Court File No: 41415

**IN THE SUPREME COURT OF CANADA**
(ON 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, 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
(Respondents)

**(Title of proceedings continued on next page)**

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**RESPONSE TO APPLICATION FOR LEAVE TO APPEAL**
**(RULE 27 OF THE *SUPREME COURT RULES*)**

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**ATTORNEY GENERAL OF CANADA**
Department of Justice
National Litigation Sector
Ontario Regional Office
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1
Fax: (416) 973-0809

**Per: Adam Gilani**
Tel: (416) 557-3574
E-mail: adam.gilani@justice.gc.ca

**Renuka Koilpillai**
Tel: (416) 458-5530
E-mail: renuka.koilpillai@justice.gc.ca

Counsel for the Respondents

**DEPUTY ATTORNEY GENERAL OF CANADA**
Department of Justice Canada
Civil Litigation Sector
50 O'Connor Street, Suite 500
Ottawa, ON K2P 6L2
Fax: (613) 954-1920

**Per: Christopher M. Rupar**
Tel.: (613) 941-2351
E-mail: christopher.rupar@justice.gc.ca

Agent for the Respondents

and

**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) VOID, 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)**

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

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

**ORIGINAL TO: THE REGISTRAR**

**COPIES TO:**

**ROCCO GALATI LAW FIRM PROFESSIONAL CORPORATION**
1062 College Street, Lower Level Toronto, Ontario, M6H 1A9

**Rocco Galati, B.A., LL.B., LL.M.**
Tel: (416) 530-9684
Fax: (416) 530-8129
Email: rocco@idirect.com

Counsel for the Applicants

**HAMEED LAW**
43 Florence St.
Ottawa, Ontario, K2P 0W6

**Yavar Hameed**
Tel: (613) 627-2974
Fax: (613) 232-2680
Email: yhameed@hameedlaw.ca

Agent for Counsel for the Applicants

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## PART I – OVERVIEW AND STATEMENT OF FACTS

### A) Overview

1. The judgment for which leave to appeal is sought in this case does not raise an issue of public importance warranting this Court's consideration. It involves the application of the statutory bar contained in section 236 of the *Federal Public Sector Labour Relations Act*,[1] (*FPSLRA*) to the employment-related claims raised by the Applicant.

2. The Applicants include federal Government employees and others challenging the employer's policies relating to vaccination in light of the COVID-19 pandemic. Rather than pursuing a grievance, as the employees were entitled to do, they elected to sue, alleging intentional torts and *Charter* violations, among a slew of frivolous and vexatious claims. Following the guidance of this Court in *Weber*[2] and *Vaughan*[3], the Courts below focussed on the essential character of the matters raised in the Statement of Claim, and concluded that the employer's policy "was a term and condition of employment and thus subject to grievance under section 208 of the *FPSLRA*".[4] As such, they held that this action was barred by the combined operation of sections 208 and 236 of the *FPSLRA*.

3. There is no conflict in the law respecting section 236 of the *FPSLRA*. The judgment of the Federal Court of Appeal is one of several decisions where Canadian courts have resisted taking jurisdiction in the face of a binding grievance regime, recognizing that the prospect of concurrent civil actions undermines statutory and internal recourse mechanisms. This deferential posture is codified by section 236 of the *FPSLRA*, which provides that the grievance rights afforded to federal public servants are in lieu of any right of action that employees may have in relation to a grievable issue. Lower courts have uniformly held that once it is established that the matter in dispute may be the subject of a grievance, the grievance process cannot be circumvented by separate action.

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[1] *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2
[2] *Weber v Ontario Hydro*, [1995] 2 SCR 929, 1995 CanLII 108 [***Weber***].
[3] *Vaughan v Canada*, 2005 SCC 11 [***Vaughan***].
[4] *Adelberg et al v Canada et al*, 2024 FCA 106 at para 55 [***Adelberg FCA***].

## B) The Proceedings Below

### (1) The Allegations in the Statement of Claim

4. The Applicants' Statement of Claim (Claim) was brought in the Federal Court. It included allegations of breaches of the *Charter*, claims for tort damages, as well as remedies not available in the context of civil actions such as administrative and interlocutory remedies.[5]

5. Approximately two-thirds of the Applicants are federal Government employees who are subject to the *FPSLRA*.[6] All of the claims of the Government employee Applicants subject to the *FPSLRA* relate to their terms and conditions of employment.[7] The Applicants brought claims primarily against the employer's policies, principally the Treasury Board of Canada's ("Treasury Board") *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (the "Policy"), alleging that the Policy caused them harm and damages because they chose not to be vaccinated against COVID-19.

6. The remaining Applicants are not subject to the *FPSLRA* bar.[8] The Applicants who are not employed by the Crown alleged that the Crown was liable for their employers adopting similar policies.

7. The Court of Appeal distilled the essential character of the Applicants' allegations with respect to the employer's Policy. It found that:

> It is not disputed that the plaintiffs who were employed by organizations other than the RCMP could have filed grievances under section 208 of the *FPSLRA* challenging the TB Policy or its application to them. As noted, the TB Policy was a term and condition of employment and thus subject to grievance under section 208 of the *FPSLRA*, which allows the employees of the organizations listed in Schedule "A" to the Federal Court's Reasons other than the RCMP to file grievances relating to their terms and conditions of employment.[9]

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[5] *Adelberg et al v Canada et al*, 2023 FC 252 at paras 31, 45, 53, and 54 [***Adelberg FC***]; Statement of Claim at paras 1-5, **Appeal Book, Tab D1**, at pp 164-172.
[6] *Adelberg FC* at para 6; Schedule "A".
[7] *Adelberg FC* at paras 31-32.
[8] *Adelberg FC* at para 7; Schedule "B".
[9] *Adelberg FCA* at para 55.

### (2) The Crown's Motion to Strike

8. The Crown moved to strike out the Statement of Claim on the ground that the matters complained of in the Claim were grievable pursuant to section 208 of the *FPSLRA*, and that the action was barred by section 236 of the *FPSLRA*. Section 208 of the *FPSLRA* gives employees in the federal public service the right to grieve the interpretation or application of a provision of *inter alia* a direction or instrument that deals with the terms and conditions of their employment. The right to grieve applies to both unionized and non-unionized employees and is not predicated upon the existence of a collective agreement. Section 236 of the *FPSLRA* bars an employee from bringing an action if he or she has a right to grieve. The section provides that the grievance rights afforded by the *FPSLRA* are "in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute." There is no controversy concerning the fact that the Policy related to the Applicants' terms and conditions of employment. The Applicants did not dispute this.

9. With respect to the remainder of the claim, including the claims of the non-Government employees, the Crown also moved to strike out the Statement of Claim on the grounds that certain claims were not justiciable and that the Statement of Claim was generally improper and for having failed to plead the necessary material facts.

### (3) The Decisions of the Courts below

10. Applying the plain and obvious test from *R v Imperial Tobacco*[10], the Federal Court granted the motion to strike the Claim. In his Order dated February 21, 2023, the Motion Judge decided that the pleading was "bad beyond argument" and struck the claim in its entirety. The appellants subject to s. 236 of the *FPSLRA* were not granted leave to amend their pleading. For the remaining appellants, the Motion Judge granted leave to amend.[11]

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[10] *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42.
[11] *Adelberg FC* at para 55.

11. The Motion Judge listed the employers of the appellants subject to s. 236 of the *FPSLRA* in Schedule A.[12] There is no dispute between the parties as to the accuracy of the Schedules.[13]

12. After examining the allegations in light of the jurisprudence, including this Court's decisions in *Weber* and *Vaughan*, the Motion Judge held that s. 236 of the *FPSLRA* barred the claim. The Motion Judge held that harms allegedly suffered by employees as a result of their employers' policies and practices in response to the COVID-19 pandemic are properly addressed by way of grievance, in both unionized and non-unionized workplaces. As a result, all the Applicant's allegations relating to the Policy could have been grieved under paragraph 208(1)(*b*) of the *FPSLRA*, regardless of how they were characterized in the Statement of Claim.

13. The Motion Judge held that s. 236 of the *FPSLRA* has been recognized as an "explicit ouster" of courts' jurisdiction.[14] The Motion Judge also found that the plaintiffs who were subject to s. 236 did not have exceptional circumstances or that there was any gap in the labour regime that would deprive them of the ultimate remedy.[15]

14. On appeal to the Federal Court of Appeal, the Applicants' presented largely the same argument as they now present in their application for leave to appeal. Their central argument was that the Motion Judge erred because, in interpreting sections 208 and 236 of the *FPSLRA*, the Judge failed to examine the collective agreement and erred in finding that the statutory bar applied notwithstanding allegations of *Charter* breaches or torts. The Applicant also argued that the Motion Judge erred in not exercising his discretion to hear to the action notwithstanding the statutory bar.

15. The Court of Appeal dismissed these arguments and granted the appeal, in part, on other grounds that are not at issue on this application for leave.[16] Citing a consistent line of

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[12] *Adelberg FC* at para 25, and Schedule "A".
[13] Email between counsel for the parties consenting to Schedules "A" and "B" to the decision, dated February 17, 2023, **Appeal Book**, **Tab 4**.
[14] *Adelberg FC* at para 13, *Bron v Canada (Attorney General)*, 2010 ONCA 71 [***Bron***].
[15] *Adelberg FC* at para 36.
[16] *Adelberg FCA* at para 3 (appeal granted in part finding that it was not plain and obvious that the claims of members of the RCMP were subject to the statutory bars in the *FPSLRA*, nevertheless dismissing their claims, with leave to amend, on other grounds).

jurisprudence anchored in this Court's decisions in *Weber* and *Vaughan,* the Court held that it is the facts of each case that must govern, not the legal characterization of those facts.[17] The Court of Appeal found that the employer's Policy was a term and condition of employment for the Government employees. The requirements under the Policy could have been grieved under s. 208 of the *FPSLRA*, and as a result, s. 236 of the *FPSLRA* "is a complete bar to the right of action for any matter that may be the subject of a grievance…."[18]

16. The Court of Appeal found that the frivolous and vexatious allegations of criminal behaviour, broad declarations regarding the current state of medical and scientific knowledge, and the allegation that administering medical treatment without informed consent is a crime against humanity, were not justiciable in a civil action.[19] It struck these claims.

17. The Court of Appeal also struck the Claim on the basis that it was improperly pleaded and lacked necessary material fact.[20]

## PART II – QUESTION IN ISSUE

18. The issue is whether this case raises a question of public importance or an issue of such a nature or significance to warrant leave of this court.

## PART III – STATEMENT OF ARGUMENT

### A) The Applicants raise no issue of public importance

19. This case does not raise any issue of public importance. There is no uncertainty in the law that requires this Court's intervention. Rather, the Applicant invites this Court to overturn decades of jurisprudence by advocating for an interpretation of s. 208 and the prohibition in s. 236 of the *FPSLRA* that is premised on a misunderstanding of the basis for the decisions of the lower courts, and seeking to require that the courts apply an incorrect legal test and analysis. This would undermine the comprehensive and exclusive scheme for the resolution

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[17] *Adelberg FCA* at para 56.
[18] *Adelberg FCA* at paras 57-58.
[19] *Adelberg FCA* at para 65.
[20] *Adelberg FCA* at paras 68-69.

of labour disputes in the federal workplace and the established jurisprudence of this Court and the courts below.

**B) The Applicants' misapplication of *Weber* and ignoring the explicit ouster of jurisdiction in the *FPSLRA* is contrary to the jurisprudence of this Court.**

20. The Applicants rely on a misapplication of this Court's decision in *Weber* to argue that the lower courts could not apply the statutory bar of the *FPSLRA* to this case. The Applicants argue that by simply pleading an allegation of tort or a *Charter* violation, they must be permitted to bring an action in Court. The Applicants urge an interpretation of the language used in paragraph 208(1)(*b*) of the *FPSLRA* - " any occurrence or matter affecting [an employee's] terms and conditions of employment" - to exclude torts and alleged violations of the *Charter*. Such an approach is opposite the approach adopted by this Court in *Weber*, where Justice McLachlin (as she then was) emphasized that it is the nature of the dispute that determines whether it is grievable, not how it has been framed:

> Underlying both the Court of Appeal and Supreme Court of Canada decisions in *St. Anne Nackawic* is the insistence that the analysis of whether a matter falls within the exclusive arbitration clause must proceed on the basis of the facts surrounding the dispute between the parties, not on the basis of the legal issues which may be framed. The issue is not whether the action, defined legally, is independent of the collective agreement, but rather whether the dispute is one "arising under [the] collective agreement". Where the dispute, regardless of how it may be characterized legally, arises under the collective agreement, then the jurisdiction to resolve it lies exclusively with the labour tribunal and the courts cannot try it.[21]

21. Both the Federal Court and the Court of Appeal recognized this and applied this approach in concluding that the matters complained of by the Applicants fell within section 208 and were grievable. The Court of Appeal's reasoning was sound, holding that the application of section 208 cannot be driven by the label that a party assigns to the behaviour or conduct complained of.

22. The Federal Court of Appeal in *Ebadi* recognized that virtually any workplace dispute causing an employee mental distress can be framed by a skilled counsel in terms of an

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[21] *Weber* at para 43.

intentional tort, which would render meaningless Parliament's intention to confer exclusive jurisdiction to determine certain disputes on a forum other than the courts.

> [36] […] To allow large categories of claims—such as any claim involving an intentional tort or Charter breach—to escape the operation of the *FPSLRA* would undermine Parliament's intent. Many if not all workplace grievances could, through artful pleading, be cast as intentional torts: for example, a manager speaking harshly to an employee could be said to be intentionally inflicting mental harm, or the failure to be promoted an act of discrimination. To exempt these claims from the grievance process could effectively gut the scheme, reducing it to the most mechanical and administrative elements of employment relationships, such as hours of work, overtime, classification and pay.

23. Several guiding principles have been developed in the jurisprudence with respect to the interpretation of comprehensive and exclusive scheme for the resolution of labour disputes, and whether and to what extent they oust the jurisdiction of the courts to resolve workplace disputes:

a) Courts must look at the essential character of the facts of the dispute, not how they are characterised by the parties.[22]

b) The comprehensive nature of the *FPSLRA* scheme signals that Courts should defer to the grievance process.[23]

c) Permitting parallel civil actions would jeopardize the comprehensive scheme for resolving labour disputes set out by Parliament, because creative pleadings would seek to transform grievable disputes into negligence actions.[24]

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[22] *Adelberg FCA* at para 56; *Ebadi v Canada,* 2024 FCA 39 at paras 21-22 [***Ebadi FCA***]; *Weber* at paras 51-52.
[23] *Ebadi FCA* at para 26; *Vaughan* at paras 13, 16-17, 22, and 39.
[24] *Ebadi FCA* at para 27; *Vaughan* at paras 37, 40 and 42.

d) An employee's right to grieve pursuant to section 208 is very broad and encompasses all employment-related disputes, including allegations of harassment, threats, intimidation, discrimination, or harm to reputation.[25]

e) Allegations of intentional torts and *Charter* breaches in the workplace are grievable.[26]

24. There is no need for this Court to re-consider its previous decisions on this issue, which are well-settled law.

25. Each case will turn on its own facts. Courts are manifestly capable of assessing the essential character of claims to separate those claims which arise in the context of or affect terms and conditions of employment from those that do not.[27] In those cases, like in the circumstances of the Applicants' claims, it is entirely appropriate for the Courts to strike such claims.

**C) There is no conflict in the law that requires resolution by this Court.**

26. The approach adopted by Federal Court of Appeal is wholly consistent with that of other Canadian appellate courts that have considered sections 208 and 236 of the *FPSLRA*. In *Bron*, the Court of Appeal for Ontario held that the language in section 236 is a clear, unambiguous, and unequivocal ouster of the court's jurisdiction over claims that could be the subject of a grievance. Further, that the result of the language used in s. 236(1) and (2) is that a court no longer has any residual discretion to entertain a claim that is otherwise grievable under the legislation on the basis of an employee's inability to access third-party adjudication.[28] The Quebec, New Brunswick, and Prince Edward Island Courts of Appeal have also similarly

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[25] *Bron* at para 4; *Canada (Attorney General) v Amos*, 2011 FCA 38 at para 9; *Barber c J.T.*, 2016 QCCA 1194 at paras 23-26 **[*Barber*]**; *Nosistel v Canada (Attorney General)*, 2018 FC 618 at para 66; *Green v Canada (Border Services Agency)*, 2018 FC 414 at para 16; *Price v Canada (Attorney General)*, 2016 FC 649.
[26] *Adelberg FCA* at para 58; *Ebadi FCA* at paras 29-33; *Hudson v Canada*, 2022 FC 694; *Jane Doe v Canada (Attorney General)* 2018 FCA 183.
[27] *Adelberg FCA* at para 55; *Ebadi FCA* at paras 31-33; *Martell v AG of Canada & Ors.*, 2016 PECA 8 **[*Martell*]**; *Joseph v Canada School of Public Service et al*, 2022 ONSC 6734.
[28] *Bron*, at paras 29, 31 and 33.

interpreted section 236 as ousting the Court's jurisdiction to deal with any matters that could be the subject of a grievance.[29]

27. The legislative scheme in the *FPSLRA* has been interpreted consistently by lower courts in a manner that is consistent with this Court's previous decisions. There is no lack of clarity that requires judicial intervention from this Court.

28. The fundamental principles of law and the place of labour adjudication in Canada's administration of justice are settled. There is no merit to the Applicant's assertion that this Court's intervention is needed to clarify it decision in *Weber*, as the legal basis for the lower courts' decision to strike the Claim is the statutory bar in the *FPSLRA* that applies whether or not the Applicants are unionized or subject to a collective bargaining agreement, so long as they are afforded grievance rights. In any event, there is equally no reason for the Court to revisit its decision in *Weber*.

## PART IV – SUBMISSION CONCERNING COSTS

29. The Applicant has not provided any basis for departing from the ordinary rule that costs should follow the event. Given that the application for leave does not raise a question warranting the granting of leave to appeal, the Respondents respectfully request costs.

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[29] *Barber* at paras 24-26; *Bouchard c Procureur général du Canada*, 2019 QCCA 2067 (leave to appeal dismissed 2020 CanLII 29400); *Attorney General of Canada v Robichaud and MacKinnon*, 2013 NBCA 3 at paras 14-16; *Martell* at paras 19-22.

## PART V – ORDER SOUGHT

30. The Respondents request that this application for leave be dismissed with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Toronto, in the Province of Ontario, this 27th day of September in the year 2024.

ADAM GILANI
Counsel on behalf of the Respondents

## PART VI – TABLE OF AUTHORITIES

| STATUTES AND REGULATIONS | | CITED AT PARA |
|---|---|---|
| 1. | *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2, ss. 208 and 236<br>*Loi sur les relations de travail dans le secteur public fédéral,* L.C. 2003, ch. 22, art. 2, ss. 208 and 236 | 1-3, 5-8, 10-15, 19-21, 23(b), 23(d), 26-28 |
| 2. | *Canadian Charter of Rights and Freedoms, Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11<br>*Charte canadienne des droits et libertésss, Loi constitutionnelle de 1982,* constituant l'annexe B de la Loi canadienne de 1982 (UK), 1982, c 11 | 2, 4, 14, 20, 22, 23(e) |
| **AUTHORITIES** | | **CITED AT PARA** |
| 3. | *Adelberg et al v Canada et al*, 2024 FCA 106 | 2, 7, 15-17, 23(a), 23(e), 25 |
| 4. | *Adelberg et al v Canada et al*, 2023 FC 252 | 4-6, 10-11, 13 |
| 5. | *Attorney General of Canada v Robichaud and MacKinnon*, 2013 NBCA 3 | 26 |
| 6. | *Barber c J.T.*, 2016 QCCA 1194 | 23(d), 26 |
| 7. | *Bouchard c Procureur général du Canada*, 2019 QCCA 2067, leave to appeal dismissed 2020 CanLII 29400 | 26 |
| 8. | *Bron v Canada*, 2010 ONCA 71 | 13, 23(d), 26 |
| 9. | *Canada (Attorney General) v Amos*, 2011 FCA 38 | 23(d) |
| 10. | *Ebadi v Canada*, 2024 FCA 39 | 22, 23(a)-(c), 23(e), 25 |
| 11. | *Green v Canada (Border Services Agency)*, 2018 FC 414 | 23(d) |
| 12. | *Hudson v Canada*, 2022 FC 694 | 23(e) |
| 13. | *Jane Doe v Canada (Attorney General)*, 2018 FCA 183 | 23(e) |
| 14. | *Joseph v Canada School of Public Service et al*, 2022 ONSC 6734 | 25 |
| 15. | *Martell v AG of Canada & Ors.*, 2016 PECA 8 | 25-26 |

| STATUTES AND REGULATIONS | | CITED AT PARA |
|---|---|---|
| 16. | *Nosistel v Canada (Attorney General)*, 2018 FC 618 | 23(d) |
| 17. | *Price v Canada (Attorney General)*, 2016 FC 649 | 23(d) |
| 18. | *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 | 10 |
| 19. | *Vaughan v Canada*, 2005 SCC 11 | 2, 12, 15, 23(b)-(c) |
| 20. | *Weber v Ontario Hydro*, [1995] 2 SCR 929, 1995 CanLII 108 | 2, 12, 15, 20, 23(a), 28 |