Eric Dupuis, Sherri Elliot, Roben Ivens, Jane Doe #46,  
Luke Van Hoekelen, Kurt Watson, (Ontario Power Generation)**

- and –

**Theresa Stene, Michael Dessureault, Adam Pidwerbeski, (Parks Canada)**

-and-

**John Doe #39, (Pacific Pilotage Authority)**

- and –

**Angela Gross, (Purolator Inc.)**

- and –

**Gerhard Geertsema, (Questral Helicopters)**

- and –

**Amanda Randall, Jane Doe #47, Frank Veri, (RBC Royal Bank)**

- and –

**James (Jed) Forsman, (Rise Air)**

- and –

**Jane Doe #48, (Rogers Communications Inc)**

- and –

**Jerrilynn Rebeyka, (SaskTel)**

- and –

**Eileen Fahlman, Mary Treichel, (Scotiabank)**

- and -

**Judah Gaelan Cummins, (Seaspan Victoria Docks)**

- and –

**Darin Watson, (Shaw)**

- and -

**Richard Michael Alan Tabak, (SkyNorth Air Ltd)**

- and –

**Deborah Boardman, Michael Brigham, (Via Rail Canada)**

- and –

**Kevin Scott Routly, (Wasaya Airways)**

- and –

**Bryce Sailor, (Waterfront Employers of British Columbia)**

- and –

**Joseph Bayda, Jamie Elliott, John Doe #40, Randall Mengerling, Samantha Nicastro,  
Veronica Stephens, Jane Doe #49, (WestJet)**

- and –

**Melvin Gerein, (Westshore Terminals)**

Applicants

AND:

**His Majesty The King, Prime Minister Justin Trudeau, Deputy Prime Minister and Minister  
of Finance Chrystia Freeland, Chief Medical Officer Teresa Tam, Minister of Transport Omar  
Alhabra, Deputy Minister of Public Safety Marco Mendicino, Johns and Janes Doe**

Respondents

## MEMORANDUM OF ARGUMENT

### PART I – OVERVIEW AND FACTS

1. The Plaintiffs rely on the facts as set out in the statement of claim, which, for the purposes of this motion, are required to be taken as proven<sup>1</sup>.
2. This statement of Claim sets out that:
  6. The Plaintiffs are all either:
    - (a) Federal (former) Employees of various agencies and Ministries of the Government of Canada and servants, officials, and/or agents of the Crown;
    - (b) Employees of Federal Crown Corporations; and
    - (c) Employees of federally regulated sectors;

As set out and categorized in the style of cause in the within claim.

7. Most of the Plaintiffs were sent home on “leave without pay” and/or subsequently fired for refusing to take the COVID-19 “vaccines” (inoculations) whether or not they were working from home, and/or further refused to multi-weekly PCR testing in order to continue working. All Plaintiffs were placed on leave without pay and fired pursuant to the purported dictate of the *Financial Administration Act* with respect to Covid-19 “vaccines”, purportedly mandated by the Treasury Board.
8. Some Plaintiffs are/were on medical leave but declined to take the covid-vaccine, particularly of which will be furnished subsequent to the issues of the within Statement of Claim. Some Plaintiffs due to the coercive illegal and unconstitutional actions and dictates of the Defendants and their officials took, under that duress, early and involuntary retirement, particulars of which will be furnished subsequent to the issuance of the within Statement of Claim.
9. All the Plaintiffs possess a conscientious and/or physical /medical reason for refusing to take the COVID-19 “vaccines” (inoculations).
10. While “exemptions” to these “mandatory vaccine mandates” exist, in theory, all of the Plaintiffs who sought an exemption were arbitrarily denied without reasons. The

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<sup>1</sup> *A.G. Canada v. Inuit Tapirasiat of Canada*, [1980] 2 S.C.R. 735; *Nelles v. Ontario*, [1989] 2 S.C.R. 170; *Operation Dismantle v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 SCR441; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959; *Dumont v. A.G. Canada*, [1990] 1 S.C.R. 279; *Trendsetter Ltd. v. Ottawa Financial Corp.*, (1989)32 O.A.C. 327 (C.A.); *Nash v. Ontario*, (1995) 27 O.R. (3d) 1 (Ont. C. A.); *Canada v. Arsenault*, 2009 FCA 242; *B.C. v. Imperial Tobacco Canada Ltd.*, [2005] 2 S.C.R. 473



Plaintiffs further state that there is no obligation to seek any exemption before refusing the vaccines.

11. All the Plaintiffs are ineligible for Employment Insurance benefits because they were dismissed for refusing the “vaccines” (Inoculations).
  12. All of the Plaintiffs wish to exercise their ss. 6 and 7 of the *Charter* rights to travel within Canada, as well as abroad, which is barred to them by virtue of a non-possession of a “vaccine passport”.<sup>2</sup>
3. The Honourable Chief Justice Marc Noel, of the Federal Court of Appeal, recognized that the challenge to government vaccine policies are “fraught with controversy” in September 2021 when he publicly stated:

“The court’s paramount responsibility, especially on an issue as controversial and unprecedented as this, is to ensure that Canadians are confident in this court’s capacity and commitment to decide cases on the facts and the law and nothing else — not even any personal views and institutional policies we may happen to have.”<sup>3</sup>

## **PART II – ISSUES**

4. Whether the Federal Court and Federal Court of Appeal erred in misapplying the test on a motion to strike?
5. Whether the Federal Court of Appeal erred, in 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 remedies?
6. Whether the Federal Court of Appeal erred in applying an absolute rule that there is no room for Superior Court action where a Plaintiff is a member of a collective bargaining agreement and thus<sup>4</sup>:
  - (a) ignoring *Weber* and the cited exceptions therein to adequate alternate remedy; and

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<sup>2</sup> **Application for Leave (“AFL”), Tab E1, Statement of Claim, at AFL, at Tab 4 Paragraphs 6-12**

<sup>3</sup> **AFL Tab E3, Affidavit of Amina Sherazee, “Exhibit A” at paragraph 6**

<sup>4</sup> **AFL Tab C1, Decision of Federal Court, at [paragraph 32](#)**

- (b) ignoring Superior and Federal Court jurisprudence where, applying the *Weber* exceptions, found that action for the torts misfeasance of public office can be brought in the Superior Court;
- thus again misapplying the test on a motion to strike?

### **PART III – ARGUMENT**

#### **A/ Motion to Strike – The Jurisprudence – General Principles**

7. It is submitted and tritely held, by the Supreme Court of Canada, and the Appellate Courts, that:

- (a) the facts pleaded by the Plaintiffs must be taken as proven and fact:<sup>5</sup>
- (b) it has been further held, that on a motion to strike, the test is a rather high one, namely that,

“A Court should strike a pleading under Rule 126 **only in plain and obvious cases where the pleading is bad beyond argument.**

**Furthermore, I am of the view that the rules of civil procedure should not act as obstacles to a just and expeditious resolution of a case.**

Rule 1.04(1) of the Rules of Civil Procedure in Ontario, O. Reg 560/84, confirms this principle in stating that “these rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.”<sup>6</sup>

and rephrased, re-iterated by the Supreme Court of Canada, in *Dumont*, wherein the Court stated that,

***“It cannot be said that the outcome of the case is ‘plain and obvious’ or ‘beyond doubt’.***

Issues as to the proper interpretation of relevant provisions...and the effect...upon them would appear to be better determined at trial where a proper factual base can be laid.”<sup>7</sup>

and further, that:

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<sup>5</sup> **Supra. Paragraph 1, Footnote 1.**

<sup>6</sup> *Nelles v. Ontario*, [1989] 2 S.C.R. 170 at page. 627

<sup>7</sup> *Dumont v. A.G. Canada*, [1990] 1 S.C.R. 279; page. 280

“It is not for this Court on a motion to strike to reach a decision as to the Plaintiff’s chance of success.”<sup>8</sup>

and further that:

**The fact that a pleading reveals “an arguable, difficult or important point of law” cannot justify striking out part of the statement of claim. Indeed, I would go so far as to suggest that where a statement of claim reveals a difficult and important point of law, it may well be critical that the action be allowed to proceed. Only in this way can we be sure that the common law in general, and the law of torts in particular, will continue to evolve to meet the legal challenges that arise in our modern industrial society.**

...

This brings me to the second difficulty I have with the defendants’ submission. **It seems to me totally inappropriate on a motion to strike out a statement of claim to get into the question whether the Plaintiff’s allegations concerning other nominate torts will be successful. This a matter that should be considered at trial where evidence with respect to the other torts can be led and where a fully informed decision about the applicability of the tort of conspiracy can be made in light of that evidence and the submissions of counsel.** If the Plaintiff is successful with respect to the other nominate torts, then the trial judge can consider the defendants’ arguments about the unavailability of the tort of conspiracy. If the Plaintiff is unsuccessful with respect to the other nominate torts, then the trial judge can consider whether he might still succeed in conspiracy. Regardless of the outcome, it seems to me inappropriate at this stage in the proceedings to reach a conclusion about the validity of the defendants’ claims about merger. I believe that this matter is also properly left for the consideration of the trial judge.<sup>9</sup>

and further that:

[21] Valuable as it is, the Motion to Strike **is a tool that must be used with care.** The Law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. Before *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.) introduced a general duty of care to one’s neighbour premised on foreseeability, few would have predicted that, absent a contractual relationship, a bottling company could be held liable for physical injury and emotional trauma resulting from a snail in a bottle of ginger beer. Before *Hedly Byrne & Co. v. Heller & Partners, Ltd.*, [1963] 2 All E.R. 575 (H.L.), a tort action for negligent misstatement would have been regarded as incapable of success. The history of our law reveals that often new developments in the law first surface on motions to

<sup>8</sup> *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959

<sup>9</sup> *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, at page. 14

strike or similar preliminary motions, like that one at issue in *Donoghue v. Stevenson*. therefore, on a Motion to Strike, it is not determinative that the law has not yet recognized the particular claim. **The Court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.**<sup>10</sup>

and that “the court should make an order only in *plain and obvious cases* which it is satisfied to be beyond doubt”;<sup>11</sup>

(c) (i) and that a statement of claim should not be struck just because it is “novel”;<sup>12</sup>

(ii) that “matters law not *fully settled* by the jurisprudence should not be disposed of at this stage of the proceedings”;<sup>13</sup>

(iii) and that to strike, the Defendants must produce a “decided case *directly on point* from the same jurisdiction demonstrating that the very same issue has been *squarely dealt with and rejected*”;<sup>14</sup>

(a) and that, in fact, the Court ought to be generous in the drafting of pleadings and not strike but allow amendment before striking.<sup>15</sup>

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<sup>10</sup> *R. v. Imperial Tobacco Canada Ltd.*, supra at [para 21](#)

<sup>11</sup> *Trendsetter Ltd. v. Ottawa Financial Corp.*, (1989)32 O.A.C. 327 (C.A.), supra, (Ont. C.A.).

<sup>12</sup> *Nash v. Ontario*, (1995) 27 O.R. (3d) 1 (Ont. C. A.); *Hanson v. Bank of Nova Scotia*, (1994) 19 O.R. (3d) 142 (C.A.); *Adams-Smith v. Christian Horizons*, (1997)14 C.P.C.(4<sup>th</sup>)78 (Ont. Gen. Div.); *Miller (Litigation Guardian of) v. Wiwchairyk*, (1997) 34 O.R. (3d) 640 (Ont.Gen.Div);

<sup>13</sup> *R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd.*, (1991) 5 O.R. (3d) 778 (C.A.)

<sup>14</sup> *Dalex Co. v. Schawartz Levitsky Feldman*, (1994) 19 O.R. (3d) 463 (Gen. Div)

<sup>15</sup> *Grant v. Cormier – Grant, et. al.*, (2001) 56 O.R. (3d) 215 (Ont. C.A.), *TD Bank v. Delloitte Hoskins & Sells*, (1991) 5 O.R. (3d) 417 (Gen. Div.)

### **B/ Nature of Plaintiff's Claim**

8. The Plaintiffs, in their claim, seek the following:

(a) monetary damages;<sup>16</sup>

Based on the following torts:

- (i) Misfeasance of public;
- (ii) Conspiracy;
- (iii) Intimidation;
- (iv) Violations of ss.2,7, and 15 of the *Charter*;
- (v) Intentional infliction of mental anguish;

(b) Declaratory relief as to jurisdiction, legislation, regulations and executive action and inaction;<sup>17</sup>

(c) injunctive relief.<sup>18</sup>

9. Contrary to what the Defendants posit, and the Federal Court and Federal Court of Appeal ruled, the claim is **not** based on contract or a labour paradigm. The claim is solely based on common law and constitutional tort, with declaratory relief ancillary to those torts, particularly the constitutional torts (violations), **all** grounded in various forms of **misfeasance of public office**.

### **C/ The Constitutional Right to Declaratory Relief**

10. The Plaintiffs submit that Declaratory relief goes to the crux of the constitutional right to judicial review, which right the Supreme Court of Canada has re-affirmed in *Dunsmuir*:

**31** The legislative branch of government cannot remove the judiciary's power to review actions and decisions of administrative bodies for compliance with the constitutional capacities of the government. Even a privative clause, which provides a strong indication of legislative intent, cannot be determinative in this respect (*Executors of the Woodward Estate v. Minister of Finance*, [1973] S.C.R. 120, at p. 127 [page213]). The inherent power of superior courts to review administrative action and ensure that it does not exceed its jurisdiction stems from

<sup>16</sup> AFL, Tab E1 Statement of claim., Paragraph 3

<sup>17</sup> Ibid., AFL, Tab E1 at paragraph 1

<sup>18</sup> Ibid., AFL Tab E1 at Paragraph 4

the judicature provisions in ss. 96 to 101 of the *Constitution Act, 1867*: *Crevier*. As noted by Beetz J. in *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, at p. 1090, "[t]he role of the superior courts in maintaining the rule of law is so important that it is given constitutional protection". ***In short, judicial review is constitutionally guaranteed in Canada***, particularly with regard to the definition and enforcement of jurisdictional limits...<sup>19</sup>

11. The Federal Court, in *Singh v. Canada (Citizenship and Immigration)*, 2010 FC 757, re-affirmed the ample and broad right to seek declaratory relief, in quoting the Supreme

Court of Canada in *Solosky*:

Declaratory relief is a remedy **neither constrained by form nor bounded by substantive content**, which avails persons sharing a legal relationship, in respect of which a "real issue" concerning the relative interests of each has been raised and falls to be determined.<sup>20</sup>

12. More recently, the Supreme Court of Canada, in the *Manitoba Metis* case reaffirmed the breadth of the right to declaratory relief to rule that it cannot be statute-barred:

[134] This Court has held that although claims for personal remedies flowing from the striking down of an unconstitutional statute are barred by the running of a limitation period, courts retain the power to rule on the constitutionality of the underlying statute: *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, 2007 SCC 1, [2007] 1 S.C.R. 3; *Ravndahl v. Saskatchewan*, 2009 SCC 7, [2009] 1 S.C.R. 181. ***The constitutionality of legislation has always been a justiciable question***: *Thorson v. Attorney General of Canada*, [1975] 1 S.C.R. 138, at p. 151. ***The "right of the citizenry to constitutional behaviour by Parliament" can be vindicated by a declaration that legislation is invalid, or that a public act is ultra vires***: *Canadian Bar Assn. v. British Columbia*, 2006 BCSC 1342, 59 B.C.L.R. (4th) 38, at paras. 23 and 91, citing *Thorson*, at p. 163 (emphasis added). **An "issue [that is] constitutional is always justiciable"**: *Waddell v. Schreyer* (1981), 126 D.L.R. (3d) 431 (B.C.S.C.), at p. 437, aff'd (1982), 142 D.L.R. (3d) 177 (B.C.C.A.), leave to appeal refused [1982] 2 S.C.R. vii (*sub nom. Foothills Pipe Lines (Yukon) Ltd. v. Waddell*).

...

[140] ***The courts are the guardians of the Constitution and, as in Ravndahl and Kingstreet, cannot be barred by mere statutes from issuing a declaration on a fundamental constitutional matter. The principles of legality, constitutionality and the rule of law demand no less***: see *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217, at para. 72.

...

<sup>19</sup> *Dunsmuir v. New Brunswick*, 2008 SCC 9, at Para. 31

<sup>20</sup> *Canada v. Solosky*, [1980] 1 S.C.R. 821, at page. 830

[143] ***Furthermore, the remedy available under this analysis is of a limited nature. A declaration is a narrow remedy. It is available without a cause of action, and courts make declarations whether or not any consequential relief is available.*** As argued by the intervener Assembly of First Nations, it is not awarded against the defendant in the same sense as coercive relief: factum, at para. 29, citing *Cheslatta Carrier Nation v. British Columbia*, 2000 BCCA 539, 193 D.L.R. (4th) 344, at paras. 11-16.<sup>21</sup>

#### **D/Jurisprudence on Covid-19 measures mitigating against striking claim**

13. It is further submitted that jurisprudence, both in Canada and abroad, to the same claims and issues set out in the within claim, clearly weighs against striking this claim, whether in whole or in part.
14. Thus, the United States Supreme Court, struck, as unconstitutional measures against barring church gatherings on constitutional provisions indistinguishable from s.2 of the Canadian *Charter*.<sup>22</sup>
15. Recently, the Indian Supreme Court struck as unconstitutional, the Covid-vaccine, **coercive measures** as unconstitutional for offending a provision of their constitution protecting bodily integrity, indistinguishable from s.7 of the Canadian *Charter*.<sup>23</sup>
16. Moreover, it has already been established, in Canadian jurisprudence that any medical treatment without informed, voluntary, consent violates s.7 of the *Charter* and not saved by s.1:<sup>24</sup> wherein, the Supreme Court of Canada, in *inter alia*, *Carter* ruled:

[67] The law has long protected patient autonomy in medical decision-making. In *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30, [2009] 2 S.C.R. 181, a majority of this Court, per Abella J. (the dissent not disagreeing on this point), endorsed the “tenacious relevance in our legal system of the principle that competent individuals are — and should be — free to make decisions about their bodily integrity” (para. 39). This right to “decide one’s own

<sup>21</sup> *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, [2013 SCC 14](#) at [para 134](#), [140](#), [143](#)

<sup>22</sup> *Roman Catholic Diocese of Brooklyn, New York V. Andrew M. Cuomo, Governor Of New York U.S.*, [592 \(2020\)](#)

<sup>23</sup> *Jacob Puliyel vs Union of India*, [2 May, 2022](#)

<sup>24</sup> *Fleming v. Reid, Carter v. Canada (Attorney General)*, [2015 SCC 5 \(CanLII\)](#) at [para. 67](#)

fate” entitles adults to direct the course of their own medical care (para. 40): it is this principle that underlies the concept of “informed consent” and is protected by s. 7’s guarantee of liberty and security of the person (para. 100; see also *R. v. Parker* (2000), 2000 CanLII 5762 (ON CA), 49 O.R. (3d) 481 (C.A.)). As noted in *Fleming v. Reid* (1991), 1991 CanLII 2728 (ON CA), 4 O.R. (3d) 74 (C.A.), the right of medical self-determination is not vitiated by the fact that serious risks or consequences, **including death, may flow from the patient’s decision. It is this same principle that is at work in the cases dealing with the right to refuse consent to medical treatment, or to demand that treatment be withdrawn or discontinued**: see, e.g., *Ciarlariello v. Schacter*, 1993 CanLII 138 (SCC), [1993] 2 S.C.R. 119; *Malette v. Shulman* (1990), 1990 CanLII 6868 (ON CA), 72 O.R. (2d) 417 (C.A.); and *Nancy B. v. Hôtel-Dieu de Québec* (1992), 1992 CanLII 8511 (QC CS), 86 D.L.R. (4th) 385 (Que. Sup. Ct.).

Additionally, the Indian Supreme Court, ruled, under their equality provision, indistinguishable from s.15 of the *Charter*, that, based on the scientific evidence, drawing a distinction or discriminating as between “vaccinated” and “unvaccinated” individuals is unconstitutional because the vaccinated could equally transmit and receive the Covid-19 virus. In fact, this Indian Supreme Court decision heavily relies on jurisprudence from other common-law jurisdictions including the USA, Australia and New Zealand.<sup>25</sup>

17. In Ontario, attempts at moving to strike applications, *in limine*, challenging the Covid-measures, have been dismissed.<sup>26</sup>
18. The Ontario Superior Court has also recently ruled that these issues of Covid-measures are not to be dealt with on a perfunctory basis, assuming and adopting the baldly-stated positions of public health officials, but to be dealt with, like any other case, on the available evidence and material bearing on the issue(s) before the Court.<sup>27</sup>

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<sup>25</sup> *Roman Catholic Diocese of Brooklyn, New York V. Andrew M. Cuomo, Governor Of New York U.S.*, [592 \(2020\)](#)

<sup>26</sup> *Sgt Julie Evans et al. v. AG Ontario et al.*, ([2021](#)); *M.A. v. De Villa*, [2021 ONSC 3828](#)

<sup>27</sup> *J.N. v. C.G.*, [2022 ONSC 1198](#)



19. It is further submitted that the B.C. Supreme Court recently dismissed a motion to strike B.C.'s Covid-measures, **albeit** on standing, pointing out the complexity of the issues that the Covid-measures present.<sup>28</sup>
20. Furthermore, with respect to the Defendants' bald and baseless assertion that the vaccine mandates are not "mandatory" but a "choice", albeit coercive in that the choice is "be vaxxed or be fired", the caselaw on this point defies the Defendant's postulation in that:
- (a) the Indian Supreme Court ruled that coercive measures are as unconstitutional as mandating measures<sup>29</sup>: and
  - (b) the California Court of Appeal Fourth Appellate District recently ruled that a "choice" of vaccination or staying away from school was **not** a choice but a coercive, **de facto**, mandatory measure<sup>30</sup>.

#### **E/ Errors of Federal Court of Appeal – The Weber Issue(s)**

21. The Supreme Court of Canada, as well as other Appellate courts, have continually and consistently held that the collective bargaining or employment context does NOT exclude an action for **tort** within that relationship.<sup>31</sup>
22. In the same way that an employee could not raise this basis for (sexually) assaulting an employee in the context of employment, the coercive and intimidation measures to violate bodily and psychological integrity contrary to s.7 of the *Charter*, and at common-law, is not a bar to this action.
23. There is no distinction between a sexual or common assault and a violation done to bodily integrity and psychological integrity under s.7 of the *Charter*. At common law,

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<sup>28</sup> *Canadian Society for Advancement of Science in Public Policy v. Henry*, [2022 BCSC 724](#)

<sup>29</sup> *Jacob Puliyel vs Union of India*, [2 May, 2022](#)

<sup>30</sup> *Let them Choose et al. v. San Diego Unified School District*, [\(2022\)](#)

<sup>31</sup> *Weber v. Ontario Hydro*, [1995 CanLII 108 \(SCC\)](#), [1995] 2 SCR 929 at [para 54](#)

and under the *Charter*, mandating medical treatment is prohibited and coercive measures in furtherance of this is both a constitutional violation to bodily and psychological integrity,<sup>32</sup> as well as constitute the common-law, tort of intimidation, pleaded in the within claim. The prohibition against mandatory vaccination, or any medical treatment under constitutional jurisprudence, is not disputable.<sup>33</sup>

- ***Claim Discloses No Reasonable Cause of Action***

24. With respect to the Defendants' position, and the Court's **de facto** ruling on s.236 of the FPSLRA, the Plaintiffs state that, in analyzing the issue, the Supreme Court of Canada, in *Weber* ruled and guided as follows:

54 This approach **does not preclude all actions in the courts between employer and employee**. Only **disputes which expressly or inferentially arise out of the collective agreement** are foreclosed to the courts: *Elliott v. De Havilland Aircraft Co. of Canada Ltd.* (1989), 32 O.A.C. 250 (Div. Ct.), at p. 258, *per* Osler J.; *Butt v. United Steel workers of America*, *supra*; *Bourne v. Otis Elevator Co.*, *supra*, at p. 326. **Additionally, the courts possess residual jurisdiction based on their special powers, as discussed** by Estey J. in *St. Anne Nackawic*, *supra*.<sup>34</sup>

and further ruled that:

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

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and [57](#); *Northern Regional Health Authority v. Horrocks*, [2021 SCC 42 \(CanLII\)](#)

<sup>32</sup> *Jacob Puliyeel vs Union of India*, [2 May, 2022](#); *Let them Choose et al. v. San Diego Unified School District*, [\(2022\)](#)

<sup>33</sup> *Carter v. Canada (Attorney General)*, [2015 SCC 5 \(CanLII\)](#) at page. 67; *Fleming v. Reid*, [\(1991\), 4 O.R. \(3d\) 74 \(C.A.\)](#).

<sup>34</sup> *Weber v. Ontario Hydro*, [1995 CanLII 108 \(SCC\)](#), [1995] 2 SCR 929 at [para. 54](#)

language of Estey J. in *St. Anne Nackawic* (at p. 723), is a "real deprivation of ultimate remedy".<sup>35</sup>

In applying **Weber**, this Court has recently ruled:

... However, not all actions in the courts between a unionized employer and employee are precluded, because an arbitrator's exclusive jurisdiction extends only to disputes that expressly or inferentially arise out of the collective agreement, and not every workplace dispute will fall within this scope. In addition, the exclusive jurisdiction of a labour arbitrator is subject to the residual curial jurisdiction to grant remedies that lie outside the remedial authority of a labour arbitrator.<sup>36</sup>

... Weber does not stand for the proposition that labour arbitrators always have exclusive jurisdiction in employer-union disputes; rather, depending on the legislation and the nature of the dispute, other tribunals may possess overlapping jurisdiction, concurrent jurisdiction, or themselves be endowed with exclusive jurisdiction.<sup>37</sup>

No arbitrator has jurisdiction to grant the **in rem** declaratory and injunctive relief sought both under ss. 91-92 of the *Constitution Act*, 1867 and under the *Charter*. Moreover, the collective agreement(s) were **NOT** before the Court, thus the analysis in *Weber* could **not** have been undertaken, and the test on a motion to strike further in excess of jurisdiction.

25. The Supreme Court of Canada thus set out and ruled that:

- (a) Declaratory relief is the purview of the Superior Courts; and
- (b) An analysis of the **terms** of the collective bargaining agreement is necessary before the adequate alternative remedy is applied and a bar to access the Superior Court is applied.

26. 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.<sup>38</sup>

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<sup>35</sup> *Weber v. Ontario Hydro*, [1995 CanLII 108 \(SCC\)](#), [1995] 2 SCR 929 at para. 57

<sup>36</sup> *Northern Regional Health Authority v. Horrocks*, [2021 SCC 42 \(CanLII\)](#)

<sup>37</sup> *Northern Regional Health Authority v. Horrocks*, [2021 SCC 42 \(CanLII\)](#)

27. The Court, on a perfunctory basis, simply decides that, without any access to the collective agreements, that the collective agreements give rise to seek the remedies sought in the action, through the grievance mechanism of s. 236 of the FPSLRA.
28. The Plaintiffs' claim seeks Declaratory relief, constitutional declaratory relief both under ss. 91-92 and the Federal government's lack of a head of power to enact any medical treatment legislation or policy, as well as **Charter** violations grounded in the tort of misfeasance of public office.
29. 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:

[5] For the reasons that follow, I strike the Muirheads' Statement of Claim **with leave to Constable Muirhead to plead a claim in misfeasance in public office**, the constituent elements of which are: (1) the defendant is a public official or public authority; (2) the defendant engaged in deliberate unlawful conduct in his, her, or its capacity as a public official or public authority; (3) the defendant had a culpable mental state; namely the public official or public authority was aware that: (a) the conduct was unlawful, and (b) that the conduct was likely to harm the plaintiff; (4) the conduct caused the plaintiff harm; and, (5) the harm is compensable under tort law.

[6] See *Odhavji Estate v. Woodhouse*, [2003 SCC 69 \(CanLII\)](#), [2003] 3 S.C.R. 263; *Freeman-Maloy v. Marsden*, (2006), [2006 CanLII 9693 \(ON CA\)](#), 79 O.R. (3d) 401 (C.A.), rev'g (2005), [2005 CanLII 14319 \(ON SC\)](#), 253 D.L.R. (4th) 728 (S.C.J.), leave to appeal to the S.C.C. ref'd [2006] S.C.C.A. No. 201; *Reynolds v. Kingston (City) Police Services Board*, [2007 ONCA 166 \(CanLII\)](#), [2007] O.J. No. 900 (C.A.), rev'g (2006), [2006 CanLII 16837 \(ON SCDC\)](#), 267 D.L.R. (4th) 409 (Ont. Div. Ct.) restoring [2005] O.J. No. 3503 (Master); *Martineau v. Ontario (Alcohol and Gaming Commission)*, [2007] O.J. No. 1141 (C.A.); *Roncarelli v. Duplessis*, [1950] S.C.R. 121

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<sup>38</sup> **AFL Tab C1: Decision of Federal Court, at [paragraphs 19-22.](#)**

[7] **As currently pleaded, Constable Muirhead's claim is a discipline dispute for which the court's jurisdiction has been ousted; however, it may be that he will be able to plead the material facts for a dispute that is about misfeasance in public office, which is an abuse of power dispute that must be adjudicated by a Superior Court.** It may be that the material facts of the circumstances of Constable Muirhead's claim have crossed the line from being an employment relations dispute, which must be adjudicated by an arbitrator, to a dispute about abuse of power, bigotry, and racism by a public official or public authority against a citizen who happens to be an employee.<sup>39</sup>

and further ruled:

[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:

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: *Energy & Chemical Workers Union, supra*, per La Forest J.A. Sometimes the time when the claim originated may be important, as in *Wainwright v. Vancouver Shipyards Co.* (1987), 38 D.L.R. (4th) 760 (B.C.C.A.), where it was held that the court had jurisdiction over contracts pre-dating the collective agreement. See also *Johnston v. Dresser Industries Canada Ltd.* (1990), 75 O.R. (2d) 609 (C.A.). 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. ....

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<sup>39</sup> *Muirhead v. York Regional Police Services Board*, 2014 ONSC 6817, [paragraph 5-7](#)

54. This approach does not preclude all actions in the courts between employer and employee. Only disputes which expressly or inferentially arise out of the collective agreement are foreclosed to the courts: *Elliott v. De Havilland Aircraft Co. of Canada Ltd.* (1989), 32 O.A.C. 250 (Div. Ct.), at p. 258, per Osler J.; *Butt v. United Steelworkers of America*, *supra*; *Bourne v. Otis Elevator Co.*, *supra*, at p. 326. Additionally, the courts possess residual jurisdiction based on their special powers, as discussed by Estey J. in *St. Anne Nackawic*, *supra*.

**[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. ....**<sup>40</sup>

and further ruled that the tort in misfeasance of public office could proceed.<sup>41</sup>

30. The Federal Courts have also similarly ruled.<sup>42</sup>
31. The above passages and jurisprudence were the subject of extensive submissions before the Federal Court, and not addressed in the Court’s reasons, nor in the Federal Court of Appeal.
32. It is respectfully submitted that, given the jurisprudence in *Weber* and *Horracks*, and the Ontario and Federal Courts rulings in interpreting *Weber* on the same issues **in favor** of the Plaintiffs, that the Federal Court and Court of Appeal exceeded jurisdiction, **on a motion to strike**, as opposed to a motion for summary judgment, on proper evidence, in determining that it is “plain and obvious, beyond argument” that the case cannot succeed when in fact it **has** succeeded in other cases. The lower Courts, have misinterpreted **Weber** to a perfunctory question of whether the Plaintiff is unionized and go no further.
33. The Courts have also ruled, in the COVID-19 context that **coercive measures** to vaccinate constitute a violation of bodily and psychological integrity of the person, and that to treat the vaccinated an unvaccinated differently, in the face of the scientific and

<sup>40</sup> *Muirhead v. York Regional Police Services Board*, [2014 ONSC 6817](#) at [para. 62-63](#)

<sup>41</sup> *Muirhead v. York Regional Police Services Board*, [2014 ONSC 6817](#) at [para. 81-82, 85, 87.](#)

medical data that shows that vaccination does not prevent transmission, discriminates and violates equality of treatment.<sup>43</sup>

34. These coercive measures, under common law, not only violates s.2, 7 and 15 of the *Charter*, but further constitute the **tort** of intimidation under common law.<sup>44</sup>
35. It is respectfully submitted that, when the Federal Court ruled, and Court of Appeal upheld, that:

[32] The Plaintiffs cannot escape the operation of s 236 of the FPSLRA by pleading that their claims are not ordinary workplace disputes, or that some of the remedies they seek are not available through the internal grievance process. As the Ontario Court of Appeal held in *Bron*, the right to grieve is “very broad” and “[a]lmost all employment-related disputes can be grieved under s 208 of the FPSLRA” (at paras 14-15).<sup>45</sup>

This misstates, and ignores, the law as enunciated in *Weber, Horracks* and decisions interpreting *Weber*. For the Federal Court and Court of Appeal the question starts and ends by the deficient singular question of whether a Plaintiff is covered by a labour arbitrator regime. This is perfunctory, and in excess of jurisdiction on a motion to strike. It does not comply with the *Weber* analysis as enunciated and interpreted.

- **Granting of Leave**

36. It is respectfully submitted that the Applicants have met their onus and should be granted leave in that they raise issues of natural and public importance which include:
- (a) A clarification of this Court’s decision in *Weber* particularly in the context of a motion to strike:

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<sup>42</sup> *Edwards v. Canada*, [\(2000\) 181 F.T.R. 219](#)

<sup>43</sup> *Jacob Puliyeel vs Union of India*, [2 May, 2022](#); *Let them Choose et al. v. San Diego Unified School District*, [\(2022\)](#)

<sup>44</sup> *McIlvenna v. 1887401 Ontario Ltd.*, [2015 ONCA 830 \(CanLII\)](#)

<sup>45</sup> **AFL, Tab C1, Decision of the Federal Court, at [paragraph 32](#)**

- (b) Whether the **Weber** analysis is restricted to the sole issue of membership in a union and subject to a collective bargaining unit:
- (c) Whether the **Weber** analysis can be undertaken in a vacuum without regard to the context of the collective bargaining agreement; and
- (d) Whether this Court need not put its mind to exercising its residual discretion and jurisdiction in all the circumstances of the case.

**PART IV– SUBMISSIONS CONCERNING COSTS**

37. The Applicants seek their costs on this Application for Leave.

**PART V– ORDER(S) SOUGHT**

38. The Applicants therefore respectfully requests:

- (a) a granting of leave to appeal the Decision of Federal Court of Appeal in docket # A-67-23, made on June 7<sup>th</sup>, 2024;
- (b) costs of this application for leave and any such further or other order as counsel may advise and this Court deems appropriate.

All of which is respectfully submitted, this 30<sup>th</sup> day of August , 2024.



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## PART VI – TABLE OF AUTHORITIES

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2. <i>Adams-Smith v. Christian Horizons</i> , <a href="#">(1997)14 C.P.C.(4<sup>th</sup>)78 (Ont. Gen. Div.)</a>	1,7
3. <i>B.C. v. Imperial Tobacco Canada Ltd.</i> , <a href="#">[2005] 2 S.C.R. 473</a>	1,7
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25. <i>Nash v. Ontario</i> , <a href="#">(1995) 27 O.R. (3d) 1 (Ont. C. A.)</a> .	1,7
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27. <i>Northern Regional Health Authority v. Horrocks</i> , <a href="#">2021 SCC 42 (CanLII)</a>	21,24
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34. <i>Trendsetter Ltd. v. Ottawa Financial Corp.</i> , <a href="#">(1989)32 O.A.C. 327 (C.A.)</a>	1,7
35. <i>Weber v. Ontario Hydro</i> , <a href="#">1995 CanLII 108 (SCC), [1995] 2 SCR 929</a>	21,24

## PART VII– STATUTORY PROVISIONS

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

<b>Disputes relating to employment</b>
<ul style="list-style-type: none"> <li>• <b>236 (1)</b> 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.</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Marginal note:Application</b></li> </ul>
<p><b>(2)</b> 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.</p>
<ul style="list-style-type: none"> <li>• <b>Marginal note:Exception</b></li> </ul>
<p><b>(3)</b> 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.</p>

Constitution Act, [1982, ss. 2, 6, 7, 15](#)

## **Fundamental freedoms**

**2** Everyone has the following fundamental freedoms:

- **(a)** freedom of conscience and religion;
- **(b)** freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- **(c)** freedom of peaceful assembly; and
- **(d)** freedom of association.
- 

## **Mobility rights – section 6**

### **Mobility of citizens**

**6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.**

### **Rights to move and gain livelihood**

- **(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right:**
  1. **a) to move to and take up residence in any province; and**
  2. **b) to pursue the gaining of a livelihood in any province.**

### **Limitation**

- **(3) The rights specified in subsection (2) are subject to:**
  1. **a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and**
  2. **b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.**

### **Affirmative Action Program**

- **(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.**

Section 6 protects the right of Canadian citizens to move from place to place, and subsection 6(1) ensures that all Canadian citizens are free to come and go as they please. Extradition laws place some limits on these rights; these laws state that persons in Canada who face criminal charges or punishment in another country may be ordered to return to that country.

Subsection 6(2) gives all Canadian citizens and permanent residents the right to move to and live in any province or territory. They may also look for work or set up a business there.

Subsection 6(3) makes clear that provinces and territories may decide to give social benefits, such as welfare, only to persons who have lived in the province or territory for a certain period of time. They may also pass employment laws that require workers to have the necessary qualifications to practice their profession or trade.

In addition, subsection 6(4) allows a province or territory that has an employment rate below the national average to create programs that favour its own residents.

### **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.

### **Equality before and under law and equal protection and benefit of law**

15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

- **Affirmative action programs**

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.<sup>(85)</sup>

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.<sup>(44)</sup>
- **1A.**  
The Public Debt and Property.<sup>(45)</sup>
- **2.**  
The Regulation of Trade and Commerce.
- **2A.**  
Unemployment insurance.<sup>(46)</sup>
- **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.<sup>(47)</sup>

### **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.<sup>(48)</sup>
- **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.<sup>(49)</sup>

**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**

---

**MEMORANDUM OF ARGUMENT**

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**ROCCO GALATI LAW FIRM**  
PROFESSIONAL CORPORATION  
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Toronto, Ontario, M6H 1A9

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Counsel for the Applicants

**HAMEED LAW**  
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Tel: (613) 627-2974  
Fax: (613) 232-2680  
Email: [yhameed@hameedlaw.ca](mailto:yhameed@hameedlaw.ca)

Ottawa Agent for Counsel for the Applicants

# TAB D

# TAB D-1



Court File No.: T-1089-22

## FEDERAL COURT

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**, Philip **Dobernigg**, 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**)

- and -

Nicole **Auclair**, Michael **Baldock**, Sabrina **Baron**, William Dean **Booth**, Charles **Borg**, Marie-Ève **Caron**, Thomas **Dalling**, Joseph Israel Marc Eric De **Lafontaine**, Ricardo **Green**, Jordan **Hartwig**, Rodney **Howes**, Christopher Mark **Jacobson**, Jane **Doe #5**, Pascal **Legendre**, Kimberly **Lepage**, Kim **MacDonald**, Cindy **Mackay**, Kim **Martin-McKay**, David **Mason**, Alexandra Katrina **Moir**, Joseph Daniel Eric **Montgrain**, Radoslaw **Niedzielski**, Leanna June **Nordman**, Donald **Poole**, Edward Dominic **Power**, Norman L. **Reed**, Jane **Doe #6**, Brenden **Sangster**, Timothy Joseph **Seibert**, Ann-Marie Lee **Traynor**, Carl Barry **Wood**, Eddie Edmond **Andrukaitis**, Ruby **Davis**, Jennifer **Schroeder**, Joseph **Shea** employed by the (**Department of National Defence**)

- and -

Stefanie **Allard**, Jake Daniel **Boughner**, Brent **Carter**, Brian **Cobb**, Laura **Constantinescu**, Sonia **Dinu**, Aldona **Fedor**, Jane **Doe #7**, Malorie **Kelly**, Matthew **Stephen MacDonald**, Mitchell **Macintyre**, Hertha **McLendon**, Marcel **Mihailescu**,

Michael **Munro**, Sebastian **Nowak**, Diana **Rodrigues**, Natalie **Holden** , Adam Dawson  
**Winchester, (Canada Border Services Agency)**

- and -

Christine **Clouthier**, Debbie **Gray**, Jennifer **Penner**, Dale **Wagner**, Joseph **Ayoub**,  
**(Agriculture and Agri-food Canada)**

- and -

Jane **Doe #8**, **(Atlantic Canada Opportunities Agency)**

- and -

Melanie **DuFour**, **(Bank of Canada)**

- and -

Jennifer **Auciello**, Sharon **Ann Joseph**, Eric **Munro**, **(Canada Mortgage and Housing Corporation)**

- and -

Jane **Doe #9**, **(Canada Pension Plan)**

- and -

Natalie **Boulard**, Beata **Bozek**, John **Doe #14**, Nerin **Andrea Carr**, Sara Jessica **Castro**,  
Debbie (Dubravka ) **Cunko**, Josée **Cyr**, Jane **Doe #10**, Carol **Gaboury**, Tania **Gomes**,  
Julita **Grochocka**, Monique **Harris**, William **Hooker**, Kirstin **Houghton**, Leila **Kostyk**,  
Diane C **Labbé**, Michelle **Lamarre**, Nicolas **LeBlond**, Suana-Lee **Leclair**, Paulette  
**Morissette**, Jennifer **Neave**, Pierre-Alexandre **Racine**, Benjamin **Russell**, Robert  
**Snowden**, Aabid **Thawer**, Heidi **Wiener**, Svjetlana **Zelenbaba**, Nadia **Zinck**, Aaron  
James Thomas **Shorrocks**, Deirdre **McIntosh** , **(Canada Revenue Agency)**

- and -

Tamara **Stammis**, **(Canada School of the Public Service)**

- and -

Jasmin **Bourdon**, **(Canada Space Agency)**

- and -

Sharon **Cunningham**, Allen **Lynden**, Rory **Matheson**, (**Canadian Coast Guard**)

- and -

Tatjana **Coklin**, John **Doe #15**, Raquel **Delmas**, Jane **Doe #11**, Chelsea **Hayden**, Helene **Joannis**, Zaklina **Mazur**, Jane **Doe #12**, Jessica **Simpson**, Katarina **Smolkova**,  
(**Canadian Food Inspection Agency**)

- and -

Alexandre **Charland**, (**Canadian Forestry Service**)

- and -

Catherine **Provost**, Kristina **Martin**, (**Canadian Heritage**)

- and -

Jane **Doe #13**, (**Canadian Institutes of Health Research**)

- and -

Beth **Blackmore**, Roxanne **Lorrain**, (**Canadian Nuclear Safety Commission**)

- and -

Rémi **Richer**, (**Canadian Radio-television and Telecommunications Commission**)

- and -

Octavia **La Prairie**, (**Canadian Security Intelligence Service**)

- and -

Robert **Bestard**, (**City of Ottawa Garage Fed regulated**)

- and -

Kimberly Ann **Beckert**, (**Core Public Service**)

- and -

Sarah **Andreychuk**, Francois **Bellehumeur**, Pamela **Blaikie**, Natasha **Cairns**, Angela **Ciglonecki**, Veronika **Colnar**, Randy **Doucet**, Kara **Erickson**, Jesse **Forcier**, Valérie **Fortin**, Roxane **Gueotal**, Melva **Isherwood**, Milo **Johnson**, Valeria **Luedee**, Laurie

**Lynden, Annette Martin, Craig McKay, Isabelle Methot, Samantha Osypchuk, Jane Doe #14, Wilnive Phanord, Alexandre Richer Levasseur, Kathleen Sawyer, Trevor Scheffel, (Correctional Service of Canada)**

- and -

**Jordan St-Pierre, (Courts Administration Service)**

- and-

**Brigitte Surgue, Jane Doe #15, (Department of Canadian Heritage)**

- and-

**Ghislain Cardinal, Heather Halliday, Paul Marten, Celine Rivier, Ngozi Ukwu, Jeannine Bastarache, Jane Doe #16, Hamid Naghdian-Vishteh, (Department of Fisheries and Ocean)**

- and –

**Ishmael Gay-Labbe, Jane Doe #17, Leanne James, (Department of Justice)**

- and -

**Danielle Barabe-Bussieres, (Elections Canada)**

- and -

**Tanya Daeichert, Jane Doe #18, Francois Arseneau, Chantal Authier, Nathalie Benoit, Aerie Biafore, Rock Briand, Arnaud Brien-Thiffault, Sharon Chiu, Michel Daigle, Brigitte Daniels, Louise Gaudreault, Karrie Gevaert, Mark Gevaert, Peter Iversen, Derrick Lamb, Jane Doe #19, Anna Marinic, Divine Masabarakiza, James Mendham, Michelle Marina Micko, Jean Richard, Stephanie Senecal, Jane Doe #20, Ryan Sewell, Kari Smythe, Olympia Somesan, Lloyd Swanson, Tyrone White, Elissa Wong, Jenny Zambelas, Li yang Zhu, Patrice Lever, (Employment and Social Development Canada)**

-and-

**Jane Doe #21, Brian Philip Crenna, Jane Doe #22, Bradley David Hignell, Andrew Kalteck, Dana Kellett, Josée Losier, Kristin Mensch, Elsa Mouana, Jane Doe #23, Jane Doe #24, Valentina Zagorenko, (Environment and Climate Change Canada)**

- and -



**Pierre Trudel, (Export Development Canada)**

- and -

**Stephen Alan Colley, (Federal Economic Development Agency for Southern Ontario)**

- and -

**Vladimir Raskovic, (Garda Security Screening Inc)**

- and -

**Mélanie Borgia, Jonathan Kyle Smith, Donna Stainfield, Annila Tharakan, Renee Michiko Umezuki, (Global Affairs Canada)**

- and -

**Dennis Johnson, (Global Container Terminals Canada)**

- and -

**Alexandre Guilbeault, Tara (Maria) McDonough, France Vanier, (Government of Canada)**

- and -

**Alex Braun, Marc Lescelleur-Paquette, (House of Commons)**

- and -

**Aimee Legault, (Human Resource Branch)**

- and -

**Dorin Andrei Boboc, Jane Doe #25, Sophie Guimard, Elisa Ho, Kathy Leal, Caroline Legendre, Diana Vida, (Immigration, Refugees and Citizenship Canada)**

- and -

**Nathalie Joanne Gauthier, (Indigenous and Northern Affairs Canada)**

- and -

**Christine Bizier, Amber Dawn Kletzel, Verona Lipka, Kerry Spears, (Indigenous Services Canada)**

- and -

Sun-Ho **Paul Je**, (**Innovation, Science and Economic Development Canada**)

- and -

Giles **Roy**, (**National Film Board of Canada**)

- and -

Ray **Silver**, Michelle **Dedyulin**, Letitia **Eakins**, Julie-Anne **Kleinschmit**, Marc-Andre **Octeau**, Hugues **Scholaert**, (**National Research Council Canada**)

- and -

Felix **Beauchamp**, (**National Security and Intelligence Review Agency**)

- and -

Julia May **Brown**, Caleb **Lam**, Stephane **Leblanc**, Serryna **Whiteside**, (**Natural Resources Canada**)

- and -

Nicole **Hawley**, Steeve **L'italien**, Marc **Lecocq**, Tony **Mallet**, Sandra **McKenzie**, (**NAV Canada**)

- and -

Muhammad **Ali**, (**Office of the Auditor General of Canada**)

- and -

Ryan **Rogers**, (**Ontario Northland Transportation Commission**)

- and -

Theresa **Stene**, Michael **Dessureault**, John **Doe #16**, (**Park Canada**)

- and -

Charles-Alexandre **Beauchemin**, Brett **Oliver**, (**Parliamentary Protection Service**)

- and -

**Carole Duford, (Polar Knowledge Canada)**

- and -

**Joanne Gabrielle de Montigny, Ivana Eric, Jane Doe #26, Salyna Legare, Jane Doe #27,  
Angie Richardson, Jane Doe #28, (Public Health Agency of Canada)**

- and -

**Fay Anne Barber, (Public Safety Canada)**

- and -

**Denis Laniel, (Public Sector Pension Investment Board)**

- and -

**Kathleen Elizabeth Barrette, Sarah Bedard, Mario Constantineau, Karen Fleury,  
Brenda Jain, Megan Martin, Jane Doe #29, Isabelle Paquette, Richard Parent, Roger  
Robert Richard, Nicole Sincennes, Christine Vessia, Jane Doe #30, Pamela McIntyre,  
(Public Services and Procurement Canada)**

- and -

**Isabelle Denis, (Registrar of the Supreme Court of Canada)**

- and -

**Jane Bartmanovich, (Royal Canadian Mint)**

- and -

**Nicole Brisson, (Service Canada)**

- and -

**Denis Audet, Mathieu Essiambre, Alain Hart, Andrea Houghton, Natalia Kwiatek,  
Dany Levesque, David McCarthy, Pascal Michaud, Mervi Pennanen, Tonya Shortill,  
Stephanie Tkachuk, Marshall Wright, (Shared Services Canada)**

- and -

**Eve Marie Blouin-Hudon, Marc-Antoine Boucher, Christopher Huszar , (Statistics  
Canada)**

- and -

**Steve Young, (Telestat Canada)**

- and -

**Nathan Aligizakis, Stephen Daniel, Alain Douchant, Krystal McColgan, Debbie Menard, Clarence Ruttle, Dorothy Barron, Robert McLachlan, (Transport Canada)**

- and -

**Scott Erroll Henderson, Denis Theriault, (Treasury Board of Canada)**

- and -

**Josiane Brouillard, Alexandra McGrath, Nathalie Ste-Croix, Jane Doe #31, (Veterans Affairs Canada)**

- and -

**Olubusayo (Busayo) Ayeni, John Doe #17, Cynthia Bauman, Jane Doe #32, , Laura Crystal Brown , Ke(Jerry) Cai, Nicolino Campanelli, Donald Keith Campbell, Colleen Carder, Kathy Carriere, Melissa Carson, David Clark, Bradley Clermont, Laurie Coelho, Estee Costa, Antonio Da Silva, Brenda Darvill, Patrick Davidson, Eugene Davis, Leah Dawson, Marc Fontaine, Jacqueline Genaille, Eldon Goossen, Joyce Greenaway, Lori Hand, Darren Hay, Krista Imiola, Catherine Kanuka, Donna Kelly, Benjamin Lehto, Anthony Leon, Akemi Matsumiya, Jane Doe #33, Jane Doe #34, Jane Doe #35, Anne Marie McQuaid-Snider, Lino Mula, Pamela Opersko, Gabriel Paquet, Christine Paquette, Carolin Jacqueline Paris , Jodie Price, Kevin Price, Giuseppe Quadrini, Saarah Quamina, Shawn Rossiter, Anthony Rush, Anthony Shatzko, Charles Silva, Ryan Simko, Norman Sirois, Brandon Smith, Catharine Spiak, Sandra Stroud, Anita Talarian, Daryl Toonk, Ryan Towers, Leanne Verbeem, Eran Vooyo, Robert Wagner, Jason Weatherall, Melanie Burch, Steven Cole, Toni Downie , Amber Ricard, Jodi Stammers, (Canada Post)**

- and -

**Nicolas Bell, John Doe #18, John Doe #19, Jane Doe #36, John Doe #20, Paola Di Maddalena, Nathan Dodds, John Doe #21, Jane Doe #37, Nunzio Giolti, Mario Girard, Jane Doe #38, Jane Doe #39, You-Hui Kim, Jane Doe #40, Sebastian Korak, Ada Lai, Mirium Lo, Melanie Mailloux, Carolyn Muir, Patrizia Paba, Radu Rautescu, Aldo Reano, Jacqueline Elisabeth Robinson, John Doe #22, Frederick Roy, John Doe #23, Taeko Shimamura, Jason Sisk, Beata Sosin, Joel Szostak, Mario Tcheon, Rebecca Sue Thiessen, Jane Doe #41, Maureen Yearwood, (Air Canada)**

- and -

John Doe #24, JOSÉE Demeule, Jacqueline Gamble, Domenic Giancola, Sadna Kassan, Marcus Steiner, Christina Trudeau, (Air Canada Jazz)

- and -

John Doe #25, Emilie Despres, (Air Inuit)

- and -

Rejean Nantel, (Bank of Montreal)

- and -

Lance Victor Schilka, (BC Coast Pilots Ltd)

- and -

Elizabeth Godler, (BC Ferries)

- and -

John Doe #26, Jane Doe #42, Tamara Davidson, Jane Doe #43, Karter Cuthbert Feldhoff de la Nuez, Jeffrey Michael Joseph Goudreau, Brad Homewood, Chad Homewood, Charles Michael Jefferson, John Doe #27, Janice Laraine Kristmanson, Jane Doe #44, Darren Louis Lagimodiere, John Doe #28, John Doe #29, Mirko Maras, John Doe #30, John Doe #31, John Doe #32, John Doe #33, John Doe #34, Jane Doe #45, John Doe #35, Kendal Stace-Smith, John Doe #36, Steve Wheatley, (British Columbia Maritime Employers Association)

- and -

Paul Veerman, (Brookfield Global Integrated Solutions)

- and -

Mark Barron, Trevor Bazilewich, John Doe #37, Brian Dekker, John Gaetz, Ernest Georgeson, Kyle Kortko, Richard Letain, John Doe #38, Dale Robert Ross, (Canadian National Railway)

- and -

Tim Cashmore, Rob Gebert, Micheal Roger Mailhiot, (Canadian Pacific Railway)

- and -

**Karin Lutz, (DP World)**

- and -

**Crystal Smeenk, (Farm Credit Canada)**

- and -

**Sylvie M.F. Gelinas, Susie Matias, Stew Williams, (G4S Airport Screening)**

- and -

**Shawn Corman, (Geotech Aviation)**

- and -

**Juergen Bruschkewitz, Andre Deveaux, Bryan Figueira, David Spratt, Guy Hocking,  
Sean Grant, (Greater Toronto Airports Authority)**

- and -

**Dustin Blair, (Kelowna Airport Fire Fighter)**

- and -

**Hans-Peter Liechti, (National Art Centre)**

- and -

**Bradley Curruthers, Lana Douglas, Eric Dupuis, Sherri Elliot, Roben Ivens, Jane Doe  
#46, Luke Van Hoekelen, Kurt Watson, (Ontario Power Generation)**

- and -

**Theresa Stene, Michael Dessureault, Adam Pidwerbeski, (Parks Canada)**

-and-

**John Doe #39, (Pacific Pilotage Authority)**

- and -

**Angela Gross, (Purolator Inc.)**

- and -

**Gerhard Geertsema, (Questral Helicopters)**

- and -

**Amanda Randall, Jane Doe #47, Frank Veri, (RBC Royal Bank)**

- and -

**James (Jed) Forsman, (Rise Air)**

- and -

**Jane Doe #48, (Rogers Communications Inc)**

- and -

**Jerrilynn Rebeyka, (SaskTel)**

- and -

**Eileen Fahlman, Mary Treichel, (Scotiabank)**

- and -

**Judah Gaelan Cummins, (Seaspan Victoria Docks)**

- and -

**Darin Watson, (Shaw)**

- and -

**Richard Michael Alan Tabak, (SkyNorth Air Ltd)**

- and -

**Deborah Boardman, Michael Brigham, (Via Rail Canada)**

- and -

**Kevin Scott Routly, (Wasaya Airways)**

- and -

**Bryce Sailor, (Waterfront Employers of British Columbia)**

- and -

**Joseph Bayda, Jamie Elliott, John Doe #40, Randall Mengerling, Samantha Nicastro,  
Veronica Stephens, Jane Doe #49, (WestJet)**

- and -

**Melvin Gerein, (Westshore Terminals)**

**PLAINTIFFS**

AND:

**Her Majesty The Queen, Prime Minister Justin Trudeau, Deputy Prime Minister and  
Minister of Finance Chrystia Freeland, Chief Medical Officer Teresa Tam, Minister of  
Transport Omar Alhabra, Deputy Minister of Public Safety Marco Mendicino, Johns  
and Janes Doe**

**DEFENDANTS**

### **STATEMENT OF CLAIM**

(Pursuant to s.17 (1) and (5)(b) *Federal Courts Act*,  
and s.24(1) and 52 of the *Constitution Act, 1982*)

(Filed this 30<sup>th</sup> day of May, 2022)

*R.G.*

**TO THE DEFENDANT:**

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

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or a solicitor acting for you are required to prepare a statement of defence in Form 1/1B prescribed by the *Federal Courts Rules*, serve it on the applicant's solicitor or, where the applicant does not have a solicitor, serve it on the applicant, and file it, with proof of service, at a local office of this



FORM 171A Rule 171  
**Statement of Claim**

**(General Heading — Use Form 66)**  
*(Court seal)*

**Statement of Claim**

TO THE DEFENDANT:

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 a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the Federal Courts Rules.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

*(Date)*

Issued by:

*(Registry Officer)*  
 Address of local office:

TO: *(Name and address of each defendant)*

*(Separate page)*

1-6.

~~Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.~~

~~Copies of the **Federal Courts Rules**, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.~~

~~**IF YOU FAIL TO DEFEND THIS PROCEEDING**, judgment may be given against you in your absence and without further notice to you.~~

Date: **MAY 30 2022**

Issued by:

*Nicole Hradsky*

Address of local office:

**NICOLE HRADSKY  
REGISTRY OFFICER  
AGENT DU GREFFE**

Federal Court of Canada  
180 Queen Street West, Suite 200  
Toronto, Ontario M5V 3L6

TO: Department of Justice Canada  
Ontario Regional Office  
120 Adelaide Street West  
Suite #400  
Toronto, Ontario  
M5H 1T1

## CLAIM

### 1. The Plaintiffs claim:

(a) Declarations that the “Covid-vaccine mandates” announced, promulgated and enforced by Federal Regulations and Executive decree by the Defendants and their officials and administrations are unconstitutional and of no force and effect in that:

- (i) There is no jurisdiction under s.91 of the *Constitution Act, 1867* to decree any medical treatment whatsoever as this lies, subject to constitutional restraint(s), within the exclusive jurisdiction of the Provinces;
- (ii) That any purported or pretended power, under the emergency branch of P.O.G.G (Peace, Order and and Good Government) can only be done by Legislation, with the invocation, subject to constitutional constraints, of the *Emergencies Act (R.S.C., 1985, c. 22 (4th Supp.))*;
- (iii) That the *Regulations* and Executive decrees mandating such “vaccine mandates” are improper delegation, and constitute “dangling” *Regulations*, not tied to any *Act* of Parliament;
- (iv) That, in any event, any purported mandatory, or coerced *de facto* mandatory vaccine mandates violate ss. 2, 6, 7, and 15 of the *Charter*, as enunciated, *inter alia*, by the Ontario Court of Appeal in *Fleming v. Reid* (1991) 4 O.R. (3d) 74 and in the Supreme

Court of Canada in *Morgentaler (1988)*, *Rodriguez (1993)* and *Rasouli (2013)*, and *Carter (2005)*;

- (v) That any purported mandatory, or coerced *de facto* mandatory vaccines violate ss.2 and ss 7 of the *Charter*, as enunciated, *inter alia*, by the Ontario Court of Appeal in *Fleming v. Reid*, and the Supreme Court of Canada in *Morgentaler (1988)*, *Rodriguez (1993)* violate international treaty norms which constitute *minimal* protections to be read into s.7 of the *Charter* as ruled, *inter alia*, by the Supreme Court of Canada in *Hape*, and the Federal Court of Appeal in *De Guzman*;

(b) A further Declaration that Policy on *COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police*, purportedly issued pursuant to *sections 7 and 11.1 of the Financial Administration Act*, stipulating that Employment Insurance benefits are to be denied to anyone dismissed from their employment for refusing to be “vaccinated” with the COVID-19 inoculations is unconstitutional in that:

- (i) There is no jurisdiction under s.91 of the *Constitution Act, 1867* to decree any medical treatment whatsoever as this lies, subject to constitutional restraint(s), within the exclusive jurisdiction of the Provinces;
- (ii) The Pre-*Charter* constitutional rights to freedom of conscience and religion as pronounced by the Supreme Court of Canada in, *inter alia*,

*Switzman v Elbing and A.G. of Quebec, [1957] SCR 285* and *Saumur v City of Quebec, 2 S.C.R. 299*;

(iii) violates the rights, under s.2 of the *Charter*, as well as s.1 under the *Canadian Bill of Rights (1960)* to freedom of conscience, belief, and religion;

(iv) violates s.7 of the *Charter* in violating the right to bodily and psychological integrity, as manifested in the constitutionally protected right to informed, voluntary, consent to any medical treatment and procedure, as well as violating international treaty rights, protecting the same right(s) which protections must be read in as minimal protection under s.7 of the *Charter* in accordance with, *inter alia*, *Hape (SCC)* and *De Guzman (FCA)*;

(c) a further declaration that the mandatory and/or coerced *de facto* mandatory medical treatment, in the absence of informed, voluntary consent, in this case covid-“vaccines”, and PCR and other mRNA and RNA testing, constitute a Crime Against Humanity under international treaty and customary law, thereby making an offence under the *War Crimes and Crimes Against Humanity Act* in Canada;

(d) a further declaration that promoting, and executing, PCR testing constitutes a criminal act under sections 3 - 5 and s.7 of the *Genetic Non-Discrimination Act (S.C. 2017, c. 3)*, and counselling and aiding and abetting a criminal act under s. 126 of the *Criminal Code of Canada*, to wit, disobeying a statute;

(e) a further declaration that the introduction of “vaccine passports”, and their compulsory use to obtain goods and services, as well as travel on trans-provincial

routes by air, train, and water vehicles, is unconstitutional and of no force and effect in violating:

- (i) ss.6 and 7 of the *Charter*;
- (ii) violating s.9 of the *Charter*;
- (iii) violating the pre-*Charter*, recognized rights on “the liberty of the subject” remedied by way of *habeas corpus*.

(f) a further declaration that **Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No.61**, requiring covid “vaccination” and masking on planes, trains and boats is unconstitutional and of no force and effect in that:

- (i) There is no jurisdiction under s.91 of the *Constitution Act, 1867* to decree any medical treatment whatsoever as this lies, subject to constitutional restraint(s), within the exclusive jurisdiction of the Provinces;
- (ii) That any purported or pretended power, under the emergency branch of P.O.G.G (Peace, Order and and Good Government) can only be done by Legislation, with the invocation, subject to constitutional constraints, of the *Emergencies Act (R.S.C., 1985, c. 22 (4th Supp.))*;
- (iii) That the *Regulations* and Executive decrees mandating such “vaccine mandates” are improper delegation, and constitute “dangling” *Regulations*, not tied to any *Act* of Parliament;
- (iv) That, in any event, any purported mandatory, or coerced *de facto* mandatory vaccine mandates violate ss. 2, 6, 7, and 15 of the *Charter*,

- as enunciated, *inter alia*, by the Ontario Court of Appeal in *Fleming v. Reid* (1991) 4 O.R. (3d) 74 and in the Supreme Court of Canada in *Morgentaler (1988)*, *Rodriguez (1993)* and *Rasouli (2013)*, and *Carter (2005)*;
- (v) That any purported mandatory, or coerced *de facto* mandatory vaccines violate ss.2 and ss 7 of the *Charter*, as enunciated, *inter alia*, by the Ontario Court of Appeal in *Fleming v. Reid*, and the Supreme Court of Canada in *inter alia*, *Morgentaler (1988)*, *Rodriguez (1993)*, and *Carter (2005)* violate international treaty norms which constitute *minimal* protections to be read into s.7 of the *Charter* as ruled, *inter alia*, by the Supreme Court of Canada in *Hape*, and the Federal Court of Appeal in *De Guzman*;
- (vi) There is no jurisdiction under s.91 of the *Constitution Act, 1867* to decree any medical treatment whatsoever as this lies, subject to constitutional restraint(s), within the exclusive jurisdiction of the Provinces;
- (vii) The Pre-*Charter* constitutional rights to freedom of conscience and religion as pronounced by the Supreme Court of Canada in, *inter alia*, *Switzman v Elbing and A.G. of Quebec, [1957] SCR 285* and *Saumur v City of Quebec, 2 S.C.R. 299*;
- (viii) violates the rights, under s.2 of the *Charter*, as well as s.1 under the *Canadian Bill of Rights (1960)* to freedom of conscience, belief, and religion;

- (ix) violates s.7 of the *Charter* in violating the right to bodily and psychological integrity, as manifested in the constitutionally protected right to informed, voluntary, consent to any medical treatment and procedure, as well as violating international treaty rights, protecting the same right(s) which protections must be read in as minimal protection under s.7 of the *Charter* in accordance with, *inter alia*, *Hape (SCC)* and *De Guzman (FCA)*;
- (x) violating ss.6 and 7 of the *Charter*;
- (xi) violating s.9 of the *Charter*;
- (xii) violating the pre-*Charter*, recognized rights on “the liberty of the subject” remedied by way of *habeas corpus*.

(b) a further declaration that the use of the PCR test, as a pre-cursor to imposing Quarantine, violates s.14 of the *Quarantine Act (S.C. 2005, c. 20)*;

(c) a further declaration that Her Majesty the Queen’s servants, officials, and agents, in doing so, engaged in the following:

- (i) A contravention of s.126 of the *Criminal Code of Canada* in (knowingly) “disobeying a statute”;
- (ii) Counselling and aiding and abetting a criminal offence, contrary to s.126 of the *Criminal Code of Canada*, for violating the criminal provisions under s. 3-5 and 7 of the *Genetic Non-Discrimination Act (S.C. 2017, c. 3)*;
- (iii) The tort of abuse of process and malicious prosecution in charging those who refused such PCR tests with quasi-criminal offences and fines;



- (d) a further declaration that the creation of a “vaccine passport” to travel domestically as well as to enter and leave Canada, violates the Plaintiffs’;
- (i) Pre-*Charter* right to enter and leave, pursuant to the *Magna Carta* as read in through the Pre-amble to the *Constitution Act, 1867*;
  - (ii) The rights contained in ss. 6 and 7 of the *Charter*;
  - (iii) By international treaty law, as to be read in as a minimal protection under s. 7 of the *Charter* pursuant to, *inter alia*, *Hape* (SCC) and *De Guzman (FCA)*;
- (e) a further declaration that there is no rational connection between being vaccinated or not, in terms of avoiding or preventing transmission of the COVID virus, and thus, in drawing a distinction and consequent punitive and depriving measures against the unvaccinated, violates their rights to equality, both pre-*Charter*, as well as under s. 15 of the *Charter.b*
2. The Plaintiffs further seek:
- (a) The re-instatement of their (employment) positions, *nunc pro tunc*, to the day prior to their being mandatorily placed on leave without pay and subsequently dismissed from their position(s);
  - (b) Back-pay from their last day of paid employment to the date of judgment with:
    - (i) Corresponding benefits and financial contribution commiserate with that back-pay including, but not restricted to, pension earning, sick days and other benefits;
    - (ii) Re-instatement at the advanced level they would likely have attained by the date of judgment;

All in accordance with the Supreme Court of Canada ruling in, *inter alia*, **Proctor v. Sarnia Board of Commissioners of Police** [1980] 2 S.C.R. 72;

3. The Plaintiffs further seek, from the Defendants, monetary damages, as follows:
  - (a) For each Plaintiff in general damages as follows:
    - (i) \$100,000 under the tort of misfeasance in public office by the named and unnamed Johns and Janes Doe public officer holders;
    - (ii) \$50,000 each against the Defendants under the tort of intimidation;
    - (iii) \$100,000 each against the Defendants under the tort of conspiracy to deprive them of their constitutional rights;
    - (iv) \$100,000 each, for the actions of Her Majesty the Queen's officials, servants, and agents, in the tort of constitutional violations in violating the Plaintiffs' pre-**Charter** constitutional rights, to freedom of belief, conscience, and religion, violating of their s.2 **Charter** rights to conscience, relief and religion, as well as violation of their s.7 **Charter** rights to bodily and psychological integrity, in violating consent to medical treatment and procedure with respect to COVID-19 "vaccines" and "PCR" testing as well as breach of the right to pre-**Charter** equality as well as section 15 of the **Charter** based on medical status which damages are required to be paid for by the Crown as ruled and set out by the SCC in **Ward v. City of Vancouver**;
    - (v) \$200,000 each per Plaintiff for the intentional infliction of mental distress and anguish to the Plaintiffs by the Defendants;
  - (b) Punitive damages in the amount of \$100,000 per plaintiff for the Defendants callous violation of the Plaintiffs' constitutional rights whereby the Defendants

knew, or had a reckless and wanton disregard to, the fact that they were violating the Plaintiffs' constitutional and statutory rights under Acts of Parliament.

4. The Plaintiffs further seek:
  - (a) An interim stay/injunction of the Federal "vaccine mandates" and "passports" *nunc pro tunc*, effective the day before they were announced and/or implemented;
  - (b) A final stay/injunction of the Federal "vaccine mandates" and "passports" *nunc pro tunc*, effective the day before they were announced and/or implemented.
5. The Plaintiffs seek costs of this action and such further and/or other relief as this Court deems just.

## **THE PARTIES**

### **• The Plaintiffs**

6. The Plaintiffs are all either:
  - (a) Federal (former) Employees of various agencies and Ministries of the Government of Canada and servants, officials, and/or agents of the Crown;
  - (b) Employees of Federal Crown Corporations; and
  - (c) Employees of federally regulated sectors;As set out and categorized in the style of cause in the within claim.
7. Most of the Plaintiffs were sent home on "leave without pay" and/or subsequently fired for refusing to take the COVID-19 "vaccines" (inoculations) whether or not they were working from home, and/or further refused to multi-weekly PCR testing in order to continue working. All Plaintiffs were placed on leave without pay and fired

pursuant to the purported dictate of the *Financial Administration Act* with respect to Covid-19 “vaccines”, purportedly mandated by the Treasury Board.

8. Some Plaintiffs are/were on medical leave but declined to take the covid-vaccine, particularly of which will be furnished subsequent to the issues of the within Statement of Claim. Some Plaintiffs due to the coercive illegal and unconstitutional actions and dictates of the Defendants and their officials took, under that duress, early and involuntary retirement, particulars of which will be furnished subsequent to the issuance of the within Statement of Claim.
9. All the Plaintiffs possess a conscientious and/or physical /medical reason for refusing to take the COVID-19 “vaccines” (inoculations).
10. While “exemptions” to these “mandatory vaccine mandates” exist, in theory, all of the Plaintiffs who sought an exemption were arbitrarily denied without reasons. The Plaintiffs further state that there is no obligation to seek any exemption before refusing the vaccines.
11. All the Plaintiffs are ineligible for Employment Insurance benefits because they were dismissed for refusing the “vaccines” (Inoculations).
12. All of the Plaintiffs wish to exercise their ss. 6 and 7 of the *Charter* rights to travel within Canada, as well as abroad, which is barred to them by virtue of a non-possession of a “vaccine passport”.

- **The Defendants**

13. The Defendant, Justin Trudeau, is the current Prime Minister of Canada, and as such, a holder of a public office, and a primary propagator of the federal “vaccine mandates”.
14. Deputy P.M Minister of Finance Crystia Freeland, and as such, a holder of public office, and a primary propagator of the federal “vaccine mandates”.
15. The Defendant, Dr. Theresa Tam, is Canada’s Chief Public Health Officer and as such a holder of a public office, centrally responsible for “vaccine mandates”.
16. Marco Mendicino is Canada’s Minister of Public Safety and, as such a holder of public office, and responsible for the enforcement of the “vaccine mandates”.
17. The Defendant Omar Alghabra is the Federal Minister of Transport, as such a holder of public office, and responsible for the enforcement of the “vaccine mandates” with respect to travel within and outside Canada.
18. The Defendants Johns and Janes Doe, are Federal Administrators who implement and enforce the illegal and unconstitutional “vaccine mandates and passports” announced, issued and implemented by the other Defendants.
19. All the Defendants have knowingly, expressly, and through their actions planned, executed, and continue to enforce a coercive and *de facto* mandatory vaccine mandate, under the threat and actual firing the Plaintiffs from their employment, and further barring the Plaintiffs from their employment insurance benefits for refusing the vaccine, and further barring the Plaintiffs from traveling within and outside Canada on planes, trains and boats.

20. The Defendant Her Majesty the Queen in Right of Canada, is statutorily and constitutionally liable for the acts and omissions of her officials, particularly with respect to *Charter* damages as set out by the SCC in, *inter alia*, *Ward v. City of Vancouver*, without the necessity of **mala fides**.
21. The Defendant Attorney General of Canada is, constitutionally, the Chief Legal Officer, responsible for and defending the integrity of all legislation, and Federal executive action and inaction, as well as responding to declaratory relief, including with respect constitutional declaratory relief, and required to be named as a Defendant in any action for declaratory relief.

#### **THE FACTS**

22. The facts of this case are as set out below.
23. All the Plaintiffs were sent home on “leave without pay” and/or subsequently fired for refusing to take the COVID-19 “vaccines” (inoculations) whether or not they were working from home, and/or further refused to multi-weekly PCR testing, at their own expense, in order to continue working. This, pursuant to the dictates set out, purportedly, under ss.7 and 11 of the **Financial Administration Act**.
24. All the Plaintiffs possess a conscientious and/or physical /medical reason for refusing to take the COVID-19 “vaccines” (inoculations).
25. While “exemptions” to these “mandatory vaccine mandates” exist, in theory, all of the Plaintiffs who sought an exemption were arbitrarily denied without reasons. The Plaintiffs further state that there is no obligation to seek any exemption before refusing the vaccines.

26. Some Plaintiffs are/were on medical leave but declined to take the covid-vaccine, particularly of which will be furnished subsequent to the issues of the within Statement of Claim. Some Plaintiffs due to the coercive illegal and unconstitutional actions and dictates of the Defendants and their officials took, under that duress, early and involuntary retirement, particulars of which will be furnished subsequent to the issuance of the within Statement of Claim.
27. All the Plaintiffs are ineligible for Employment Insurance benefits because they were dismissed for refusing the “vaccines” (Inoculations).
28. In particular, the following Plaintiffs:
- (a) Shauna Lee Leclair and Anne Cheng resigned early and involuntarily under duress, under threat of being fired if they did not vaccinate;
  - (b) Patrick Roy took the vaccine under duress and involuntarily;
  - (c) Jacqueline Robinson, Monique Harris, and Nathan Aligizakis, along with other Plaintiffs, submitted exemptions and were denied.
29. All the Plaintiff John and Jane Does have initiated this proceeding as John and Jane Does due to their *bona fide* and reasonable fear of negative repercussions, as well as family and societal stigma and vilification from being identified, publicly, as “anti-vaxxers”.
30. All of the Plaintiffs wish to exercise their ss. 6 and 7 of the *Charter* rights to travel within Canada, as well as abroad, which is barred to them by virtue of a non-possession of a “vaccine passport”, notwithstanding that airlines and foreign countries of destination do not require nor do the airlines.

31. All the Defendants have knowingly, expressly, and through their actions planned, executed, and continue to enforce a coercive and *de facto* mandatory vaccine mandate, under the threat and actual firing the Plaintiffs from their employment, and further barring the Plaintiffs from their employment insurance benefits for refusing the vaccine, and further barring the Plaintiffs from traveling within and outside Canada on planes, trains and boats.

- **The “Pandemic” and its Measures**

32. The Plaintiffs state, and the fact is, that there is no, and there has not been, a “COVID-19 pandemic” beyond and/or exceeding the consequences of the fall-out of the pre-covid annual flu or influenza.

33. The Plaintiffs further state that, since early 2020, to the present, being three (3) flu seasons, the purported deaths resulting from complications of the COVID-19 have **not** been any marginally higher than the annual deaths from complications of the annual influenza.

34. The fact, and data is, that the COVID-19 measures have caused, to a factor of a minimum of five (5) to one (1), **more deaths** than the actual purported COVID-19 has caused. Given the admittedly high death/injury rates as a result of the cover 19 vaccines, and the most affected age groups, and given the most recent definition of what is required to be “up to date”, namely:

(a) for people who are moderately or severely immunocompromised– five (5) doses;

and

(b) for adults ages 60 and over and First Nation, Inuit and Métis individuals and their non-Indigenous household members – four (4) doses; and



(c) for adults up to 59 years of age – four (3) doses; and

(d) children, ages 12 to 17 – three (3) doses;

that this vaccine agenda is turning into a *de facto* eugenics agenda. The number of doses is forecast to increase every three (3) months.

35. The facts are that in Canada, 86% of all purported deaths have occurred in long-term care (LTC) facilities at an average age of 83.4 years, which exceeds the general life expectancy of Canadians, of age 81.

36. The Defendant officials scandalously claim that, during COVID-19 pandemic there have been **no** annual flus.

37. In Canada, no person under age 19 has died from COVID-19, as the primary cause of death (without co-morbidities).

38. The death rate for those who have contracted the COVID-19 virus has been 0.024 % (one quarter of one percent) for adults, and 0.0 % (zero) for children.

39. The Defendants and their officials falsely claim that Canada's death rate from Covid-19, being no higher than the complications of the annual flu, is because of the measures taken. This is wild speculation and incantation which could only be proven by comparison of jurisdictions (states and countries) which have taken **no** or **little** COVID measures against countries, such as Canada, who have taken severe measures.

40. A comparison of jurisdictions (such as some U.S. states) and 14 other countries who took no or little covid-19 measures shows that those jurisdictions and countries taking no or little measures fared just as well, and in fact **better** than countries such as Canada.

- **The Case Counts**

41. The Defendants, as well as provincial authorities, have based all their rationale and measures, with respect to Covid-19, tied to the “case counts” of positive testing for the Covid virus (SARS-CoV-2).
42. Case counts are based on “positive” PCR tests. “PCR” test, which when run **above a “35 thresh-hold cycle”**, have been found, by various court jurisdictions, and the avalanche of scientific data and expertise, to produce a **96.5% “false positive” rate**. This means that for every 100 “positive” cases announced, there are only 3.5 actual positive “cases”.
43. In Canada, PCR testing is conducted at 43 to 47 threshold cycle rates, well above the 35-threshold cycle rate. These cycle rates are not cumulative but exponential with each cycle exponentially distorts and magnifying the false positive rate.
44. The PCR tests, according to its inventor, Kary Mullis, who won the Nobel Prize for inventing the PCR test who, was unequivocally and adamantly loud, before his death in October, 2019, that his PCR machine and test does **not** and **cannot** identify **any** virus, but is merely a screening test which must be followed by a culture test (of attempting to reproduce the virus) and concurrent blood (anti-body test), in order to determine whether that virus identified in the PCR test is dead (non-infectious) or alive (infectious). This is the so-called “gold standard” to verify the existence of any virus. This is **not** done in Canada with respect to the SARS-CoV-2.
45. The fact is that, above and beyond all the above, the virus, SARS-CoV-2 has **not** yet been identified or isolated anywhere in the world.

- **The COVID-“Vaccines” (Inoculations)**

46. The COVID-19 “vaccines” are not “vaccines”. They have not gone through the required protocols nor trials. Their human trials are to end in 2023. They are “emergency use” “medical experimentation” as medically and historically understood.
47. Therefore, at this moment, they are admittedly “medical experimentation”. Medical experimentation without voluntary, informed, consent, is a Crime Against Humanity born out of the Nuremberg Code, following the Nazi experimentation under the Nazi regime. They are also contrary to the Helsinki Declaration (1960).
48. Statistics, from Pfizer post-authorization data, in part, show that:
  - (a) Of a group of 40,000 participants (with a significant number receiving “placebos”), there were 1,223 deaths:
  - (b) That 10% of pregnant women spontaneously aborted, with an extreme number of still-born deaths of vaccinated pregnant women; and
  - (c) a long list of severe, permanent side-effects.
49. The Plaintiffs further state, and fact is, that according to Public Health officials, including the Defendant, Teresa Tam:
  - (a) The COVID-19 “vaccines” do **NOT** prevent transmission of the virus, even as between vaccinated and vaccinated individuals;
  - (b) That the “vaccines” merely suppress symptoms;
  - (c) That, in order to maintain a “vaccinated status”, a “booster” shot of the useless and ineffective “vaccines”, must be taken every three (3) months, projected to

continue, judging by the number of vaccines Justin Trudeau announced that he procured from Pfizer, until the year 2025;

(d) That the variants require these boosters and public health officials falsely claim that the “unvaccinated” are causing the “variants”.

50. The Plaintiffs state, and the fact is, that internationally renowned experts, including a Nobel Prize winner in virology, Luc Montagnier, adamantly state and warn that it is **the “vaccines”** which are creating the “variants”.

51. The Plaintiffs state, and the fact is, that on the Defendants’ own assessment and claim there is:

(a) No correlation between transmission as between the vaccinated and unvaccinated;

(b) COVID “vaccines” do not prevent transmission nor immunize the vaccinated against the virus;

(c) That the “vaccines” merely suppress the virus symptoms;

(d) That the “vaccines” effectiveness at even suppressing the symptoms are at best, 90 days (3 months).

The plaintiffs therefore state, and the fact is, that the measures taken are irrational, arbitrary, and violate the Plaintiff’s rights to equal treatment before the law, as well as violate s.15 of the *Charter*.

- **Tortious Conduct (at Common Law) Inflicted Against the Plaintiffs**
  - **Misfeasance of Public Office**

52. The Plaintiffs state, and fact is, that the Defendants, Justin Trudeau, Teresa Tam, and the other Co-Defendants have knowingly engaged in misfeasance of their public office, and abuse of authority, through their public office, as contemplated and set out by the Supreme Court of Canada in, *inter alia*, ***Roncarelli v. Duplessis*, [1959] S.C.R. 121** ***Odhavji Estate v. Woodhouse* [2003] 3 S.C.R. 263, 2003 SCC 69** by knowingly:

- (a) Exercising a coercive power to force unwanted “vaccination” knowing that:
- (i) It is not a power section 91 of the ***Constitution Act, 1867*** grants the Federal Government as medical treatment is a matter of exclusive Provincial legislation, absent legislation and declaration of the ***Emergencies Act***, subject to constitutional constraints. as set out and noted in the ***Emergencies Act*** itself;
  - (ii) Such coercive mandates and measures violate ss.2, 6, 7, and 15, of the ***Charter***;
  - (iii) Such coercive measures violate the ***Genetic Non-Discrimination Act***;
  - (iv) Such coercive measures violate international (treaty) norms and rights, which norms and rights are read into s. 7 of the ***Charter***;
  - (v) Such coercive measures in ignoring the statutory prohibitions, further constitute offences under **the *Criminal Code of Canada***, including: disobeying a statute (s. 126) and Extortion (s. 346);

- (vi) That such coercive measures were planned, executed, and implemented knowingly and perpetual statements and threats by Justin Trudeau and other Defendants that, “not vaccinating will carry consequences”;
- (vii) By coercive statements such as by Trudeau that: “The bottom line is if anyone who doesn't have a legitimate medical reason for not getting fully vaccinated chooses to not get vaccinated, there will be consequences”;
- (viii) By further inflammatory statements by Trudeau made on or about September 16, 2021 that persons who decline the vaccines: "Don't believe in science, they're often misogynists, also often racists,". “It's a small group that muscles in, and we have to make a choice in terms of leaders, in terms of the country. Do we tolerate these people?”

53. The Plaintiffs further state, and the fact is, that as a result of this misfeasance of public office, the Plaintiffs have been caused damages, including, but not restricted to:

- (a) Loss of their livelihood;
- (b) Mental anguish and distress;
- (c) Loss of dignity and discrimination based on their medical status;
- (d) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

- **Conspiracy**

54. The Plaintiffs further state that the Defendants, through their statements, actions, and co-ordinated actions and offices, are engaging in the tort of conspiracy as set out, *inter alia*, by the Supreme Court of Canada in *Hunt v. Carey Canada Inc [1990] 2 S.C.R. 959* in that:

- (a) the means used by the defendants are lawful or unlawful, the predominant purpose of the defendants' conduct is to cause injury to the plaintiff; or,
- (b) where the conduct of the defendants is unlawful, the conduct is directed towards the plaintiff (alone or together with others), and the defendants should know in the circumstances that injury to the plaintiff is likely to and does result.

The Defendants do so through the implementation of coercive and damaging measures, including the infliction of a violation of their constitutional rights, as set out above in the within statement of claim; and/or which has caused the Plaintiffs damages including, but not restricted to:

- (c) Loss of their livelihood;
- (d) Mental anguish and distress;
- (e) Loss of dignity and discrimination based on their medical status;
- (f) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

55. The Plaintiffs state, and the fact is, that this conspiracy, between the named, and unnamed Johns and Janes Doe administrators, is borne out, by way of:

- (a) Public statements by Trudeau and other Defendants that “not vaccinating will carry consequences”:

- (b) That those who decline vaccines "Don't believe in science, they're often misogynists, also often racists," "It's a small group that muscles in, and we have to make a choice in terms of leaders, in terms of the country. Do we tolerate these people?"
- (c) It is not a power section 91 of the *Constitution Act, 1867* grants the Federal Government, absent legislation and declaration of the *Emergencies Act*, subject to constitutional constraints as set out as redundantly noted in the *Emergencies Act*;
- (d) Such coercive mandates and measures violate ss.2, 6, 7, and 15, of the *Charter*;
- (e) Such coercive measures violate the *Genetic Non-Discrimination Act*;
- (f) Such coercive measures violate international (treaty) norms and rights, which norms and rights are read into s. 7 of the *Charter*;
- (g) Such coercive measures in ignoring the statutory prohibitions, further constitute offences under **the *Criminal Code of Canada***, including: disobeying a statute (s. 126) Extortion (s. 346);
- (h) That such coercive measures were planned, executed, and implemented knowingly through the actions of the Defendants and perpetual statements, and threats, by Justin Trudeau and other defendants that, "not vaccinating will carry consequences".



- **Intimidation (through Third Parties)**

56. The Plaintiffs state, and fact is, that the Defendants, Justin Trudeau, Teresa Tam, and other Co-Defendants, in:

- (a) Making their public threats of “consequences” for not “vaccinating”; and
- (b) In implementing vaccine employment requirements of take the “jab or lose your job”; and
- (c) Making such statements that those who decline vaccines: “Don’t believe in science, they’re often misogynists, also often racists,”. “it’s a small group that muscles in, and we have to make a choice in terms of leaders, in terms of the country. do we tolerate these people?”
- (d) In then mandatorily drafting third parties such as government agencies, Crown corporations, and federally regulated sectors, into implementing those knowingly coercive, illegal, and unconstitutional measures in, and outside Canada;

Are liable in the tort of intimidation as set out in, *inter alia*, by the Court of Appeal of Ontario in *McIlvenna v. 1887401 Ontario Ltd., 2015 ONCA 830*, and other Supreme Court of Canada jurisprudence, as follows:

[23]The tort of intimidation consists of the following elements:

- (a) a threat;
- (b) an intent to injure;
- (c) some act taken or forgone by the plaintiff as a result of the threat;
- (d) as a result of which the plaintiff suffered damages:

Score Television Network Ltd. v. Winner International Inc., 2007 ONCA 424, [2007] O.J. No. 2246, at para. 1; see also Central Canada Potash Co. v. Saskatchewan, 1978 CanLII 21 (SCC), [1979] 1 S.C.R. 42. Although the pleading of intimidation is most frequently seen in the context of economic torts, the business context is not an essential element of the tort.

which has caused the Plaintiffs damages including, but not restricted to:

- (e) Loss of their livelihood;
- (f) Mental anguish and distress;
- (g) Loss of dignity and discrimination based on their medical status;
- (h) Violation and forfeiting their constitutional rights under ss.2, 6, 7, and 15 of their *Charter* rights;
- (i) The forfeiting of their chosen vocations.

57. The Plaintiffs state that, in exercising their constitutional right(s) to choose not to take the Covid-19 “vaccines” they have been forced to forfeit those ss. 2, 6, 7, and 15 **Charter** rights and forced to forfeit their livelihood in their federal or federally regulated employment which has led to the suffering of damages as set out above in the within statement of claim.

- **Intentional Infliction of Mental Anguish**

58. The Plaintiffs state, and the fact is, that the Defendants, through their illegal and unconstitutional “vaccine” and other Covid-19 mandates and “passports”, have knowingly inflicted mental anguish on the Plaintiffs, as one of the “consequences” of exercising their constitutionally protected right(s) to decline any medical treatment and/or procedure based on the constitutionally protected right to informed, voluntary, consent.

59. The Plaintiffs further state, and the fact is, that they are knowingly inflicting this mental anguish and distress, which is manifested by:

- (a) The Defendants’ public statements that they know that they cannot “force” mandatory vaccination as it is unconstitutional;

- (b) However, that not “voluntarily” “vaccinating” will “have consequences”, which renders the decision involuntary through coercion and equally unconstitutional conduct, as set out by the Supreme Court of Canada in, *inter alia*, in the *Morgentaler* case;
- (c) By stating that those who decline vaccines: “Don’t believe in science, they’re often misogynists, also often racists,”. “It’s a small group that muscles in, and we have to make a choice in terms of leaders, in terms of the country. Do we tolerate these people?” Thus vilifying and making the Plaintiffs the objects of disdain, disgust and abuse, which furthers the mental anguish and anxiety.
- (d) Exercising a coercive power to force unwanted vaccination knowing that:
- (i) It is not a power section 91 of the *Constitution Act, 1867*, grants the Federal Government, absent legislation and declaration of the *Emergencies Act*, subject to constitutional constraints as set out and noted in the *Emergencies Act*;
- (ii) It is an issue already judicially determined to violate s. 7 of **Charter** and not saved by s. 1, as already ruled by, *inter alia*, by the Ontario Court of Appeal in *Fleming v. Reid* (1991) 4 O.R. (3d) 74 and in the Supreme Court of Canada in *Morgentaler (1988)*, *Rodriguez (1993)* and *Rasouli (2013)*, and *Carter (2005)* (at paragraph 67);

60. The Plaintiffs state, and the fact is, that such coercive and unconstitutional conduct, and infliction of mental anguish and distress, includes the prohibition of applying for Employment Insurance benefits if dismissed for exercising their right(s) to informed,

voluntary, consent with respect to medical treatment and/or procedure, as well as being vilified as “anti-vaxxers” and prohibited from travel.

- **Violation of Constitutional Rights**

- **Freedom of Conscience, Belief, and Religion (S. 2 of the *Charter*)**

61. The Plaintiffs state, and the fact is, that their pre-*Charter*, recognized constitutional right(s) to freedom of conscience, belief, and/or religion have been violated, as set out by the Supreme Court of Canada in, *inter alia*, *Switzman, v Elbing* and *Saumar v City of Quebec*, recognized as **rights** through the pre-amble of the *Constitution Act, 1867*.
62. The Plaintiffs further state, that these rights are mirrored in s. 2 of the *Charter*, and s.1 of the *Canadian Bill of Rights* (1960) and further violate those rights.
63. The Plaintiffs state, and the fact is, that the sincerely held belief of one (1) single individual, in the absence of a large group sharing that belief, is constitutionally protected under s. 2 of the *Charter*, as set out by the Supreme Court of Canada in, *inter alia*, *Big M Drug Mart*.
64. The Plaintiffs state, as a result of this violation, the Plaintiffs have suffered damages, including, but not limited to:
  - (a) Loss of their employment;
  - (b) Mental anguish and distress;
  - (c) Loss of dignity and discrimination based on their medical status;
  - (d) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

For which they seek damages under s. 24(1) of the *Charter* because these violations are not saved by s.1 of the *Charter*, which damages are payable and must be paid, by the Crown, as set out by the Supreme Court of Canada in, *inter alia*, the *Ward v City of Vancouver* case.

- **Life, Liberty, and Security of the Person (s.7 of the *Charter*)**

65. The Plaintiffs further state, and the fact is, that the Ontario Court of Appeal, and other Appellate Courts, as well as the Supreme Court of Canada, have clearly ruled that:

- (a) s.7 of the *Charter*, protects a person’s physical and psychological integrity;
- (b) s.7 of the *Charter* , in that broad context, also protects the right to informed, voluntary, consent, to any medical treatment and/or procedure, and equally s. 7 *Charter* protected rights to refuse any medical treatment or procedure; that the Defendants are fully aware of the above and do not care, callously ignore, and violate the right of the Plaintiffs; and
- (c) The Defendants hide behind a transparent Fig-leaf that while not “mandatory”, failure to vaccinate “has (coercive and seismic) consequences” which coercive measures amount to making the vaccine mandates, and vaccines mandatory and unconstitutional as enunciated by the Supreme Court of Canada in, *inter alia*, the *Morgantaler, O’Connor* cases as well as the *Carter* decision.

66. The Plaintiffs state, as a result of this violation, the Plaintiffs have suffered damages, including, but not limited to:

- (a) Loss of their employment;
- (b) Mental anguish and distress;
- (c) Loss of dignity and discrimination based on their medical status;

(d) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

For which they seek damages under s. 24(1) of the *Charter* because these violations are not saved by s.1 of the *Charter*, which damages are payable and must be paid, by the Crown, as set out by the Supreme Court of Canada in, *inter alia*, the *Ward v City of Vancouver* case.

• **Ss. 6 and 7 of the *Charter* – Vaccine Passports – Travel Bans**

67. The Plaintiffs further state that “vaccine passports” further violate their explicit right(s) under s.6 and 7 of the *Charter* granting them mobility of travel, domestically and internationally, which violations are arbitrary (contrary to s.7), irrational, and disproportionate, and thus fail any s.1 fundamental justice, or s.1 *Charter* analysis, in that:

- (a) The Defendants admit, in their public statements, and scientific data, and science confirms, that transmission of the virus as between the vaccinated-to-vaccinated and vaccinated-to-unvaccinated, and *vice versa*, is NOT prevented by the COVID-19 “vaccines” (inoculations);
- (b) That there is NO rational connection between being **un**vaccinated and higher risks of transmission;
- (c) That the punitive bar to travel and board planes, trains, and boats is simply an irrational, arbitrary, over-reaching **punitive** dispensation of *Charter* violations and part of the malicious “consequences” of simply NOT “vaccinating”.

68. The Plaintiffs state, and the fact is, that the “vaccine passports” are not in furtherance of a “public health agenda” but simply of an irrational coercive “vaccine political agenda” knowingly geared at the violation of rights to informed, voluntary, consent

and the constitutional right to decline any medical treatment and/or procedure. The Plaintiffs state that it is thus purely political.

69. The Plaintiffs state, and the fact is, that as a result of the “vaccine passports”, and the removal of their mobility rights, the Plaintiffs have suffered, and will continue to suffer damages, which include, but are not restricted to:

- (a) An inability to travel to visit family, which family relationships, particularly between parent and child are constitutionally protected under s.7 of the *Charter* as set out by the Supreme Court of Canada;
- (b) That this restriction under **Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No.61**, from visiting family creates mental anguish and distress when that travel to visit family includes members facing death, medical conditions, funerals, (particularly when attendance is religiously required), weddings, confirmations, bar mitzvahs, etc;
- (c) An inability to vacation which is essential to recouping physical and psychological rest and integrity, which physical and psychological integrity is protected under s. 7 of the *Charter*;
- (d) Travel to attend specialized medical treatment not available locally;
- (e) Restrictions to obtaining domestic medical treatment in hospital for lack of a “vaccine passport”;
- (f) Prohibitions against entering domestic hospitals:
  - (i) When a spouse is giving birth to their child;
  - (ii) When a loved-one is dying, under palliative care;

All of which violate physical and psychological integrity under s. 7 of the *Charter*, by denial of the explicit mobility rights protected by s.7 of the *Charter* (liberty and security of the person) as well as the mobility (travel) rights specifically protected under s. 6 of the *Charter*.

70. The Plaintiffs state, as a result of this violation, the Plaintiffs have suffered damages, including, but not limited to:

- (a) Loss of their employment;
- (b) Mental anguish and distress;
- (c) Loss of dignity and discrimination based on their medical status;
- (d) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

For which they seek damages under s. 24(1) of the *Charter* because these violations are not saved by s.1 of the *Charter*, which damages are payable and must be paid, by the Crown, as set out by the Supreme Court of Canada in, *inter alia*, the *Ward v City of Vancouver* case.

- **“Vaccinated” versus “Unvaccinated” Equality Violations**

71. The Plaintiffs state, and fact is, that the Defendants’ “vaccine mandates and passports” have driven an irrationally, malicious, disproportionate and punitive wedge between the “vaccinated and unvaccinated” notwithstanding the Defendants’ admission that the “vaccines” have little to no effectiveness in preventing transmission between anyone, whether vaccinated or unvaccinated, thereby engaging in a punitive and unequal and discriminatory treatment for those, who have chosen to exercise their constitutionally protected rights, pre-and post- *Charter*, to informed



voluntary, consent, to any medical treatment/procedure, and the conditional right to decline treatment and *procedure*.

- **Pre-Charter rights to Equality of Treatment**

72. The Plaintiffs state, and fact is, that the Supreme Court of Canada, pre-*Charter*, recognized equality of treatment by governments of all its citizens in, *inter alia*, the *Winner (1952)* case. This right to equality, was also recognized, by the U.S Supreme Court, in *inter alia*, *Bolling* absent an equality provision, as a matter of due process and fundamental justice protecting citizens from arbitrary, irrational, action, the hallmark of s.7 of the *Charter*, whereby equality under s.15 and s. 7 of the *Charter* was recognized as a matter of due process, by the Supreme Court of Canada in *Schmidt (1987)*.
73. The Plaintiffs state, and the fact is, that their mistreatment, as “unvaccinated” citizens, violates their right against unequal treatment recognized, pre-*Charter*, as a constitutional **right** emanating from the Rule of Law, an unwritten conditional principle and imperative.
74. The Plaintiffs state, and fact is, that what is being violated is a recognized unwritten constitutional RIGHT which is not to be equated nor confused with an unwritten constitutional PRINCIPLE of Rule of Law, Constitutionalism, Democracy, Federalism, and Respect for Minorities as enunciated by the Supreme Court of Canada in the *Reference re Secession of Quebec, [1998] 2 S.C.R. 217*
75. What is being relied upon here are the specific **rights recognized** through the preamble of the *Constitutional Act, 1867*, and not the general underlying structural imperatives of the unwritten constitutional principles.

76. The Plaintiffs state and the fact is, that where there is a violation of an "unwritten" constitutional **right**, read in through to the pre-amble of the *Constitution Act, 1867*, there is no s.1 *Charter* analysis, nor are the rights subject to s.33 *Charter* override as this source is not the *Charter*.

- **S. 15 of the *Charter* – Discrimination on Emmerated and Analogous Grounds**

77. The Plaintiffs state and the fact is, that the Defendants have violated their right(s) against discrimination based on medical status, as follows:

- (a) By ironically creating, in law, two immutable classes of individuals: the covid-“vaccinated” versus the covid-“unvaccinated”;
- (b) These two classes are immutable in that, once vaccinated, you are forever vaccinated and, so long as citizens choose to decline the “COVID-19 vaccines” (inoculations) there will be that immutable class based on medical status and thus, is akin to religion and belief in that, while a person may change beliefs or religion, the class is immutable, one is either vaccinated or not, in whole or in part, in this case, a person is “unvaccinated” by mere virtue of the absence of the COVID-19 “vaccination” , even though the person has had other vaccines, including the annual flu shot;
- (c) The Plaintiffs are being denied rights and benefits and moreover, other constitutional rights, based on this discriminatory treatment.

78. The Plaintiffs state, as a result of this violation, the Plaintiffs have suffered damages, including, but not limited to:

- (a) Loss of their employment;

- (b) Mental anguish and distress;
- (c) Loss of dignity and discrimination based on their medical status;
- (d) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

For which they seek damages under s. 24(1) of the *Charter* because these violations are not saved by s.1 of the *Charter*, which damages are payable and must be paid, by the Crown, as set out by the Supreme Court of Canada in, *inter alia*, the *Ward v City of Vancouver* case.

The Plaintiffs further state, and the fact is, that the rights under the *Charter* do not sit in silo isolation of each other but are inter-twined and inseparable as set out by the SCC in, *inter alia*, *Morgentaler*, which case was unanimously endorsed by the SCC in *inter alia*, *O'Connor*.

- **S.1 of the *Charter***

79. The Plaintiffs state, and the fact is, that **none** of the *Charter* violations pleaded in this statement of claim are saved by s. 1 of the *Charter* in that:

- (a) At this point “vaccine mandates and passports” are no longer part of a valid public health objective, if they ever were, as “COVID-19 vaccines” as they have been admitted to, and proven as, completely ineffective in blocking transmission and thus the objective now is clearly a never ending “vaccine objective” of a “booster” every three (3) months simply to “suppress symptoms” with absolutely no consequence to effective resistance from transmission.
- (b) The vaccine mandates and passports are thus, and further arbitrary and irrational;
- (c) These mandates and passports do NOT minimally impair the *Charter* rights being violated and therefore are overly-broad;

(d) And, lastly, the measures' and passports' deleterious effects far outweigh the beneficial effects in that, *inter alia*:

- (i) The deaths attributable to the COVID measures themselves far exceed the purported deaths from COVID-19 itself to a factor of a minimal of five (5) to one (1);
- (ii) The economic devastation and cost has been seismic;
- (iii) *De facto* over-ride and blanket removal of constitutional right(s) and the Rule of Law is pervasive, at the arbitrary command and benefit of a handful of unelected and democratically and constitutionally unaccountable "public health officers" acting in place of Legislatures, via decree, and in the absence of legislation and judicial scrutiny.

- *Violation of Pre-Charter Constitutional Rights*

80. The Plaintiffs state, and the fact is, that where the Defendants are in violation of pre-existing recognized constitutional rights that pre-date the *Charter*, no s. 1 analysis ensues.


### **RELIEF SOUGHT**

81. The Plaintiffs therefore seek:

- (a) The relief and damages sought in paragraph 1 through 5 of the within statement of claim;
- (b) Costs of this action on a solicitor -client basis regardless of outcome;
- (c) Such further or other relief as counsel to the Plaintiffs may advise and/or this Honourable Court deems just.

The Plaintiffs propose that this action be tried at Toronto.

Dated at Toronto this 25<sup>th</sup> day of May, 2022.



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Solicitor for the Plaintiffs

Court File No.:

**FEDERAL COURT**

**B E T W E E N:**

Karen Adelberg et al.

Plaintiffs

- and -

HER MAJESTY THE QUEEN,

Defendants

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**STATEMENT OF CLAIM**

(Pursuant to s.17(1) and (5) (b) *Federal Courts Act*, and s.24(1) of the *Charter*)

(Filed this 30<sup>th</sup> day of May, 2022)

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Solicitor for the Plaintiffs

Court File No.:

**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  
(Appellants)**

-and-

**HIS MAJESTY THE KING ET AL.**

**Respondents  
(Respondents)**

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**APPLICATION FOR LEAVE TO APPEAL - VOL 1 of 3**

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