Court File number: 41415

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 **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 **Grison**, (Officers with the **Royal Canadian Mounted Police)**

(style of cause to be continued…)

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

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Ottawa Agent for Counsel for the Applicants

- 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, (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-

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(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**, **(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 **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** 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**, Derrik **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

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 S**isk**, 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 H**omewood**, 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 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 **Mengering**, 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 **Alghabra**, 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

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Solicitors for the Respondents

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FEDERAL COURT

B E T W E E N:

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants.

PLAINTIFFS' (RESPONDING) MOTION RECORD
(to Defendants' Motion to Strike)

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Counsel for the Plaintiffs

TAB 1

Court File No.: T-1089-22

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N:

Karen **Adelberg**, Matthew **Anderson**, Wyatt George **Baiton**, Paul **Barzu**, Neil **Bird**, Curtis **Bird**, Beau **Bjarnason**, Lacey **Blair**, Mark **Bradley**, John **Doe** #1 , Daniel **Bulford**, John **Doe** #2, Shawn **Carmen** , John **Doe** #3, Jonathan Corey **Chaloner**, Cathleen **Collins**, Jane **Doe** #1 , John **Doe #4**, Kirk **Cox**, Chad **Cox**, Neville **Dawood**, Richard **de Vos**, Stephane **Drouin**, Mike **Desson**, 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**, 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 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)**

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Michael **Munro**, Sebastian **Nowak**, Diana **Rodrigues,** Natalie **Holden** , Adam Dawson **Winchester**, **(Canada Border Services Agency)**

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- 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)**

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- and -

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- and -

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- and -

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- and -

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

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

- and –

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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 **Gaudreault**, Karrie **Gevaert**, Mark **Gevaert**, Peter **Iversen**, Derrik **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 Developement 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 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**, 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 **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 **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 **Mengering**, 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 **Alghabra**, 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 30th day of May, 2022)

J.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 171B 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 171ARule 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*)

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

NICOLE HRADSKY
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office:

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, promogulated 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 deprivating 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 unvoluntary 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 **Charte**r 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 unvoluntary 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 metal 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, a 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 plains, 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 pre-amble 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 25th 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

STATEMENT OF CLAIM

(Pursuant to s.17(1) and (5) (b)***Federal Courts Act***, and s.24(1) of the ***Charter***)

(Filed this 30th day of May, 2022)

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Solicitor for the Plaintiffs

TAB 2

Court File No.:T-1089-22

FEDERAL COURT

B E T W E E N:

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants.

AFFIDAVIT

I, Amina Sherazee, B.A., LL.B, of the City of Toronto, in the Province of Ontario, **MAKE OATH**

AND SAY:

1. I am a Lawyer in Ontario having been called to the bar in the year 2000.
2. I practice in the same offices as Rocco Galati (Law Firm Professional Corporation), and as such, have knowledge of the matter hereafter deposed.
3. In the course of my practice I have, in association, conjunction, as well as independently, been involved in conducting extensive review of evidence and the procurement of scientific and medical experts in various fields, including public health, virology, immunology, epidemiology, vaccinology, infectious disease, etc., with respect to the governments Covid-19 policies and measures, their scientific and medical basis, as well as their impact.

4. I have read the Written Representation of the Defendants in the within motion to strike and state the following:

   (a) The factual assertions made in the statement of claim, while disputed by the Defendants and perceived as controversial, are nevertheless, capable of being proven by a preponderance of scientific and medical evidence, based on world renowned and recognized experts, as well as by authoritative sources;

   (b) the Plaintiffs intend to tender this evidence, which both supports the facts pleaded, and, also contradicts the assertions of the Government of Canada on which the impugned Policy and Interim order(s) are based;

   (c) Many of the facts pleaded, although characterized by the Defendants as "conspiratorial, scandalous, salacious or extreme" are capable of proof. For example, that the "Covid-19 vaccinations" do not prevent transmission is not only conceded by Federal and Provincial Chief Medical Officers, but the subject of judicial determinations in various jurisdictions throughout the world. Likewise, lawsuits against Federal agencies and governments in an effort to uncover the origins of Covid-19 and the declaration of a global pandemic are also underway. The Plaintiffs intend to adduce this evidence;

   (d) the Plaintiffs intend to contest the unproven and unsubstantial assertions of the Defendants, with respect to the scientific and medical data, in seeking to challenge measures as unjustifiably infringing constitutional rights.

5. Other Courts, in other jurisdictions, such as the United States, and Indian Supreme Courts, for example, have ruled in favor of the same or similar factual assertions and

claims made by the Plaintiffs in this case, after a review of the full evidentiary record, and not on a hollow dismissal of the facts, taken as proven, on a motion to strike.

6. That the facts in dispute in this case are "fraught with controversy" and require evidentiary proof and trial was anticipated and acknowledged in September 2021 by the Honourable Chief Justice of the Federal Court of Appeal in his comments to the *The Lawyers Daily*, attached and marked as "Exhibit A".

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, on this 29th day of November, 2022.

A Commissioner for Taking Affidavits
Rocco Galati, B.A., LL.B., LL.M.

Amina Sherazee

Court File No.:T-1089-22

FEDERAL COURT

B E T W E E N:

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants

AFFIDAVIT

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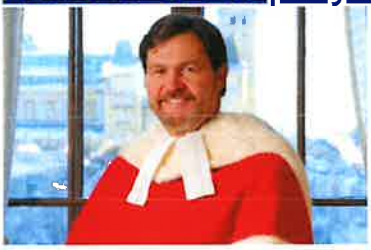
This is Exhibit "A" referred to in the affidavit of Amina Sherazee sworn before me, this 29th day of November A.D. 2022

A COMMISSIONER, ETC.

Labour & Employment



Supreme Court mandates COVID jabs for in-court staff; Federal C.A. won't disclose COVID policies

Tuesday, September 07, 2021 @ 2:35 PM | By Cristin Schmitz

Canada's top court has informed *The Lawyer's Daily* that all nine of its judges are fully vaccinated against COVID-19 and that its staffers will have to be fully vaccinated in order to work in the Supreme Court of Canada's courtroom during the fall session which begins next month.

Responding to queries from *The Lawyer's Daily*, the Supreme Court of Canada said in an e-mailed statement that Chief Justice of Canada Richard Wagner has directed that access to the top court's Ottawa hearing room by "court staff, including law clerks, registry clerks and court attendants" will be "conditional upon being fully vaccinated, and this direction will be in effect for the fall session" which begins in early October.

Chief Justice of Canada Richard Wagner

"Until further notice, counsel will continue to appear remotely via Zoom, and the court building remains closed to the public," explained the Supreme Court's executive legal officer Renée Thériault, who noted that the court is continuing "to monitor the situation with a view to ensuring a safe and healthy workplace for all of our employees within the federal public service framework."

(The federal Liberal government announced last month, just before calling an election, that it will mandate COVID-19 vaccinations this fall for federal public servants — which would presumably include staff of the five Ottawa-based federally appointed courts. However, there is no federal vaccine mandate in place at this time, and there may never be, particularly if there is a change in government Sept. 20.)

As the delta variant of COVID-19 spurs a rapid rise of infections, particularly among unvaccinated persons, and as many businesses and public employers announce vaccine mandates, *The Lawyer's Daily* is contacting all chief justices and chief judges across the country to ascertain what specific policies, and measures, if any, their courts are rolling out to ensure that their court's judges and staff are fully vaccinated against COVID-19, and are thus protecting the public, litigants, lawyers and members of the court and staff.

The Federal Court recently became the first known court to announce that its judges are all fully vaccinated against COVID-19.

The Manitoba Court of Queen's Bench also announced last month that access to its chambers — whether by judges, judicial assistants, court staff or others — will be restricted to those who are fully vaccinated. Any judges who are not fully vaccinated will not be assigned judicial duties this month, Chief Justice Glenn Joyal said.

The Canadian Judicial Council (CJC), chaired by Chief Justice Wagner, recently told *The Lawyer's Daily* that each court, under the leadership of its chief justice, must independently make its own policies on COVID-19 vaccination for judges and staff, given its particular circumstances, in order to ensure the health, safety and well-being of all persons who attend the court building, as well as access to justice and the proper functioning of their court.

Chief Justice Marc Noël

In response to a query, Chief Justice Marc Noël, who leads the Federal Court of Appeal, told *The Lawyer's Daily* he does not consider it ethically appropriate, however, for him or his court to disclose publicly "whether it has any personal views or institutional policies on this issue, one way or the other" given that the matter of vaccine mandates is likely to come before his court for adjudication and the court's paramount obligation is to maintain its impartiality.

"The issue of mandatory vaccination in workplaces and other settings is fraught with controversy. It is a subject of debate in the current federal election campaign," Chief Justice Noël explained in an e-mail. "This issue is almost certain to come before our court in the form of appeals from decisions on labour grievances, human rights complaints and other matters."

Chief Justice Noël noted that the CJC's recently published *Ethical Principles for Judges* stipulates that judges "must ensure that their conduct at all times maintains and enhances confidence in their impartiality", both actual and apparent.

"To preserve the actual and apparent impartiality of the court on this issue and related issues — as the court must — the court will not disclose whether it has any personal views or institutional policies on this issue, one way or the other," Chief Justice Noël explained. "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. Thus, in no way should this response be seen as a desire to conceal the vaccination status of the judges."

The chief justice added that the court's registry, the Courts Administration Service, is "responsible for ensuring that all precautionary measures and requirements are taken to protect all who attend court premises. Judges presiding over hearings shall address any concerns about the safety of their courtrooms."

Photo of Chief Justice Richard Wagner by Supreme Court of Canada Collection

If you have any information, story ideas or news tips for The Lawyer's Daily *please contact Cristin Schmitz at* Cristin.Schmitz@lexisnexis.ca *or at 613-820-2794.*

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TAB 3

MEMORANDUM OF FACT AND LAW

In response to the Defendants' Written submissions ("submissions"), in support of their motion to strike, the Plaintiffs state as follows:

PART I - THE 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[1].

2. The Plaintiffs further state, as global observations and submissions, that the Defendants:

   (a) improperly teeter-totter between asserting that certain facts are not "facts" because they are bald conclusions without evidentiary foundation, and at other times, that "facts" are not properly "facts" because they constitute "claims" or "conspiracy theories", without elaboration;

   (b) while such concerns and objections may, or may not, form the proper basis for a request for particulars, within the context of this motion, all "facts", pleaded as "facts", must be taken as proven "facts", in accordance with the above-noted jurisprudence; and

   (c) The Defendants, in engaging in this "Alice in Wonderland" dance of mischaracterizing the pleadings into what the Defendants say they mean, fly in the face of the clear holding of the Court of Appeal in arsenal wherein the court ruled:

> **10** In my view, for the purposes of Rule 221(1) of the *Federal Courts Rules,* SOR/98-10, the moving party must take the opposing party's pleadings as

---

[1] ***A.G. Canada v. Inuit Tapirasat of Canada [1980] 2 S.C.R. 735; Nelles v. Ontario (1989) 60 DLR (4th) 609 (SCC); Operation Dismantle Inc. v. The Queen [1985] 1 S.C.R. 441; 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***

> they find them, and cannot resort to reading into a claim something which is
> not there. The Crown cannot, by its construction of the respondents' claim, make it say something which it does not say.
>
> - ***Canada v. Arsenault*** 2009 FCA 242, @ paragraph 10

3. With respect to the "facts" **filed by the Defendants** through the affidavit of Gabriella Prati Trotto, the Plaintiffs state that this affidavit is inadmissible under rule 21. While the Defendants feign that the affidavit is admissible on a challenge to jurisdictional grounds, the content of the affidavit and exhibits go to the factual (very contested at that) of the substance of the litigation itself. The affidavit is further inadmissible in that it posits "facts" from the face of the Representation of the face of the policy statements and interim order(s), which is highly improper and inadmissible, particularly on a motion to strike. On a motion to strike, the only admissible "facts" are those contained in the statement of claim which, for purposes of the motion, must be taken and accepted as having been proven. The Plaintiffs dispute the "facts" posited by these documents. If the "facts" posited are to be relied upon, let the Defendants incorporate them into their statement of defence.

4. In this Motion the Defendants plead "facts" which are in dispute on the Plaintiffs' action, from government "policy" as if proven, as to truth of content. The only way this motion to strike can succeed is if the Court also accepts as facts pleaded on this motion, but not proven, also without evidence, and dispense with the requirement of a trial of the facts.

5. For example, the Defendant declares that the vaccine mandate (Treasury Board Policy) and the vaccine passport (Interim Order) were required for health and safety of the Plaintiffs, the Plaintiffs' colleagues and the Plaintiffs' clients. **These "facts" are disputed** and are at the heart of the action. The doctrine of the Rule of Law, Judicial

Independence and the constitutional separation of powers between the executive and judiciary requires a full and fair trial based on a comprehensive examination of the all the evidence prior to disposition of this case.

6. A full and fair trial and a complete and comprehensive record of evidence is required before the Court can establish whether the Policy or the Order was indeed required or not, necessary or not, constitutional or not. This fact, baldly declared without evidence, on a motion to strike ***as*** evidence for striking pleadings, without proof, is scandalous, vexatious and invites the administration of justice into disrepute, undermining the Rule of Law, Independence of the Judiciary, and Constitutionalism.

7. The Defendants are inviting the Court to abdicate its role and function as an independent and impartial trier of fact. Examining the purpose and objective of impugned legislation, as well as the evidence on which it is based for compliance is the role of the Courts. This case is of seminal public, national importance and the Court should not shy away from conducting a trial because the issues raised by this case are "controversial" and have been mischaracterized by the Defendants as "conspiratorial", etc.

8. The Honourable Chief Justice Marc Noel, of the Federal Court of Appeal, recognized that the challenge to government vaccine polices are "fraught with controversy" on 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."
>
> ***- Affidavit of Amina Sherazee, "Exhibit A"***

9. By adducing evidence rationalizing the very impugned executive action, and legislation which is in dispute, without an opportunity for the Plaintiffs' evidence to be adduced, the

Defendants are inviting the Court to dispense with the Rule of Law, the Independence of the Judiciary, and blindly align its decision with bald executive mantra. Not only would this call the administration of justice in disrepute, but it would also vitiate the precarious balance of power required in a free and democratic society.

> ***-Ref re Remuneration of Judges of the Prov. Court of P.E.I.; Ref re Independence and Impartiality of Judges of the Prov. Court of P.E.I., 1997 CanLII 317 (SCC), [1997] 3 SCR 3***
> ***- Reference re Secession of Quebec, 1998 CanLII 793 (SCC), [1998] 2 SCR 217***

10. A case of this magnitude of national importance cannot be disposed of in a summary fashion without trial, in this perfunctory fashion, on a motion to strike.

PART II - THE ISSUES

11. Whether this motion ought to be disposed of in writing or after oral submissions?

12. Whether any portion of the statement of claim should be struck?

13. If any of the statement of claim is struck, whether it should be struck without prejudice, with leave to the Plaintiffs to amend?

PART III - LAW AND ARGUMENT

A/ Preliminary Issue – Disposition of motion in writing or orally

14. It is submitted that this is not a motion that is properly amenable to being disposed of in writing, without violating the Plaintiffs' rights to natural and fundamental justice to be heard because of, ***inter alia***;

(a) The novelty and complexity of the evidentiary and legal issue(s) pleaded in the statement of claim;

(b) The fact that there is no appellate conclusive determination, on all fours, of any of the issue(s) raised by the Plaintiffs with respect to the pleadings;

(c) The fact that there is evidence, issue(s), and relief sought in the within statement of claim **not** squarely dealt with in the jurisprudence;

All of which requires that the Plaintiffs be able to orally parse, through oral submissions, the vague, blunt, and inapplicable submissions of the Defendants. In writing is not a sufficient vehicle in this particular motion.

15. To deny the right to an oral hearing on this motion is to deny the Plaintiffs a fair hearing.

B/ Motion to Strike – The Jurisprudence – General Principles

16. 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:[2]

(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.** Rule1.04(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."
>
> - ***Nelles, supra,* p. 627**

and rephrased, re-iterated by the Supreme Court of Canada, in ***Dumont***, wherein the Court stated that,

---

[2] ***A.G. Canada v. Inuit Tapirasat of Canada [1980] 2 S.C.R. 735; Nelles v. Ontario (1989) 60 DLR (4th) 609 (SCC); Operation Dismantle Inc. v. The Queen [1985] 1 S.C.R. 441; 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***

> "***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."

- *Dumont, supra.* p. 280

and further, that:

> "It is not for this Court on a motion to strike to reach a decision as to the Plaintiff's chance of success."

- Hunt, supra (SCC)

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.

- *Hunt, supra* p. 14

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 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.**
>
> - ***R. v. Imperial Tobacco Canada Ltd., supra at para 21.***

and that "the court should make an order only in ***plain and obvious cases*** which it is satisfied to be beyond doubt";

- ***Trendsetter Ltd, supra,* (Ont. C.A.).**

(c) (i) and that a statement of claim should not be struck just because it is "novel";

- ***Nash v. Ontario (1995) 27 O.R. (3d) (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.(4th)78 (Ont. Gen. Div.)***
- ***Miller (Litigation Guardian of) v. Wiwchairyk (1997) 34 O.R. (3d) 640 (Ont.Gen.Div)***

(ii) that "matters law not ***fully settled*** by the jurisprudence should not be disposed of at this stage of the proceedings";

- ***R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd.*** (1991) 5 O.R. (3d) 778 (C.A.)

(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***";

- ***Dalex Co. v. Schawartz Levitsky Feldman*** (1994) 19 O.R. (3d) 463 (Gen. Div).

(d) and that, in fact, the Court ought to be generous in the drafting of pleadings and not strike but allow amendment before striking.

- ***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.)

C/ Constitutional Principles Applicable to Claim

17. It is further submitted that virtually all of the declaratory relief sought as well as much of the damages sought in tort, is constitutional. It is submitted that the Constitution delineates both legislative and executive limits, and does not belong to either the Federal or Provincial legislatures, as set out by the Supreme Court of Canada, in that:

> ***The constitution of Canada does not belong either to Parliament, or to the Legislatures; it belongs to the country and it is there that the citizens of the country will find the protection of the rights to which they are entitled....***
>
> ***- Nova Scotia (Attorney General) v. Canada (Attorney General)*** [1951] S.C.R. 31

and has been further held that the Executive, and every other government actor, and institution is bound by the terms of constitutional norms.

- ***Reference re Secession of Quebec,*** [1988] 2 S.C.R. 217

18. It has also been held, by the Supreme Court of Canada, that legislative **omission** can also lead to constitutional breaches.

- ***Vriend v. Alberta*** [1998] 1 S.C.R. 493

19. It is further submitted, and long-held that, pre-***Charter***, as well as post-***Charter,*** that all executive ***action*** and ***inaction*** requires conformity with constitutional norms.

- ***Air Canada v. British Columbia (Attorney General)*** [1986] 2 S.C.R. 539
- ***Vriend v. Canada [1998] 1 SCR 493***
- ***Canada (Prime Minister) v. Khadr***, [2010] 1 S.C.R. 44

D/ Nature of Plaintiff's Claim

20. The Plaintiffs, in their claim, seek the following:

(a) monetary damages;

-Statement of claim., Paragraph 3

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;

-Ibid., paragraph 1

(c) injunctive relief or relief in the nature of **mandamus**;

- Ibid., Paragraph 2

Contrary to what the Defendants posit, nothing in the claim is based on any contract or 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).

E/ The Constitutional Right to Judicial Review and Declaratory Relief

21. 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 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..,.
>
> ***- Dunsmuir v. New Brunswick, 2008 SCC 9, at Paragraph 31***

It is submitted that the Plaintiffs confuse the substantive constitutional right to "judicial review" with the procedural vehicle by which it is exercised by restricting it to **applications** under s.18-18.1 as opposed to actions under s.17 of the ***Federal Court Act.*** This is misguided. Declaratory relief may be sought whether by way of application or by action either under s.17 and/or s.18-18.1 or by converting an application into an action under section **18.4(2)** of the ***Federal Courts Act***.

> - s.18.4(2) ***Federal Courts Act***
> - ***Edwards v. Canada*** (2000) 181 F.T.R. 219

22. This 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.
>
> ***- Canada v. Solosky, [1980] 1 S.C.R. 821, @ p. 830***

23. 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.
>
> ...
>
> [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.
>
> - ***Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14***

24. It is further submitted that, the Defendants, in addition to ignoring the provisions of ss. 2 and 17 of the ***Federal Courts Act***, further ignore the statutory right to seek declaratory relief, ***albeit*** at times unenforceable wherein Rule 64 of the ***Federal Courts Rules*** reads:

> 64. Declaratory relief available —No proceeding is subject to challenge on the ground that only a declaratory order is sought, and the Court may make a binding declaration of right in a proceeding ***whether or not any consequential relief is or can be claimed.***
>
> ***- Federal Courts Rules, R. 64***

and it has been held that Declaratory relief may be sought (in an action), under s. 17 of the ***Federal Courts Act***,

-see, i.e., ***Edwards v. Canada*** (2000) 181 F.T.R. 219

which is consistent with the Supreme Court jurisprudence,

- ***Canada (Prime Minister) v. Khadr***, [2010] 1 S.C.R. 44

and it has been long-stated, by the Supreme Court of Canada that "The constitutionality of legislation has always been a justiciable issue".

- ***Thorson v. AG of Canada [1975] 1 SCR 138, @ p. 151***
- ***Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14, @ paragraph 134***

F/Jurisprudence on Covid-19 measures mitigating against striking claim

25. 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.

26. 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***.

- ***592 U. S. ____ (2020)***

27. 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***:

- ***Jacob Puliyel Vs. Union of India & Ors.***

28. Moreover, it has already been established, in Canadian jurisprudence that any medical treatment without the informed, voluntary, consent violates s.7 of the ***Charter*** and not saved by s.1:

> ***- Fleming v. Reid (1991), 48 O.A.C. 46 (CA)***
> ***- Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331***

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 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.).

Moreover, 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.

> ***- 592 U. S. ____ (2020)***

29. In Ontario, attempts at moving to strike applications, ***in limine***, challenging the Covid-measures, have been dismissed.

- Sgt. Julie Evans et al. v. AG Ontario et al.
- M.A. v. De Villa, 2021 ONSC 3828

30. The Ontario Superior Court has also recently ruled that these issues of Covid-measures are not to be dealt with on a perfumatory 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.

- J.N. v. C.G., 2022 ONSC 1198

31. 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.

- Canadian Society for the Advancement of Science in Public Policy v. Henry, 2022 BCSC 724

32. 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: and

- Jacob Puliyel Vs. Union of India & Ors.

(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.

- Let Them Choose et al. v. San Diego Unified School District (2022)

G/ The Defendants' Position

- ***Claim barred by s.236 of the FPSLRA***

33. The Defendants, in paragraph 17 state that the plaintiffs "do not challenge any actions or omissions of the separate agencies" [apart from the Treasury Board]. This is not so. The Plaintiffs challenge all actions and omissions violating their constitutional rights pursuant to the Federal regulations, policies, and legislation driving those violations. In addition the hold those Defendants liable in the common-law and constitutional torts pleaded.

34. With respect to paragraphs 43 to 57 of the Defendant's Written Representations, and that:

(a) the Treasury Board has jurisdiction to impose vaccine mandates:

(b) that this Court has no jurisdiction with the jurisdiction under s.236 of the FPSLRA;

The Plaintiffs state that:

(i) There is no jurisdiction, under s.91 of the ***Constitution Act, 1867*** for the Federal Parliament nor executive to dictate medical treatment, which is the exclusive domain of the Provincial Legislatures;

(ii) there is no jurisdiction to impose unconstitutional measures that violate the ***Charter***, including ss.2, 7 and 15, and that to do so constitutes a constitutional **tort**;

(c) that this action is strictly grounded in constitutional declaratory relief and action in **common law and constitutional torts**, and not in any labour or collective bargaining issue(s).

35. 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.

> ***- Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929***
> ***- Northern Regional Health Authority v. Horrocks, 2021 SCC 42 (CanLII)***

36. 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 from common-law, is not a bar to this action.

37. 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, 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;

> ***- Let Them Choose et al. v. San Diego Unified School District (2022)***
> ***-Jacob Puliyel Vs. Union of India & Ors.***

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.

> ***- Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331 at P.67***
> ***- Fleming v. Reid (1991), 48 O.A.C. 46 (CA)***

- ***This action ought to be a judicial review***

38. It is submitted that the Defendant's contention that this action for damages cannot be brought because it has to be brought as judicial review is either:

(a) embarrassing in its misstatement of the clear jurisprudence; and/or

(b) embarrassing in its ignorance of the jurisprudence;

in that the ***Telezone*** line of cases, six (6) concurrent judgments from the Supreme Court of Canada, in the Federal context, the Supreme Court of Canada clearly ruled that whether or not judicial review could be, or was/ was not brought it did not preclude on action for damages in either the Federal Court, or the Provincial Superior Courts.

> ***- Canada (Attorney General) v. TeleZone Inc., 2010 SCC 62 (CanLII), [2010] 3 SCR 585***
> ***- Canada (Attorney General) v. McArthur, 2010 S.C.C. 63***
> ***- Parrish & Heimbecker Ltd. v. Canada (Agriculture and Agri-Food), 2010 S.C.C. 64***
> ***- Nu-Pharm Inc. v. Canada (Attorney General), 2010 S.C.C. 65***
> ***- Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada, 2010 S.C.C. 66***
> ***- Manuge v. Canada, 2010 S.C.C. 67***
> ***- Sivak et al. v. MCI, 2011 FC 402***

39. It is further submitted, as the distinction between judicial review and action for damages, the Saskatchewan Court of Appeal, citing the six (6) Supreme Court of Canada ***Telezone*** line of cases, had this to say:

> [73] This distinction, between actions that seek to invalidate the effect of a previous court or tribunal order and legal proceedings which seek damages allegedly suffered as a consequence of such an order, was developed in six companion decisions of the Supreme Court of Canada released in 2010. The most frequently cited case out of this series is *Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62, [2010] 3 SCR 585 [*TeleZone*].
>
> [74] In *TeleZone*, the party of that name had initiated a claim for breach of contract, negligence, and unjust enrichment arising from the Minister of Industry Canada's decision not to issue the company a licence to provide telecommunications services. Industry Canada had indicated to TeleZone that six licences would be issued to applicants, but then ultimately only issued four, not including TeleZone. The defendants' position was that TeleZone's action was improper because it had not challenged Industry Canada's decision through judicial review. Justice Binnie described the principle underlying the question confronting the Court in the following terms:

> [18] This appeal is fundamentally about access to justice. People who claim to be injured by government action should have whatever redress the legal system permits through procedures that minimize unnecessary cost and complexity. The Court's approach should be practical and pragmatic with that objective in mind.
>
> (Emphasis added)

[75] He then set the line which divides those cases where a claim for damages can proceed and those cases where a litigant must pursue a matter in an alternative forum by reference to the litigant's objective or purpose for initiating the impugned proceeding:

> [19] If a claimant seeks to set aside the order of a federal decision maker, it will have to proceed by judicial review, as [*Canada v Grenier*, 2003 FCA 348, 262 DLR (4th) 337] held. However, if the claimant is content to let the order stand and instead seeks compensation for alleged losses (as here), there is no principled reason why it should be forced to detour to the Federal Court for the extra step of a judicial review application (itself sometimes a costly undertaking) when that is not the relief it seeks. Access to justice requires that the claimant be permitted to pursue its chosen remedy directly and, to the greatest extent possible, without procedural detours.
>
> (Emphasis added)

[76] On the facts, the Supreme Court held that TeleZone was seeking to recover damages from the Minister of Industry Canada's alleged tortious actions and contractual violations, and not to overturn the administrative decision not to issue it a licence. Accordingly, the Supreme Court allowed its claim to proceed in the Ontario Superior Court. In reaching this conclusion, Binnie J. offered the following additional guidance:

> [76] Where a plaintiff's pleading alleges the elements of a private cause of action, I think the provincial superior court should not in general decline jurisdiction on the basis that the claim looks like a case that should be pursued on judicial review. If the plaintiff has a valid cause of action for damages, he or she is normally entitled to pursue it.
>
> ***- Solgi v College of Physicians and Surgeons of Saskatchewan, 2022 SKCA 96 (CanLII)***
> ***- Canada (Attorney General) v. TeleZone Inc., 2010 SCC 62 (CanLII), [2010] 3 SCR 585***

40. It is further submitted that this anemic attempt by the Defendants to so qualify this action, runs afoul of the clear admonition of the Federal Court of Appeal in not taking the claim as pleaded, but rather nebulously and vaguely re-configuring it to suit the Defendants'

ends on this motion, contrary to the clear ruling of the Federal Court of Appeal in ***Arsenault***, wherein the Court ruled:

> **10** In my view, for the purposes of Rule 221(1) of the *Federal Courts Rules,* SOR/98-10, the moving party must take the opposing party's pleadings as they find them, and cannot resort to reading into a claim something which is not there. The Crown cannot, by its construction of the respondents' claim, make it say something which it does not say.
>
> **- *Canada v. Arsenault*** 2009 FCA 242, @ paragraph 10

- ***Claim Discloses No Reasonable Cause of Action***

41. With respect to paragraphs 58 to 78 of the Defendants' Written Representations the Plaintiffs state:

(a) when the facts pleaded are taken as proven, as is required on this motion; and

(b) when the causes of action, both in common-law and constitutional **torts** are assessed on the facts pleaded;

- ***Statement of Claim***, at paragraphs 22-78

the Plaintiffs state that reasonable causes of action are made out, on material facts pleaded, for the purposes of this motion to strike.

42. The jurisprudence is clear that, at common law, and under the ***Charter***, mandatory medical treatment without informed consent is a tortious and constitutional violation.

- Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331 at P.67
- Fleming v. Reid (1991), 48 O.A.C. 46 (CA)

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 medical data that shows that vaccination does not prevent transmission, discriminates and violates equality of treatment.

- Let Them Choose et al. v. San Diego Unified School District (2022)
-Jacob Puliyel Vs. Union of India & Ors.

43. 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.

- McIlvenna v. 1887401 Ontario Ltd., 2015 ONCA 830 (CanLII)

44. Lastly, with respect to the Defendants incantation of the "vague" and "unclear" pleading, the Plaintiffs deny that the pleadings are so, and further states that, at a maximum this echoing complaint may, if at all, go only to a request for particulars.

- ***Claim Not Justiciable***

45. With respect to paragraphs 79 to 85 of the Respondent's Written Representations and that the claim is not justiciable, the Plaintiffs state:

(a) The statement by the Defendants in paragraph 79 to 85 of its Written Representations is absurd in that the Plaintiffs do not plead this and the Defendants are again constructing straw-men contrary to the ruling in ***Canada v. Arsenault***; and

(b) It is evident, from the clear jurisprudence cited above, that the justiciability of any, and all legislation and or legislative omission, and/or executive action or inaction is justiciable.[3]

- ***Action is an abuse of Process***

46. With respect to paragraphs 86 to 90 of the Respondent's Written Representations and that the claim is an abuse of process, the Plaintiffs state:

(a) This action is not an abusive process in that:

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[3] ***Edwards v. Canada*** (2000) 181 F.T.R. 219; ***Canada (Prime Minister) v. Khadr***, [2010] 1 S.C.R. 44; ***Thorson v. AG of Canada [1975] 1 SCR 138, @p. 15; Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14, @paragraph 134***

(i) the facts;
(ii) causes of action pleaded;
(iii) relief sought; and
(iv) jurisdiction at common law, s.17 of the ***Federal Court Act***, and s.24(1) and s.52 of the ***Constitution Act 1982*** ground the action; and

(b) it is not strikable under **Rule** 221, or any other Rule on basis.

- ***Action is Scandalous, Frivolous, and Vexatious***

47. With respect to paragraphs 86 to 90 of the Respondent's Written Representations and that the claim is scandalous, frivolous, and vexatious, the Plaintiffs state:

(a) With all due respect to the Defendants' counsel's crystal ball and access to unascertained oracle of truth with reference to scientific and medical fact, the facts alleged in the statement of claim are capable of proof, and must be taken as proven for the purposes of this motion;

(b) Moreover, the Plaintiffs intend to establish those facts and are in the possession of the scientific and medical evidence, and expert witnesses, to prove these facts pleaded, which evidence and experts the Plaintiffs intend to tender at trial; and

-Affidavit of Amina Sherazee

(c) Again, the incantations of the Defendants that these allegations are "baseless" are more of a religious or political submission, because that determination can only be made after an assessment of the evidence, from the facts pleaded, that the Plaintiffs intend to tender.

48. With respect to the relevance on some jurisprudence that erroneously asserts "judicial notice", the Plaintiff state:

(a) that the very ***Khodeir*** the Defendants cite is not so categoric as the Defendants claim in that this Court in ***Khodeir*** clarified by stating:

> [35] I also wish to emphasize that the Attorney General is asking me to **take judicial notice solely of a narrow and basic fact regarding the COVID-19 pandemic, namely, the existence of the virus causing the disease**. Of course, knowledge about various aspects of COVID-19 continues to develop, **and there is a lively debate about which public health measures are most appropriate to fight the pandemic. In this process, some facts beyond the mere existence of the virus may or may not be sufficiently indisputable or notorious to warrant judicial notice.** I am not, however, called upon to set the outer boundaries of judicial notice in relation to the COVID-19 pandemic.

Furthermore the Court stated:

> [37] Moreover, if there was any evidence incompatible with the existence of the virus, one would have expected Mr. Khodeir to provide it to the Court. As we will see later, he utterly failed in this regard.
>
> ***- Khodeir v. Canada (Attorney General), 2022 FC 44 (CanLII)***

And further, and of seismic importance and distinction is the fact that **no *Charter*** issues were raised in ***Khodeir*** as set out by the Court in stating:

> [5] **Unlike other litigants who have challenged the validity of the Policy, Mr. Khodeir does not invoke his rights guaranteed by the *Canadian Charter of Rights and Freedoms***. Rather, he asserts that the policy is *ultra vires* the *Financial Administration Act*, because it is unreasonable in the administrative law sense of the term. In this regard, his amended application alleges the following:

(b) the Plaintiffs, intend to provide an avalanche of evidence to prove the facts set out in the statement of claim which was **not** the case in ***Khodeir***;

- Affidavit of Amina Sherazee

(c) the jurisprudence on judicial notice, in the COVID-19 context, is not as simplistic nor as categorical, and open and shut, as the Defendants would have it in mis-stating the ruling in ***Khodeir*** and as ***Khodeir*** misapplied the Supreme Court of Canada in ***Find*** on the principle of judicial notice.

- R. v. Find, 2001 SCC 32 (CanLII), [2001] 1 SCR 863
- R. v. Morgan, 2020 ONCA 279 (CanLII)

And as to how ***Find*** and ***Morgan*** is interpreted by the Alberta Court of Appeal in ***R v Church in the Vine and Fortin, 2022 ABKB 704 (CanLII)*** where in it ruled:

> [53] This principle was adopted in this Court by Graesser J in ***R v Mella***, 2021 ABQB 785(released in September 2021) at para 40 and Whitling J in ***Sembaliuk v Sembaliuk***, 2022 ABQB 62 (released in January 2022) at para 8. In ***LMS v JDS***, 2020 ABQB 726 (released in October 2020) at para 18, Hollins J stated the following:
>
> > [18] I can take judicial notice of certain things about COVID, namely that it is a global pandemic and that our own public health officials have provided us with commonly-accepted precautions to avoid contracting COVID (wearing a mask, keeping distanced whenever possible, reducing contacts, washing hands). **However, in my view, I cannot take judicial notice of much more than that.**

And further by the Ontario Superior Court in ***J.N. v. C.G., 2022 ONSC 1198 (CanLII),*** wherein the Court stated:

> [1] When did it become illegal to ask questions? *Especially in the courtroom?*
>
> [2] And when did it become unfashionable for judges to receive answers? *Especially when children's lives are at stake?*
>
> [3] How did we lower our guard and let the words "unacceptable beliefs" get paired together? *In a democracy? On the Scales of Justice?*
>
> [4] **Should judges sit back as the concept of "Judicial Notice" gets hijacked from a *rule* of evidence to a *substitute* for evidence?**
>
> [5] And is "misinformation" even a real word? Or has it become a crass, self-serving tool to pre-empt scrutiny and discredit your opponent? To de-legitimize questions and strategically avoid giving answers. Blanket denials are almost never acceptable in our adversarial system. Each party always has the onus to prove their case and yet "misinformation" has crept into the court lexicon. A childish – but sinister – way of saying *"You're so wrong, I don't even have to explain why you're wrong."*

> [6] What does *any* of this have to do with family court? Sadly, these days it has *everything* to do with family court.
>
> [7] Because when society demonizes and punishes anyone who disagrees – or even dares to ask really important questions – the resulting polarization, disrespect, and simmering anger can have devastating consequences for the mothers, fathers and children I deal with on a daily basis.

And it is further submitted that the meaningless word "misinformation" is akin to the depraved slur of "conspiracy theory", or "theorist" without factual elaboration:

And further:

> [66] In *R.S.P. v. H.L.C.* 2021 ONSC 8362 (SCJ) Justice Breithaupt Smith recently set out a timely **warning about the danger of applying judicial notice to cases where expert opinion is unclear or in dispute.** It's a warning I whole heartedly adopt:
>
> .....

And further:

> [67] Why should we be so reluctant to take judicial notice that the government is always right?
>
> a. Did the Motherisk inquiry teach us nothing about blind deference to "experts"? Thousands of child protection cases were tainted – and lives potentially ruined – because year after year courts routinely accepted and acted upon substance abuse testing which turned out to be incompetent.
> b. What about the Residential School system? For decades the government assured us that taking Indigenous children away – and being wilfully blind to their abuse – was the right thing to do. We're still finding children's bodies.
> c. How about sterilizing Eskimo women? The same thing. The government knew best.
> d. Japanese and Chinese internment camps during World War Two? The government told us it was an emergency and had to be done. Emergencies can be used by governments to justify a lot of things that later turn out to be wrong.
> e. Few people remember Thalidomide. It was an experimental drug approved by Canada and countries throughout the world in the late 1950's. It was supposed to treat cancer and some skin conditions. Instead it caused thousands of birth defects and dead babies before it was withdrawn from the market. But for a period of time government experts said it was perfectly safe.

f. On social issues the government has fared no better. For more than a century, courts took judicial notice of the fact that it was ridiculous to think two people of the same sex could get married. At any given moment, how many active complaints are before the courts across the Country, alleging government breaches of Charter Rights? These are vitally important debates which need to be fully canvassed.
g. The list of grievous government mistakes and miscalculations is both endless and notorious. Catching and correcting those mistakes is one of the most important functions of an independent judiciary.
h. And throughout history, the people who held government to account have always been regarded as heroes – not subversives.
i. When our government serially pays out billions of dollars to apologize for unthinkable historic violations of human rights and security – how can we possibly presume that today's government "experts" are infallible?
j. Nobody is infallible.
k. And nobody who controls other people's lives – *children's lives* – should be beyond scrutiny, or impervious to review.

And further by the Ontario Superior Court in ***M.M. v. W.A.K., 2022 ONSC 4580***

(CanLII):

> [37] The issue before the court in taking judicial notice of scientific facts is not assessing whether the science is "fake science", but whether scientific facts that would normally require expert opinion to be admitted, may be judicially noticed without proof. This issue was recently addressed by Breithaupt Smith J. in *R.S.P. v. H.L.C.* 2021 ONSC 8362 in which she provided what has been described as a timely warning (*J.N. v. C.G.*, 2022 ONSC 1198 at para 65):
>
> > [57] Judicial notice of the facts contained in government publications are "capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy." Such facts could include, for example, that there are two time zones in the Province of Ontario or that there were two deaths and 39 Intensive Care Unit admissions among Ontario children from January 15, 2020, to June 30, 2021 connected with SARS-CoV-2.
> >
> > [58] **Judicial notice cannot be taken of expert opinion evidence. Chief Justice McLachlin for the unanimous Court in *R. v. Find* underscored that: "Expert evidence is by definition neither notorious nor capable of immediate and accurate demonstration. This is why it must be proved through an expert whose qualifications are accepted by the court and who is available for cross-examination" (at paragraph 49).**

> [39] I also share the concerns expressed by Pazaratz J. with respect to the court taking judicial notice of government information. In a recent case, similar to this case, he makes several critical observations:

With a similar refusal to take judicial notice ***in R.S.P. v. H.L.C., 2021 ONSC 8362 (CanLII).***

(d) The statement of claim pleads facts, concessions, uttered by Chief Medical Officers themselves.

49. It is thus submitted that the Defendants misstate the holding in ***Khodeir,*** misstate the Plaintiffs' pleading. Furthermore, the holding in ***Khodeir*** in any event is contrary to ***R. v. Find*** in misapplying ***R. v. Find***, and moreover contrary to the jurisprudence on judicial notice in the Covid context. In any event, nothing about "judicial review" in this context is "plain and obvious", "beyond argument", in the jurisprudence for the purpose of a motion to strike.

50. It is thus clear, for the purposes of this motion, that it is not plain and obvious beyond argument to the point that this action should be struck.

- ***Action is doomed to fail***

51. With respect to paragraphs 100 to 113 of the Respondent's Written Representations and with respect to the Defendants' judicial forecast the claim is "doomed" to fail the Plaintiffs state:

(a) The Defendants embarrassingly confuse the constitutional right to judicial review with the procedural avenue of conducting that judicial review by the procedural avenue of an **application** versus **an action**, again trying to reconfigure the pleading for its own fictitious purposes in that:

(i) Declarations can be sought under s.17 of the ***Federal Court Act***;

- ***Edwards v. Canada*** (2000) 181 F.T.R. 219

(ii) This action further and centrally **seeks damages**, which cannot be sought by way of application under s.18 -18.1 **unless** it were converted into an action under s.18.4(2) of the ***Federal Court Act***;

(iii) insofar as the ***Charter***, and/or other parts of the ***Constitution Act*** are invoked in virtually all the declaratory relief, ss.24 and s.52 of the ***Constitution Act, 1982*** further grounds the relief by way of action in conjunction with the damages in tort, both at common law and under the ***Charter***;

(iv) this issue was settled by the ***Telezone*** line of cases by the Supreme Court of Canada[4].

(b) It is again submitted that this not a proper "plain and obvious" case, "beyond argument" basis for striking the claim;

(c) With respect to the Defendants' submissions, at paragraph 107 to 113, of their Written Representations, that a "reconstituting of the action into a judicial review would make it moot", the Plaintiffs state:

(i) The defendants are again reconstituting the claim (action) for something it is NOT, and should not be, contrary to the Federal Court of Appeal ruling in ***Canada v. Arsenault 2009 FCA 242*** which merits repeating in that:

> [10] In my view, for the purposes of Rule 221(1) of the *Federal Courts Rules*, SOR/98-106, the moving party must take the opposing party's pleadings as they find them, and cannot resort to reading into a claim something which is not there. The Crown

---

[4] ***Canada (Attorney General) v. TeleZone Inc., 2010 SCC 62 (CanLII), [2010] 3 SCR 585Canada (Attorney General) v. McArthur, 2010 S.C.C. 63***; ***Parrish & Heimbecker Ltd. v. Canada (Agriculture and Agri-Food), 2010 S.C.C. 64***; ***Nu-Pharm Inc. v. Canada (Attorney General), 2010 S.C.C. 65***; ***Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada, 2010 S.C.C. 66***; ***Manuge v. Canada, 2010 S.C.C. 67***; ***Sivak et al. v. MCI, 2011 FC 402***

> cannot, by its construction of the respondents' claim, make it say something which it does not say.
>
> ***- Canada v. Arsenault 2009 FCA 242 at paragraph 10***

(ii) Their argument is shot down by the ***Telezone*** line of cases;

(iii) It is not plain and obvious that vaccine mandate and making mandates are moot, in that the Defendants and their officials, including Prime Minister Trudeau, have made it clear that the same measures can and will be reinstituted if deemed necessary, and in any case, the exception to mootness clearly applies under Canadian jurisprudence

> ***- Borowski v. Canada [1989] 1 S.C.R. 342 (SCC)***
> ***- Vic Restaurant Inc. v. City of Montreal, 1958 CanLII 78 (SCC), [1959] SCR 58***
> ***- The Canadian Civil Liberties Association v. Nova Scotia (Attorney General), 2022 NSCA 64 (CanLII)***

And, the United States Supreme Court, in the context of Covid measures, and Covid context of church closings, rejected such a mootness argument due to the fact that churches again could see similar closures.

> ***- 592 U. S. ____ (2020)***

And further, in the covid-context, the Nova Scotia Court of Appeal made a similar ruling in stating on the exception to mootness;

> (b) Although moot, the Court should entertain this appeal owing to the public interests engaged;
>
> ***- The Canadian Civil Liberties Association v. Nova Scotia (Attorney General), 2022 NSCA 64 (CanLII)***

52. It is thus not "plain and obvious", "beyond argument", that this is moot nor that it is not subject to the exception on mootness.

53. In any event, the Declaratory Relief, tort and ***Charter*** damages are not moot.

- ***No Leave to Amend***

54. With respect to paragraphs 114 to 115 of the Respondent's Written Representations and that the claim should be given no leave to amend, the Plaintiffs state:

(a) If struck, in whole or in part, the Plaintiffs should be granted leave to amend in accordance with the jurisprudence in this Court:

- ***Collins v. Canada*** [2011] D.T.C. 5076
- ***Simon v. Canada*** [2011] D.T.C. 5016
- ***Spatling v. Canada*** 2003 CarswellNat 1013
- ***Larden v. Canada*** (1998) 145 F.T.R. 140
- ***Action4Canada v British Columbia (Attorney General), 2022 BCSC 1507 (CanLII)***

(b) In a recent, covid-measure case, which was struck due to it being prolix at (398 pages) the Court struck it without prejudice to issue an amended claim

- Action4Canada v British Columbia (Attorney General), 2022 BCSC 1507 (CanLII)

G/ Issues and Relief Not Covered in Defendants' Submissions

55. It is lastly submitted that, insofar as the Defendants neglect or chose, not to cover or move to strike other relief and/or paragraphs contained in the statement of claim, the Plaintiffs have not dealt with those portions of the claim in the within memorandum, ***albeit*** the Plaintiffs continue to rely on those paragraphs and relief.

H/ Costs

56. The Plaintiffs, in accordance with the jurisprudence, with respect to motions to strike, state that, where the motion is dismissed, in the main, the Plaintiffs are entitled to solicitor-client costs

- Lominadze v. Canada (MCI) [1998] F.C.J. No. 115

and the Plaintiffs state that they are also generally entitled, in this case, to solicitor-client costs, under ***Rule 400***.

-Singh v. MEI [1985] S.C.R. 177 (SCC)
-Borowski v. Canada [1989] 1 S.C.R. 342 (SCC)
-Canada (MEI) v. Villafranca [1992] F.C.J. No. 1189 (F.C.A.)
-Lominadze v. Canada (MCI) [1998] F.C.J. No. 115
-Ruby v. Canada [2002] S.C.J. No. 73 (SCC)

PART IV - ORDER SOUGHT

57. The Plaintiffs respectfully request that:

(a) the Defendants' motion to strike be dismissed;

(b) in the alternative, if any portions are struck, that is to be without prejudice, to file an amended statement of claim in accordance with the jurisprudence[5]:

(c) solicitor-client costs and, in accordance with ***Native Women's Assn. of Canada vs. Canada [1994] 3 SCR 627***, such further and other relief as this Honourable Court deems just.

All of which is respectfully submitted

Dated this 29th day of November 2022.

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[5] ***Collins v. Canada*** [2011] D.T.C. 5076; ***Simon v. Canada*** [2011] D.T.C. 5016; ***Spatling v. Canada*** 2003 CarswellNat 1013; ***Larden v. Canada*** (1998) 145 F.T.R. 140; ***Action4Canada v British Columbia (Attorney General), 2022 BCSC 1507 (CanLII)***

PART V - AUTHORITIES

- **Statutory Provisions Appendix A**

1. ***Federal Courts Act*.**
2. ***Constitution Act, 1982*, *ss. 2, 7, 15, 24, 52.***
3. ***Constitution Act, 1867*, *ss. 91, 92.***

- **Jurisprudence**

1. ***592 U. S. (2020)***

2. ***A.G. Canada v. Inuit Tapirasat of Canada [1980] 2 S.C.R. 735***

3. ***Action4Canada v British Columbia (Attorney General), 2022 BCSC 1507 (CanLII)***

4. ***Adams-Smith v. Christian Horizons (1997)14 C.P.C.(4th)78 (Ont. Gen. Div.)***

5. ***Air Canada v. British Columbia (Attorney General)*** [1986] 2 S.C.R. 539

6. ***B.C. v. Imperial Tobacco Canada Ltd., [2005] 2 S.C.R. 473***

7. ***Borowski v. Canada [1989] 1 S.C.R. 342 (SCC)***

8. ***Canada (Attorney General) v. McArthur, 2010 S.C.C. 63***

9. ***Canada (Attorney General) v. TeleZone Inc., 2010 SCC 62 (CanLII), [2010] 3 SCR 585***

10. ***Canada (MEI) v. Villafranca [1992] F.C.J. No. 1189 (F.C.A.)***

11. ***Canada (Prime Minister) v. Khadr***, [2010] 1 S.C.R. 44

12. ***Canada v. Arsenault 2009 FCA 242***

13. ***Canada v. Solosky, [1980] 1 S.C.R. 821, @ p. 830***

14. ***Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada, 2010 S.C.C. 66***

15. ***Canadian Society for the Advancement of Science in Public Policy v. Henry, 2022 BCSC 724***

16. ***Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331***

17. ***Collins v. Canada*** [2011] D.T.C. 5076

18. ***Dalex Co. v. Schawartz Levitsky Feldman*** (1994) 19 O.R. (3d) 463 (Gen. Div).

19. ***Dumont v. A.G. Canada [1990] 1 S.C.R. 279***

20. ***Dunsmuir v. New Brunswick, 2008 SCC 9*****, at Paragraph 31**

21. ***Edwards v. Canada*** (2000) 181 F.T.R. 219

22. ***Fleming v. Reid (1991), 48 O.A.C. 46 (CA)***

23. ***Grant v. Cormier – Grant, et. al*** (2001) 56 O.R. (3d) 215 (Ont. C.A.)

24. ***Hanson v. Bank of Nova Scotia (1994) 19 O.R .(3d) 142 (C.A.)***

25. ***Hunt v. Carey Canada Inc [1990] 2 S.C.R. 959***

26. ***J.N. v. C.G., 2022 ONSC 1198***

27. ***Jacob Puliyel Vs. Union of India & Ors.***

28. ***Khodeir v. Canada (Attorney General), 2022 FC 44 (CanLII)***

29. ***Larden v. Canada*** (1998) 145 F.T.R. 140

30. ***Let Them Choose et al. v. San Diego Unified School District (2022)***

31. ***Liebmann v. Canada*** [1994] 2 F.C. 3

32. ***Lominadze v. Canada (MCI) [1998] F.C.J. No. 115***

33. ***M.A. v. De Villa, 2021 ONSC 3828***

34. ***M.M. v. W.A.K., 2022 ONSC 4580 (CanLII):***

35. ***Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14***

36. ***Manuge v. Canada, 2010 S.C.C. 67***

37. ***McIlvenna v. 1887401 Ontario Ltd., 2015 ONCA 830 (CanLII)***

38. ***Miller (Litigation Guardian of) v. Wiwchairyk (1997) 34 O.R. (3d) 640 (Ont.Gen.Div)***

39. ***Nash v. Ontario (1995) 27 O.R. (3d) (C.A.)***

40. ***Native Women's Assn. of Canada vs. Canada [1994] 3 SCR 627,***

41. ***Nelles v. Ontario (1989) 60 DLR (4th) 609 (SCC)***

42. ***Northern Regional Health Authority v. Horrocks, 2021 SCC 42 (CanLII)***

43. ***Nova Scotia (Attorney General) v. Canada (Attorney General)*** [1951] S.C.R. 31

44. ***Operation Dismantle Inc. v. The Queen [1985] 1 S.C.R. 441***

45. ***Parrish & Heimbecker Ltd. v. Canada (Agriculture and Agri-Food), 2010 S.C.C. 64***

Nu-Pharm Inc. v. Canada (Attorney General), 2010 S.C.C. 65

46. ***R v Church in the Vine and Fortin, 2022 ABKB 704 (CanLII)***

47. ***R. v. Find, 2001 SCC 32 (CanLII), [2001] 1 SCR 863***

48. ***R. v. Morgan, 2020 ONCA 279 (CanLII)***

49. ***R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd.*** (1991) 5 O.R. (3d) 778 (C.A.)

50. ***R.S.P. v. H.L.C., 2021 ONSC 8362 (CanLII).***

51. ***Reference re Secession of Quebec,*** [1988] 2 S.C.R. 217

52. ***Ruby v. Canada [2002] S.C.J. No. 73 (SCC)***

53. Sgt. Julie Evans et al. v. AG Ontario et al.

54. ***Simon v. Canada*** [2011] D.T.C. 5016

55. ***Singh v. Canada (Citizenship and Immigration), 2010 FC 757***

56. ***Singh v. MEI [1985] S.C.R. 177 (SCC)***

57. ***Sivak et al. v. MCI, 2011 FC 402***

58. ***Solgi v College of Physicians and Surgeons of Saskatchewan, 2022 SKCA 96 (CanLII)***

59. ***Spatling v. Canada*** 2003 CarswellNat 1013

60. ***TD Bank v. Delloitte Hoskins & Sells*** (1991) 5 O.R. (3d) 417 (Gen. Div.)

61. The Canadian Civil Liberties Association v. Nova Scotia (Attorney General), 2022 NSCA 64 (CanLII)

62. Thorson v. AG of Canada [1975] 1 SCR 138, @ p. 151

63. Trendsetter Ltd. v. Ottawa Financial Corp. (1989)32 O.A.C. 327 (C.A.)

64. Vic Restaurant Inc. v. City of Montreal, 1958 CanLII 78 (SCC), [1959] SCR 58

65. ***Vriend v. Canada [1998] 1 SCR 493***

66. Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929

Court File No.:T-1089-22

FEDERAL COURT

B E T W E E N:

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants

MEMORANDUM OF FACT AND LAW

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Court File No.:T-1089-22

FEDERAL COURT

B E T W E E N:

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants

PLAINTIFFS' MOTION RECORD

Plaintiffs' Responding Motion Record to Defendants' Motion to Strike, (Returnable January 19th, 2023)

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TAB D-4

Court File No.A-67-23

FEDERAL COURT OF APPEAL

BETWEEN:

KAREN ADELBERG ET AL.

Appellants

- and -

HIS MAJESTY THE KING ET AL.

Respondents

APPEAL BOOK

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TAB D-5

Court of Appeal File No.:A-67-23

FEDERAL COURT OF APPEAL

B E T W E E N:

KAREN ADELBERG ET AL.

Appellants

- and -

HIS MAJESTY THE KING ET AL.

Respondents

APPELLANTS' MEMORANDUM OF FACT AND LAW

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MEMORANDUM OF FACT AND LAW

PART I - THE FACTS

1. The Plaintiffs rely on the facts as set out in the statement of claim, which, for the purposes of this motion and appeal, are required to be taken as proven[1].

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

- Decision of the Federal Court, at paragraphs 19-22

- **Decision of Federal Court**

3. In its decision, the Federal Court ruled as follows:

   (a) that core administration employees Plaintiffs were barred to proceed with their tort action grounded in various misfeasances of public office and ***Charter*** violations grounded in misfeasance of public office, and struck the claim with prejudice;

   - **Decision of Federal Court, at paragraphs 8; 11-18; 25-36**

   (b) With respect to the rest of the Plaintiffs, stuck the claim in its entirety, with leave to amend, basing the decision on the ***Action4Canada*** decision of British Colombia.

   - **Decision of Federal Court, at paragraphs 8; 37-57**

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[1] ***A.G. Canada v. Inuit Tapirasat of Canada [1980] 2 S.C.R. 735; Nelles v. Ontario (1989) 60 DLR (4th) 609 (SCC); Operation Dismantle Inc. v. The Queen [1985] 1 S.C.R. 441; 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***

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

PART II – THE ISSUES

4. Whether the Federal Court erred in misapplying the test on a motion to strike?

5. Whether the Federal Court err, in both:

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

   (b) in any event, 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:

   - Decision of Federal Court, at paragraph 32

      (i) ignoring ***Weber*** and the cited exceptions therein to adequate alternate remedy; and

      (ii) ignoring Superior 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?

6. Whether the Federal Court erred, in violating the Plaintiffs rights in choosing to ignore its duty to give reasons to the pointed submissions of the Plaintiffs?

7. Whether the Federal Court erred, in misapplying, in a perfunctory fashion, the ***Action4Canada*** case to this case thereby striking the claim in its entirety with leave to amend to one third of the non-core administration Plaintiffs?

PART III – LAW AND ARGUMENT

A/ Motion to Strike – The Jurisprudence – General Principles

8. 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:[3]

(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.** Rule1.04(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."
>
> - ***Nelles, supra,*** **p. 627**

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."
>
> - ***Dumont, supra.*** **p. 280**

---

[3] ***A.G. Canada v. Inuit Tapirasat of Canada [1980] 2 S.C.R. 735; Nelles v. Ontario (1989) 60 DLR (4th) 609 (SCC); Operation Dismantle Inc. v. The Queen [1985] 1 S.C.R. 441; 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***

and further, that:

> "It is not for this Court on a motion to strike to reach a decision as to the Plaintiff's chance of success."
>
> ***- Hunt, supra (SCC)***

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.
>
> **- *Hunt, supra* p. 14**

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 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.**
>
> ***- R. v. Imperial Tobacco Canada Ltd., supra at para 21.***

and that "the court should make an order only in ***plain and obvious cases*** which it is satisfied to be beyond doubt";

- Trendsetter Ltd, ***supra,*** **(Ont. C.A.).**

(c) (i) and that a statement of claim should not be struck just because it is "novel";

- ***Nash v. Ontario (1995) 27 O.R. (3d) (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.(4th)78 (Ont. Gen. Div.)***
- ***Miller (Litigation Guardian of) v. Wiwchairyk (1997) 34 O.R. (3d) 640 (Ont.Gen.Div)***

(ii) that "matters law not ***fully settled*** by the jurisprudence should not be disposed of at this stage of the proceedings";

- ***R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd.*** (1991) 5 O.R. (3d) 778 (C.A.)

(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***";

- ***Dalex Co. v. Schawartz Levitsky Feldman*** (1994) 19 O.R. (3d) 463 (Gen. Div).

(d) and that, in fact, the Court ought to be generous in the drafting of pleadings and not strike but allow amendment before striking.

- ***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

9. The Plaintiffs, in their claim, seek the following:

(a) monetary damages;

-Statement of claim., Paragraph 3

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;

-Ibid., paragraph 1

(c) injunctive relief or relief in the nature of **mandamus**;

- Ibid., Paragraph 2

10. Contrary to what the Defendants posit, and the Federal Court ruled, nothing in the claim is based on any contract or 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

11. 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 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..,.
>
> ***- Dunsmuir v. New Brunswick, 2008 SCC 9, at Paragraph 31***

12. This 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.
>
> ***- Canada v. Solosky, [1980] 1 S.C.R. 821, @ p. 830***

13. 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.
>
> …
>
> [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.

- ***Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14***

D/Jurisprudence on Covid-19 measures mitigating against striking claim

14. 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.

15. 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***.

> ***- Roman Catholic Diocese of Brooklyn, New York V. Andrew M. Cuomo, Governor Of New York U. S. 592 (2020)***

16. 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***:

- Jacob Puliyel Vs. Union of India & Ors.

17. Moreover, it has already been established, in Canadian jurisprudence that any medical treatment without the informed, voluntary, consent violates s.7 of the ***Charter*** and not saved by s.1:

- Fleming v. Reid (1991), 48 O.A.C. 46 (CA)
- Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331

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 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.).

Moreover, 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.

- Roman Catholic Diocese of Brooklyn, New York V. Andrew M. Cuomo, Governor Of New York U. S. 592 (2020)

18. In Ontario, attempts at moving to strike applications, ***in limine***, challenging the Covid-measures, have been dismissed.

- Sgt. Julie Evans et al. v. AG Ontario et al.
- M.A. v. De Villa, 2021 ONSC 3828

19. The Ontario Superior Court has also recently ruled that these issues of Covid-measures are not to be dealt with on a perfumatory 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.

- J.N. v. C.G., 2022 ONSC 1198

20. 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.

- Canadian Society for the Advancement of Science in Public Policy v. Henry, 2022 BCSC 724

21. 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: and

- Jacob Puliyel Vs. Union of India & Ors.

(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.

- Let Them Choose et al. v. San Diego Unified School District (2022)

E/ Errors of Federal Court

- ***Claim barred by s.236 of the FPSLRA***

22. 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.

- Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929
- Northern Regional Health Authority v. Horrocks, 2021 SCC 42 (CanLII)

23. 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 from common-law, is not a bar to this action.

24. 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, 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;

- Let Them Choose et al. v. San Diego Unified School District (2022)
-Jacob Puliyel Vs. Union of India & Ors.

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.

> ***- Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331 at P.67***
> ***- Fleming v. Reid (1991), 48 O.A.C. 46 (CA)***

- ***Claim Discloses No Reasonable Cause of Action***

25. With respect to Defendants' Written position, and 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 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.*
>
> ***- Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929 at paragraph 54***

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 language of Estey J. in *St. Anne Nackawic* (at p. 723), is a "real deprivation of ultimate remedy".
>
> ***- Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929 at paragraph 57***

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** be undertaken.

26. The Supreme Court of Canada thus set out and ruled that:

(a) Declaratory relief is the purview of the Superior Court; 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.

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

- Decision of Federal Court, at paragraphs 19-22.

28. 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.

29. The Plaintiff's 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.

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

> [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
>
> [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.**
>
> ***- Muirhead v. York Regional Police Services Board, 2014 ONSC 6817 at paragraph 5 - 7***

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.). T**he 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. ….
> >
> > 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.** …..
>
> ***- Muirhead v. York Regional Police Services Board, 2014 ONSC 6817 at paragraph 62-63***

and further ruled:

> [81] In my opinion, however, in the circumstances of the Muirheads' case, **it remains to be determined whether Constable Muirhead has a claim for misfeasance in public office.** I appreciate that in *Heasman v. Durham Police Services Board* and in other cases claims for misfeasance in public office were precluded by the *Weber* principle, **but those cases might be distinguishable on the basis that it is a factual determination in every particular case about the fundamental nature of the dispute.**
>
> [82] The Court of Appeal in those cases concluded that the misfeasance in public office allegations essentially arose out of an employment relationship dispute, which may be true in a given case, and in those cases, the court's jurisdiction to decide the tort would be ousted, **but it does not follow that whenever there is an employment relationship between a plaintiff and defendant that the plaintiff's tort claims arise out of that employment relationship in a way that ousts the court's jurisdiction.**
>
> ….
>
> [85] As noted above, **the *Weber* principle does not inevitably oust the court's jurisdiction over tort claims because the facts include an employment relationship.** This thought brings the discussion to the tort of misfeasance in public office. In *Freeman-Maloy v. Marsden*, *supra*, Justice Sharpe described the nature of the tort of misfeasance in public office; he stated:
>
> > The tort of misfeasance in a public office is founded on the fundamental rule of law principle that those who hold public office and exercise public functions are subject to the law and must not abuse their powers to the detriment of the ordinary citizen. As Lord Steyn put it in *Three Rivers District Council v. Bank of England (No. 3)*, [2000] 2 W.L.R. 1220, at p. 1230 W.L.R.: "The rationale of the tort is that in a legal system based on the rule of law executive or administrative power 'may be exercised only for the public good' and not for ulterior and improper purposes." The "underlying purpose" of the tort of misfeasance in a public office "is to protect each citizen's reasonable expectation that a public officer will not intentionally injure a member of the public through deliberate and unlawful conduct in the exercise of public functions:" *Odhavji*, *supra*, at para. 30.

…..

> [87] **The tort of misfeasance in public office requires deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff**; the defendant must know what he or she is doing is wrongful and have a conscious disregard for the interests of those who will be affected by the misconduct in question: *Odhavji Estate v. Woodhouse*, *supra* at para. 29. Misfeasance in public office is an intentional tort; it is not directed at a public officer who inadvertently or negligently fails adequately to discharge the obligations of his or her office: *Odhavji Estate v. Woodhouse*, *supra* at para. 26. As an intentional tort, it requires proof of subjective awareness that harm to the plaintiff is a likely consequence of the alleged misconduct or reckless disregard to the possibility that harm was a likely consequence of the alleged misconduct: *Odhavji Estate v. Woodhouse*, *supra* at para. 38.
>
> ***- Muirhead v. York Regional Police Services Board, 2014 ONSC 6817 at paragraphs 81-82, 85, 87***

31. The above passages and jurisprudence were the subject of extensive submissions before the Federal Court, and not addressed in the Court's reasons.

32. It is respectfully submitted that, given, the jurisprudence in ***Weber***, and the Ontario Courts rulings in interpreting ***Weber*** on the same issues **in favor** of the Plaintiffs, that the Federal Court exceeded its 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.

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 medical data that shows that vaccination does not prevent transmission, discriminates and violates equality of treatment.

> ***- Let Them Choose et al. v. San Diego Unified School District (2022)***
> ***-Jacob Puliyel Vs. Union of India & Ors.***

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.

- *McIlvenna v. 1887401 Ontario Ltd., 2015 ONCA 830 (CanLII)*

35. It is respectfully submitted that, when the Federal Court ruled.

> [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).
>
> **- Decision 2023 FC 252, at paragraph 32**

The Federal Court misstates, and ignores, the law as enunciated in ***Weber*** and decisions interpreting ***Weber*** whereby the question starts and ends by the deficient 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.

- **Federal Court's violation of duty to give reasons**

36. It is further submitted that the Federal Court erred, in its duty to give reasons, as required by the Supreme Court of Canada,

> ***Baker v. Canada* (Minister of Citizenship and Immigration),** [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39.

and, as ***Baker*** has been interpreted by the Courts of Appeal in Ontario:

> [47] The decision to surrender a fugitive to an extradition party is as important as the humanitarian and compassionate determination under s.114(2) of the ***Immigration Act***, R.S.C. 1985, c. I-2 (now s. 25 of the ***Immigrant and Refugee Protection Act***, R.S.C. 2001, c. 27), dealt with in ***Baker***. The appellant was entitled to reasons that were responsive to the factors relevant to his situation.
>
> ***USA v. Johnson*** (2002), 62 O.R. (3d) 327

and in British Columbia:

> [18]… In my view, the Minister's reasons in this case were not responsive to the applicant's submissions. More particularly, while he stated that he had given the matter full consideration, ***his reasons are conclusory and do not demonstrate that he performed his mandatory duty…***
>
> In other words, the Minister did not explain why he reached his conclusion. This amounts to a failure to afford the applicant procedural fairness: ***Baker v. Canada (Minister of Citizenship and Immigration)***, *supra.*
>
> ***USA v. Taylor***, 2003 BCCA 250 at para 18

and as reaffirmed by this Federal Court:

> [15] The duty to provide reasons is well established in law. This duty requires that the reasons be adequate. They must set out the findings of fact and must address the major points in issues …
>
> ***Thalang v. MCI*****,** [2007] FCJ no. 1002 at para 15

37. It is respectfully submitted that the Federal Court did not address the submissions of the Plaintiffs with respect to ***Weber***, and its interpretation by other Courts, as it feeds into and applies to the test to be applied on a motion to strike. It is respectfully submitted that the Court performs a perfunctory exercise of starting and ending the analysis of whether the Plaintiffs are subject to a collective bargaining agreement under s .236 of the FPSLRA. This is not the test in ***Weber***. The Court perfunctorily applies its erroneous, own jurisprudence, with respect to the binding jurisprudence from the Supreme Court of Canada, and other Courts, and then exceeds jurisdiction by misapplying the test on a motion to strike.

- **Error of Law in Misapplication of Action4Canada case**

38. It is further submitted that., in striking the claim and it's entirely, with respect to the Plaintiffs, not barred by s.236 of the FPSLRA, The Court again perfunctorily applies a case from British Columbia, which was struck, with leave to amend, based on the fact that it was "prolix" and difficult to decipher because of its prolixity at 392 pages. That case is not applicable to the within case. It is submitted that the within statement of claim is clear, succinct, and discloses reasonable causes of action.

39. Again, The Federal Court gives no reasons for its bald conclusion, but to rely on ***Action4Canada***, which is not applicable.

PART IV - ORDER SOUGHT

40. The Plaintiffs respectfully request that:

(a) The decision of the Federal Court be set aside.

(b) That the matter be remitted to the Federal Court to proceed to trial in accordance with the ***Rules:***

(c) costs of the motion and the within appeal to the Plaintiff, and, in accordance with ***Native Women's Assn. of Canada vs. Canada [1994] 3 SCR 627***, such further and other relief as this Honourable Court deems just.

All of which is respectfully submitted

Dated this 19th day of May 2023.

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PART V - AUTHORITIES

- **Statutory Provisions**

1. ***Federal Courts Act.***

2. ***Constitution Act, 1982, ss. 2, 7, 15, 24, 52.***

3. ***Constitution Act, 1867, ss. 91, 92.***

- **Jurisprudence**

1. ***A.G. Canada v. Inuit Tapirasat of Canada [1980] 2 S.C.R. 735;***
2. **Adams-Smith v. Christian Horizons (1997)14 C.P.C.(4th)78 (Ont. Gen. Div.)**
3. ***B.C. v. Imperial Tobacco Canada Ltd., [2005] 2 S.C.R. 473***
4. ***Baker v. Canada*** **(Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, [1999] S.C.J. No. 39.**
5. ***Canada v. Arsenault 2009 FCA 242;***
6. ***Canada v. Solosky, [1980] 1 S.C.R. 821, @ p. 830***
7. ***Canadian Society for the Advancement of Science in Public Policy v. Henry, 2022 BCSC 724***
8. ***Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331***
9. ***Dalex Co. v. Schawartz Levitsky Feldman*** **(1994) 19 O.R. (3d) 463 (Gen. Div).**
10. ***Dumont v. A.G. Canada [1990] 1 S.C.R. 279;***
11. ***Dunsmuir v. New Brunswick, 2008 SCC 9, at Paragraph 31***
12. ***Fleming v. Reid (1991), 48 O.A.C. 46 (CA)***
13. ***Grant v. Cormier – Grant, et. al*** **(2001) 56 O.R. (3d) 215 (Ont. C.A.)**
14. **Hanson v. Bank of Nova Scotia (1994) 19 O.R .(3d) 142 (C.A.)**
15. ***Hunt v. Carey Canada Inc [1990] 2 S.C.R. 959;***
16. ***J.N. v. C.G., 2022 ONSC 1198***
17. ***Jacob Puliyel Vs. Union of India & Ors.***
18. ***Let Them Choose et al. v. San Diego Unified School District (2022***
19. ***M.A. v. De Villa, 2021 ONSC 3828***
20. ***Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14***
21. ***McIlvenna v. 1887401 Ontario Ltd., 2015 ONCA 830 (CanLII)***
22. **Miller (Litigation Guardian of) v. Wiwchairyk (1997) 34 O.R. (3d) 640 (Ont.Gen.Div)**
23. ***Muirhead v. York Regional Police Services Board, 2014 ONSC 6817***
24. ***Nash v. Ontario (1995) 27 O.R. (3d) 1 (Ont. C. A.).***
25. ***Native Women's Assn. of Canada vs. Canada [1994] 3 SCR 627***
26. ***Nelles v. Ontario (1989) 60 DLR (4th) 609 (SCC);***
27. ***Northern Regional Health Authority v. Horrocks, 2021 SCC 42 (CanLII)***
28. ***Operation Dismantle Inc. v. The Queen [1985] 1 S.C.R. 441;***
29. ***R. v. Imperial Tobacco Canada Ltd.,***

30. ***R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd.*** **(1991) 5 O.R. (3d) 778 (C.A.)**
31. ***Roman Catholic Diocese of Brooklyn, New York V. Andrew M. Cuomo, Governor Of New York U. S. 592 (2020)***
32. ***Sgt. Julie Evans et al. v. AG Ontario et al.***
33. ***TD Bank v. Delloitte Hoskins & Sells*** **(1991) 5 O.R. (3d) 417 (Gen. Div.)**
34. ***Thalang v. MCI*****, [2007] FCJ no. 1002**
35. ***Trendsetter Ltd. v. Ottawa Financial Corp. (1989)32 O.A.C. 327 (C.A.);***
36. ***USA v. Johnson*** **(2002), 62 O.R. (3d) 327**
37. ***USA v. Taylor*****, 2003 BCCA 250**
38. ***Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929***

Registry No.A-67-23

IN THE FEDERAL COURT OF APPEAL

B E T W E E N:

KAREN ADELBERG ET AL.

Appellants

- and -

HIS MAJESTY THE KING ET AL.

Respondents

MEMORANDUM OF FACT AND LAW

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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)

APPLICATION FOR LEAVE TO APPEAL - VOL 3 of 3

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