

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
February 14, 2025		
Lindsay Krieger		
EDM	59	

Court File No. T-1436-22

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

Plaintiffs

and

CANADA POST CORPORATION and
HIS MAJESTY THE KING IN RIGHT OF CANADA

Defendants

APPLICANTS' MOTION RECORD**Gratl & Company**Barristers and Solicitors
511-55 Cordova Street East
Vancouver, BC V6A 0A5Jason Gratl
jason@gratlandcompany.com
Tel: 604-694-1919
Fax: 604-608-1919

Counsel for the Applicants

Fasken Martineau DumoulinBarristers and Solicitors
333 Bay Street, Suite 2400
Toronto, ON M5H 2T6Christopher D. Pigott
cpigott@fasken.com
Tel: 416-865-5475
Fax: 416-364-7813Grace P. McDonell
gmcdonell@fasken.com
Tel: 416-865-4538
Fax: 416-364-7813Counsel for the Respondent
Canada Post Corporation**The Department of Justice Canada**300, 10423-101 Street NW
Edmonton, AB T5H 0E7Daniel Vassberg
daniel.vassberg@justice.gc.ca
Tel: 587-545-3097
Fax: 780-495-8491Counsel for the Respondent
His Majesty the King in right of Canada

TABLE OF CONTENTS

Tab	Document	Date	Page
1	Notice of Motion of the Applicants	November 14, 2024	1
	Schedule "A"		4
2	Affidavit of Karine Solakian	November 14, 2024	6
3	Affidavit #1 of Jodi Kaldestad	November 14, 2024	10
	Exhibit "A" – Draft Notice of Motion to Appeal	November 14, 2024	12
	Exhibit "B" – Draft Memorandum of Fact and Law	November 2024	17
	Exhibit "C" – Letter to Federal Court of Canada from Connor Farquhar of GWS LLP	April 18, 2024	43
4	Affidavit #2 of Jodi Kaldestad	January 10, 2025	45
	Exhibit "A" – Letter from counsel for the Applicants in response to Respondents' requests for documents	January 10, 2025	47
5	Transcript of Cross-Examination on Affidavit of Karine Solakian	January 7, 2025	64
6	Written Representations of the Applicants	February 14, 2025	160

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
November 15, 2024		
Lindsay Krieger		
EDM	53	

Court File No. T-1436-22

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

Plaintiffs

and

**CANADA POST CORPORATION and HIS MAJESTY
THE KING IN RIGHT OF CANADA**

Defendants

NOTICE OF MOTION

TAKE NOTICE THAT the Applicants enumerated in “Schedule A”, which is attached hereto, will make a motion to the Federal Court on Tuesday, November 26, 2024, at 9:30 a.m. or as soon thereafter as the motion can be heard at 701 West Georgia Street, 3rd Floor, in the City of Vancouver, British Columbia.

THE MOTION IS FOR:

1. An Order granting the Applicants an extension of time pursuant to Rule 8 of the *Federal Court Rules*, SOR/98-106 to commence an appeal of the order and decision to strike the Plaintiffs’ claim with no leave to amend, made on March 13, 2013, by Associate Justice Coughlan; and
2. Such further and other relief as may be necessary to give effect to the intention of this motion.

THE GROUNDS FOR THE MOTION ARE:

3. The Applicants seek to appeal the order of Associate Justice Coughlan made March 13, 2024, in *Albert v. Canada Post Corporation*, 2024 FC 420, to strike their claim without leave to amend pursuant to R. 51(1) of the *Federal Courts Rules*, SOR/98-106 ("*FCR*").
4. Pursuant to R. 51(2), the Plaintiffs were required to serve and file the notice of the motion to appeal "within 10 days after the day on which the order under appeal was made".
5. The Federal Court may exercise its discretion under R. 8 of the *FCR* to extend the deadline to file a notice of motion under R. 51. The Federal Court of Appeal has identified four factors the Court should consider when determining whether to exercise their discretion under R. 8. These factors are: (1), did the moving party have a continuing intention to pursue the proceeding; (2) is there some merit to the proceeding; (3) is the respondent prejudiced by the delay; and (4) does the moving party have a reasonable explanation for the delay. All factors do not need to be resolved in the moving party's favor. The overriding consideration is whether granting the extension is in the interests of justice.
6. The Applicants assert that each of the four factors supports the extension of the deadline, and that it is in the interests of justice for the Court to grant an extension for filing a notice of motion to appeal. The delay is attributable to delays in filing attributable to previous counsel, the time requirements for new counsel to prepare the application and the inherent logistical requirements of organizing a large group of plaintiffs. The appeal itself is ready to be filed.
7. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit #1 of Jodi Kaldestad, affirmed November 14, 2024;
2. Affidavit #2 of Karine Solakian, affirmed November 14, 2024; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

All of which is respectfully submitted this 14th day of November, 2024.



Jason Gratl
511-55 Cordova Street East
Vancouver, BC V6A 0A5
Tel: 604-694-1919
Fax: 604-608-1919
Counsel for the Applicants

TO: Christopher Pigott & Grace McDonnell
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6
Counsel for Canada Post Corporation

TO: Daneil Vassberg
10423 101 Street
3rd Floor, Epcor Tower
Edmonton, AB T5H 0E7
Counsel for the His Majesty the King in the Right of Canada and the Attorney
General of Canada

SCHEDULE "A"
Application to Extend Deadline to Appeal

1. Julia Alvarez
2. Ali Bahri
3. Mark Boikovitis
4. Robert Bourbonniere
5. Line Bujold-Lavalle
6. Jennifer Comin
7. Esterina Costa
8. Wayne Cowan
9. Selena Cvitan
10. Mark Daggett
11. Jana Dancakova
12. Marlice Deptuch
13. Gisele Desharnais
14. Karen Desrosiers
15. Tanya Docanto-Cordeiro
16. Johanna Emmanouil
17. John Emmanouil
18. Sarah Frangione
19. Joy Esdaille
20. Raquel Ferreira
21. Karen Gibeault
22. Michail Grigoratou
23. Peter Heidebrecht
24. Stephanie Johnston
25. Riina Kapp
26. Marietta Kirby
27. Damir Kramaric
28. Chung Le
29. Lorraine Light
30. Paul Lussier
31. Tanya Mandel
32. Tracy Matlock
33. Daniel Matti
34. Bozena Mazur
35. Margaret McGeachie
36. Szilvia Mertl
37. Lisa Nicoll

38. Christopher Pillon
39. Kimberlee Priest
40. Dolores Relic
41. Amber Ricard
42. Helene (Lena) Ricci
43. Russel Sawchuk
44. Stephen See
45. Marion Serink
46. John Serrambana
47. Dewitt Shainline
48. Shrikant Sharma
49. Alan Shum
50. Wanita Siklenka
51. Karine Solakian
52. Roberta Strickland
53. Martyna Styrzula
54. Lindsay Sunthgolam
55. Lori Taylor-Ribero
56. Lara Trenaman
57. Leonardo de Jesus Vasquez
58. Jennifer Vogelgesang
59. Maria Visic
60. Carrie Visser
61. Shanda Vorrath
62. Mariam Wali
63. Nancy Whitcome
64. Yvonne Yuctuc
65. Carson Zorget
66. Michael Zottola

[END OF LIST]

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D E P O S É
November 15, 2024		
Lindsay Krieger		
EDM	55	

ID112

Court File No. T-1436-22

FEDERAL COURT

BETWEEN:

Bernard Albert and Others

Plaintiffs

AND:

Canada Post Corporation,
His Majesty the King in right of Canada and
The Attorney General of Canada

Defendants

AFFIDAVIT OF KARINE SOLAKIAN

I, Karine Solakian, administrative assistant, with a mailing address at 511-55 Cordova Street East, in the City of Vancouver, in the Province of British Columbia, AFFIRM THAT:

1. I am one of the appellants in this matter, and as such I have personal knowledge of the facts and matters hereinafter deposed to, save and except for information imparted to me by other people, in which case I believe the source of the information to be reliable and I believe the information to be true.
2. I am responsible for instructing the appellants' legal counsel, Jason Gratl, of the firm Gratl & Company, on behalf of each of the 66 current applicants in this matter.
3. I was among the team of four plaintiffs who instructed the former legal counsel, Leighton Grey, of the firm Grey Wowk Spencer LLP ("GWS LLP"), on behalf of each of the 145 plaintiffs in Federal Court File No. T-1436-22 ("Action T-1436-22").

4. In respect of the application under appeal, I affirmed an affidavit on September 15, 2023, and was cross-examined on my affidavit on October 25, 2023.
5. In my experience, it is logistically complicated and time consuming for a large group of plaintiffs or appellants to obtain legal advice and to give instructions to legal counsel, even if they agree on the applicable general principles, normative values and practical direction of a lawsuit.
6. The appellants have acted as quickly as practicable to obtain legal advice and provide instructions for this appeal.
7. The adverse order and reasons for judgment were issued by Associate Judge Coughlin on March 13, 2024 (the "Decision"). The Decision was provided to the plaintiffs by GWS LLP on March 14, 2024. The plaintiffs then immediately, on March 14, 2024, requested legal advice from GWS LLP on the merits of an appeal.
8. A core group of appellants crystallized the intention to appeal the dismissal of Action T-1436-22 on April 8, 2024. This intention was communicated to Mr. Grey of GWS LLP on April 8, 2024, in the form of instructions to appeal the Decision. Mr. Grey advised that Mr. Hershey, a student at law at GWS LLP who was about to be called to the bar, would prepare and argue the application to extend the deadline to appeal under Mr. Grey's supervision.
9. By April 10, 2024, each of the intended appellants individually confirmed their individual instructions to GWS LLP to appeal the Decision. I do not believe there is anything we could have done to speed up the process of getting legal advice and providing instructions to our legal counsel to appeal the Decision.
10. As of April 10, 2024, we believed that the deadline for appealing was 30 days from the date of the decision. Although I had suspected that the deadline might be 10 days from the date of decision in late March of 2024, our legal counsel first advised me in late April of 2024 that the deadline was 10 days from the date of decision.
11. On May 13, 2024, I requested an update from GWS LLP on how the appeal was proceeding. On June 6, 2024, I again requested an update from GWS LLP. On June 19, 2024, I again requested an update from GWS LLP. I am advised by Kim Priest that she repeatedly telephoned GWS LLP to ask for updates on the progress of the appeal and to urge GWS LLP to file the application to extend the deadline.

12. On July 4, 2024, I was advised by Mr. Farquhar, an associate lawyer at GWS LLP, that Ms. Trignani, another associate lawyer at GWS LLP, was no longer working at GWS LLP and she had been working on the appeal. Mr. Farquhar assured me on July 4, 2024, that he, Mr. Farquhar, was now personally working on the application to extend the deadline for the appeal and that it would be prepared shortly.
13. On July 17, 2024, I received application materials, and on July 22, 2024, I provided comments and again instructed GWS LLP to file the application. On July 26, 2024, Mr. Grey of GWS LLP advised that he would no longer be supervising the work on the appeal and that Mr. Farquhar of GWS LLP would be working on the file alone.
14. On September 4, 2024, Mr. Grey advised that Mr. Farquhar was no longer working at GWS LLP, and that Mr. Hershey, the lawyer at GWS LLP who was initially supposed to be working on the appeal under Mr. Grey's supervision, no longer worked at GWS LLP and that no one else at GWS LLP was able to take on the appeal.
15. We immediately began to look for another lawyer. We had some difficulty finding a lawyer with experience at the Federal Court who was willing to work for a large group in a lawsuit against the federal government.
16. We found Gratl & Company, a Vancouver-based law firm, in late September of 2024. We agreed in principle to retain Gratl & Company to give advice on this appeal on September 22, 2024.
17. The Law Society of British Columbia requires personal verification of identification of new clients, either by the firm or by an outside agent, such as a lawyer or notary. The appellants are dispersed across Canada so this process of verification of identification and verifying written retainers was time consuming.
18. I am advised that Gratl & Company worked with reasonable diligence to research the legal issues and prepare the appeal and application to extend the deadline to appeal.

19. I know of no facts that would suggest that the appellants caused the delay in filing the application to extend the deadline to appeal. We crystallized our collective intention to appeal the Decision on April 8, 2024, and communicated that collective intention to our previous legal counsel on April 8, 2024.

AFFIRMED BEFORE ME at the City of Kitchener, in the Province of Ontario, this 14 day of November, 2024.


A Commissioner for taking Affidavits


KARINE SOLAKIAN

This Affidavit is Commissioned by:

Elizabeth Purkiss
Commissioner, etc
In the province of Ontario
As a licensed Paralegal
LSO#: P15360

e-document	
F I L E D	FEDERAL COURT COUR FÉDÉRALE
November 15, 2024	
Lindsay Krieger	
EDM	54

Affidavit #1 of Jodi Kaldestad
Affirmed November 14, 2024

Court File No. T-1436-22

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

Plaintiffs

and

**CANADA POST CORPORATION and
HIS MAJESTY THE KING IN RIGHT OF CANADA**

Defendants

AFFIDAVIT OF JODI KALDESTAD

I, Jodi Kaldestad, paralegal, of 511-55 Cordova Street East, in the City of Vancouver, in the Province of British Columbia AFFIRM AND SAY AS FOLLOWS:

1. I am a paralegal to Jason Gratl who is counsel of record for the Applicants in this process and as such I have personal knowledge of the facts and matters hereinafter deposed to, save and except for information imparted to me by other people, in which case I believe the source of the information to be reliable and I believe the information to be true.
2. Attached to this affidavit as **Exhibit "A"** is a copy of a complete draft Notice of Motion to Appeal the order of Associate Justice Coughlan made on March 13, 2024, in Action No. T-1436-22.
3. Attached to this affidavit as **Exhibit "B"** is a copy of a complete draft Memorandum of Fact and Law in support of an appeal of the order of Associate Justice Coughlan made on March 13, 2024, in Action No. T-1436-22.

- 4. Attached to this affidavit as **Exhibit "C"** is a copy of a letter to the Federal Court of Canada dated April 18, 2024, from Connor Farquhar of Grey Wowk Spencer LLP, the firm which was previous counsel of record for all of the plaintiffs.

AFFIRMED BEFORE ME at the City)
of Vancouver, in the Province of British)
Columbia, this 14th day of November, 2024)
)
)
)
)
)
_____)
A Commissioner for taking Affidavits)
within British Columbia)



_____)
Jodi Kaldestad

This Affidavit is Commissioned by Jason Gratl of Gratl & Company, Barristers and Solicitors
511-55 Cordova Street East, Vancouver, BC V6A 0A5
Tel: 604-694-1919 Fax: 604-608-1919

This is Exhibit " A " referred to in the
Affidavit of Jodi Kaldestad
sworn (or affirmed) before me at
Vancouver, BC
this 14 day of November 2024.

1

Court File No. T-1436-22

A Commissioner for Taking Affidavits for British Columbia

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

Plaintiffs

and

**CANADA POST CORPORATION and HIS MAJESTY
THE KING IN RIGHT OF CANADA**

Defendants

NOTICE OF MOTION

TAKE NOTICE THAT the Applicants enumerated in "Schedule A", which is attached hereto, will make a motion to the Federal Court on Tuesday, November 26, 2024, at 9:30 a.m. or as soon thereafter as the motion can be heard at 701 West Georgia Street, 3rd Floor, in the City of Vancouver, British Columbia.

THE MOTION IS FOR:

1. An Order granting the Applicants an extension of time pursuant to Rule 8 of the *Federal Court Rules*, SOR/98-106 to commence an appeal of the order and decision to strike the Plaintiffs' claim with no leave to amend, made on March 13, 2013, by Associate Justice Coughlan; and
2. Such further and other relief as may be necessary to give effect to the intention of this motion.

THE GROUNDS FOR THE MOTION ARE:

3. The Applicants seek to appeal the order of Associate Justice Coughlan made March 13, 2024, in *Albert v. Canada Post Corporation*, 2024 FC 420, to strike their claim without leave to amend pursuant to R. 51(1) of the *Federal Courts Rules*, SOR/98-106 ("*FCR*").
4. Pursuant to R. 51(2), the Plaintiffs were required to serve and file the notice of the motion to appeal "within 10 days after the day on which the order under appeal was made".
5. The Federal Court may exercise its discretion under R. 8 of the *FCR* to extend the deadline to file a notice of motion under R. 51. The Federal Court of Appeal has identified four factors the Court should consider when determining whether to exercise their discretion under R. 8. These factors are: (1), did the moving party have a continuing intention to pursue the proceeding; (2) is there some merit to the proceeding; (3) is the respondent prejudiced by the delay; and (4) does the moving party have a reasonable explanation for the delay. All factors do not need to be resolved in the moving party's favor. The overriding consideration is whether granting the extension is in the interests of justice.
6. The Applicants assert that each of the four factors supports the extension of the deadline, and that it is in the interests of justice for the Court to grant an extension for filing a notice of motion to appeal. The delay is attributable to delays in filing attributable to previous counsel, the time requirements for new counsel to prepare the application and the inherent logistical requirements of organizing a large group of plaintiffs. The appeal itself is ready to be filed.
7. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit #1 of Jodi Kaldestad, affirmed November 14, 2024;
2. Affidavit #2 of Karine Solakian, affirmed November 14, 2024; and
3. Such further and other material as counsel may advise and this Honourable Court may permit.

All of which is respectfully submitted this 14th day of November, 2024.



Jason Gratl
511-55 Cordova Street East
Vancouver, BC V6A 0A5
Tel: 604-694-1919
Fax: 604-608-1919
Counsel for the Applicants

TO: Christopher Pigott & Grace McDonnell
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6
Counsel for Canada Post Corporation

TO: Daneil Vassberg
10423 101 Street
3rd Floor, Epcor Tower
Edmonton, AB T5H 0E7
Counsel for the His Majesty the King in the Right of Canada and the Attorney
General of Canada

SCHEDULE "A"
Application to Extend Deadline to Appeal

1. Julia Alvarez
2. Ali Bahri
3. Mark Boikovitis
4. Robert Bourbonniere
5. Line Bujold-Lavalle
6. Jennifer Comin
7. Esterina Costa
8. Wayne Cowan
9. Selena Cvitan
10. Mark Daggett
11. Jana Dancakova
12. Marlice Deptuch
13. Gisele Desharnais
14. Karen Desrosiers
15. Tanya Docanto-Cordeiro
16. Johanna Emmanouil
17. John Emmanouil
18. Sarah Frangione
19. Joy Esdaille
20. Raquel Ferreira
21. Karen Gibeault
22. Michail Grigoratou
23. Peter Heidebrecht
24. Stephanie Johnston
25. Riina Kapp
26. Marietta Kirby
27. Damir Kramaric
28. Chung Le
29. Lorraine Light
30. Paul Lussier
31. Tanya Mandel
32. Tracy Matlock
33. Daniel Matti
34. Bozena Mazur
35. Margaret McGeachie
36. Szilvia Merti

37. Lisa Nicoll
38. Christopher Pillon
39. Kimberlee Priest
40. Dolores Relic
41. Amber Ricard
42. Helene (Lena) Ricci
43. Russel Sawchuk
44. Stephen See
45. Marion Serink
46. John Serrambana
47. Dewitt Shainline
48. Shrikant Sharma
49. Alan Shum
50. Wanita Siklenka
51. Karine Solakian
52. Roberta Strickland
53. Martyna Styrzcula
54. Lindsay Sunthgolam
55. Lori Taylor-Ribero
56. Lara Trenaman
57. Leonardo de Jesus Vasquez
58. Jennifer Vogelgesang
59. Maria Visic
60. Carrie Visser
61. Shanda Vorrath
62. Mariam Wali
63. Nancy Whitcome
64. Yvonne Yuctuc
65. Carson Zorget
66. Michael Zottola

[END OF LIST]

This is Exhibit " B " referred to in the
Affidavit of Jodi Kaldestad
sworn (or affirmed) before me at
Vancouver, BC
this 14 day of November 2024.

6

1

Court File No. T-1436-22

A Commissioner for Taking Affidavits for British Columbia

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

Plaintiffs

and

**CANADA POST CORPORATION and HIS MAJESTY THE KING
IN RIGHT OF CANADA**

Defendants

MEMORANDUM OF FACT AND LAW

OVERVIEW

1. The Applicants appeal the order and decision to strike the claim without leave to amend made on March 13, 2024, by Coughlan A.J., indexed as *Albert v. Canada Post Corporation*, 2024 FC 420. The Applicants seek an order quashing Coughlan A.J.'s order striking the claim brought by the Applicants under s.7 of the *Canadian Charter of Rights and Freedoms*, and seek an order granting the Applicants leave to amend the Statement of Claim as it pertains to s. 7 of the *Charter*, to the extent required to comport with the reasons for judgment on this appeal.
2. The Applicants are employees of Canada Post Corporation ("CP"). This appeal concerns vaccination and reporting requirements imposed on all CP employees including the Applicants by CP on October 22, 2021 (the "CP Vaccination Requirement"). The CP Vaccination Requirement was set out in a document entitled "CP Vaccination Practice Requirement" issued on October 22, 2021 (the "CP Requirement Document"). The CP Vaccination Requirement mirrored the federal government's vaccination requirement set out in a document entitled "Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police" issued October 6, 2021 (the "Federal Vaccination Policy"). The CP Vaccination Requirement required all employees to receive two

injections of vaccine and disclose their vaccination status to CP management. CP employees that did not adhere to the CP Vaccination Requirement were put on mandatory leave without pay.

3. The Applicants were all CP employees subject to the CP Vaccination Requirement. CP put each of the Applicants on unpaid leave due to their failure to comply with the CP Vaccination Requirement. The Applicants claim that compelling each of them to choose between receiving vaccine injections and disclosing their vaccination status and being put on leave without pay for an indeterminate amount of time violated their s. 7 rights to life, liberty and security of the person in a manner that was inconsistent with the principles of fundamental justice and was not demonstrably justified under s. 1 of the *Charter*.
4. The CP Vaccination Requirement is subject to *Charter* scrutiny because CP satisfies the *Eldridge* test binding CP to comply with the *Charter* pursuant to s.32 of the *Charter*. CP is either (1) government or (2) was following the direction of the Minister to implement the CP Vaccination Requirement. The reasons for judgment for the March 13, 2024, order made by Coughlan A.J. do not address this legal issue.
5. There are three grounds of appeal. First, Coughlan A.J. erred in law by striking out the s. 7 *Charter* claim. Second, Coughlan A.J. erred in law by incorrectly applying the test for Federal Court jurisdiction. Third, Coughlan A.J. made a palpable and overriding error on the facts when she found that there was no evidence that the Minister directed CP to implement the CP Vaccination Requirement.
6. Although the Applicants acknowledge that the COVID-19 pandemic was a public health emergency, Canada remains a constitutional democracy and the government response to COVID-19 continues to be constrained by the Constitution of Canada. Indeed, “[h]istory demonstrates why the bulwark of the robust protection of *Charter* rights by an independent judiciary is so important in times of crisis”.

Spencer v. Canada (Attorney General), 2021 FC 361 at paras 124-125

7. The Applicants claim that the Government of Canada and CP went beyond the limits of the Constitution of Canada by implementing and enforcing the CP Vaccination Requirement on the Applicants. The Applicants assert that they were harmed as a result. Although COVID-19 is no longer an emergency the legal issue of whether the Applicants were individually harmed is not moot. The Applicants should be entitled to a trial on the merits to determine whether their s. 7 rights were infringed by the CP Vaccination Requirement imposed by CP and the Minister.
8. The Applicants acknowledge that the Amended Amended Statement of Claim ("AASOC") is not a model of clarity and may not have pleaded material facts with clarity to establish Federal Court jurisdiction, and the material facts in respect of the tort claim under s.7 of the *Charter* could have been more clearly stated. However, material facts sufficient to ground a s.7 tort claim are adequately set out in the Statement of Claim, and sufficient material facts are without question laid out in the affidavit evidence before the Associate Judge on the motion to strike. Residual insufficiencies of the pleadings can be addressed by granting the Applicants leave to amend the Statement of Claim.

PART I. STATEMENT OF FACTS

A. Parties

9. The Applicants are employees of CP who were forced to take unpaid leave because they did not comply with the CP Vaccination Requirement.
10. CP is a Crown corporation as listed in Schedule III, Part I of the *Financial Administration Act*, R.S.C. 1985, c. F-11 ("*FAA*") and established under the *Canada Post Corporation Act*, R.S.C., 1985, c. C-10 ("*CPCA*"). Section 23 of the *CPCA* expressly provides that CP is an agent of the Crown for the purpose of the Act.
11. The Government of Canada is named as a defendant as His Majesty the King in Right of Canada. The Statement of Claim refers to directions give by the Minister as defined by s.2(1) of the *CPCA*. The Governor General has directed pursuant to Order SI/2015-100 that the Minister of Public Works and Government Services is

designated as the “Minister” as defined by s. 2(1) of the *CPCA*. The Minister is authorized and empowered to provide “directives” to CP pursuant to s. 22 of the *CPCA*, and CP is obliged to follow those directives (“*CPCA Directives*”).

B. History of Proceedings

12. The COVID-19 virus began to circulate globally in December of 2019. Vaccines to suppress transmission and to minimize symptoms of COVID-19 were approved by Health Canada in or around March of 2021. On October 6, 2021, the federal government issued the Federal Vaccination Policy, which required all core public administration employees to be vaccinated and disclose their vaccination status to their employer or would be forced to take leave without pay. A Federal Government press release issued October 6, 2021, states that “Crown Corporations and separate agencies are being asked to implement vaccine policies mirroring the requirements announced today for the rest of the public service”.

Motion Record of the Defendant, Canada Post Corporation, dated January 12, 2024, Ex. A

Motion Record of the Plaintiff Responding to Canada Post, dated February 2, 2024, Ex. E

13. On October 22, 2021, CP imposed the CP Vaccination Requirement. The CP Vaccination Requirement mirrors the Federal Vaccination Policy. The CP Vaccination Requirement set a deadline of November 26, 2021, for employees to get vaccinated and disclose their vaccination status. Employees who failed to do so were put on unpaid leave.
14. The CP Vaccination Requirement expressly states the following in the first paragraph: “At the direction of the Government of Canada, Canada Post has prepared this COVID-19 Vaccination Practice that mirrors the Policy on COVID-19 Vaccination for the Core Public Administration”. The Applicants say that this strong direct evidence that the Government of Canada directed CP to implement the CP Vaccination Requirement.

Motion Record of the Defendant, Canada Post Corporation, dated January 12, 2024, Ex. E

15. On October 25, 2021, the Minister wrote to the Chair of the Board of Directors of CP, making the following direction (the "Minister's Letter to the Chair of CP"):

I would like to thank Canada Post for developing a COVID-19 Vaccination Policy that mirrors the requirements announced for the federal public service. Please note that the President of the Treasury Board recently wrote to me to share his expectations that Crown corporations vaccination requirements (and those of any wholly-owned subsidiaries) are fully aligned with the requirements of the policy referred to above by November 30, 2021. Specifically, this includes, but is not limited to, ensuring that employees attest to their vaccination status no later than November 30, 2021. Compliance measures, including leave without pay, should be underway as early as December 15, 2021. It is further expected that you align with the policy by developing monitoring, verification, and assurance frameworks, within the governance appropriate to your organization. ...

Vaccination requirements should apply to all employees, officers, and directors. Crown corporations are also expected to implement the vaccination requirements that apply to Governor in Council (GIC) appointees affiliated with their corporation, including members and chairs of their governing bodies and chief executive officers. ...

Thank you in advance for paying close personal attention to the material attached and for taking the necessary measures for Canada Post to align with the policy. ...

Motion Record of the Defendant, Canada Post Corporation, dated January 12, 2024, Ex. D

16. The Minister's Letter to the Chair of CP is compelling evidence that CP was directed by the Government of Canada to implement and enforce the CP Vaccination Requirement.
17. On November 15, 2021, the Canadian Union of Postal Workers ("CUPW") filed a National Policy Grievance pursuant to their Collective Agreement. CUPW argued that the CP Vaccination Requirement breached the Collective Agreement. CUPW did not argue at the arbitration hearing that the CP Vaccination Requirement breached s. 7 of the *Charter* (or any other section of the *Charter*). The Arbitrator did not consider or determine any *Charter* issues. The Arbitrator dismissed the grievance after determining that the CP Vaccination Requirement was "a reasonable

exercise of management rights and responsibilities under the collective agreement, and pursuant to its obligations under the *Canada Labour Code*.”

Motion Record of the Defendant, Canada Post Corporation, dated January 12, 2024, Ex. M

Motion Record of the Defendant, Canada Post Corporation, dated January 12, 2024, Ex. V at paras 56 and 97

18. On June 20, 2022, the Federal Government suspended the Federal Vaccination Policy. On July 6, 2022, CP suspended the CP Vaccination Requirement.

Motion Record of the Defendant, Canada Post Corporation, dated January 12, 2024, Affidavit of John Deveen

19. On July 12, 2022, previous counsel for the Applicants filed a Statement of Claim in the Federal Court of Canada. On June 19, 2023, the Applicants filed an Amended Statement of Claim. The Applicants served the AASOC on June 28, 2023, and filed it with the Court on February 28, 2024.

Albert v. Canada Post Corporation, 2024 FC 420 at para 6

20. CP and the Attorney General of Canada each filed applications to strike the Applicants' claim. The application were argued over two days on March 4 and March 5, 2024. On March 13, 2024, Coughlan A.J. released her decision to strike the pleadings without leave to amend.

21. On May 6, 2024, Arbitrator Michelle Flaherty held that the CP Vaccination Requirement was unreasonable “to the extent that it applied to [the Union of Postal Communications] employees who worked exclusively remotely”.

Motion Record of the Defendant, Canada Post Corporation, dated January 12, 2024, Ex. R
Union of Postal Communications Employees (PSAC) v. Canada Post Corporation, 2024 CanLII 38829 (CA LA) at para 131 (emphasis original)

PART II. POINTS IN ISSUE

22. This appeal is brought on three grounds:

- a. Coughlan A.J. erred in law by finding that there was no reasonable prospect of success for the claim that the implementation and enforcement of the CP Vaccination Requirement infringed the rights of the Applicants under s. 7 of the *Charter of Rights and Freedoms*;
- b. Coughlan A.J. erred in law by failing to apply the correct test for whether the Federal Court had jurisdiction over CP and the Minister; and
- c. Coughlan A.J. made a palpable and overriding error on the facts when she held that there is no evidence that the Minister directed CP to implement the CP Vaccination Requirement.

PART III. SUBMISSIONS

A. Standard of Review

23. The Court must address Coughlan A.J.'s decision to strike the claim without leave to amend on a standard of correctness. The standard of review for appealing the decision of an associate judge is the appellate standard described by the Supreme Court of Canada in *Housen v. Nikolaisen*, 2002 SCC 33. Questions of mixed fact and law are entitled to deference and "attract the palpable and overriding error standard of review". Questions of law, including extricable questions of law, are subject to the standard of correctness.

Collins v. Canada (Attorney General), 2023 FC 863
Housen v. Nikolaisen, 2002 SCC 33
Berenguer v. Sata Internacional – Azores Airlines, SA, 2023 FCA 176

24. A decision to strike a claim on the basis that it does not disclose a reasonable cause of action is a question of law and is reviewed on a correctness standard.

Bevan v. Husak, 2024 BCCA 323

B. Legal Principles on a Motion to Strike

25. Rule 221(1)(a) of the *Federal Courts Rules* permits the Court to strike a claim with or without leave to amend on the ground that it is “plain and obvious” that the claim discloses no reasonable cause of action.

Federal Courts Rules, SOR/98-106

26. The Statement of Claim must be read “as generously as possible and must accommodate any inadequacy in the allegations that are clearly the result of deficiencies in the drafting of the document”.

Pascuet v. Canada, 2024 FC 930 at para 17
Operation Dismantle Inc. v. Canada, 1985 CanLII 74 (SCC)

27. There are three ancillary principles to the plain and obvious test: (1) the facts are to be taken as proven unless they are manifestly incapable of proof; (2) the pleadings must be read generously while recognizing that the law is not static; and (3) the motions judge must err on the side of permitting novel but arguable claims to proceed to trial.

La Rose v. Canada, 2023 FCA 241 at para 19

28. The motion to strike tool must be used cautiously to reflect new developments in the law:

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...The history of our law reveals that often new developments in the law first surface on motions to strike or similarly preliminary motions, like the one at issue in *McAlister (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.

Knight v. Imperial Tobacco Canada Ltd., 2011 SCC 42 at para 21

29. Rule 221(a) may be applied if it is “plain and obvious” that the Federal Court lacks jurisdiction. The Court may rely on evidence when determining whether there is federal jurisdiction.

Berenguer at paras 24, 26

C. Coughlan A.J. Erred Finding that the S. 7 Claim had No Reasonable Prospect of Success

30. Coughlan A.J. erred in law when she held that the pleadings were insufficient to disclose a cause of action in respect of the claim that the implementation of the CP Vaccination Requirement infringed the Plaintiffs’ rights under s.7 of the *Charter of Rights and Freedoms*. The Associate Judge did not apply the relevant test for causation under s.7 of the *Charter*. The Applicants pled sufficient material facts to establish that the s. 7 *Charter* claim has a reasonable prospect of success.

i. Legal Principles for Section 7 on Motion to Strike

31. Section 7 of the Charter states that “[e]veryone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice”. To establish a breach of s. 7, the claimants must show that the “law interferes with, or deprives them of, their life, liberty or security of the person”, and that this deprivation “is not in accordance with the principles of fundamental justice”.

Carter v. Canada (Attorney General), 2015 SCC 5 at para 55

32. The claimants must also show that there is “sufficient causal connection between the impugned action or law and the prejudice they have suffered”.

La Rose at para 89

Canada (Attorney General) v. Bedford, 2013 SCC 72

ii. The Pleadings Contain Sufficient Material Facts for a Claim under s.7 of the Charter

33. Coughlan A.J. erroneously found that the claim failed to plead the constituent elements of any cause of action. The reasons for judgment for her order disclose

no legal analysis of the elements of s.7 and disclose no attempt to review the Statement of Claim for allegations of fact material to the elements of a s.7 claim. The Applicants say that the AASOC contains the requisite material facts to support a s. 7 *Charter* cause of action on the plain and obvious standard.

Albert at para 45

(1) Sufficient Causal Connection

34. Coughlan A.J. does not address whether there was a “sufficient causal connection” pled between the state action and the impact on the Applicants’ s.7 *Charter* rights. Instead, Coughlan A.J. erroneously considered only whether there is a “relationship between Canada and the Plaintiffs”, and this “relationship” analysis is set out in the section of her reasons that consider whether the Federal Court has jurisdiction over this claim against the Government of Canada. There is no analysis of causation dealing with whether the pleadings disclose a reasonable cause of action for a *Charter* claim against either CP or the Minister/Canada.

Albert at para 63

35. There is at least arguably a sufficient causal connection between the impugned state action and the pled harms. This causal connection is set out in the Statement of Claim at para.43, which refers to the Federal Vaccination Policy in a roundabout way as an “Order” issued as part of the press release:

7. The Plaintiffs claim that the [CP Vaccination Requirement] was part of a broad public policy objective by the federal government through direction from His Majesty the King in Right of Canada to increase vaccination rates of Canadians. Canada did not implement a vaccine mandate to Canadian citizens. Instead, it directed employers to do so, thereby mandating vaccines without having to resort to a Canada-wide mandate. ...

42. [The CP Vaccination Requirement] required the Plaintiffs to receive the COVID-19 vaccine, a medical treatment, outside the premises of Canada Post ...

43. [The CP Vaccination Requirement was] “implemented to further the objectives of Canada, to protect the healthcare system of Canada and to

protect the economy of Canada. The [CP Vaccination Requirement] was implemented pursuant to the Order for the specific purposes of safeguarding the health of Canadians and to advance the public health policy of Canada.

AASOC at para 43

36. New counsel for the Applicants aspire to further amend the Statement of Claim to include more perspicuous reference to the Minister's direction to CP to implement and enforce the CP Vaccination Policy. This would bring the Statement of Claim to more closely accord with the documents affording strong evidence of Ministerial direction.¹ Any perceived insufficiency or lack of clarity in the pleadings regarding sufficient causal connection can be addressed by granting the Applicants leave to amend the Statement of Claim. Compelling evidence of the Ministerial direction supports granting the Plaintiffs leave to amend.

(2) The State Action Infringes Life, Liberty and Security of Person

37. The AASOC effectively asserts that CP Vaccination Requirement infringed the Applicants' life, liberty and security of person rights in a manner that is not in accordance with the principles of fundamental justice.

AASOC, paras 90-92

38. The right to life is engaged "where the law or state action imposes death or an increased risk of death on a person, either directly or indirectly".

Carter at para 62

39. The Applicants have pled that the federal government's actions indirectly increased their risk of death. The Applicants pled that this risk of death arises by being pressured into taking vaccines that the Applicants allege are "experimental", contain "significant risks" and may cause "severe adverse effects and injuries". These facts

¹ There is some infelicity in the references to the Minister of Transport in the AASOC and the drafting sometimes appears to suggest that the press release issued by the federal government had an immediate effect on the plaintiffs. To be clear, that is not the position of the applicants. The applicants say, in accordance with the evidence before the Associate Justice, that the Minister directed CP to implement and enforce the CP Vaccination Requirement on the applicants.

are capable of proof, and must be assumed true for the purposes of a motion to strike.

AASOC at paras 65-66, 69

40. Liberty protects “the right to make fundamental personal choices free from state interference” and security of person “encompasses ‘a notion of personal autonomy involving...control over one’s bodily integrity free from state interference’”. The SCC has stated that the right to decide one’s own fate “entitles adults to direct the course of their own medical care” and that this principle underlies the concept of “informed consent”.

Carter at paras 64, 67

41. The Statement of Claim pleads that the Plaintiffs’ right to liberty was infringed because the vaccination and attestation requirements interferes with the “protected sphere of personal autonomy involving private choices and the right to refuse medical treatment”. The Statement of Claim makes reference to an infringement of privacy as an aspect of the right to liberty under s.7. The Applicants pled that their rights to security of person were infringed because the attestation requirement interferes with “personal autonomy, and one’s ability to control their own physical or psychological integrity”. The Applicants state that such interference “has caused severe psychological harm”. The Court must assume the severity of psychological harm is true for the purpose of a motion to strike.

AASOC at paras 91-92

42. The Applicants also pled various harms that support the prospects of the s.7 claim. First, the Applicants’ pled that the vaccination requirement resulted in loss of sole or primary sources of income. This pleading factually negates the position that the CP Vaccination Requirement simply provides CP employees with an open choice as to whether to submit to vaccination. Second, the Applicants pled that they suffered “significant mental and physical anguish” due to the uncertainty of their income and employment, in addition to a list of harms outlined in paragraphs 111 and 117. These support the claim to breach of security of the person.

AASOC at paras 57, 108, 111, 117

(3) The S. 7 Infringements Violate the Principles of Fundamental Justice

43. Section 7 only protects individuals from state interference that infringe life, liberty or security of person in a manner that violates the principles of fundamental justice. In addition to procedural safeguards, principles of fundamental justice prohibit a law or state action from being “arbitrary, overbroad, or having consequences that are grossly disproportionate to their object”. To address whether these principles have been violated, the court must look at the object of the impugned state action or law.

Carter at paras.71-73

44. The Applicants pled that the impugned state action had various objects, including: (1) a “broader public policy objective to increased vaccination rates”; (2) “to protect the healthcare system of Canada and to protect the economy of Canada”; and (3) to “safeguar[d] the health of Canadians” and protect the “greater community of Canada”. The object of protecting the health of Canadians is relevant to the s. 7 analysis.

AASOC at paras 5, 7, 26, 43

45. Arbitrariness arises when “there is no rational connection between the object of the law and the limit it imposes on life, liberty or security of person”.

Carter at para 85

46. The Applicants’ pled that the COVID-19 virus did not pose a “serious health risk to 99.97% of Canadians” and that those at risk were not part of the workforce. The Applicants also pled that the vaccines create a risk of serious health issues.

AASOC at paras 65-69, 112

47. If these facts are assumed true, there is a reasonable argument that the vaccination requirements were arbitrary if the object of the actions is protecting Canadians from health issues. This is because the limitations would not protect CP employees from

harm. Further, according to the pleadings, the vaccinations increased the risk to the health of CP employees, rather than decreasing those risks.

48. The overbreadth inquiry asks “whether a law that takes away rights in a way that generally supports the object of the law, goes too far by denying the rights of some individuals in a way that bears no relation to the object”. The Applicants plead that their health was not advanced by the CP Vaccination Requirement, which supports the argument that the violation of their rights bears no relation to the object of the measures. Assuming these facts as true, no CP employees received a benefit from the vaccination requirements.

Carter at para 85

49. Gross disproportionality looks at whether the infringement is “grossly disproportionate to the object of the measure”. The focus of this analysis is on the impact to the claimant, not the impact on society.

Carter at para 89

50. The Applicants pled facts that support gross disproportionality. The Applicants claimed to have suffered severe consequences, include the loss of sole or primary income, anxiety, post-traumatic stress disorder and mental distress. The Applicants also pled that there was a negligible or non-existent risk of serious COVID-19 related health issues and serious risks arising from vaccination for the CP employees. As such, any benefit to the object is arguably grossly disproportionate compared to the impact on the employees.

AASOC at paras 92, 117

iii. Conclusion on s. 7 Causes of Action

51. Coughlan A.J. erred in law by failing to apply the “sufficient causal connection” standard for causation of a s.7 infringement and by failing to consider the elements of a s.7 cause of action when determining whether the s. 7 *Charter* claim has a reasonable prospect of success. Coughlan A.J. also erred by in law by concluding

that no material facts were pled in relation to the s.7 claim, when the Applicants had pled sufficient material facts to establish the claim on a plain and obvious standard.

D. Coughlan A.J. Erred by Incorrectly Applying the Federal Jurisdiction Test

52. Coughlan A.J. erred in law by failing to address whether the Federal Court had jurisdiction over CP under s. 17(5)(b). Coughlan A.J. also erred by failing to apply the three-part *ITO* Test for Federal Court jurisdiction to both CP and Canada.

i. Section 17(5)(b) of the FCA

53. CP claimed that the Federal Court lacked jurisdiction over CP pursuant to ss. 17(1), 17(2) and 17(5) of the *Federal Courts Act*, R.S.C., 1985, c. F-7 (“*FCA*”). However, Coughlan A.J. only addresses whether the Federal Court had jurisdiction over CP pursuant to sections 17(1) and 17(2). Coughlan A.J. does not address s. 17(5) in her reasons. Instead, she concludes that the Court “has no jurisdiction over Canada Post pursuant to sections 17(1) and 17(2) of the *FCA*”.

Notice of Motion of Canada Post Corporation, Motion to Strike, dated August 18, 2023
Albert at paras 48-52

54. The relevant subsections of s. 17 are reproduced below:

Relief against the Crown

17(1) Except as otherwise provided in this Act or any other Act of Parliament, the Federal Court has concurrent original jurisdiction in all cases in which relief is claimed against the Crown.

Cases

(2) Without restricting the generality of subsection (1), the Federal Court has concurrent original jurisdiction, except as otherwise provided, in all cases in which

- (a) the land, goods or money of any person is in the possession of the Crown;
- (b) the claim arises out of a contract entered into by or on behalf of the Crown;
- (c) there is a claim against the Crown for injurious affection; or
- (d) the claim is for damages under the *Crown Liability and Proceeding Act*.

[...]

Relief in favour of Crown or against officer

(5) The Federal Court has concurrent original jurisdiction

(a) in proceedings of a civil nature in which the Crown or the Attorney General of Canada claims relief; and

(b) in proceedings in which relief is sought against any person for anything done or omitted to be done in the performance of the duties of that person as an officer, servant or agent of the Crown.

Federal Courts Act, R.S.C., 1985, c. F-7 (emphasis added)

55. The Federal Court in *Carten* explains the history and interpretation of s. 17(5)(b) as follows:

In 1992, paragraph 17(5)(b) (formerly paragraph 17(4)(b)) only referred to officer and servant of the Crown but was already construed to include the agents of the Crown as was the case for the word “servant” under the *Crown Liability and Proceedings Act*, R.S., 1985, c. C-50. The word “agent” was thus added in the amendments which came into force in 1992 to clarify the situation. As noted by the Federal Court of Appeal in *Federation Franco-Tenoise v, Canada*, 2001 FCA 220; [2001] F.C.J. No. 1093 (F.C.A.), at para. 70, paragraph 17(5)(b) of the *Federal Courts Act* “by its very language refers to the *Crown Liability and Proceeding Act*”.

Carten v. Canada, 2010 FC 857 at para 43

56. The former s. 17(4)(b) stated the following:

(4) The Trial Division has concurrent original jurisdiction

(a) in proceedings of a civil nature in which the Crown or the Attorney General of Canada claims relief; and

(b) in proceedings in which relief is sought against any person for anything done or omitted to be done as an officer or servant of the Crown.

Federal Courts Act, R.S.C. 1970, c. F-5.5, s. 17 (emphasis added)

57. An entity may become an agent of the Crown where “(1) Parliament has expressly legislated it to be an agent, or (2) where the Crown exercises sufficient control that it [can be said] the Crown is in *de jure* control of the entity”.

Karim v. Canada (Attorney General), 2018 FC 453 at para 42
Pascuet at para 31
Carten, at para 47

58. CP is a legislated agent of the Crown pursuant to s. 23 of the *CPCA*. The pleadings provide an argument that CP was implementing the CP Vaccination Requirement in the performance of its duties as an agent of the Crown. As such, CP is an agent for the purposes of engaging s. 17(5)(b).

(1) Reconciling *Van Sluytman* and Past Caselaw

59. Coughlan A.J. references CP's caselaw, specifically *Van Sluytman* and *Committee for Monetary and Economic Reform*, to propose that "section 17 of the FCA only applies to the Crown, *eo nomine* (by its name), and not to statutory corporations acting as agent for the Crown".

Albert at para 49
Van Sluytman v. Canada, 2022 FC 545
Committee for Monetary and Economic Reform v. Canada, 2014 FC 380

60. The Applicants argue that this statement is a legal error to the extent that Coughlan A.J. finds that CP is not an agent pursuant to s. 17(5)(b).
61. The Applicants argue that an ordinary reading of s. 17(5)(b) clearly confers jurisdiction to the Federal Court when there is a claim against a legislated Crown agent. Such statutory interpretation aligns with *Rizzo Shoes*, which requires the words of an Act "to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament".

Rizzo & Rizzo Shoes Ltd. (Re), 1998 CanLII 837 (SCC) at para 21

62. Recent caselaw also supports an ordinary reading of s. 17(5)(b). In *Pascuet*, Ring A.J. addressed whether a corporation was encompassed under s. 17(5)(b) by asking whether it was a legislated agent or a *de jure* agent. It was irrelevant that the defendant was not Crown *eo nomine*. The Federal Court applied the same approach in *Karim*.

Pascuet at para 30-38
Karim at paras 40-42

63. Past caselaw must be read in context of the 1992 *FCA* amendment. Prior to 1992, s. 17(5)(b) (or formerly 17(4)(b)) did not expressly include "agent". As such, some courts found that Crown agents were not encompassed under s. 17(5)(b) (i.e. see *Gracey* below). However, this is clearly no longer the case after the 1992 amendment.

Carten at para 43

64. The following excerpts from *Van Sluytman, Committee for Monetary and Economic Reform* and *Rasmussen* illustrate (1) the ambiguous language that occasionally conflates ss. 17(1) and 17(2) to s. 17 as a whole and (2) that the Crown *eo nomine* requirement applies to ss. 17(1) and 17(2) specifically:

Section 17 of the *FCA* gives the Federal Court concurrent jurisdiction where relief is sought against the Crown. But this does not end the inquiry. The Court's jurisdiction only applies to the Crown *eo nomine* (i.e. by that name), and not to a statutory corporation acting as an agent for the Crown (*Committee for Monetary and Economic Reform v Canada*, 2014 FC 380 at paras 87-88; affirmed 2015 FCA 20).

Specifically in respect of CPC, this Court has determined that while CPC is a Crown corporation, it is not the Crown per se; it is an agent of the Crown. Subsections 17(1), 17(2), and section 48 of the *FCA* cannot be considered statutory grants of jurisdiction against CPC (*Lavigne v Canada Post Corporation* 2006 FC 1345 paras 44-49 ("*Lavigne*").

Van Sluytman at paras 56 & 57 (emphasis added)

Given the Federal Court of Appeal decision in *Rasmussen v. Canada (Minister of Fisheries & Oceans)*, [1986] 2 F.C. 500 (Fed. C.A.) at para 12, to the effect that the *Federal Courts Act* only applies to the Crown *eo nomine*, and not to a statutory corporation acting as an agent for the Crown, it is difficult to see why the Bank should be named as a Defendant.

Committee for Monetary and Economic Reform at para 77 (emphasis added)

In the *Yeats* case already referred to and again in *Canadian National Railway Company v. North-West Telephone Company* the Supreme Court held that the language of the provisions of the *Exchequer Court Act* corresponding to

subsections 17(1) and (2) of the *Federal Court Act* conferred jurisdiction on the Court only in a proceeding against the Crown *eo nomine*, and not by or against a statutory corporation acting as an agent of the Crown ...

Rasmussen v. Canada (Min. of Fisheries & Oceans), 1986 CanLII 6851 (FCA) at 507 (emphasis added)

65. Some cases, such as *Lavigne v. Canada Post Corporation*, 2006 FC 1345, rely on jurisprudence that interpreted s. 17(5) as *not* including agents. However, as explained above, the 1992 amendments clearly intended to correct and prevent further interpretation of s. 17(5)(b) as not including Crown agents:

In *Gracey v. Canadian Broadcasting Corp.*, 1990 CanLII 13051 (FC)...Justice Paul Rouleau declined jurisdiction to hear a libel suit against the CBC. Applying the first branch of the *ITO* Test, he determined section 17 of the *Federal Court Act* was not a statutory grant of jurisdiction at page 746, writing:

Subsections 17(1) to (3) of the *Federal Court Act* apply to cases where relief is sought against the Crown. Subsection 17(4) only refers to actions against the Crown *eo nomine* and does not include an action by or against a Crown agency. As the style of cause in the plaintiff's claim is presently worded, none of these sections confers jurisdictions on this Court since the Crown is not named as a party to the proceedings and the named defendants are neither Crown officers or servants.

Thus, the jurisprudence is quite clear that these sections are not a statutory grant of jurisdiction for a claim against Canada Post, as it is not the Crown *eo nomine*.

Lavigne v. Canada Post Corporation, 2006 FC 1345 at para 48 (emphasis added)

66. As such, *Lavigne* and the caselaw cited in *Albert* do not as a matter of law preclude CP from being encompassed under s. 17(5)(b).

ii. *The ITO Test*

67. The test for whether there is federal jurisdiction is well established from *ITO-Int'l Terminal Operators v. Miida Electronics* (the "*ITO Test*"):

1. There must be a statutory grant of jurisdiction by the federal Parliament.

2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction.
3. The law on which the case is based must be "a law of Canada" as the phrase is used in s. 101 of the Constitution Act, 1867 (U.K.), c. 3.

ITO-Int'l Terminal Operators v. Miida Electronics, 1986 CanLII 91 (SCC) at para 12

(1) Coughlan A.J. Does Not Apply the ITO Test

68. Coughlan A.J. does not apply the *ITO* Test. She references the *ITO* Test once when reviewing CP's arguments but does not apply the *ITO* Test in any meaningful sense in her reasons, either expressly or implicitly. Coughlan A.J. was required to address whether the pleadings could satisfy the *ITO* Test.

Albert at para 48

(2) The Pleadings and Evidence Establish Federal Court Jurisdiction

69. It is not plain and obvious that the Federal Court lacks jurisdiction over CP and the federal government. The Applicants argue that the *ITO* Test is well met on a plain and obvious standard.
70. First, there is a statutory grant of jurisdiction to the Federal Court by Parliament. Section 23 of the *CPCA* establishes CP as an agent of the Crown. Moreover, the direction given by the Minister to CP to implement the CP Vaccination Requirement makes CP a *de jure* agent of the Minister. As such, the Federal Court has statutory jurisdiction over CP pursuant to s. 17(5)(b). The Federal Court evidently has statutory jurisdiction over the federal government pursuant to s. 17(1).
71. Second, there is an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction. The fact that the CP is a legislated agent of the Crown and arguably implementing a Vaccination Requirement under the direction of the federal government is essential to the disposition of the s. 7 *Charter* claim. The power of the Minister to provide direction to CP in the form of a statutory directive underscores the force of the direction given

by the Minister to CP to implement the CP Vaccination Requirement, as does the appointment powers under the *CPCA*.

72. The reference to the President of the Treasury Board in the Minister's Letter to the Chair of CP is also evocative of s.89.8 of the *Financial Administration Act*. The factual interactions between the Minister and CP cannot properly be interpreted without reference to the existing body of federal law. The jurisdiction of the Federal Court is properly engaged to undertake this task.
73. If the *CPCA* is engaged, the third branch of the test is also met, because the *CPCA* is part of the law of Canada.
74. The Applicants acknowledge that the pleadings do not adequately address the elements of *ITO* Test. The Applicants argue that the evidence on the record meets the test and that any inadequacies of the pleadings can be corrected by amendment.

(3) Coughlan A.J. Did Not Apply the Plain and Obvious Test for Jurisdiction

75. When addressing jurisdiction on a motion to strike, the Court is not to make a determination of the merits. Rather, the Court is to apply the plain and obvious test to the preliminary motion. However, Coughlan A.J. made factual determinations, appearing to impose the default standard requiring the Plaintiffs to provide proof of jurisdiction on a balance of probabilities.

Pascuet at para 19
Berenguer at para 41

76. First, Coughlan A.J. finds that there was no Federal Court jurisdiction over CP, and concluded that because there was no jurisdiction it was "plain and obvious" that the claim would fail:

I am satisfied that this Court has no jurisdiction over Canada Post pursuant to sections 17(1) and 17(2) of the *FCA*. Thus, it is plain and obvious that the action cannot succeed against Canada Post and must be struck.

Albert at para 52

77. Further, Coughlan A.J. appeared to place burden on the Applicants to demonstrate jurisdiction, when the Respondents as the moving party had the burden of establishing it was plain and obvious there was no jurisdiction.
78. Coughlan A.J. applied the plain and obvious test incorrectly. Coughlan A.J. should have determined whether it was plain and obvious that the Federal Court did not have jurisdiction over CP.

E. Coughlan A.J. Made a Palpable and Overriding Error on the Evidence

Coughlan A.J. Made a Palpable and Overriding Error on the Evidence

79. Coughlan A.J. concluded that “there is no evidence before the Court to support the Plaintiffs’ assertion that Canada Post was acting under the direction of Canada when implementing the Practice”. However, there is strong evidence in the Motion Record establishing that the Federal Government was expressly directing CP to implement the CP Vaccination Requirement.

Albert at para 51

80. First, the CP Requirement Document issued October 22, 2021, specifically admits that CP has followed Canada’s “direction”, with the following words: “[a]t the direction of the Government of Canada, Canada Post has prepared this COVID-19 Vaccination Practice that mirrors the Policy on COVID-19 Vaccination for the Core Public Administration”. Second, the Minister’s Letter to the Chair of CP dated October 25, 2021 confirms that the Minister directed Canada Post to implement the CP Vaccination Requirement, and specifically directs Canada Post to enforce the CP Vaccination Requirement.

Motion Record of the Defendant, Canada Post Corporation, dated January 12, 2024, Ex. D

Motion Record of the Defendant, Canada Post Corporation, dated January 12, 2024, Ex. E

81. The Applicants say that the Court should generally not engage in an examination of the facts on a motion to strike for lack of jurisdiction under s.17(5) of *FCA* because

express and *de jure* agency is typically a matter of statutory interpretation. However, in this case, the Motion Record's evidence that the Minister clearly directed CP to implement and enforce the CP Vaccination Requirement could be relevant to a determination of *de jure* jurisdiction, because the *de facto* agency could assist in disambiguating the scope of the Minister's influence under the legislative framework.

F. Conclusion

82. Coughlan A.J. made errors of law when she held that the s. 7 *Charter* claim should be struck on a motion to strike. She failed to apply the correct test of "sufficient causal connection" and instead undertook an analysis of the "relationships" between parties. The Applicants argue that there are sufficient facts in the pleadings to establish a s. 7 *Charter* claim. The evidence that the Minister directed CP to implement and enforce the CP Vaccination Requirement supports granting leave to the Applicants to further amend the Statement of Claim to more fully accord with the evidence.
83. Coughlan A.J. made errors of law when she failed to apply the *ITO* Test and failed to address whether CP is an agent of the crown pursuant to s. 17(5)(b) of the *FCA*. She also incorrectly applied the plain and obvious standard to the issue. As an express statutory agent, CP is an agent of the Crown pursuant to s. 17(5)(b), and for the purpose of the *ITO* Test. The pleadings establish that the Federal Court has jurisdiction on a plain and obvious standard. Any insufficiencies in the pleadings can be cured by granting the Applicants leave to further amend the statement of claim.
84. Finally, Coughlan A.J. also made a palpable and overriding error by concluding that there was no evidence of Ministerial "direction" of CP. While there is certainly no evidence of a formal directive under s. 22 of the *CPCA*, there is strong evidence that the Minister directed CP to implement and enforce the CP Vaccination Requirement.

PART IV. ORDERS SOUGHT

85. The Applicants seek an Order overturning the order and decision to strike the Applicants' claim brought under s.7 of the *Canadian Charter of Rights and*

Freedoms and the order denying the Applicants leave to amend their Statement of Claim, made on March 13, 2024, by Associate Justice Coughlan.

86. The Applicants seek an Order granting the Applicants leave to further amend their Statement of Claim to accord with the order and reasons of this Court.
87. The Applicants seek an Order overturning the order made on March 13, 2024, by Associate Justice Coughlan awarding costs against the Plaintiffs, and such further and other relief as may be necessary to give effect to the intention of this motion.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this ____ day of November, 2024.

Signature of Lawyer for Applicants
Jason Gratl
Gratl & Company

TO: Christopher Pigott & Grace McDonnell
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6
Counsel for Canada Post Corporation

AND TO: Daniel Vassberg
10423 101 Street
3rd Floor, Epcor Tower
Edmonton, AB T5H 0E7
Counsel for the His Majesty the King in the Right of Canada and the
Attorney General of Canada

PART V. LIST OF AUTHORITIES

Legislation	
1	<i>Canada Post Corporation Act</i> , R.S.C., 1985, c. C-10
2	<i>Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act, 1982 (U.K.), 1982, c. 11</i>
3	<i>Federal Court Act</i> , R.S.C. 1970, c. F-5.5
4	<i>Federal Courts Act</i> , R.S.C., 1985, c. F-7
5	<i>Federal Courts Rules</i> , SOR/98-106
6	<i>Financial Administration Act</i> , R.S.C. 1985, c. F-11
Caselaw	
1	<i>Albert v. Canada Post Corporation</i> , 2024 FC 420
2	<i>Berenguer v. Sata Internacional – Azores Airlines, SA</i> , 2023 FCA 176
3	<i>Bevan v. Husak</i> , 2024 BCCA 323
4	<i>Canada (Attorney General) v. Bedford</i> , 2013 SCC 72
5	<i>Carten v. Canada</i> , 2010 FC 857
6	<i>Carter v. Canada (Attorney General)</i> , 2015 SCC 5
7	<i>Collins v. Canada (Attorney General)</i> , 2023 FC 863
8	<i>Committee for Monetary and Economic Reform v. Canada</i> , 2014 FC 380
9	<i>Housen v. Nikolaisen</i> , 2002 SCC 33
10	<i>ITO-Int'l Terminal Operators v. Miida Electronics</i> , 1986 CanLII 91 (SCC)
11	<i>Karim v. Canada (Attorney General)</i> , 2018 FC 453
12	<i>Knight v. Imperial Tobacco Canada Ltd.</i> , 2011 SCC 42
13	<i>La Rose v. Canada</i> , 2023 FCA 241
14	<i>Lavigne v. Canada Post Corporation</i> , 2006 FC 1345

15	<i>Operation Dismantle Inc. v. Canada</i> , 1985 CanLII 74 (SCC)
16	<i>Pascuet v. Canada</i> , 2024 FC 930
17	<i>Rasmussen v. Canada (Min. of Fisheries & Oceans)</i> , 1986 CanLII 6851 (FCA)
18	<i>Rizzo & Rizzo Shoes Ltd. (Re)</i> , 1998 CanLII 837 (SCC)
19	<i>Spencer v. Canada (Attorney General)</i> , 2021 FC 361
20	<i>Union of Postal Communications Employees (PSAC) v. Canada Post Corporation</i> , 2024 CanLII 38829 (CA LA)
21	<i>Van Sluytman v. Canada</i> , 2022 FC 545



Grey Wowk Spencer LLP

Leighton B.U. Grey, K.C. *
Bradley V. Sinclair *
Alexis Trignani

Lawren E.I. Wowk *
Moe K. Tanash

Hart R. Spencer *
Connor Farquhar
David Hersey *

April 18, 2024

VIA EMAIL

Federal Court of Canada
10060 Jasper Avenue
Tower 1, Suite 530
Edmonton, Alberta T5J 3R8

Attention : Registry Officer

Re: **Albert et al v. CANADA POST CORPORATION et al**
ACTION NO. T-1436-22

CST-59

This is Exhibit " C " referred to in the
Affidavit of Jodi Kaldestad
sworn (or affirmed) before me at
Vancouver, BC
this 14 day of November 2024.

A Commissioner for Taking Affidavits for British Columbia

We are counsel for the Plaintiffs in the above noted matter. We are instructed to bring a motion to extend the timeline for filing of a Motion for Appeal of Associate Judge Coughlan's 13 March 2024 Order and Reasons under *Federal Court Rules* 8 and 51. The grounds for the Motion are:

- a) The Defendant Canada Post sought an order striking the entirety of the Claim as against Canada Post pursuant to Rule 221(1)(a) of the *Rules* and for want of jurisdiction (the "**Canada Post Motion**");
- b) The Defendant Crown sought an order pursuant to Rules 221(1)(a) and 221(1)(c) of the *Rules* striking the Claim as against Canada, or portions of it (the "**Crown Motion**");
- c) Following a two-day hearing, Associate Judge Coughlan released her Order and Reasons on 13 March 2024 granting the Defendants' motions and striking the Claim in its entirety (the "**Decision**");
- d) Several Plaintiffs seek to appeal the Decision under Rule 51 of the *Rules*; and
- e) An extension under Rule 8 of the *Rules* for filing a Motion to Appeal is sought, given the time required to obtain clear instructions from hundreds of Plaintiffs.

We seek the Court's further direction.

Yours truly,

GREY WOVK SPENCER LLP

Per:

A handwritten signature in black ink, appearing to be 'CF', written over a horizontal line.

Connor Farquhar

CF/ld

cc. Daniel Vassberg, Counsel for the Crown Defendants

cc. Christopher Pigott, counsel for the Canada Post Corporation

FEDERAL COURT

BETWEEN:

Bernard Albert and Others

Plaintiffs

AND:

Canada Post Corporation and
His Majesty the King in right of Canada

Defendants

AFFIDAVIT OF JODI KALDESTAD

I, Jodi Kaldestad, Paralegal, of 511-55 East Cordova Street, Vancouver, BC, AFFIRM
THAT:

1. I am the paralegal to Jason Gratl, who is counsel of record for the applicants in this matter and as such I have personal knowledge of the facts and matters hereinafter deposed to, save and except for information imparted to me by other people, in which case I believe the source of the information to be reliable and I believe the information to be true.
2. On January 7, 2025, counsel for Canada Post Corporation and His Majesty the King in right of Canada cross-examined Ms. Solakian, an applicant in this matter, on her affidavit. During the cross-examination, counsel made requests for documents.

This is Exhibit " A " referred to in the
Affidavit of Jodi Kaldestad
sworn (or affirmed) before me at
Vancouver, BC
this 10 day of January 2025.

GRATL & COMPANY [Signature]
A Commissioner for Taking Affidavits for British Columbia
BARRISTERS AND SOLICITORS

January 10, 2025

By Electronic Mail

Department of Justice Canada
10423 101 Street NW
3rd Floor, Epcor Tower
Edmonton, AB T5H 0E7
daniel.vassberg@justice.gc.ca
Attn: Daniel Vassberg

Fasken LLP
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6
cpigott@fasken.com
Attn: Christopher Pigott

Dear Sirs:

**Re: Albert and Others v. CPC and HMTK
Federal Court File No. T-1436-22**

I write in response to requests for documents made by Mr. Vassberg during the cross examination of Ms. Karine Solakian on her affidavit affirmed November 14, 2024, which occurred on January 7, 2025. Responses are as follows:

1. Provide a copy of the email that Ms. Solakian sent to the other plaintiffs requesting their position on whether or not they wished to appeal Justice Coughlan's March 13, 2024 decision.

See attached "2024 03 28 – Client Appeal Email.pdf".

2. Provide a copy of the May 13, 2024 email referenced in paragraph 11 of Ms. Solakian's affidavit. Specifically, the email Ms. Solakian deposes to have sent to GWS LLP requesting an update.

See attached **“2024 May and June – Grey Client Correspondence.pdf”**. Please note that there is an error in the affidavit. Paragraph 11 should state **“On May 14, 2024...”**.

- 3. Provide a copy of GWS LLP’s response to the May 13, 2024 email referenced in Request 2.

See attached **“2024 May and June – Grey Client Correspondence.pdf”**.

- 4. Provide a copy of the June 6, 2024 email referenced in paragraph 11 of Ms. Solakian’s affidavit. Specifically, the email Ms. Solakian deposes to have sent to GWS LLP requesting an update.

See attached **“2024 May and June – Grey Client Correspondence.pdf”**.

- 5. Provide a copy of the June 19, 2024 email referenced in paragraph 11 of Ms. Solakian’s affidavit. Specifically, the email Ms. Solakian deposes to have sent to GWS LLP requesting an update.

The June 19 communication referred to in paragraph 11 was a voicemail.

- 6. Provide a copy of Mr. Farquhar’s July 4, 2024 communication, which is referenced in paragraph 12 of Ms. Solakian’s affidavit.

See attached **“2024 07 04 – Grey Client Correspondence.pdf”**.

- 7. Provide a copy of the email Ms. Solakian sent to GWS LLP on July 22, 2024, which is referenced in paragraph 13 of Ms. Solakian’s affidavit.

See attached **“2024 07 29 – Grey Client Correspondence.pdf”**. The draft Notice of Motion Brief referenced in the July 17 email is also attached.

- 8. Provide a copy of the email GWS LLP sent on September 4, 2024, which is referenced in paragraph 14 of Ms. Solakian’s affidavit.

See attached **“2024 09 04 – Grey Letter to Client.pdf”**.

Thank you for your time and attention to this matter.

Sincerely,

 Jason Grat

REQUEST 1



Re: T-1436-22 Appeal Intake Form

1 message



On Thu, Mar 28, 2024, 6:02 p.m. <p4f.legal@gmail.com> wrote:

Google Forms

I've invited you to fill out a form:

T-1436-22 Appeal Intake Form

Please complete and submit this form on or before ~~April 5th 2024~~, this form is required to determine your personal intentions with respect to appealing.

FILL OUT FORM

Create your own Google Form

REQUEST 2, 3, 4

Re: Posties Appeal CST-59A

[Redacted text block]

Original message

From: Karine Solakian <karines68@hotmail.com>
Date: 2024-06-06 8:07 a.m. (GMT-07:00)
To: Connor Farquhar <CFarquhar@gwslip.ca>

[Redacted]
[Redacted]

Subject: Re: Posties Appeal CST-59A

Good Morning Connor,

Has there been any finalization of our Motion from the last time we contacted?

Best Regards,

Karine, [Redacted]

[Redacted]

From: Connor Farquhar <CFarquhar@gwsllp.ca>

Sent: Wednesday, May 15, 2024 2:14:48 PM

To: Karine Solakian <karines68@hotmail.com>

[Redacted]
[Redacted]
[Redacted]

Subject: RE: Posties Appeal CST-59A

Good afternoon, Karine,

I have reviewed our Motion to extend. There is still some fine-tuning that needs to be done before we submit same for filing. We will provide you with an update once our Motion is finalized.

Thank you,



Connor Farquhar | Associate | Grey Wowk Spencer
LLP

#200, 5110-51 Ave; Box 1028 | Cold Lake, Alberta T9M 1P3|

Ph: 780.594.0299 | F: 780.594.0211

#202, 4702-1st Street SW | Calgary, Alberta T3E 7V3 | Ph:

403.543.9955 | F: 403.543.9956

www.gwsllp.ca

IMPORTANT NOTICE: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the

employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication in error, please notify Grey Wowk Spencer LLP, Legal Counsel immediately by email at cfarquhar@gwsllp.ca.

From: Karine Solakian <karines68@hotmail.com>

Sent: Tuesday, May 14, 2024 5:36 AM

To: Connor Farquhar <CFarquhar@gwsllp.ca>

Subject: Posties Appeal CST-59A

Good Morning Connor,

We were wondering if the courts have finalized and granted us an extension to submit the appeal.

We've asked several times now and have not received any documentation verifying it.

Where are we in the process?

Best Regards,

[Redacted]
Karine Solakian

[Redacted]

[Redacted]

[Redacted]

[Redacted]

REQUEST 6

RE: Inquiry**From:** Connor Farquhar CFarquhar@gwsllp.ca**To:** Karine Solakian karines68@hotmail.com,Leighton Grey LGrey@gwsllp.ca**Cc:** Lesley Doucet LDoucet@gwsllp.ca,**Sent:** Thursday, July 4 at 6:42 p.m.

Good afternoon,

Ms. Trignani had been tasked with drafting the Request for Extension. I had followed up with her several times to provide you and your group with an update RE: same. As of last Friday, Ms. Trignani is no longer with our firm. I will be taking over many of her files, including the drafting of the request for an extension to appeal. I am working as quickly as I can, and endeavor to have a draft completed for your review before the weekend. There is no prescribed timeline to submit the request, but the sooner we do, the better.

Thank you,



Connor Farquhar | Associate | Grey Wovk Spencer

LLP

#200, 5110-51 Ave; Box 1028 | Cold Lake, Alberta T9M 1P3 |

Ph: [780.594.0200](tel:780.594.0200) | F: [780.594.0211](tel:780.594.0211)#202, 4702-1st Street SW | Calgary, Alberta T3E 7V3 | Ph:[403.543.9955](tel:403.543.9955) | F: [403.543.9956](tel:403.543.9956)www.gwsllp.ca

IMPORTANT NOTICE: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or

*copying of this communication in error, please notify Grey Work Spencer
LLP, Legal Counsel immediately by email at cfarquhar@gwsllp.ca*

From: Karine Solakian <karines68@hotmail.com>
Sent: Wednesday, July 3, 2024 8:36 PM
To: Leighton Grey <L.Grey@gwsllp.ca>; Connor Farquhar
<CFarquhar@gwsllp.ca>
Cc: Lesley Doucet <L.Doucet@gwsllp.ca>

[Redacted]

Subject: Inquiry

Good Day,

[Redacted]

We were also wondering, as we have asked for updated status of the request for extension to appeal several times since May 15th with no response. Has this been completed? How much time do we have to submit the request?

[Redacted]

[Redacted]

Karine Solakian

[Redacted]

he'd have a draft to us before the weekend.

• July 17.24 we reached out again and you responded with a Draft document which you invited us to review and comment.

• July 22.24 we responded with our comments.

• [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Going forward we will direct all inquiries to Connor.

Kind regards,

Kim
Karine

[REDACTED]
[REDACTED]

Sent from my Galaxy

----- Original message -----

From: Leighton Grey <Grey@gwsllp.ca>
Date: 2024-07-26 8:15 a.m. (GMT-07:00)
To: Karine Solakian <karines68@hotmail.com>
Cc: Connor Farquhar <CFarquhar@gwsllp.ca> [REDACTED]

[REDACTED]
[REDACTED]

Subject: Re: Inquiry

Good morning.

[Redacted]

[Redacted]

(2) The case was assigned to Connor Farquhar of our office. At this point, my only involvement is as a resource to him;

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Regards,

Sent from my iPad

On Jul 22, 2024, at 5:35 PM, Karine Solakian <karines68@hotmail.com> wrote:

Good evening Leighton and Connor:

Having reviewed the draft motion provided, with our fellow plaintiffs, we come back to you with the following observations:

[Redacted text block]

[Redacted text block]

We look forward to further fleshing out of the draft, our final review, and it being filed as promptly as possible.

Kind regards,

[Redacted signature]
Karine, [Redacted]

[Redacted text]

From: Karine Solakian <karines68@hotmail.com>
Sent: Wednesday, July 17, 2024 4:19:49 PM

[Redacted text block]

Subject: Fwd: Inquiry

Get [Outlook for Android](#)

From: Leighton Grey <L.Grey@gwsllp.ca>
Sent: Wednesday, July 17, 2024 2:20:53 PM
To: Karine Solakian <karines68@hotmail.com>
Cc: Jackie Kasper <JKasper@gwsllp.ca>; Lesley Doucet <L.Doucet@gwsllp.ca>
Subject: FW: Inquiry

Good afternoon.

Attached please find the draft Notice of Motion Brief for your review and comments.

Best Regards,



Leighton B.U. Grey, K.C.

BA(Distinction) LLB.

Member of AB (1993), SK (2004), BC (2015), & MB
(2023) Law Societies

Senior Partner | Licenced Mediator | Grey Wowk
Spencer LLP

#200, 5110-51 Ave; Box 1028 | Cold Lake, Alberta T9M

1P3 | Ph: [780.594.0299](tel:780.594.0299) | F: [780.594.0211](tel:780.594.0211)

#202, 4702 – 7th Street SW | Calgary, Alberta T2G 0A2 |

Ph: [403.543.9959](tel:403.543.9959) | F: [403.543.9956](tel:403.543.9956)

www.gwsllp.ca

IMPORTANT NOTICE: This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication in error, please notify Grey Wowk Spencer LLP, Legal Counsel immediately by email at lgrey@gwsllp.ca.

FEDERAL COURT

BETWEEN:

BERNARD ALBERT and others

Plaintiffs

and

CANADA POST CORPORATION, HIS MAJESTY THE KING IN RIGHT OF CANADA

Defendants

NOTICE OF MOTION

TAKE NOTICE THAT the Plaintiffs will make a motion to the Federal Court under Rule 369 of the *Federal Court Rules*.

THE MOTION IS FOR

- a) An Order extending the limitation for filing of a Motion for Appeal;
- b) An Order allowing the Plaintiffs' Motion for Appeal;
- c) Costs of this motion; and
- d) Such other grounds that counsel may advise and that this Honourable Court deems appropriate.

THE GROUNDS FOR THE MOTION ARE

- a) The Defendant Canada Post sought an order striking the entirety of the Claim as against Canada Post pursuant to Rule 221(1)(a) of the *Rules* and for want of jurisdiction (the "Canada Post Motion").
- b) The Defendant Crown sought an order pursuant to Rules 221(1)(a) and 221(1)(c) of

the *Rules* striking the Claim as against Canada, or portions of it (the “**Crown Motion**”).

- c) Following a two-day hearing, Associate Judge Coughlan released her Order and Reasons on 13 March 2024 granting the Defendants’ motions and striking the Claim in its entirety (the “**Decision**”).
- d) Several Plaintiffs seek to appeal the Decision under Rule 51 of the *Rules*.
- e) An extension under Rule 8 of the *Rules* for filing a Notice of Motion for Appeal is sought, given the time required outside of Rule 51 to obtain clear instructions from hundreds of Plaintiffs and transcribe the audio recording of the hearing.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) Order and Reasons of A.J. Coughlan dated 13 March 2024; and
- b) Such further and other evidence as counsel may advise and this Honourable Court may permit.

_____ 2024

GREY WOWK SPENCER LLP
 #202, 4702-1 Street SW
 Calgary, Alberta T2G 0A2

Connor Farquhar
 Email: cfarquhar@qwsllp.ca
 Tele: (403) 543-9955
 Fax: (403) 543-9956
 Solicitor for the Plaintiffs

TO: FEDERAL COURT
 Calgary Local Office
 Canadian Occidental Tower
 635 Eighth Avenue SW, 3rd Floor
 PO Box 14
 Calgary, Alberta T2P 3M3

Tele: (403) 292-5920
 Fax: (403) 292-5329

AND TO: FASKEN MARTINEAU DUMOULIN LLP
 333 Bay Street, Suite 2400

Toronto, Ontario M5H 2T6

Christopher Pigott
Tele: (406) 865-5475
Email: cpigott@fasken.com

Solicitor for the Defendant, Canada Post Corporation

AND TO: DEPARTMENT OF JUSTICE CANADA
300, 10423-101 Street NW
Edmonton, Alberta T5H 0E7

Per: Daniel Vassberg/Christine Williams
Tele (587) 545-3097
Fax : (780) 495-8491
Email: Daniel.Vassberg@justice.gc.ca
Email: Christine.Williams@justice.gc.ca

Lawyers for the Defendant,
His Majesty the King in Right of Canada



Grey Wowk Spencer LLP

Leighton B.U. Grey, K.C. *
Bradley V. Sinclair *

Lawren E.I. Wowk *

Harl R. Spencer *
Moe K. Yanash

CST-59A

September 4, 2024

VIA EMAIL:

Posties v. CPC [REDACTED]
Karine Solakian- karine68@hotmail.com

[REDACTED]

Dear Sirs/Madams:

Re: **Albert et al v. CANADA POST CORPORATION et al**
ACTION NO. T-1436-22

We write to advise that Mr. Farquhar has left our employ. [REDACTED]

[REDACTED]

The undersigned has confirmed that he cannot proceed as counsel of record for the Motion [REDACTED]

Yours truly,
GREY WOWK SPENCER LLP
Per:

Leighton Grey (Sep 4, 2024 13:50 MDT)

Leighton B.U. Grey, K.C.
LBUG/ld
Enclosures

QUESTIONING OF KARINE SOLAKIAN
WATERLOO, ONTARIO
BY D. VASSBERG, C. PIGOTT
AFFIDAVIT AFFIRMED NOVEMBER 14, 2024
HELD JANUARY 7, 2025
VIA REMOTE VIDEO

Court File No. T-1436-22

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

Plaintiffs

and

CANADA POST CORPORATION and HIS MAJESTY THE KING IN
RIGHT OF CANADA

Defendants

1 _____
2 Taken before H. Postma-Strand, Official Court
3 Reporter, pursuant to Rules 5.26, 6.20, and 13.46 of
4 the Court of King's Bench of Alberta.

5 _____

6 FOR THE PLAINTIFFS/APPLICANTS:

7 J. Gratl
8 Gratl & Company
9 55 E Cordova Street
10 Vancouver, British Columbia
11 604-694-1919

12

13 FOR THE DEFENDANTS HIS MAJESTY THE KING IN
14 RIGHT OF ALBERTA and THE ATTORNEY GENERAL OF
15 CANADA:

16 D.N. Vassberg
17 Department of Justice Canada
18 300, 10423-101 Street
19 Edmonton, Alberta
20 587-336-1492

21

22

23

24

25

26

27

1 FOR THE DEFENDANT CANADA POST CORPORATION:

2 C.D. Pigott

3 R.M. Counsell

4 Fasken Martineau DuMoulin LLP

5 2400, 333 Bay Street

6 P.O. Box 20

7 Toronto, Ontario

8 416-366-8381

9

10 OFFICIAL COURT REPORTER:

11 H. Postma-Strand, CSR(A)

12 Commissioner for Oaths Appointee No. 0743159

13 ASRA Membership No. 186

14 Dicta Court Reporting Inc.

15 760, 1015-4 Street SW

16 Calgary, Alberta

17 403-531-0590

18

19

20

21

22

23

24

25

26

27

1 (PROCEEDINGS COMMENCED AT 10:11 AM)

2 KARINE SOLAKIAN, Affirmed, Questioned by

3 D. Vassberg

4 Q D. VASSBERG: Good morning,
5 Ms. Solakian. My name is Daniel Vassberg. I'm
6 counsel with the Department of Justice Canada.
7 I act on behalf of the federal defendants in
8 Federal Court File Number T-1436-22. Can you
9 confirm that you swore an affidavit -- or
10 excuse me -- affirmed an affidavit dated
11 November 14th, 2024, in this action?

12 A I did.

13 Q And that affidavit was your evidence in support
14 of a number of plaintiffs' application to
15 extend an appeal timeline; correct?

16 A Correct.

17 Q And through the course of this
18 cross-examination, I'd like to use short forms
19 for a few phrases, and so I will just tell you
20 what I would like those to be, and if you could
21 confirm that you understand. If I refer to the
22 Canada Post Corporation as "Canada Post", will
23 you know what I'm referring to?

24 A Yes, I will.

25 Q If I refer to His Majesty in Right of Canada or
26 The Attorney General of Canada cumulatively as
27 "Canada", will you understand what I'm

1 referring to?

2 A Yes.

3 Q If I refer to Federal Court File T-1436-22 as
4 "the action" or "the claim", will you know what
5 I'm referring to?

6 A Yes.

7 Q And if I refer to the written decision Albert
8 v. Canada Post Corporation, 2024 FC 420 simply
9 as "the decision", will you know what I'm
10 referring to?

11 A Yes.

12 Q And if I refer to Grey Wowk Spencer LLP, your
13 former counsel, as "GWS LLP", will you know
14 what I'm referring to?

15 A Yes.

16 Q At paragraph 3 of your affidavit, you state:
17 (as read)

18 Among the team of four plaintiffs who
19 instructed former legal counsel.
20 Who were the three other plaintiffs other than
21 yourself?

22 A That would have been Kim Priest, Mark Daggett,
23 and Paul Lussier.

24 Q Could you spell those for me, please.

25 A Kim Priest is K-I-M, P-R-I-E-S-T; Mark Daggett
26 is M-A-R-K, D-A-G-G-E-T-T; and Paul Lussier is
27 P-A-U-L, L-U-S-S-I-E-R.

1 Q And if I refer to yourself, Kim Priest,
2 Mark Daggett, and Paul Lussier collectively as
3 "the instructing plaintiffs", will you know
4 that I'm referring to those four individuals?

5 A Yes, I will.

6 J. GRATL: I'm going to object -- I
7 object to the question.

8 D. VASSBERG: Okay. What's the basis
9 for the objection?

10 J. GRATL: You're stipulating
11 content.

12 D. VASSBERG: What does that mean?

13 J. GRATL: Your definition
14 stipulates substantive content.

15 D. VASSBERG: I just want to be sure if
16 I'm referring to that group of individuals,
17 Ms. Priest [sic] knows who I'm referring to.
18 You find that objectionable?

19 J. GRATL: Well, I think that your
20 definition incorporates substantive content.

21 D. VASSBERG: Well, in the affidavit,
22 Ms. Priest states that she was among a team of
23 four plaintiffs who instructed former legal
24 counsel.

25 J. GRATL: Yes.

26 (OBJECTION)

27 D. VASSBERG: Okay. Let's move on.

1 Q D. VASSBERG: Ms. Priest, did any
2 plaintiffs other than the four instructing
3 plaintiffs, being Kim Priest, Mark Daggett,
4 Paul Lussier, and yourself, communicate or
5 attempt to communicate with GWS LLP at any time
6 between March 14 and September 4, 2024?

7 J. GRATL: I'm going to object to
8 the question.

9 D. VASSBERG: Okay. What's the basis?

10 J. GRATL: Relevance.

11 D. VASSBERG: We're trying to assess
12 the steps taken by the plaintiffs to advance
13 this claim in order to assess whether or not an
14 extension of time is appropriate. I would like
15 to confirm whether Ms. Priest is aware of any
16 communication by any non-instructing plaintiffs
17 with GWS LLP, which would be relevant to
18 whether or not the plaintiffs appropriately
19 tried to advance this file.

20 Just a moment. We've lost Mr. Gratl.

21 J. GRATL: The objection, I said, is
22 too -- or the question is too broad, and it is
23 irrelevant.

24 D. VASSBERG: So you're refusing to
25 advise as to whether or not there was contact
26 between anyone other than the instructing
27 plaintiffs and GWS LLP since the decision was

1 rendered?

2 J. GRATL: I'm objecting to the
3 question on the basis that it's too broad and
4 it's irrelevant.

5 (OBJECTION)

6 Q D. VASSBERG: Ms. Priest, how did you
7 communicate with the initial 281 plaintiffs
8 that were on this action?

9 A Are you referring to me?

10 Q Or -- excuse me. I said Ms. Priest.
11 Ms. Solakian.

12 A Oh. Okay. How did we communicate with the
13 other plaintiffs?

14 Q Yes.

15 A By email, by live chat, by a private room
16 online that we created specifically for that
17 group, in person. It just depended on the
18 situation.

19 Q Okay. And when you say "private room", what
20 does that mean?

21 J. GRATL: I'm -- I'm going to
22 object. What's the relevance?

23 D. VASSBERG: I'm trying to assess how
24 information was communicated between the
25 plaintiffs in order to inform later questions
26 about what was done in the intervening period
27 since the decision was rendered.

1 J. GRATL: What -- what's the
2 relevance of that?

3 D. VASSBERG: The Court needs to assess
4 whether or not the plaintiffs reasonably
5 conducted themselves and promptly conducted
6 themselves in bringing the appeal.

7 J. GRATL: So what's the relevance
8 of the private chat detail?

9 D. VASSBERG: I'd just like to know
10 details of --

11 J. GRATL: What does that have to do
12 with properly conducting oneself?

13 D. VASSBERG: Okay. So you refuse to
14 permit Ms. Solakian to answer the question?

15 Mr. Gratl, you cut out again.

16 J. GRATL: In the absence of any
17 explanation as to relevance, I object to the
18 question.

19 D. VASSBERG: Okay.

20 (OBJECTION)

21 Q D. VASSBERG: Ms. Solakian, at
22 paragraph 5 of your -- of your affidavit, you
23 state: (as read)

24 It is logistically complicated and
25 time consuming for a large group of
26 plaintiffs or appellants to obtain
27 legal advice and to give instructions

1 to legal counsel.

2 Was legal advice provided to all of the
3 plaintiffs or just the four instructing
4 plaintiffs?

5 A Legal advice was provided --

6 J. GRATL: I'm going --

7 A I'm sorry.

8 J. GRATL: I'm going to object.

9 What's the -- what's the relevance?

10 D. VASSBERG: In support of your
11 application, Ms. Solakian has sworn an
12 affidavit that asserts or implies that the
13 number of plaintiffs is relevant to how long it
14 should take to bring an appeal or an
15 application for an extension of time. I would
16 like to confirm the types of communications
17 that took place that might explain whether or
18 not that argument or implication is reasonable.

19 J. GRATL: All right. Go ahead.

20 A Could you repeat the question?

21 Q D. VASSBERG: Was legal advice provided
22 to all of the plaintiffs or just the four
23 instructing plaintiffs?

24 A Legal advice was provided to all of the
25 plaintiffs.

26 Q Did that change based on the type of advice
27 that was provided?

1 A I don't understand the question.

2 Q Were there times when GWS LLP would only
3 communicate with the four instructing
4 plaintiffs versus times when they would
5 communicate with all, let's say, 281 of the
6 initial plaintiffs?

7 A Yes.

8 Q Okay. And how would things differ?

9 A If we wanted to have him go on a Zoom call with
10 us, it would be with the four instructing
11 plaintiffs initially. And then if -- depending
12 on what he said, we would sometimes invite him
13 to come and speak to the entire group.

14 Q As far as you were aware, were the four
15 instructing plaintiffs entitled to consent to
16 an approach on behalf of all remaining
17 plaintiffs?

18 J. GRATL: I'm going to object.

19 D. VASSBERG: Okay. What's the basis?

20 J. GRATL: Solicitor-client
21 privilege.

22 D. VASSBERG: Okay. And you appreciate
23 that in Ms. Solakian's affidavit, she describes
24 herself as an instructing plaintiff? And you
25 maintain that objection, Mr. Gratl?

26 J. GRATL: Are you asking me whether
27 I know what's in the affidavit?

1 D. VASSBERG: Okay.

2 J. GRATL: I'm not sure what you're
3 asking.

4 D. VASSBERG: So -- so you refuse
5 Ms. Solakian to advise whether or not she could
6 confirm instructions on behalf of the other
7 plaintiffs?

8 J. GRATL: (UNREPORTABLE SOUND)

9 D. VASSBERG: Is that a yes?
10 Mr. Gratl?

11 J. GRATL: No.

12 Ms. Solakian, go ahead. You can answer
13 that question.

14 A In asking that question, are you referring to
15 current? My current affidavit in the current
16 group? Or previous?

17 Q D. VASSBERG: Let's say as of the time
18 that the decision was rendered. So on
19 March 14, 2024, were you and the three other
20 instructing plaintiffs permitted to provide
21 instructions on behalf of the remaining
22 plaintiffs in the action?

23 A To some extent. But if there was a decision to
24 be made as to any kind of a filing, that would
25 be done by the entire group.

26 Q Okay. Then in what instances would you be
27 permitted to provide instructions on behalf of

1 the entire group?

2 J. GRATL: I'm going to object.

3 You're asking for solicitor-client privileged
4 information.

5 (OBJECTION)

6 Q D. VASSBERG: So, Ms. Solakian, when
7 you say that all of the plaintiffs would need
8 to consent to a filing, what do you mean by
9 that? Would each individually contact Mr. Grey
10 or GWS LLP? How would that work?

11 A Normally with GWS LLP specifically if -- not
12 if, but when we requested an appeal, then they
13 sent out notice to each individual plaintiff
14 requesting direction from each of the
15 plaintiffs in the group.

16 Q Okay. And when you say "we", who is the "we"
17 that you're referring to?

18 A The group as a whole.

19 Q What you said was, to quote, "when we requested
20 an appeal, they sent notice to each plaintiff",
21 end quote --

22 A Right.

23 Q -- and when you say "we requested", who was the
24 "we" that would request it before that --

25 A The group appealing.

26 Q Ms. Solakian, just let me finish my question
27 before you begin --

1 A Oh, I'm sorry.

2 Q -- speaking. Okay?

3 So the four instructing plaintiffs would
4 provide instructions, including to request an
5 appeal, and then a confirmation notice was sent
6 out to the remaining plaintiffs by GWS LLP. Is
7 that correct?

8 A No.

9 Q No? Okay. Then explain how that's incorrect.

10 A The four instructing plaintiffs would have a
11 meeting, discuss the options, provide feedback
12 to the entire group. And once the entire group
13 of whoever decided to appeal wanted to appeal,
14 then we would instruct the office of GWS that
15 there are a large number of appellants, and
16 then they would provide all of the entire group
17 confirmation requests.

18 Q And how were those requests sent?

19 J. GRATL: I'm -- I'm going to
20 object.

21 D. VASSBERG: Okay. What's the basis?

22 J. GRATL: Relevance.

23 D. VASSBERG: I think it's important to
24 know the time in which it would take for a
25 plaintiff to receive that notice that an appeal
26 was pending or anticipated because that might
27 impact how long it would take to respond, if

1 they get the notice in the mail versus via
2 telephone versus email. Do you maintain that
3 objection, Mr. Gratl?

4 J. GRATL: Yes.

5 (OBJECTION)

6 Q D. VASSBERG: Ms. Solakian, you
7 received a copy of the decision from GWS LLP on
8 March 14, 2024; correct?

9 A Correct.

10 Q And was that via email?

11 A Yes.

12 Q At the time, as outlined in the decision, there
13 were 149 active plaintiffs on the file. Was
14 that email sent to all of the active plaintiffs
15 or just the four instructing plaintiffs?

16 J. GRATL: I'm going to object.

17 What's the relevance?

18 D. VASSBERG: In order to assess the
19 reasonableness of the plaintiff's conduct in
20 the intervening period between when the
21 decision was rendered and when the extension of
22 time was filed, it is useful to know when they
23 received the decision itself.

24 J. GRATL: Uh-huh.

25 D. VASSBERG: Do you maintain your
26 objection?

27 J. GRATL: Yes. I -- I -- I think

1 it's a -- it's a question that does not assist
2 in any way at getting to the reasons for the
3 delay. It is remarkably irrelevant.

4 (OBJECTION)

5 Q D. VASSBERG: Ms. Solakian, at
6 paragraph 7 of your affidavit, you state:
7 (as read)

8 The plaintiffs then immediately on
9 March 14, 2024, requested legal advice
10 from GWS LLP on the merits of the
11 appeal.

12 Who specifically requested that advice?

13 A The group of four.

14 Q And how was that advice requested?

15 A We sent a request for a meeting via email.

16 Q Was the request for legal advice on the merits
17 of the appeal or just for a meeting?

18 A It was for a meeting to discuss the merits of
19 an appeal.

20 Q Okay. Was a response received for that -- to
21 that meeting request?

22 A Yes.

23 Q When was that received?

24 A I believe within a day or two.

25 Q And when did you meet?

26 A March 18th, I believe, is the date.

27 Q Okay. And as of March 18, 2024, what was your

1 understanding of the appeal timeline that you
2 were subject to?

3 A I don't believe there was a timeline mentioned
4 at that point. It was whether or not there was
5 an appealable case. And we asked for
6 clarification on some of the points of the
7 decision.

8 Q So was it your understanding that there were no
9 deadlines to file an appeal?

10 A March 18th? I think there was a mention of a
11 30-day timeline.

12 Q A mention by who?

13 A By previous counsel.

14 Q By GWS LLP?

15 A Correct.

16 Q Is that Mr. Grey?

17 A Correct.

18 Q And what happened, and what meetings or
19 communication concerning the decision occurred
20 between the March 18, 2024, meeting and
21 April 7, 2024?

22 A Communications with whom?

23 Q Concerning the decision by the plaintiff group,
24 with counsel, with the instructing plaintiffs.

25 J. GRATL: I'm -- I'm going to
26 object. It sounds like you're attempting to
27 solicit solicitor-client communications.

1 D. VASSBERG: I'm not asking for the
2 content. I'm asking what meetings occurred, if
3 any, or communications occurred, if any.

4 J. GRATL: You're asking for the
5 dates of all meetings and communications?

6 D. VASSBERG: Between the March 18,
7 2024, meeting and April 7, 2024.

8 J. GRATL: You want -- you want the
9 witness to list all the dates of all
10 communications?

11 D. VASSBERG: I want her to advise of
12 what communications occurred between that
13 period.

14 J. GRATL: I don't understand the
15 question. Are you asking for the specific
16 dates, or are you asking generally for a -- a
17 synopsis of communications? Or what are you --
18 what are you driving at?

19 D. VASSBERG: Let's -- let's start --

20 Q D. VASSBERG: Ms. Solakian, were there
21 any communications between the plaintiffs
22 internally or with GWS LLP between -- from
23 after the March 14 -- or excuse me -- March 18,
24 2024, meeting, and April 7, 2024?

25 A I'm sorry. Were there any communications with
26 the plaintiffs themselves, the large group of
27 plaintiffs?

1 Q Yes. Or with GWS LLP and those plaintiffs.

2 A Yes, there were.

3 Q Okay. And what were those communications?

4 J. GRATL: Again, I'm going to
5 object. It sounds like you're trying to
6 solicit the contents of communications that are
7 subject to solicitor-client privilege.

8 (OBJECTION)

9 Q D. VASSBERG: Okay. When did those
10 communications specifically occur,
11 Ms. Solakian?

12 A With whom?

13 Q Internally with the plaintiffs or between the
14 plaintiffs and GWS LLP between March 18, 2024,
15 and April 7, 2024?

16 J. GRATL: Are you asking about each
17 and every communication between 66 plaintiff
18 applicants and each and every communication
19 between any of those plaintiffs and the law
20 firm?

21 D. VASSBERG: Well, Mr. Gratl, I don't
22 know the number of plaintiffs that were
23 communicating and who they were communicating
24 with and when those communications occurred,
25 and that's why I'm asking the question.

26 J. GRATL: I don't know. It just
27 seems, like, very difficult to understand how a

1 list of all communications between, say, 80 or
2 so people in a three-week time period will
3 assist the Court.

4 D. VASSBERG: Mr. Gratl, we're trying
5 to determine whether or not the plaintiffs,
6 specifically the applicants, took reasonable
7 steps to either file an appeal or bring an
8 extension of time to do so. In order to assess
9 that, we need to establish a timeline of what
10 was done and communicated by and between those
11 individuals. So if you're refusing --

12 J. GRATL: I'm -- I'm -- I'm -- I'm
13 saying that your question dealing with the
14 dates of -- and times of all communication
15 between, say, 70 or 80 people, that's too far
16 afield. If you could narrow down your
17 questions to drive at the questions of whether
18 these plaintiffs were wasting time or dawdled
19 or -- (AUDIO FEED LOST).

20 D. VASSBERG: Mr. Gratl, you've cut
21 out, and we lost you at "dawdled".

22 J. GRATL: Yes. The question is
23 whether these plaintiffs dawdled or wasted
24 time. Isn't that the point at issue?

25 Q D. VASSBERG: Ms. Solakian, you agree
26 that you had a meeting on March 18, 2024,
27 concerning the decision with GWS LLP; correct?

1 A Correct.

2 Q And you agree that in your affidavit, you swear
3 that the -- or a group of appellants
4 crystallized the intention to appeal the
5 decision --

6 A M-hm.

7 Q -- on April 8, 2024; correct?

8 A Correct.

9 Q So what happened between March 18, 2024, and
10 April 7, 2024, that led that group to
11 crystallize its intention?

12 A GWS LLP -- between March 18th and April 7th, we
13 had a group meeting with GWS. They were able
14 to ask questions. There was back and forth
15 information. We summarized the decision, his
16 thoughts on appeal. And then the group itself
17 basically communicated daily with all of us.

18 There is a large group. They were able to
19 chat freely. We answered questions. We
20 provide questions.

21 J. GRATL: I -- I just want to
22 caution Ms. Solakian not to divulge the
23 contents --

24 A M-hm.

25 J. GRATL: -- of communications with
26 legal counsel.

27 A Okay.

1 Q D. VASSBERG: Okay. Ms. Solakian, you
2 said you had a group meeting between the
3 plaintiffs and GWS LLP. What day did that
4 meeting take place on?

5 A I believe it was March 26th.

6 Q And why did it take a week to schedule that
7 meeting?

8 A I am unable to see the GWS appointment calendar
9 for availability. I don't know.

10 Q You don't know. Okay. You agree that you just
11 don't know?

12 A Well, I don't know because that was the date
13 that was available from GWS office.

14 Q And why did it take two weeks from that meeting
15 on March 26th until April 7 or April 8, 2024,
16 for the intention to appeal to be crystallized,
17 as you describe it?

18 A The plaintiffs, the group of plaintiffs, made
19 their intentions known that they wished to
20 appeal, and some made them immediately and some
21 wanted to think it over. And so crystallized
22 means finalized, and that's when it was
23 finalized. It wasn't that it was a random date
24 that they all came together and decided,
25 Today's the day we're going to make that
26 decision. It came about throughout the two
27 weeks, or the period of seeing the GWS meeting

1 with the group and April 7th.

2 Q When did you form an intention to appeal the
3 decision?

4 A My personal intention?

5 Q Yes.

6 A Probably somewhere between the March 18th and
7 the March 26th meeting.

8 Q And when you say -- or when you said previously
9 that some made the decision that they wanted to
10 appeal immediately, how many plaintiffs
11 communicated that intention immediately?

12 J. GRATL: Indicated to whom?

13 D. VASSBERG: To GWS LLP or
14 Ms. Solakian or the other instructing
15 plaintiffs.

16 J. GRATL: That's a -- I wonder if
17 you could ask those questions severally rather
18 than combining multiple questions in this
19 disjunctive form.

20 Q D. VASSBERG: Okay. Ms. Solakian, when
21 you previously said that some of the plaintiffs
22 made the decision to appeal immediately, could
23 you explain the timing and to whom that
24 decision was communicated?

25 J. GRATL: Now, that's two
26 questions. Could you ask one question at --

27 (AUDIO FEED LOST)

1 D. VASSBERG: Okay. Mr. Gratl, you cut
2 out again. Can you hear us?

3 J. GRATL: Oh, I was just saying --
4 making a request for you to ask one question at
5 a time.

6 Q D. VASSBERG: Okay. Ms. Solakian, when
7 you said the word "immediately", what did
8 "immediately" mean to you?

9 A "Immediately" meant right after we received and
10 read through the decision in and amongst our
11 group.

12 Q So that would be on or about March 14, 2024?

13 A Or just shortly after.

14 Q And when you say "shortly after", do you mean
15 within a day, two days?

16 A Yeah, within a day or two.

17 Q And who was it that advised that they intended
18 to appeal within a day or two of receiving the
19 March 14, 2024, decision?

20 A About --

21 J. GRATL: I'm sorry. I'm going to
22 have to object. You asked a question about
23 what Ms. Solakian meant by the word
24 "immediately" in -- in paragraph 7; right?

25 D. VASSBERG: I was asking her about
26 when she used the word "immediately" in
27 response to a question that I had asked her.

1 J. GRATL: Well, no, I thought you
2 said -- when you used the word "immediately",
3 that's in response to paragraph 7.

4 D. VASSBERG: That is not what I said.

5 Q D. VASSBERG: So, Ms. Solakian, going
6 back to the question that I asked. For
7 context, you indicated that there were
8 plaintiffs that confirmed their intention to
9 appeal within a day or two of receiving the
10 decision --

11 A Correct.

12 Q -- so on or about March 15 or 16, 2024;
13 correct?

14 A Correct.

15 Q And I asked who those plaintiffs were.

16 A When you say "who those plaintiffs were", are
17 you looking for names?

18 Q Yes.

19 A Or are you looking for a round number?

20 Q If it's more than five, a round number is fine.

21 A 40 plaintiffs.

22 Q So on or about March 16, 2024, 40 plaintiffs
23 confirmed their intention to appeal the
24 decision; correct?

25 A Correct.

26 Q And that was prior to meeting with GWS LLP;
27 correct?

1 A Correct.

2 Q And of those 40 plaintiffs, did that -- did any
3 change their mind and not become part of the
4 current applicant group?

5 A I can't answer that with certainty. I would
6 have to go back over some of the notes that
7 were kept back then and look at the 40 names
8 and then match them up with the current group.

9 Q I'm not asking you to do any digging. Perhaps
10 I can word it like this: Do you recall
11 specifically any plaintiffs that changed their
12 mind and didn't become applicants?

13 A Specifically, no.

14 Q So you've indicated that 40 crystallized their
15 intention on or about March 16, 2024. And then
16 at paragraph 8 of your affidavit, you state:
17 (as read)

18 A core group of appellants
19 crystallized the intention to appeal
20 the dismissal of Action T-1436-22 on
21 April 8, 2024.

22 So between March 16 and April 8, there was an
23 additional -- let's see -- 26 plaintiffs that
24 indicated they wanted to become applicants or
25 appellants?

26 A It was actually more at that time.

27 Q Okay. How many?

1 A I believe the number was somewhere between 83
2 to 88.

3 Q And how was that crystallized intention
4 communicated to GWS LLP?

5 A So can I clarify your use of the word
6 "crystallization"? The --

7 Q You can --

8 A In paragraph 8 where it says: (as read)
9 The core group of appellants
10 crystallized the intention to appeal
11 That means that we sent over the list of names
12 of appellants that responded to us directly
13 stating their intention was to appeal, and we
14 took those names, and we sent them to the GWS
15 office.

16 The 40 that we initially talked about that
17 we knew because they had stated to us that they
18 -- they wanted to appeal right away, that's not
19 a crystallization. A crystallization -- when
20 there's names on paper, that's the difference.
21 One was not provided to the GWS office right
22 away, and the other one, where it says in
23 paragraph 8 "crystallized", it's because we had
24 a list of names.

25 Q If you were aware that 40 individuals wanted to
26 appeal as of March 16, why did you wait until
27 April 8, 2024, to communicate that to GWS LLP?

1 A We did not wait.

2 Q Okay. Then explain that gap.

3 A There -- there is no gap. We knew 40 right off
4 the hop, and we communicated that.

5 Q So you --

6 A We communicated -- sorry?

7 Q Sorry. There was a pause there. I thought you
8 were done speaking. Go ahead and finish.

9 A We communicated that there was an approximate
10 number that we knew about to him on our initial
11 meeting when we requested the meeting from him.

12 Q So you advised GWS LLP on or about March 16
13 that approximately 40 plaintiffs wanted to
14 appeal?

15 A Yes.

16 Q And then provided a list of approximately 83 to
17 88 plaintiffs on April 8, 2024; correct?

18 A Correct.

19 Q Why did you not provide a list of plaintiffs
20 who wished to appeal sooner?

21 A Because that was when we received our final
22 number of plaintiffs wishing to appeal.

23 Q How did you know it was the final number?

24 A We requested a response from everybody
25 involved, and when we got the response, that's
26 when we finalized the number.

27 Q So you ended up hearing from every single

1 plaintiff that was still a party to the action
2 when the decision was rendered?

3 A If you did not respond, then we advised -- if
4 we didn't receive a response from within our
5 group, that that would indicate that they were
6 not interested in appealing.

7 Q When did you request a response by?

8 A Early April. I don't recall the exact date we
9 requested it. I believe it was April 2nd or
10 3rd, something along those lines.

11 Q Okay. And that was communicated to the other
12 plaintiffs via email?

13 A It was communicated via group chat, it was
14 communicated via Zoom, and email.

15 Q Okay. Did your email list include all of the
16 active plaintiffs at the time that the decision
17 was rendered?

18 A Yes.

19 Q And do you still have a copy of the email
20 request that was sent to the plaintiffs?

21 A Yeah, I could possibly find it.

22 D. VASSBERG: Okay. I'm going to ask
23 for an undertaking for Ms. Solakian to provide
24 a copy of the email that was sent to the
25 plaintiffs requesting their position on whether
26 or not they would appeal. And for clarity,
27 if -- if there's a large number of email

1 addresses and you have concerns regarding that,
2 that can be redacted. I'm looking for the date
3 that the email was sent and the content of it.

4 J. GRATL: We will obtain a copy of
5 the email and review it for solicitor-client
6 privilege.

7 D. VASSBERG: Is it your position that
8 the deadline that Ms. Solakian or the sender
9 advised of would be subject to solicitor-client
10 privilege, Mr. Gratl?

11 J. GRATL: You want me to talk in
12 the abstract about the contours of
13 solicitor-client privilege?

14 D. VASSBERG: I just want to be clear
15 that I wouldn't expect that deadline to be
16 redacted at all.

17 J. GRATL: Well, your expectations
18 don't come into it. I'll be assessing the
19 email for solicitor-client privilege and making
20 a claim accordingly if it's appropriate.

21 UNDERTAKING 1 - To provide a copy of
22 the email that was sent to the
23 plaintiffs requesting their position
24 on whether or not they would appeal
25 (Subject to solicitor-client
26 privilege)

27 Q D. VASSBERG: Ms. Solakian, you were

1 told that a student-at-law at GWS LLP,
2 Mr. Hersey, was about to be called to the bar
3 and would be preparing and arguing an extension
4 of time to appeal the decision; correct?

5 A Yes.

6 Q When were you told that?

7 I see you looking down, Ms. Solakian. Are
8 you looking --

9 A I'm looking at my affidavit because I recall
10 putting it in.

11 Q Okay. Ms. Solakian, because we're attending
12 remotely and I can't see what you're looking
13 at, if you are looking at your affidavit, I
14 need you to state that on the record. Okay?

15 A Okay. I'm looking at my affidavit. Just a
16 moment.

17 So on April 8th and 9th, 10th, those few
18 days, there was a lot of communication with the
19 GWS office, and Mr. Grey advised that
20 David Hersey would be the person looking after
21 it, and he would supervise.

22 Q Did you or any of the other plaintiffs ask when
23 the materials would be prepared or completed?

24 A Not at that time.

25 Q Why not?

26 A Because we were advised it would be shortly, so
27 we didn't ask for a specific date.

1 Q So your expectation as of April 9 was that the
2 appeal materials would be prepared shortly?

3 A Correct.

4 Q Was there a reason provided as to why Mr. Grey
5 would or could not prepare those materials?

6 A I believe he had said at that time that he had
7 other pieces that he was working on and he
8 would leave it to Mr. David Hersey.

9 Q From your affidavit, you indicated that you
10 were advised that Mr. Hersey was a
11 student-at-law and would be called to the bar.
12 Did you inquire as to when he would be called
13 to the bar and assume carriage of the file?

14 J. GRATL: What paragraph are we
15 looking at?

16 D. VASSBERG: Paragraph 8: (as read)
17 A student-at-law at GWS LLP who was
18 about to be called to the bar.

19 A I'm sorry, what was the question?

20 Q D. VASSBERG: Did you ask when
21 Mr. Hersey was going to be called to the bar?

22 A No.

23 Q Paragraph 9, you state: (as read)

24 By April 10, 2024, each of the
25 intended appellants individually
26 confirmed their individual
27 instructions to GWS LLP to appeal the

1 decision.

2 Explain to me this gap between
3 April 8, when you say you communicated
4 the list of plaintiffs who wanted to
5 appeal, and April 10, when the
6 appellants individually confirmed
7 their individual instructions. What
8 is the difference between those two
9 things? Were the instructions not
10 confirmed on April 8?

11 A Oh, no, they were confirmed by us. But the GWS
12 office, and specifically Mr. Grey, wanted his
13 instructions sent out individually, and he did
14 so.

15 Q Sorry, when you say Mr. Grey wanted his
16 instructions sent out individually, what does
17 that mean?

18 A Not instructions, sorry. He sent out a form
19 requesting that all those individuals who
20 wanted to appeal wanted to move forward and to
21 confirm that. So he sent it on their
22 letterhead through his email, and they wanted
23 confirmation sent by each individual plaintiff
24 back to their office.

25 Q And in that paragraph when you say "intended
26 appellants", are you referring to the 83 to 88
27 appellants that you estimated previously or to

1 the 66 that ended up being applicants?

2 A Are you asking me if the email was sent out
3 from GWS, to how many?

4 Q I'm asking what you mean by "intended
5 appellants". And are you looking at your
6 affidavit right now?

7 A I am. That is the only piece of paper I have
8 in front of me is my affidavit. I'm sorry, so
9 that was --

10 Q Paragraph 9.

11 A I see. 9. Okay. Yeah. So that was
12 actually -- he sent that out to the entire
13 group, not to the 88, and certainly not to 66.
14 But he needed to hear from everybody, so he
15 sent it out to the entire group.

16 Q Okay. And did GWS LLP just request
17 instructions, or did they request an additional
18 funds for retainer or any other information?

19 J. GRATL: Objection.

20 D. VASSBERG: Okay. What's the basis
21 of the objection?

22 J. GRATL: Solicitor-client
23 privilege.

24 (OBJECTION)

25 D. VASSBERG: So you won't advise of
26 what was requested by GWS LLP. Is that
27 correct, Mr. Gratl?

1 J. GRATL: I'm sorry, are you asking
2 whether I will advise of what was requested?

3 D. VASSBERG: No. I'm asking whether
4 or not you maintain your objection.

5 J. GRATL: Well, I think the answer
6 here is pretty clear, that GWS sent out a
7 letter to all these people asking them
8 individually to confirm whether they wanted to
9 appeal. That happened between the 8th and the
10 10th. And now you want to know other things
11 that are in the letter? What are you asking
12 for?

13 D. VASSBERG: Well, if there are other
14 things in the letter, yes, I want to know.

15 J. GRATL: Well, why?

16 D. VASSBERG: If -- because if the
17 issue is that GWS LLP had an insufficient
18 retainer and thus didn't produce or prepare
19 these materials, then that would be relevant to
20 this application that your clients have
21 brought. So can Ms. Solakian confirm whether
22 or not that was the case?

23 J. GRATL: Yes. Generally you can
24 ask her, Was the problem ever related to
25 nonpayment or what -- if that's what you're
26 driving at.

27 Q D. VASSBERG: Let's start with that,

1 Ms. Solakian.

2 A Are you asking -- I'm sorry. Can you clarify
3 the question?

4 Q Did GWS LLP ever advise that there was any
5 delay in their preparation of the appeal
6 materials that was attributable to the lack of
7 a retainer or a fee retainer?

8 A No.

9 Q Okay. Paragraph 10 of your affidavit, you
10 state: (as read)

11 As of April 10, 2024, we believed that
12 the deadline for appealing was 30 days
13 from the date of the decision.

14 Why did you and the other plaintiffs believe as
15 of April 10 that the appeal deadline was
16 30 days?

17 A Because that's what we were advised by GWS.

18 Q So if you received the -- or if the decision
19 was issued on March 13, 2024, and you thought
20 the deadline was 30 days, that would be
21 approximately April 12, 2024; correct?

22 A I guess, yeah.

23 Q And if you thought the deadline was April 12,
24 why did you think that Mr. Hersey was preparing
25 an application for an extension of time on
26 April 8, 2024?

27 A Because we were close to a deadline. I'm -- I

1 don't really know.

2 Q Well, why would the appeal materials not be
3 completed rather than an application when you
4 weren't at the point where an application was
5 necessary? I don't understand the timing.

6 A If Mr. Hersey was preparing a request for an
7 extension of time, it was because there could
8 be an extension required. I -- I'm not sure.
9 I just know what the facts are. That's what we
10 were told. That's what we went with.

11 Q Okay. You also stated: (as read)

12 I had suspected that the deadline
13 might be 10 days from the date of
14 decision in late March 2024.

15 What did you mean by "suspected"?

16 A I had read that due to the decision being
17 rendered by an associate judge, it could be 10
18 days, but I wasn't sure of the verbiage, so I
19 brought it up.

20 Q And when did you read that?

21 A March 26th.

22 Q Okay. And you said you brought it up. Who did
23 you --

24 A I did.

25 Q -- bring it up to?

26 A To GWS on a group call that we were on.

27 Q When was that group call?

1 A On March 26th.

2 Q Okay. And were you advised that there was a
3 10-day deadline?

4 A No.

5 Q Okay. What were you advised?

6 A That they would look into it.

7 Q Okay. And then you state in your affidavit at
8 paragraph 10: (as read)

9 Our legal counsel first advised me in
10 late April of 2024 that the deadline
11 was 10 days from the date of decision.
12 When specifically in late April?

13 A I don't recall the exact date.

14 Q Do you recall how that was communicated to you?

15 A I believe it was -- it may have been via email,
16 or it could have been a phone call.
17 Specifically, no, I don't.

18 Q Okay. But as of late April, you were aware
19 that, whether it was 30 days or 10 days, the
20 appeal was already late; correct?

21 A Correct.

22 Q Did you do anything to try to expedite the
23 drafting of the application or appeal records
24 at that time?

25 A Did we do anything to expedite the drafting of
26 the records?

27 Q Of the pleadings.

1 A Did we inquire?

2 Q Well, was there not urgency if you knew that
3 your appeal was late and an extension would be
4 necessary?

5 A Our counsel was looking after it, and we
6 assumed that the urgency of it would be dealt
7 with at GWS offices. We inquired. We've
8 requested updates along the way, of course.

9 Q In your affidavit, you indicated that you
10 requested an update on May 13, 2024; correct?

11 A In which paragraph?

12 Q Paragraph 11.

13 A Yes.

14 Q And who did you request an update from?

15 A From counsel.

16 Q Which counsel?

17 A I believe that was Leighton Grey.

18 Q At that time, were you still communicating
19 primarily with Mr. Grey rather than Mr. Hersey?

20 A Yes.

21 Q And when you requested that update, was it via
22 email?

23 A Yes.

24 D. VASSBERG: I'll ask for an
25 undertaking to provide the May 13, 2024, email
26 from Ms. Solakian to Mr. Grey requesting an
27 update on how the appeal was proceeding.

1 J. GRATL: We'll obtain a copy of
2 that email and provide it subject to redactions
3 for solicitor-client privilege.

4 UNDERTAKING 2 - To provide the
5 May 13, 2024, email from
6 Karine Solakian to Leighton Grey
7 requesting an update on how the
8 appeal was proceeding (Subject to
9 redactions for solicitor-client
10 privilege)

11 Q D. VASSBERG: Ms. Solakian, you've
12 indicated that at least 40 plaintiffs were
13 aware as of March 16 that they wanted to
14 appeal, that the decision to appeal was
15 communicated to GWS LLP on or about April 10,
16 2024. Why did you wait over a month between
17 that decision being communicated and following
18 up with GWS LLP?

19 J. GRATL: I'm going to object.

20 D. VASSBERG: Okay. What's the basis?

21 J. GRATL: Your question misstates
22 the evidence given by the witness.

23 D. VASSBERG: Okay. How does it
24 misstate the evidence?

25 J. GRATL: The witness stated that
26 the intention of 40 plaintiffs to appeal was
27 communicated to GWS prior to April the 10th.

1 D. VASSBERG: That was her evidence,
2 was that it was communicated on April 8th.

3 A March.

4 J. GRATL: No. That -- hence the
5 misstatement.

6 (OBJECTION)

7 Q D. VASSBERG: The 40 was March 16, and
8 then the follow up with the 83 to 88 was on or
9 about April 8th; correct?

10 A Are you talking to me?

11 Q Yes.

12 A Yes.

13 Q Okay. So we're on the same page. Then to go
14 back to my question, why did you wait a month,
15 from April 8 or 10 until May 13, to follow up
16 with your counsel?

17 A We may have followed up in between there. I
18 just had specifics of that day, of May 13th,
19 because I had sent an email.

20 Q Okay.

21 A That doesn't mean that there was no
22 communication between April 10th and May 13th.

23 Q Are you aware of any specific communications
24 requesting an update from GWS LLP on how the
25 appeal was proceeding?

26 A There could possibly be. I don't recall at
27 this time if there was phone calls.

1 Q But you agree that you do not recall any
2 specific communication; correct?

3 A Correct. At this -- well, yeah, I guess.

4 Q Did GWS LLP respond to your May 13, 2024,
5 inquiry?

6 A Not on May 13th, but they did respond.

7 Q Okay. When did they respond?

8 A May 15th.

9 Q Was that --

10 A 14th or 15th.

11 Q -- via email?

12 A Sorry?

13 Q Was that via email?

14 A Yes.

15 Q Okay. And did they respond indicating that
16 there was delay, that the materials would be
17 prepared promptly?

18 A Yes. They -- they indicated that there was a
19 delay.

20 Q Okay. And what was the reason for the delay?

21 A It was internal staffing issues.

22 Q Did they provide an estimated timeline for when
23 the materials would be completed for plaintiff
24 review?

25 A They said it was -- needed to be looked over by
26 someone else and that it would get back to us
27 shortly.

1 D. VASSBERG: I'll ask for an
2 undertaking for Ms. Solakian to provide the
3 May 14 or 15, 2024, response by GWS LLP to her
4 May 13, 2024, email.

5 J. GRATL: Yes, we'll endeavor to
6 look for that and provide it subject to
7 solicitor-client privilege.

8 UNDERTAKING 3 - To provide the May 14
9 or 15, 2024, response by GWS LLP to
10 Karine Solakian's May 13, 2024, email
11 (Subject to solicitor-client
12 privilege)

13 Q D. VASSBERG: Ms. Solakian, you made an
14 additional update request on June 6, 2024;
15 correct?

16 A M-hm.

17 Q Who did you request an update from?

18 A That was probably again GWS offices. Sometimes
19 when we put the request in for an update, we
20 included Leighton Grey, and at this point,
21 Connor Farquhar or Lesley Doucet as well. So
22 all three may have been a party to the email
23 request.

24 Q But you don't remember --

25 (SIMULTANEOUS CROSS-TALK)

26 A -- Connor. I would have to look through my
27 paperwork to see exactly who I sent it to, but

1 it's not uncommon to send it to two or three
2 individuals in that office.

3 Q D. VASSBERG: And you don't recall who
4 specifically you sent the request to on June 6,
5 2024; correct?

6 A It would have been either Leighton Grey and
7 Connor Farquhar or the both.

8 Q And that request was via email?

9 A Yes.

10 D. VASSBERG: I'll request an
11 undertaking to provide the June 6, 2024, email
12 between Ms. Solakian and GWS LLP.

13 J. GRATL: We'll endeavor to look
14 for that email and produce it subject to
15 redactions for solicitor-client privilege.

16 UNDERTAKING 4 - To provide the
17 June 6, 2024, email between
18 Karine Solakian and GWS LLP (Subject
19 to redactions for solicitor-client
20 privilege)

21 A Is it possible we could take a 5-minute break?

22 D. VASSBERG: Of course. We'll go off
23 the record.

24 (DISCUSSION OFF THE RECORD)

25 (ADJOURNMENT)

26 Q D. VASSBERG: Ms. Solakian, can you
27 confirm that you're still under oath?

1 A I can.

2 Q You made an additional update request on
3 June 19, 2024, to GWS LLP; correct?

4 A I'm just going to refer to the affidavit.

5 Q It's paragraph 11.

6 A Yes.

7 Q Do you recall who specifically you requested
8 that update from?

9 A Mr. Connor Farquhar of GWS.

10 Q And how did you make that request?

11 A By email.

12 Q And did you receive a response to that request?

13 A I believe I did, yes.

14 Q Do you recall when?

15 A I don't recall, but I do have a response in my
16 records.

17 Q Do you recall the content of the response?

18 A The content of the response, to my
19 recollection, was that Mr. Connor Farquhar was
20 going to be taking over the file, and he was
21 looking at it. Due to staffing issues at the
22 office, he would be the one going forward with
23 the file.

24 Q Okay. Was that the July 4, 2024, response that
25 you reference at paragraph 12 of your
26 affidavit?

27 A I believe so, yes.

1 Q Okay.

2 D. VASSBERG: Mr. Gratl, I'm going to
3 ask for an undertaking, first, for the June 19,
4 2024, update request sent by Ms. Solakian to
5 GWS LLP.

6 Mr. Gratl, I haven't heard if you've
7 responded to that.

8 J. GRATL: We will receive the email
9 from the client and review it for production
10 subject to redaction for solicitor-client
11 privilege.

12 UNDERTAKING 5 - To provide the
13 June 19, 2024, update request sent by
14 Karine Solakian to GWS LLP (Subject
15 to redaction for solicitor-client
16 privilege)

17 D. VASSBERG: Mr. Gratl, I'll also ask
18 for an undertaking for the response provided by
19 Mr. Farquhar to Ms. Solakian on July 4, 2024.

20 J. GRATL: Yes, we will endeavor to
21 obtain a copy of that communication and produce
22 it subject to redaction for solicitor-client
23 privilege.

24 UNDERTAKING 6 - To provide the
25 response provided by Connor Farquhar
26 to Karine Solakian on July 4, 2024
27 (Subject to redaction for

1 solicitor-client privilege)

2 Q D. VASSBERG: Ms. Solakian, you
3 received draft application materials on
4 July 17, 2024; correct?

5 A Yes.

6 Q Were those provided to the other instructing
7 plaintiffs, all the plaintiffs, or just
8 yourself?

9 A I believe that was for the four instructing
10 plaintiffs.

11 Q You provided comments and instructions to file
12 materials on July 22, 2024; correct?

13 A Yes.

14 Q How did you provide those instructions to file?

15 A By response email.

16 D. VASSBERG: I'll ask for an
17 undertaking to provide the July 22, 2024,
18 instruction email between -- or from
19 Ms. Solakian to GWS LLP.

20 J. GRATL: We will produce that
21 subject to redactions for solicitor-client
22 privilege.

23 UNDERTAKING 7 - To provide the
24 July 22, 2024, instruction email from
25 Karine Solakian to GWS LLP (Subject
26 to redactions for solicitor-client
27 privilege)

1 Q D. VASSBERG: Ms. Solakian, are you
2 aware of whether the other instructing
3 plaintiffs provided comments or instructions to
4 file?

5 A No. The four instructing plaintiffs, myself
6 included in that four, discussed it, and only
7 one person provided a response to GWS.

8 Q And were those materials reviewed by the other
9 plaintiffs at any time?

10 A They were posted for all plaintiffs to see.

11 Q When was that?

12 A The same day it was received.

13 Q And when you say "posted", where were they
14 posted to?

15 A We have an internal group on Telegram, and we
16 have a specific location where we post our
17 email correspondence with the lawyer back and
18 forth.

19 Q And is there an expectation that the other
20 plaintiffs would provide review and comments to
21 you?

22 A If they wanted to, yes, they could.

23 Q But you and the other instructing plaintiffs
24 didn't wait to confirm with each of the other
25 plaintiffs that they were amenable to filing
26 those pleadings; correct?

27 A I'm not exactly sure what you're asking me.

1 Did you --

2 J. GRATL: Or -- or -- or why.

3 Q D. VASSBERG: Okay. Let me rephrase.

4 Did you wait for confirmation that all of
5 the 62 other applicant plaintiffs had reviewed
6 and approved the pleadings prior to confirming
7 instructions?

8 J. GRATL: I'm going to object.
9 What's the basis for this question?

10 D. VASSBERG: I believe we've gone
11 through this already, but in the affidavit and
12 your motion, there's an indication that this
13 litigation is somehow made more lengthy and
14 complicated by the fact that there at one point
15 were hundreds of plaintiffs and are now 66.
16 Obviously, it's relevant to that whether or not
17 instructions were being obtained from all of
18 the plaintiffs or just a small number of them.

19 So I'll ask the question one more time in
20 that context.

21 Q D. VASSBERG: Ms. Solakian, did you
22 receive confirmation from all 62 other
23 plaintiffs that they agreed with the content
24 and confirmed instructions to file the appeal
25 and application materials, or not?

26 A At that point, there was over 80 plaintiffs,
27 and comments were not sought individually from

1 all plaintiffs. It was -- it wasn't
2 instructions that we were waiting on for
3 individuals. It was posted there for all
4 individuals to read, to understand, and to ask
5 questions or make comments. So we waited until
6 those individuals responded in some way, shape,
7 or form.

8 Q So you did wait until all 62 individuals
9 responded?

10 J. GRATL: That's not the answer,
11 sir.

12 Q D. VASSBERG: Okay. Well, clarify that
13 for me, then, Ms. Solakian, if that's not your
14 answer.

15 J. GRATL: Well, it's not because
16 she never used the number 62, and it's not
17 because she just said she didn't wait for the
18 answer. She just provided the information for
19 their -- she provided the material for their
20 review or comment. And now you're --

21 D. VASSBERG: Okay. Let's --

22 J. GRATL: -- putting some words in
23 her mouth. I don't understand where you're
24 going with this. Are you trying to show that
25 the process was more streamlined because
26 instructions were given by a small group of
27 people?

1 D. VASSBERG: Well, I'm asking to
2 ascertain in evidence on whether or not it was
3 a streamlined process or required instructions
4 from every single party.

5 Q C. PIGOTT: Now, let's break it down,
6 then, to make it simpler for Mr. Gratl.

7 Ms. Solakian --

8 J. GRATL: No, sorry. I -- I
9 object. The objection is not that it's too
10 complicated for me. The objection, sir, is
11 that it misstates the evidence in two really
12 important ways. Do you understand the nature
13 of the objection?

14 (OBJECTION)

15 Q D. VASSBERG: Okay. Ms. Solakian --

16 J. GRATL: Sir, do you understand
17 the nature of the objection? I just want to
18 know because you're suggesting that it was just
19 too complicated for me, your question, and I'm
20 suggesting the problem wasn't with complexity;
21 it was the falsehoods embedded in your
22 question. Do you get what I'm saying to you,
23 sir?

24 D. VASSBERG: Mr. Gratl, I would like
25 Ms. Solakian to confirm whether or not she
26 received confirmation from all of the
27 plaintiffs that were anticipated to be party to

1 the application prior to confirming
2 instructions with GWS LLP.

3 J. GRATL: Yeah, I don't object if
4 she answers that question again.

5 Q D. VASSBERG: Okay. Ms. Solakian, can
6 you confirm?

7 A I can confirm that the information was posted,
8 and those who wanted to confirm or comment
9 could.

10 Q So you didn't wait for explicit confirmation
11 from the other plaintiffs; correct?

12 A Correct.

13 Q You were advised by Ms. Kim Priest that she
14 called GWS LLP to request updates as well;
15 correct?

16 A Correct.

17 Q When did she call GWS LLP?

18 A I would have to verify those dates with her.

19 Q I'm not asking you to do that. So currently,
20 you're unaware of the specific dates; correct?

21 A I was aware of it at the time she did it. I
22 just didn't mark down the dates of it.

23 Q As of today, you're unaware of the specific
24 dates that Ms. Priest called GWS LLP; correct?

25 A Correct.

26 Q Are you aware of who specifically at GWS LLP
27 she asserts that she called?

1 A The GWS offices to speak to either
2 Leighton Grey or Connor Farquhar.

3 Q Did she advise whether or not she received a
4 response to those telephone inquiries?

5 A She did not.

6 Q So you're not aware of whether or not there was
7 a response?

8 A She did not receive a response.

9 Q Okay. Are you aware of any other plaintiffs
10 requesting updates from GWS LLP concerning the
11 status of the appeal, let's say, between
12 April 10 and July 22, 2024?

13 A No.

14 Q Okay. So just to set out this timeline. At
15 paragraph 14 of your affidavit, you indicate
16 that on September 4, 2024, GWS LLP went off the
17 file; correct?

18 A Correct.

19 Q And from the information in your affidavit, I
20 understand that the last communication between
21 the plaintiffs and GWS LLP was on July 26,
22 2024. Do you agree with that?

23 J. GRATL: It doesn't say that, sir.

24 Q D. VASSBERG: Okay. Is there
25 communication that took place that you omitted
26 from the affidavit between those two dates?

27 The last communication with GWS was

1 September 4th.

2 Q I'm asking between July 26 and September 4, was
3 there any communication?

4 A I don't believe so. There may have been -- the
5 phone calls from Kim Priest may have happened
6 during that time.

7 Q Okay. But you don't actually know of any
8 specific communication that took place between
9 July 26, 2024, when instructions were
10 confirmed, and September 4, 2024, when GWS LLP
11 went off the file; correct?

12 A Correct.

13 Q So let's talk about September 3, 2024. That's
14 the day before GWS LLP advised that they were
15 going off the file. So at that time, you and
16 the other plaintiffs were aware that the appeal
17 was around five months late; correct?

18 A Correct.

19 Q And GWS LLP had generally been unresponsive to
20 your inquiries; correct?

21 A Correct.

22 Q And why did you not attempt to find new counsel
23 on or prior to September 3, 2024?

24 A Because we were under the impression that
25 somebody at the GWS -- if our original counsel,
26 Leighton Grey, was not able to -- would be
27 handling this matter.

1 Q You'd agree that no steps were taken prior to
2 September 4, 2024, to obtain new counsel to
3 handle the application or the appeal; correct?

4 A Correct.

5 Q How did Mr. Grey advise that GWS LLP would no
6 longer be working on the file?

7 A By email.

8 Q And what was the reasoning provided?

9 A That Mr. Farquhar was no longer with the firm
10 and that there was no one available to take it
11 on.

12 D. VASSBERG: I'm going to ask for an
13 undertaking for Ms. Solakian to provide the
14 September 4, 2024, email from Mr. Grey advising
15 that GWS LLP would no longer be working on the
16 action.

17 J. GRATL: We'll obtain a copy of
18 that email and provide it subject to redactions
19 for solicitor-client privilege.

20 UNDERTAKING 8 - To provide the
21 September 4, 2024, email from
22 Leighton Grey advising that GWS LLP
23 would no longer be working on the
24 action (Subject to redactions for
25 solicitor-client privilege)

26 Q D. VASSBERG: Okay. I asked this
27 previously, but I don't recall the date range,

1 so I'm going to ask just for clarity. Between
2 March 14 -- that's the day of the decision --
3 and September 4, the day that GWS LLP went off
4 the file, did anyone at GWS LLP advise any of
5 the plaintiffs that the preparation or filing
6 of the application and appeal materials was
7 delayed as a result of inadequate retainer fees
8 having been paid to GWS LLP?

9 A No.

10 Q In your affidavit, you generally assert that
11 GWS LLP and its specific counsel were
12 nonresponsive and did not act in accordance
13 with your instructions; correct?

14 J. GRATL: I'm -- I'm -- I'm going
15 to object. There -- there are many instances
16 in which an indication is clearly made that GWS
17 responds.

18 (OBJECTION)

19 D. VASSBERG: I've already -- or
20 Ms. Solakian has already advised that she felt
21 GWS LLP was generally nonresponsive.

22 Q D. VASSBERG: And, Ms. Solakian, do you
23 still believe that?

24 A I don't recall stating that they were generally
25 unresponsive.

26 Q Okay. Do you agree that they're generally
27 nonresponsive or that they had delayed

1 responses to your instructions and
2 communications?

3 A That's -- that's not an easy question to just
4 say, Based on what I thought should've been a
5 response time is what is actually a response
6 time. Did we feel it was delayed some? Yeah.
7 But they could have been very busy and not been
8 able to respond. I don't know. I can't make
9 that assertion.

10 Q Okay. Would you agree that GWS LLP did not act
11 in accordance with your instructions or the
12 plaintiffs' instructions generally?

13 J. GRATL: Which -- which
14 instructions are those?

15 D. VASSBERG: Well, let's start with
16 the instructions to file an application and an
17 appeal.

18 J. GRATL: Are you really asking
19 whether they filed an application to extend the
20 deadline?

21 D. VASSBERG: I'm asking Ms. Solakian
22 to confirm whether or not she believed and
23 believes that GWS LLP did not act in accordance
24 with her instructions or the plaintiffs'
25 instructions.

26 J. GRATL: (AUDIO FEED LOST) -- are
27 you asking whether GWS -- (AUDIO FEED LOST)

1 D. VASSBERG: Mr. Gratl, we lost you
2 again at "GWS".

3 J. GRATL: Are you -- are you asking
4 whether GWS actually filed a -- an application
5 to extend the deadline? Is that in dispute?

6 D. VASSBERG: I'm just asking
7 Ms. Solakian to confirm whether or not GWS LLP
8 adhered to her instructions.

9 J. GRATL: I'm just (INDISCERNIBLE -
10 OVERLAPPING SPEAKERS)

11 D. VASSBERG: If it's not -- if it's
12 not in dispute --

13 J. GRATL: I'm objecting to the
14 vagueness of the question.
15 (OBJECTION)

16 Q D. VASSBERG: Ms. Solakian, you agree
17 that you gave explicit instructions to GWS LLP
18 on July 22, 2024, to file application
19 materials; correct?

20 A We gave instructions prior to that.

21 Q Okay. Well, let's start with July 22, 2024.
22 You gave instructions on that day for them to
23 file the materials that had been reviewed;
24 correct?

25 A I'm just going to refer back to that particular
26 paragraph.

27 J. GRATL: What it -- what it says,

1 sir, at paragraph 13 is: (as read)

2 I provided comments and again
3 instructed GWS LLP to file the
4 application.

5 D. VASSBERG: Okay. Then I'll ask the
6 question again.

7 Q D. VASSBERG: Ms. Solakian, do you
8 agree that you provided those instructions on
9 July 22, 2024, to GWS LLP, and they did not
10 follow those instructions?

11 A I provided those instructions, yes.

12 Q And GWS LLP did not follow those instructions;
13 correct?

14 A Correct.

15 Q And so you've indicated that there are examples
16 of nonresponsiveness by GWS LLP. You've
17 indicated that they didn't always follow the
18 explicit instructions given. In that context,
19 have you or any of the other plaintiffs that
20 you're aware of filed a complaint with the Law
21 Society of Alberta concerning the handling of
22 this file by Mr. Grey or any other counsel at
23 GWS LLP?

24 J. GRATL: I'm -- I'm going to
25 object because, again, you're mischaracterizing
26 the evidence given by the witness.

27 D. VASSBERG: In what way?

1 J. GRATL: The question part -- if
2 you asked the -- just the question rather than
3 providing editorializing remarks about previous
4 evidence, I think that should be
5 unobjectionable.

6 (OBJECTION)

7 D. VASSBERG: All right.

8 Q D. VASSBERG: Well, Ms. Solakian, can
9 you answer the question, then?

10 A I'm sorry, what was the question?

11 Q Have you or any other plaintiffs that you're
12 aware of filed a complaint with the Law Society
13 of Alberta concerning the handling of this
14 action by Mr. Grey or any other counsel at
15 GWS LLP?

16 J. GRATL: Now, before answering, I
17 want to ask the relevance of this question.

18 D. VASSBERG: There's indication in the
19 case law that parties that wish to assert that
20 their counsel was negligent in the handling of
21 the file have done something, specifically
22 reported that conduct to the Law Society, and
23 in other instances, having provided the counsel
24 an opportunity to respond to those allegations
25 in support of applications.

26 J. GRATL: Oh, I'd like to see that
27 case law. What's the case reference?

1 D. VASSBERG: I don't have the case
2 reference with me. If you wish to object,
3 object. And if you wish for Ms. Solakian to
4 answer the question, say so.

5 J. GRATL: Well, we haven't asserted
6 negligence here. We've just said there were
7 staffing problems that resulted in delays.
8 Have you heard an allegation of negligence?

9 D. VASSBERG: Well, negligence is a
10 legal argument, not a fact --

11 J. GRATL: Yeah, right --

12 D. VASSBERG: -- I've just heard the
13 facts that have been outlined. If you're
14 objecting to the question, just state that
15 you're objecting to the question, Mr. Gratl.

16 J. GRATL: Well, I'm objecting to
17 the question because --- for two reasons.
18 Firstly, it doesn't seem relevant to the
19 question of delay. And then secondly, there's
20 no assertion of negligence per se. There's no
21 action in negligence.

22 D. VASSBERG: So --

23 J. GRATL: The assertion is that GWS
24 had -- they had a lot of young lawyers quit or
25 disappear or be unavailable.

26 D. VASSBERG: Okay. So, Mr. Gratl,
27 you're confirming on the record that your

1 clients are not alleging that GWS LLP was
2 negligent in its handling of this file?

3 J. GRATL: Well, there's no claim
4 for negligence. It's not a tort claim. We're
5 trying to apply to extend a deadline. It's --

6 D. VASSBERG: Is that a yes?

7 J. GRATL: -- more of a question of
8 assessing the nature of the delay.

9 D. VASSBERG: I'm interpreting your
10 comments as a refusal to permit Ms. Solakian to
11 answer the question. Do you have any issues
12 with that?

13 J. GRATL: Do I have any issues with
14 what? With the question?

15 D. VASSBERG: You agree that you're
16 refusing to permit Ms. Solakian to answer the
17 question; correct?

18 J. GRATL: Well, I'm -- I'm refusing
19 to answer that -- that -- I'm refusing the
20 relevance of any question that's predicated on
21 an allegation that a tort of negligence is
22 alleged.

23 (OBJECTION)

24 D. VASSBERG: It's not a tort of
25 negligence, but in any event ...

26 Q D. VASSBERG: Ms. Solakian, have the
27 plaintiffs served Mr. Grey's office with their

1 motion for an extension of time and your
2 affidavit?

3 J. GRATL: I'm going to object.
4 (OBJECTION)

5 Q D. VASSBERG: Okay. At paragraph 15 of
6 your affidavit, you state: (as read)

7 We had some difficulty finding a
8 lawyer.

9 How many lawyers did you and the other
10 plaintiffs contact after September 4, 2024?

11 A I specifically contacted three.

12 Q Okay. And that includes Gratl LLP -- or
13 excuse me -- Gratl & Company?

14 A Yes.

15 Q And when did you contact Gratl & Company?

16 A Late September, I believe it was. I don't
17 recall the actual date.

18 Q Why would you wait from September 4 until late
19 September to contact Gratl & Company?

20 J. GRATL: The witness just said she
21 doesn't remember the date.

22 D. VASSBERG: Yeah, and that's why I
23 said "late September", which is what she
24 described the date as.

25 A It wasn't a matter of waiting. It was a matter
26 of finding people to contact.

27 Q D. VASSBERG: Okay. How much time did

1 you devote to finding new counsel?

2 A What does "devote" mean? How much time I
3 actually spent with the other plaintiffs
4 discussing it, talking about it, or actually
5 making phone calls or contacting?

6 Q Let's say locating and contacting other
7 counsel.

8 A Locating and contacting? I would say about 35
9 hours.

10 Q And you only ended up contacting three counsel?

11 A That responded, yes.

12 Q Sorry. When I asked you previously how many
13 counsel you contacted, you indicate three --

14 A Yeah.

15 Q -- and now you've added a qualifier of
16 responded. Is it that only three responded to
17 you, or you only contacted three?

18 A Only three responded, which means there was
19 back and forth conversation.

20 Q Okay. How many did you contact?

21 A Maybe about six or seven.

22 Q Did any of the other plaintiffs contact
23 potential counsel separate from you --

24 A They did.

25 Q -- that you're aware of?

26 You hired Gratl & Company on September 22,
27 2024; correct?

1 A Correct.

2 Q Did you or the other plaintiffs provide
3 Gratl & Company with the approved application
4 materials from July 22, 2024?

5 A Approved application materials --

6 J. GRATL: I'm going to object to
7 the form of the question.

8 D. VASSBERG: Okay. Could you indicate
9 specifically what the issue is?

10 J. GRATL: This witness hasn't said
11 that the form of the material was approved.
12 What it says in the affidavit -- and I -- I'll
13 read this to you again: (as read)

14 I provided comments and again
15 instructed GWS LLP to file the
16 application.

17 (OBJECTION)

18 D. VASSBERG: So she was providing
19 instructions to file an unapproved draft? I
20 don't understand the distinction that you're
21 trying to draw here or why it's material or
22 relevant.

23 J. GRATL: Well, there's all the
24 difference between approving an application as
25 to form and approving the filing of an
26 application. Do you appreciate there is a
27 distinction?

1 D. VASSBERG: All right. Well, we can
2 restate.

3 Q D. VASSBERG: Ms. Solakian, did you
4 provide the materials to Gratl & Company that
5 you had provided comment on and instructions
6 concerning on July 22, 2024?

7 A I believe so.

8 Q And did you do that on or about when you hired
9 them on September 22, 2024?

10 A Not specifically on that date.

11 Q Okay. On what date, then?

12 A I don't have an actual date. I provided
13 information after it was decided that we hired
14 him, and probably over a period of about five
15 days, four days. So specifically when that
16 information was sent, I couldn't tell you
17 exactly.

18 Q Okay. But it was provided within four or five
19 days of September 22, 2024?

20 A Yeah.

21 Q At paragraph 17 of your affidavit, you state:
22 (as read)

23 The appellants are dispersed across
24 Canada, so this process of
25 verification of identification and
26 verifying written retainers was time
27 consuming.

1 When you say "the appellants", are you
2 referring to the 66 applicants to this motion?

3 A I'm sorry. Which paragraph are you looking at?

4 Q 17. The third line, "the appellants".

5 A Right. I'm referring to the appellants
6 currently, which is 66.

7 Q And what is the process for verifying
8 identification?

9 A Taking your identification to a notary, and
10 then having them complete a form notarizing the
11 document to be true, and then providing that
12 information to Gratl & Company.

13 Q Okay. And were those provided to
14 Gratl & Company via email?

15 A It would depend on the notary. Sometimes it
16 could be email. It could be fax. It could be
17 mail.

18 Q When was your identification specifically
19 verified?

20 A I would have to look up the document date that
21 I sent it.

22 Q Was it on or about September 22, 2024, when
23 Gratl & Company was retained?

24 A No. It was just shortly after.

25 Q Okay. And when you say "shortly", are you
26 referring to within four to five days like you
27 indicated previously concerning the draft

1 materials?

2 A I don't really recall what date it was, to be
3 honest with you, but it was shortly after.

4 I -- I don't recall. I would have to look up
5 the document.

6 Q Do you know when the first plaintiff provided
7 their identification verification to
8 Gratl & Company?

9 A The date of?

10 Q Yes.

11 A September -- I believe it was September 22nd.
12 And if -- I know who it is. I know that
13 Kim Priest was one of the first ones to go in.

14 Q Was there a separate process for providing the
15 written retainers that you reference in your
16 affidavit, or was that part of the income -- or
17 the identification verification?

18 A It was a separate document.

19 Q Okay. And similarly, was the first written
20 retainer provided on or about September 22,
21 2024?

22 A Correct.

23 Q What was the reasoning for the delay between
24 September 22 and November 14 for the
25 application materials to be served and filed?

26 A I don't understand what you mean by "delay".

27 Q Well, between September 22 and November 14 is

1 approximately an eight-week period, and you've
2 indicated that you provided the draft materials
3 that you had already provided comment on to
4 Gratl & Company within a few days of
5 September 22. Why did it take eight weeks to
6 get something filed?

7 A Because it took eight weeks to have the
8 information looked at or to have the
9 identification verified of all the plaintiffs
10 and the retainer agreements of all the
11 plaintiffs -- of the appellants, my apologies.

12 Q So it took eight weeks for some of the
13 appellants to verify their identity and provide
14 a retainer?

15 A Yes.

16 Q At paragraph 18 of your affidavit, you state:
17 (as read)

18 I'm advised that Gratl & Company
19 worked with reasonable diligence to
20 research the legal issues and prepare
21 the appeal and application to extend
22 the deadline to appeal.

23 Who advised you of that?

24 A Mr. Jason Gratl.

25 Q And --

26 J. GRATL: I can -- I can confirm
27 that that's true. And I can also say

1 September 22 to November 14th isn't eight
2 weeks. It's seven weeks.

3 D. VASSBERG: Well, seven and a half --
4 or over seven and a half, but okay. Thank you
5 for that confirmation.

6 Q D. VASSBERG: Ms. Solakian, you have no
7 direct knowledge of Gratl & Company's
8 diligence; correct?

9 A Why would you say that -- I'm sorry. I don't
10 understand why I wouldn't have knowledge of
11 Gratl & Company's diligence when I would be the
12 one speaking with Mr. Gratl and/or his staff.

13 Q Okay. Well, you weren't there when Mr. Gratl
14 was preparing any of the application or appeal
15 materials; correct?

16 A I wasn't there when he was preparing it, no.

17 Q Did you receive and review the appeal and
18 application to extend the deadline to appeal
19 prior to those being filed?

20 A Yes.

21 Q When did you receive those?

22 A Prior to them being filed.

23 Q Could you be more specific?

24 A No, unfortunately. I would have to check --

25 Q How were they provided to you?

26 A -- dates.

27 By email.

1 Q Was it just you who provided comments and
2 instructions on those materials?

3 A Yes.

4 Q Did any of the other 65 appellants provide any
5 comments or instructions, communicate any
6 comments or instructions to you, anything like
7 that?

8 A They did.

9 Q How was that done?

10 A Through our group chat.

11 Q Did you hear --

12 A Or through email to me personally. Most of
13 them just end up writing it or private
14 messaging me within our group that we have.

15 Q And you did not hear from all of the 65 other
16 appellants; correct?

17 A When you say "hear from", does "good job" --
18 does that constitute hearing from?

19 Q Well, did you receive responses confirming
20 instructions to file from the 65 other
21 appellants?

22 A For the most part, yes.

23 Q Well, what do you mean by "for the most part"?

24 A Well, and that's why I asked to your earlier
25 question what you meant by confirming, because
26 in a group chat, everyone can chat at the same
27 time, so if people are in there -- they're

1 commenting once I've posted the material for
2 them, and they're having a group chat, they're
3 confirming to go ahead. They're saying it's a
4 great job or, Yes, it's a great document, let's
5 move ahead. There's comments that are made, so
6 therefore, that's taken as an -- confirmation.

7 Q Okay. And did you cross-reference those
8 comments with the list of appellants?

9 A No.

10 J. GRATL: Sorry. What's the
11 question now? What -- what kind of
12 cross-referencing are you talking about, sir?

13 D. VASSBERG: Whether or not she
14 confirmed that she received responses from all
15 of the appellants.

16 J. GRATL: I don't know what --
17 what's that relevant to?

18 D. VASSBERG: Well, again -- and this
19 is the third or fourth time we've gone through
20 this -- there -- in the affidavit and your
21 motion materials, you indicate that this
22 litigation is somehow more complicated because
23 of the number of plaintiffs and appellants, and
24 the complication is impacted by whether or not
25 instructions were actually being received from
26 all of those individuals or they were simply
27 being received through one, two, three, or four

1 of the plaintiffs, as seems to have been
2 indicated.

3 Q D. VASSBERG: So, Ms. Solakian, again
4 do you agree that --

5 J. GRATL: Just boggles my mind that
6 you're really questioning whether or not it's
7 more complicated to have a case with 66
8 applicants than with one. I -- I just -- I
9 just find this line of questioning
10 unfathomable. But go ahead if you want to
11 explore this issue.

12 Q D. VASSBERG: Ms. Solakian, you did not
13 specifically confirm that all of the other
14 appellants had provided instructions on
15 Gratl & Company's draft materials; correct?

16 A Specifically confirm? Did I check off a list?
17 No, I did not.

18 Q And you were not expected to specifically
19 confirm with every single appellant that they
20 were amenable to those materials being filed;
21 correct?

22 J. GRATL: Expected by whom? What's
23 the nature of the question?

24 D. VASSBERG: Expected by the other
25 plaintiffs.

26 J. GRATL: You're asking her to say
27 what's in the mind of 65 people?

1 D. VASSBERG: I'm asking her to say
2 what's her understanding of their expectations
3 of her as an instructing plaintiff, as she's
4 described it.

5 J. GRATL: Uh-huh. All right. Go
6 ahead.

7 A The expectation is that the information will
8 always be provided for all appellants to look
9 at, to review, to question, and to come and
10 either comment or ask questions directly to me
11 or the other group members, and then that
12 information would go through me to
13 Gratl & Company.

14 Q D. VASSBERG: And you didn't explicitly
15 confirm that everybody had provided their
16 comments or all appellants are provided their
17 comments prior to --

18 A That was not --

19 Q -- communicating -- prior to --

20 A That --

21 Q -- communicating instructions with
22 Gratl & Company; correct?

23 A Correct. Because that is not a requirement.

24 D. VASSBERG: So I'd like to take just
25 a brief recess to review my notes, and then
26 hopefully we can conclude. So could we just
27 have until 12:20, if that works for everyone?

1 J. GRATL: I don't have any
2 objection.

3 D. VASSBERG: Okay. And, Ms. Solakian,
4 just a reminder you remain under oath. And we
5 can go off the record.

6 (ADJOURNMENT)

7 D. VASSBERG: Ms. Solakian, thank you
8 for your time this morning. I do not have any
9 further questions from the Federal Crown at
10 this time, subject to your answers to
11 undertakings and questions on the answers to
12 undertakings. Thank you.

13 C. Pigott Questions the Witness

14 C. PIGOTT: Thank you, Mr. Vassberg.

15 Q C. PIGOTT: Ms. Solakian, my name is
16 Chris Pigott. I'm a lawyer for Canada Post
17 Corporation. Can -- can you hear me?

18 A I can.

19 Q Okay. Thank you. I just have a few questions
20 for you. If you need a break at any time,
21 please don't hesitate to ask.

22 In the affidavit at paragraph 10, and then
23 in your evidence in response to Mr. Vassberg's
24 questions, you confirmed that you were aware
25 that there was a 10-day deadline for filing an
26 appeal no later than April of 2024, late April
27 of 2024. Is that correct?

1 A I'm just going to refer to my paragraph 10.

2 Just a moment. Yes.

3 Q And at that time, as of late April 2024, is it
4 also fair to say that you understood that a
5 potential consequence of the failure to file an
6 appeal within that timeline could jeopardize
7 your ability to appeal the decision at all?

8 A We were made aware.

9 Q And you were made aware at that time in late
10 April 2024?

11 A Correct.

12 Q Ms. Solakian, I'd like to ask you a few
13 questions about Associate Judge Coughlan's
14 decision itself. I take it you've read
15 Associate Judge Coughlan's decision?

16 A I have.

17 Q And you were aware that in her order, Associate
18 Judge Coughlan ordered the plaintiffs to pay
19 Canada Post and Canada \$10,000 each in legal
20 costs?

21 J. GRATL: I'm going to object.

22 What's the relevance?

23 C. PIGOTT: It goes to prejudice to
24 Canada Post.

25 J. GRATL: I'm objecting.

26 (OBJECTION)

27 C. PIGOTT: Okay. Well, I'm going to

1 proceed with my questions, and you can object,
2 Mr. Gratl. I only have a few.

3 Q C. PIGOTT: Ms. Solakian, were you
4 aware that Mr. Gratl has advised counsel for
5 Canada Post and Canada that he has only been
6 retained by the 66 plaintiffs for the purpose
7 of appealing the decision and not for the
8 purpose of dealing with the costs award?

9 A Yes.

10 Q And were you aware that Mr. Leighton Grey has
11 advised counsel for Canada Post and counsel for
12 Canada that he no longer represents any of the
13 plaintiffs and cannot address the costs award?

14 A Yes.

15 Q Have you retained, yourself, counsel to address
16 the costs award?

17 J. GRATL: I'm going to object.

18 C. PIGOTT: What's the basis for the
19 objection?

20 J. GRATL: Canada Post hasn't taken
21 any steps to collect on costs, hasn't contacted
22 these respondents individually.

23 C. PIGOTT: What's the --

24 J. GRATL: And --

25 C. PIGOTT: -- basis for your
26 objection to the question?

27 J. GRATL: And -- and it hasn't

1 filed an affidavit suggesting there's any
2 prejudice.

3 C. PIGOTT: What's the basis for the
4 objection to your [sic] question?

5 J. GRATL: Relevance.

6 (OBJECTION)

7 Q C. PIGOTT: Have you taken any steps
8 to address the costs award, Ms. Solakian?

9 J. GRATL: Objection.

10 C. PIGOTT: What's the basis for the
11 objection?

12 J. GRATL: Relevance.

13 (OBJECTION)

14 Q C. PIGOTT: Ms. Solakian, do you
15 intend to pay the costs award?

16 J. GRATL: I'm going to object.

17 C. PIGOTT: What's the basis for the
18 objection?

19 J. GRATL: Relevance.

20 (OBJECTION)

21 C. PIGOTT: Thank you. Those are my
22 questions.

23 THE COURT REPORTER: All right. So we're
24 concluded?

25 J. GRATL: No. I have a few
26 questions in redirect.

27 J. Gratl Re-Questions the Witness

1 Q J. GRATL: Ms. Solakian, has
2 Canada Post or the Government of Canada ever
3 contacted you to request payment of costs?

4 A No.

5 Q To your knowledge, have there been any
6 applications to Court by Canada Post or
7 Government of Canada to enforce payment of
8 costs?

9 A Not to my knowledge.

10 Q The material provided to you as draft material
11 for an application to extend the deadline, how
12 many pages did that consist of?

13 A I'm sorry, which document?

14 Q Previous --

15 A The draft that you provided to us?

16 Q Previous counsel provided draft material on
17 which you commented?

18 A M-hm.

19 Q How many pages of draft material were provided
20 to you?

21 A I believe it was only one or two. It wasn't
22 very long.

23 J. GRATL: Those are my questions.

24 D. VASSBERG: There's nothing further
25 from the Federal Crown defendants.

26 C. PIGOTT: Nothing further from
27 Canada Post.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF TRANSCRIPT:

I, H. Postma-Strand, certify that the foregoing pages are a complete and accurate transcript of the proceedings conducted in accordance with the Alberta Protocol for Remote Questioning taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 15th day of January 2025.



H. Postma-Strand, CSR(A)
Official Court Reporter
Commissioner for Oaths Appointee No. 0743159
ASRA Membership No. 186

1 OBJECTIONS ENTERED IN THE QUESTIONING OF
2 KARINE SOLAKIAN
3 JANUARY 7, 2025

	Page
4	
5	
6	
7 (OBJECTION)	6
8 (OBJECTION)	8
9 (OBJECTION)	9
10 (OBJECTION)	13
11 (OBJECTION)	15
12 (OBJECTION)	16
13 (OBJECTION)	19
14 (OBJECTION)	34
15 (OBJECTION)	41
16 (OBJECTION)	51
17 (OBJECTION)	56
18 (OBJECTION)	58
19 (OBJECTION)	60
20 (OBJECTION)	62
21 (OBJECTION)	63
22 (OBJECTION)	65
23 (OBJECTION)	76
24 (OBJECTION)	78
25 (OBJECTION)	78
26 (OBJECTION)	78
27	

1	UNDERTAKING 3 - To provide the May 14 or 15,	43
2	2024, response by GWS LLP to Karine Solakian's	
3	May 13, 2024, email (Subject to	
4	solicitor-client privilege)	
5		
6	UNDERTAKING 4 - To provide the June 6, 2024,	44
7	email between Karine Solakian and GWS LLP	
8	(Subject to redactions for solicitor-client	
9	privilege)	
10		
11	UNDERTAKING 5 - To provide the June 19, 2024,	46
12	update request sent by Karine Solakian to	
13	GWS LLP (Subject to redaction for	
14	solicitor-client privilege)	
15		
16	UNDERTAKING 6 - To provide the response	46
17	provided by Connor Farquhar to Karine Solakian	
18	on July 4, 2024 (Subject to redaction for	
19	solicitor-client privilege)	
20		
21	UNDERTAKING 7 - To provide the July 22, 2024,	47
22	instruction email from Karine Solakian to	
23	GWS LLP (Subject to redactions for	
24	solicitor-client privilege)	
25		
26		
27		

<hr/> \$ <hr/>	16 25:12,22 26:15,22 27:26 28:12 40:13 41:7 82:12	22 47:12,17,24 53:12 58:18,21 59:9 64:26 65:4 66:6,9,19 67:22 68:20,24,27 69:5 70:1 84:21	<hr/> 5 <hr/>	36:26 41:15 55:20 82:8 85:1
\$10,000 76:19	17 47:4 66:21 67:4	22nd 68:11	5 9:22 46:12 84:11	80 20:1,15 49:26
<hr/> 0 <hr/>	18 16:27 17:20 18:6,23 19:14 20:26 21:9 69:16	26 26:23 53:21 54:2,9	5-minute 44:21	83 27:1 28:16 33:26 41:8
0743159 81:18	186 81:19	26th 22:5,15 23:7 37:21 38:1	51 82:16	88 27:2 28:17 33:26 34:13 41:8
<hr/> 1 <hr/>	18th 16:26 17:10 21:12 23:6	281 8:7 11:5	55 85:1	8th 31:17 35:9 41:2,9
1 30:21 83:14	19 45:3 46:3,13 82:13 84:11	2nd 29:9	56 82:17	<hr/> 9 <hr/>
10 32:24 33:5 36:9,11,15 37:13, 17 38:8,11,19 40:15 41:15 53:12 75:22 76:1	<hr/> 2 <hr/>	<hr/> 3 <hr/>	58 82:18	9 32:1,23 34:10, 11 82:9
10-day 38:3 75:25	2 40:4 83:19	3 5:16 43:8 54:13, 23 84:1	<hr/> 6 <hr/>	9th 31:17
10:11 4:1	2024 4:11 5:8 7:6 12:19 15:8 16:9, 27 17:20,21 18:7, 24 19:14,15 20:26 21:7,9,10 22:15 24:12,19 25:12,22 26:15, 21 27:27 28:17 32:24 36:11,19, 21,26 37:14 38:10 39:10,25 40:5,16 42:4 43:3,4,9,10,14 44:5,11,17 45:3, 24 46:4,13,19,26 47:4,12,17,24 53:12,16,22 54:9, 10,13,23 55:2,14, 21 58:18,21 59:9 63:10 64:27 65:4 66:6,9,19 67:22 68:21 75:26,27 76:3,10 83:19 84:2,3,6,11,18,21 85:2	30 36:12,16,20 38:19 83:14	6 43:14 44:4,11, 17 46:24 82:7 84:6,16	<hr/> A <hr/>
10th 31:17 35:10 40:27 41:22	2025 81:11 82:3 83:3	30-day 17:11	60 82:19	ability 76:7 81:9
11 39:12 45:5		34 82:14	62 49:5,22 50:8, 16 82:20	absence 9:16
12 36:21,23 45:25		35 64:8	63 82:21	abstract 30:12
12:20 74:27		3rd 29:10	65 71:4,15,20 73:27 82:22	accordance 56:12 57:11,23 81:6
12:29 80:2		<hr/> 4 <hr/>	66 19:17 34:1,13 49:15 67:2,6 73:7 77:6	accuracy 83:9
13 36:19 39:10,25 40:5 41:15 42:4 43:4,10 59:1 82:10 83:19 84:3		4 7:6 44:16 45:24 46:19,26 53:16 54:2,10 55:2,14, 21 56:3 63:10,18 84:6,18 85:1	<hr/> 7 <hr/>	accurate 81:4
13th 41:18,22 42:6		40 25:21,22 26:2, 7,14 27:16,25 28:3,13 40:12,26 41:7 83:19	7 16:6 17:21 18:7, 24 19:15 21:10 22:15 24:24 25:3 47:23 82:3 83:3 84:21	act 4:7 56:12 57:10,23
14 7:6 12:19 15:8 16:9 18:23 24:12, 19 43:3,8 53:15 56:2 68:24,27 84:1		41 82:15	70 20:15	action 4:11 5:4 8:8 12:22 26:20 29:1 55:16,24 60:14 61:21 85:4
149 15:13		420 5:8	76 82:23	active 15:13,14 29:16
14th 4:11 42:10 70:1		43 84:1	78 82:24,25,26	actual 63:17 66:12
15 25:12 43:3,9 63:5 82:11 84:1		44 84:6	7th 21:12 23:1	added 64:15
15th 42:8,10 81:11		46 84:11,16	<hr/> 8 <hr/>	additional 26:23 34:17 43:14 45:2
		47 84:21	8 21:7 22:15 26:16,21,22 27:8, 23,27 28:17 32:16 33:3,10	address 77:13,15 78:8
		4th 54:1		addresses 30:1
				adhered 58:8

<p>ADJOURNMENT 44:25 75:6</p> <p>advance 7:12,19</p> <p>advice 9:27 10:2, 5,21,24,26 16:9, 12,14,16</p> <p>advise 7:25 12:5 18:11 34:25 35:2 36:4 53:3 55:5 56:4</p> <p>advised 24:17 28:12 29:3 30:9 31:19,26 32:10 36:17 38:2,5,9 52:13 54:14 56:20 69:18,23 77:4,11</p> <p>advising 55:14, 22 85:2</p> <p>affidavit 4:9,10, 13 5:16 6:21 9:22 10:12 11:23,27 12:15 16:6 21:2 26:16 31:9,13,15 32:9 34:6,8 36:9 38:7 39:9 45:4,26 49:11 53:15,19, 26 56:10 63:2,6 65:12 66:21 68:16 69:16 72:20 75:22 78:1</p> <p>affirmed 4:2,10</p> <p>afield 20:16</p> <p>agree 20:25 21:2 22:10 42:1 53:22 55:1 56:26 57:10 58:16 59:8 62:15 73:4</p> <p>agreed 49:23</p> <p>agreements 69:10</p> <p>ahead 10:19 12:12 28:8 72:3,5 73:10 74:6</p>	<p>Albert 5:7</p> <p>Alberta 59:21 60:13 81:6,11</p> <p>allegation 61:8 62:21</p> <p>allegations 60:24</p> <p>alleged 62:22</p> <p>alleging 62:1</p> <p>amenable 48:25 73:20</p> <p>and/or 70:12</p> <p>answering 60:16</p> <p>answers 52:4 75:10,11</p> <p>anticipated 14:26 51:27</p> <p>apologies 69:11</p> <p>appeal 4:15 9:6 10:14 13:12,20 14:5,13,25 16:11, 17,19 17:1,9 20:7 21:4,16 22:16,20 23:2,10,22 24:18 25:9,23 26:19 27:10,13,18,26 28:14,20,22 29:26 30:24 31:4 32:2,27 33:5,20 35:9 36:5,15 37:2 38:20,23 39:3,27 40:8,14,26 41:25 49:24 53:11 54:16 55:3 56:6 57:17 69:21,22 70:14,17,18 75:26 76:6,7 83:17,21</p> <p>appealable 17:5</p> <p>appealing 13:25 29:6 36:12 77:7</p> <p>appellant 73:19</p> <p>appellants 9:26 14:15 21:3 26:18, 25 27:9,12 32:25 33:6,26,27 34:5</p>	<p>66:23 67:1,4,5 69:11,13 71:4,16, 21 72:8,15,23 73:14 74:8,16</p> <p>applicant 26:4 49:5</p> <p>applicants 19:18 20:6 26:12,24 34:1 67:2 73:8</p> <p>application 4:14 10:11,15 35:20 36:25 37:3,4 38:23 47:3 49:25 52:1 55:3 56:6 57:16,19 58:4,18 59:4 65:3,5,16, 24,26 68:25 69:21 70:14,18 79:11</p> <p>applications 60:25 79:6</p> <p>apply 62:5</p> <p>Appointee 81:18</p> <p>appointment 22:8</p> <p>approach 11:16</p> <p>appropriately 7:18</p> <p>approved 49:6 65:3,5,11</p> <p>approving 65:24, 25</p> <p>approximate 28:9</p> <p>approximately 28:13,16 36:21 69:1</p> <p>April 17:21 18:7, 24 19:15 21:7,10, 12 22:15 23:1 26:21,22 27:27 28:17 29:8,9 31:17 32:1,24 33:3,5,10 36:11, 15,21,23,26</p>	<p>38:10,12,18 40:15,27 41:2,9, 15,22 53:12 75:26 76:3,10</p> <p>arguing 31:3</p> <p>argument 10:18 61:10</p> <p>ascertain 51:2</p> <p>ASRA 81:19</p> <p>assert 56:10 60:19</p> <p>asserted 61:5</p> <p>assertion 57:9 61:20,23</p> <p>asserts 10:12 52:27</p> <p>assess 7:11,13 8:23 9:3 15:18 20:8</p> <p>assessing 30:18 62:8</p> <p>assist 16:1 20:3</p> <p>associate 37:17 76:13,15,17</p> <p>assume 32:13</p> <p>assumed 39:6</p> <p>attempt 7:5 54:22</p> <p>attempting 17:26</p> <p>attending 31:11</p> <p>Attorney 4:26</p> <p>attributable 36:6</p> <p>AUDIO 20:19 23:27 57:26,27</p> <p>availability 22:9</p> <p>award 77:8,13,16 78:8,15</p> <p>aware 7:15 11:14 27:25 38:18 40:13 41:23 48:2 52:21,26 53:6,9</p>	<p>54:16 59:20 60:12 64:25 75:24 76:8,9,17 77:4,10</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>back 21:14 25:6 26:6,7 33:24 41:14 42:26 48:17 58:25 64:19</p> <p>bar 31:2 32:11, 13,18,21</p> <p>based 10:26 57:4</p> <p>basically 21:17</p> <p>basis 6:8 7:9 8:3 11:19 14:21 34:20 40:20 49:9 77:18,25 78:3,10, 17</p> <p>begin 13:27</p> <p>behalf 4:7 11:16 12:6,21,27</p> <p>believed 36:11 57:22</p> <p>believes 57:23</p> <p>boggles 73:5</p> <p>break 44:21 51:5 75:20</p> <p>bring 10:14 20:7 37:25</p> <p>bringing 9:6</p> <p>broad 7:22 8:3</p> <p>brought 35:21 37:19,22</p> <p>busy 57:7</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>calendar 22:8</p> <p>call 11:9 37:26,27 38:16 52:17</p>
--	---	--	--	--

<p>called 31:2 32:11, 12,18,21 52:14, 24,27</p> <p>calls 41:27 54:5 64:5</p> <p>Canada 4:6,22, 25,26,27 5:8 66:24 75:16 76:19,24 77:5,11, 12,20 79:2,6,7,27</p> <p>carriage 32:13</p> <p>case 17:5 35:22 60:19,27 61:1 73:7</p> <p>caution 21:22</p> <p>certainty 26:5</p> <p>CERTIFICATE 81:1</p> <p>certify 81:3</p> <p>change 10:26 26:3</p> <p>changed 26:11</p> <p>chat 8:15 9:8 21:19 29:13 71:10,26 72:2</p> <p>check 70:24 73:16</p> <p>Chris 75:16</p> <p>City 81:10</p> <p>claim 5:4 7:13 30:20 62:3,4</p> <p>clarification 17:6</p> <p>clarify 27:5 36:2 50:12</p> <p>clarity 29:26 56:1</p> <p>clear 30:14 35:6</p> <p>client 46:9</p> <p>clients 35:20 62:1</p> <p>close 36:27</p> <p>collect 77:21</p>	<p>collectively 6:2</p> <p>combining 23:18</p> <p>COMMENCED 4:1</p> <p>comment 50:20 52:8 66:5 69:3 74:10</p> <p>commented 79:17</p> <p>commenting 72:1</p> <p>comments 47:11 48:3,20 49:27 50:5 59:2 62:10 65:14 71:1,5,6 72:5,8 74:16,17</p> <p>Commissioner 81:18</p> <p>communicate 7:4,5 8:7,12 11:3, 5 27:27 71:5</p> <p>communicated 8:24 20:10 21:17 23:11,24 27:4 28:4,6,9 29:11, 13,14 33:3 38:14 40:15,17,27 41:2</p> <p>communicating 19:23 39:18 74:19,21</p> <p>communication 7:16 17:19 19:17, 18 20:14 31:18 41:22 42:2 46:21 53:20,25,27 54:3, 8</p> <p>communications 10:16 17:22,27 18:3,5,10,12,17, 21,25 19:3,6,10, 24 20:1 21:25 41:23 57:2</p> <p>Company 63:13, 15,19 64:26 65:3 66:4 67:12,14,23</p>	<p>68:8 69:4,18 74:13,22</p> <p>Company's 70:7,11 73:15</p> <p>complaint 59:20 60:12</p> <p>complete 67:10 81:4</p> <p>completed 31:23 37:3 42:23</p> <p>complexity 51:20</p> <p>complicated 9:24 49:14 51:10, 19 72:22 73:7</p> <p>complication 72:24</p> <p>concerns 30:1</p> <p>conclude 74:26</p> <p>concluded 78:24</p> <p>conduct 15:19 60:22</p> <p>conducted 9:5 81:5</p> <p>conducting 9:12</p> <p>confirm 4:9,21 7:15 10:16 12:6 33:21 35:8,21 44:27 48:24 51:25 52:6,7,8 57:22 58:7 69:26 73:13,16,19 74:15</p> <p>confirmation 14:5,17 33:23 49:4,22 51:26 52:10 70:5 72:6</p> <p>confirmed 25:8, 23 32:26 33:6,10, 11 49:24 54:10 72:14 75:24</p> <p>confirming 49:6 52:1 61:27 71:19, 25 72:3</p>	<p>Connor 43:21,26 44:7 45:9,19 46:25 53:2 84:17</p> <p>consent 11:15 13:8</p> <p>consequence 76:5</p> <p>consist 79:12</p> <p>constitute 71:18</p> <p>consuming 9:25 66:27</p> <p>contact 7:25 13:9 63:10,15,19,26 64:20,22</p> <p>contacted 63:11 64:13,17 77:21 79:3</p> <p>contacting 64:5, 6,8,10</p> <p>content 6:11,14, 20 18:2 30:3 45:17,18 49:23</p> <p>contents 19:6 21:23</p> <p>context 25:7 49:20 59:18</p> <p>contours 30:12</p> <p>conversation 64:19</p> <p>copy 15:7 29:19, 24 30:4,21 40:1 46:21 55:17 83:14</p> <p>core 26:18 27:9</p> <p>Corporation 4:22 5:8 75:17</p> <p>correct 4:15,16 14:7 15:8,9 17:15,17 20:27 21:1,7,8 25:11, 13,14,24,25,27 26:1 28:17,18 31:4 32:3 34:27 36:21 38:20,21</p>	<p>39:10 41:9 42:2,3 43:15 44:5 45:3 47:4,12 48:26 52:11,12,15,16, 20,24,25 53:17, 18 54:11,12,17, 18,20,21 55:3,4 56:13 58:19,24 59:13,14 62:17 64:27 65:1 68:22 70:8,15 71:16 73:15,21 74:22, 23 75:27 76:11</p> <p>correspondence 48:17</p> <p>costs 76:20 77:8, 13,16,21 78:8,15 79:3,8</p> <p>Coughlan 76:18</p> <p>Coughlan's 76:13,15</p> <p>counsel 4:6 5:13, 19 6:24 10:1 17:13,24 21:26 38:9 39:5,15,16 41:16 54:22,25 55:2 56:11 59:22 60:14,20,23 64:1, 7,10,13,23 77:4, 11,15 79:16 83:7, 8</p> <p>court 4:8 5:3 9:3 20:3 78:23 79:6 81:17 83:8</p> <p>courtesy 83:6</p> <p>created 8:16</p> <p>cross-examination 4:18</p> <p>cross-reference 72:7</p> <p>cross-referencing 72:12</p>
--	---	--	--	---

CROSS-TALK 43:25	54:14 56:2,3 58:22 81:11	depended 8:17	Doucet 43:21	ensure 83:9
Crown 75:9 79:25	days 24:15 31:18 36:12,16,20 37:13,18 38:11, 19 66:15,19 67:26 69:4	depending 11:11	draft 47:3 65:19 67:27 69:2 73:15 79:10,15,16,19	ENTERED 82:1
crystallization 27:6,19	deadline 30:8,15 36:12,15,20,23, 27 37:12 38:3,10 57:20 58:5 62:5 69:22 70:18 75:25 79:11	describe 22:17	drafting 38:23, 25	entire 11:13 12:25 13:1 14:12, 16 34:12,15
crystallize 21:11	deadlines 17:9	describes 11:23	draw 65:21	entitled 11:15
crystallized 21:4 22:16,21 26:14, 19 27:3,10,23	dealing 20:13 77:8	Description 83:12	drive 20:17	establish 20:9
CSR(A) 81:16	dealt 39:6	detail 9:8	driving 18:18 35:26	estimated 33:27 42:22
cumulatively 4:26	decided 14:13 22:24 66:13	details 9:10	due 37:16 45:21	event 62:25
current 12:15 26:4,8	decision 5:7,9 7:27 8:27 12:18, 23 15:7,12,21,23 17:7,19,23 20:27 21:5,15 22:26 23:3,9,22,24 24:10,19 25:10, 24 29:2,16 31:4 33:1 36:13,18 37:14,16 38:11 40:14,17 56:2 76:7,14,15 77:7	determine 20:5		evidence 4:13 40:22,24 41:1 51:2,11 59:26 60:4 75:23 80:2
cut 9:15 20:20 24:1	defendants 4:7 79:25	devote 64:1,2	E	exact 29:8 38:13
D	definition 6:13, 20	differ 11:8	earlier 71:24	examples 59:15
D-A-G-G-E-T-T 5:26	delay 16:3 36:5 42:16,19,20 61:19 62:8 68:23, 26	difference 27:20 33:8 65:24	Early 29:8	excuse 4:10 8:10 18:23 63:13
Daggett 5:22,25 6:2 7:3	delayed 56:7,27 57:6	difficult 19:27	easy 57:3	expect 30:15
daily 21:17	delays 61:7	difficulty 63:7	editorializing 60:3	expectation 32:1 48:19 74:7
Daniel 4:5	Department 4:6	digging 26:9	Edmonton 81:10	expectations 30:17 74:2
date 16:26 22:12, 23 29:8 30:2 31:27 36:13 37:13 38:11,13 55:27 63:17,21, 24 66:10,11,12 67:20 68:2,9	depend 67:15	diligence 69:19 70:8,11	eight-week 69:1	expected 73:18, 22,24
dated 4:10 81:10		direct 70:7	email 8:15 15:2, 10,14 16:15 29:12,14,15,19, 24,27 30:3,5,19, 22 33:22 34:2 38:15 39:22,25 40:2,5 41:19 42:11,13 43:4,10, 22 44:8,11,14,17 45:11 46:8 47:15, 18,24 48:17 55:7, 14,18,21 67:14, 16 70:27 71:12 83:14,20 84:3,7, 22 85:2	expedite 38:22, 25
dates 18:5,9,16 20:14 52:18,20, 22,24 53:26 70:26		direction 13:14	embedded 51:21	explain 10:17 14:9 23:23 28:2 33:2
David 31:20 32:8		directly 27:12 74:10	end 13:21 71:13	explanation 9:17
dawdled 20:18, 21,23		disappear 61:25	endeavor 43:5 44:13 46:20	explicit 52:10 58:17 59:18
day 16:24 22:3,25 24:15,16,18 25:9 41:18 48:12		discretion 83:6	ended 28:27 34:1 64:10	explicitly 74:14
		discuss 14:11 16:18	enforce 79:7	explore 73:11
		discussed 48:6		extend 4:15 57:19 58:5 62:5 69:21 70:18 79:11
		discussing 64:4		extension 7:14 10:15 15:21 20:8 31:3 36:25 37:7,8 39:3 63:1

extent 12:23

F

fact 49:14 61:10
facts 37:9 61:13
failure 76:5
fair 76:4
falsehoods 51:21
Farquhar 43:21
 44:7 45:9,19
 46:19,25 53:2
 55:9 84:17
fax 67:16
FC 5:8
federal 4:7,8 5:3
 75:9 79:25
fee 36:7
FEED 20:19
 23:27 57:26,27
feedback 14:11
feel 57:6
fees 56:7
felt 56:20
file 4:8 5:3 7:19
 15:13 17:9 20:7
 32:13 45:20,23
 47:11,14 48:4
 49:24 53:17
 54:11,15 55:6
 56:4 57:16 58:18,
 23 59:3,22 60:21
 62:2 65:15,19
 71:20 76:5
filed 15:22 57:19
 58:4 59:20 60:12
 68:25 69:6 70:19,
 22 73:20 78:1
filing 12:24 13:8
 48:25 56:5 65:25
 75:25
final 28:21,23
finalized 22:22,
 23 28:26

find 6:18 29:21
 54:22 73:9
finding 63:7,26
 64:1
fine 25:20
finish 13:26 28:8
firm 19:20 55:9
Firstly 61:18
follow 41:8,15
 59:10,12,17
foregoing 81:4
form 23:2,19
 33:18 50:7 65:7,
 11,25 67:10
forms 4:18
forward 33:20
 45:22
fourth 72:19
freely 21:19
front 34:8
funds 34:18

G

gap 28:2,3 33:2
gave 58:17,20,22
General 4:26
generally 18:16
 35:23 54:19
 56:10,21,24,26
 57:12
give 9:27
good 4:4 71:17
Government
 79:2,7
Gratl 6:6,10,13,
 19,25 7:7,10,20,
 21 8:2,21 9:1,7,
 11,15,16 10:6,8,
 19 11:18,20,25,
 26 12:2,8,10,11
 13:2 14:19,22
 15:3,4,16,24,27

17:25 18:4,8,14
 19:4,16,21,26
 20:4,12,20,22
 21:21,25 23:12,
 16,25 24:1,3,21
 25:1 30:4,10,11,
 17 32:14 34:19,
 22,27 35:1,5,15,
 23 40:1,19,21,25
 41:4 43:5 44:13
 46:2,6,8,17,20
 47:20 49:2,8
 50:10,15,22 51:6,
 8,16,24 52:3
 53:23 55:17
 56:14 57:13,18,
 26 58:1,3,9,13,27
 59:24 60:1,16,26
 61:5,11,15,16,23,
 26 62:3,7,13,18
 63:3,12,13,15,19,
 20 64:26 65:3,6,
 10,23 66:4 67:12,
 14,23 68:8 69:4,
 18,24,26 70:7,11,
 12,13 72:10,16
 73:5,15,22,26
 74:5,13,22 75:1
 76:21,25 77:2,4,
 17,20,24,27 78:5,
 9,12,16,19,25,27
 79:1,23 80:1
great 72:4
Grey 5:12 13:9
 17:16 31:19 32:4
 33:12,15 39:17,
 19,26 40:6 43:20
 44:6 53:2 54:26
 55:5,14,22 59:22
 60:14 77:10
 83:20 85:2
Grey's 62:27
group 6:16 8:17
 9:25 11:13 12:16,
 25 13:1,15,18,25
 14:12,16 16:13
 17:23 18:26 21:3,

10,13,16,18 22:2,
 18 23:1 24:11
 26:4,8,18 27:9
 29:5,13 34:13,15
 37:26,27 48:15
 50:26 71:10,14,
 26 72:2 74:11
guess 36:22 42:3
GWS 5:13 7:5,
 17,27 11:2 13:10,
 11 14:6,14 15:7
 16:10 17:14
 18:22 19:1,14
 20:27 21:12,13
 22:3,8,13,27
 23:13 25:26 27:4,
 14,21,27 28:12
 31:1,19 32:17,27
 33:11 34:3,16,26
 35:6,17 36:4,17
 37:26 39:7 40:15,
 18,27 41:24 42:4
 43:3,9,18 44:12,
 18 45:3,9 46:5,14
 47:19,25 48:7
 52:2,14,17,24,26
 53:1,10,16,21,27
 54:10,14,19,25
 55:5,15,22 56:3,
 4,8,11,16,21
 57:10,23,27 58:2,
 4,7,17 59:3,9,12,
 16,23 60:15
 61:23 62:1 65:15
 84:2,7,13,23 85:3

H

half 70:3,4
handle 55:3
handling 54:27
 59:21 60:13,20
 62:2
happened 17:18
 21:9 35:9 54:5

hear 24:2 34:14
 71:11,15,17
 75:17
heard 46:6 61:8,
 12
hearing 28:27
 71:18
Hersey 31:2,20
 32:8,10,21 36:24
 37:6 39:19
hesitate 75:21
hired 64:26 66:8,
 13
honest 68:3
hop 28:4
hours 64:9
hundreds 49:15

I

identification
 66:25 67:8,9,18
 68:7,17 69:9
identity 69:13
immediately
 16:8 22:20 23:10,
 11,22 24:7,8,9,
 24,26 25:2
impact 14:27
impacted 72:24
implication
 10:18
implies 10:12
important 14:23
 51:12
impression
 54:24
inadequate 56:7
include 29:15
included 43:20
 48:6
includes 63:12

including 14:4
income 68:16
incorporates 6:20
incorrect 14:9
indexed 83:5
indicating 42:15
indication 49:12 56:16 60:18
INDISCERNIB
LE 58:9
individual 13:13 32:26 33:7,23
individually 13:9 32:25 33:6, 13,16 35:8 49:27 77:22
individuals 6:4, 16 20:11 27:25 33:19 44:2 50:3, 4,6,8 72:26
inform 8:25
information 8:24 13:4 21:15 34:18 50:18 52:7 53:19 66:13,16 67:12 69:8 74:7, 12
initial 8:7 11:6 28:10
initially 11:11 27:16
inquire 32:12 39:1
inquired 39:7
inquiries 53:4 54:20
inquiry 42:5
inserted 83:5
instances 12:26 56:15 60:23
instruct 14:14
instructed 5:19 6:23 59:3 65:15

instructing 6:3 7:2,26 10:3,23 11:3,10,15,24 12:20 14:3,10 15:15 17:24 23:14 47:6,9 48:2,5,23 74:3
instruction 47:18,24 84:22
instructions 9:27 12:6,21,27 14:4 32:27 33:7,9,13, 16,18 34:17 47:11,14 48:3 49:7,17,24 50:2, 26 51:3 52:2 54:9 56:13 57:1,11,12, 14,16,24,25 58:8, 17,20,22 59:8,10, 11,12,18 65:19 66:5 71:2,5,6,20 72:25 73:14 74:21
insufficient 35:17
intend 78:15
intended 24:17 32:25 33:25 34:4
intention 21:4,11 22:16 23:2,4,11 25:8,23 26:15,19 27:3,10,13 40:26
intentions 22:19
interested 29:6
internal 42:21 48:15
internally 18:22 19:13
interpretations 83:7
interpreting 62:9
intervening 8:26 15:20

invite 11:12
involved 28:25
irrelevant 7:23 8:4 16:3
issue 20:24 35:17 65:9 73:11
issued 36:19
issues 42:21 45:21 62:11,13 69:20

J

January 81:11 82:3 83:3
Jason 69:24
jeopardize 76:6
job 71:17 72:4
judge 37:17 76:13,15,18
July 45:24 46:19, 26 47:4,12,17,24 53:12,21 54:2,9 58:18,21 59:9 65:4 66:6 84:18, 21
June 43:14 44:4, 11,17 45:3 46:3, 13 84:6,11
Justice 4:6

K

K-I-M 5:25
Karine 4:2 40:6 43:10 44:18 46:14,26 47:25 82:2 83:2,20 84:2,7,12,17,22
Kim 5:22,25 6:1 7:3 52:13 54:5 68:13
kind 12:24 72:11

knew 27:17 28:3, 10 39:2
knowledge 70:7, 10 79:5,9

L

L-U-S-S-I-E-R 5:27

lack 36:6
large 9:25 14:15 18:26 21:18 29:27
late 37:14 38:10, 12,18,20 39:3 54:17 63:16,18, 23 75:26 76:3,9
law 19:19 59:20 60:12,19,22,27
lawyer 48:17 63:8 75:16
lawyers 61:24 63:9
leave 32:8
led 21:10
legal 5:19 6:23 9:27 10:1,2,5,21, 24 16:9,16 21:26 38:9 61:10 69:20 76:19
Leighton 39:17 40:6 43:20 44:6 53:2 54:26 55:22 77:10 83:20 85:2
lengthy 49:13
Lesley 43:21
letter 35:7,11,14
letterhead 33:22
lines 29:10
list 18:9 20:1 27:11,24 28:16, 19 29:15 33:4 72:8 73:16

litigation 49:13 72:22
live 8:15
LLP 5:12,13 7:5, 17,27 11:2 13:10, 11 14:6 15:7 16:10 17:14 18:22 19:1,14 20:27 21:12 22:3 23:13 25:26 27:4, 27 28:12 31:1 32:17,27 34:16, 26 35:17 36:4 40:15,18 41:24 42:4 43:3,9 44:12,18 45:3 46:5,14 47:19,25 52:2,14,17,24,26 53:10,16,21 54:10,14,19 55:5, 15,22 56:3,4,8, 11,21 57:10,23 58:7,17 59:3,9, 12,16,23 60:15 62:1 63:12 65:15 84:2,7,13,23 85:3
locating 64:6,8
location 48:16
logistically 9:24
long 10:13 14:27 79:22
longer 55:6,9,15, 23 77:12 85:3
looked 42:25 69:8
lost 7:20 20:19,21 23:27 57:26,27 58:1
lot 31:18 61:24
Lussier 5:23,26 6:2 7:4

M

M-A-R-K 5:26

M-HM 21:6,24
43:16 79:18
made 12:24
22:18,20 23:9,22
43:13 45:2 49:13
56:16 72:5 76:8,9
mail 15:1 67:17
maintain 11:25
15:2,25 35:4
Majesty 4:25
make 22:25
45:10 50:5 51:6
57:8
making 24:4
30:19 64:5
March 7:6 12:19
15:8 16:9,26,27
17:10,20 18:6,23
19:14 20:26 21:9,
12 22:5,15 23:6,7
24:12,19 25:12,
22 26:15,22
27:26 28:12
36:19 37:14,21
38:1 40:13 41:3,7
56:2
mark 5:22,25 6:2
7:3 52:22
match 26:8
material 50:19
65:11,21 72:1
79:10,16,19
materials 31:23
32:2,5 35:19 36:6
37:2 42:16,23
47:3,12 48:8
49:25 56:6 58:19,
23 65:4,5 66:4
68:1,25 69:2
70:15 71:2 72:21
73:15,20
matter 54:27
63:25
means 22:22
27:11 64:18

meant 24:9,23
71:25
meet 16:25
meeting 14:11
16:15,17,18,21
17:20 18:7,24
20:26 21:13 22:2,
4,7,14,27 23:7
25:26 28:11
meetings 17:18
18:2,5
members 74:11
Membership
81:19
mention 17:10,
12
mentioned 17:3
merits 16:10,16,
18
messaging 71:14
mind 26:3,12
73:5,27
**mischaracterizin
g** 59:25
misstate 40:24
misstatement
41:5
misstates 40:21
51:11
moment 7:20
31:16 76:2
month 40:16
41:14
months 54:17
morning 4:4 75:8
motion 49:12
63:1 67:2 72:21
mouth 50:23
move 6:27 33:20
72:5
multiple 23:18

N

names 25:17 26:7
27:11,14,20,24
narrow 20:16
nature 51:12,17
62:8 73:23
needed 34:14
42:25
negligence 61:6,
8,9,20,21 62:4,
21,25
negligent 60:20
62:2
non-instructing
7:16
nonpayment
35:25
nonresponsive
56:12,21,27
**nonresponsivene
ss** 59:16
notarizing 67:10
notary 67:9,15
notes 26:6 74:25
81:8
notice 13:13,20
14:5,25 15:1
November 4:11
68:24,27 70:1
number 4:8,14
10:13 14:15
19:22 25:19,20
27:1 28:10,22,23,
26 29:27 49:18
50:16 72:23

O

oath 44:27 75:4
Oaths 81:18
object 6:6,7 7:7
8:22 9:17 10:8

11:18 13:2 14:20
15:16 17:26 19:5
24:22 40:19 49:8
51:9 52:3 56:15
59:25 61:2,3 63:3
65:6 76:21 77:1,
17 78:16
objecting 8:2
58:13 61:14,15,
16 76:25
objection 6:9,26
7:21 8:5 9:20
11:25 13:5 15:3,
5,26 16:4 19:8
34:19,21,24 35:4
41:6 51:9,10,13,
14,17 56:18
58:15 60:6 62:23
63:4 65:17 75:2
76:26 77:19,26
78:4,6,9,11,13,
18,20 82:7,8,9,
10,11,12,13,14,
15,16,17,18,19,
20,21,22,23,24,
25,26
objectionable
6:18
OBJECTIONS
82:1
obtain 9:26 30:4
40:1 46:21 55:2,
17
obtained 49:17
occur 19:10
occurred 17:19
18:2,3,12 19:24
office 14:14
22:13 27:15,21
31:19 33:12,24
44:2 45:22 62:27
offices 39:7 43:18
53:1
Official 81:17
omitted 53:25

oneself 9:12
online 8:16
opportunity
60:24
options 14:11
order 7:13 8:25
15:18 20:8 76:17
ordered 76:18
original 54:25
outlined 15:12
61:13
**OVERLAPPIN
G** 58:10

P

P-A-U-L 5:27
P-R-I-E-S-T
5:25
pages 79:12,19
81:4
paid 56:8
paper 27:20 34:7
paperwork
43:27
paragraph 5:16
9:22 16:6 24:24
25:3 26:16 27:8,
23 32:14,16,23
33:25 34:10 36:9
38:8 39:11,12
45:5,25 53:15
58:26 59:1 63:5
66:21 67:3 69:16
75:22 76:1
part 26:3 60:1
68:16 71:22,23
parties 60:19
party 29:1 43:22
51:4,27
Paul 5:23,26 6:2
7:4
pause 28:7

pay 76:18 78:15	18:21,26,27 19:1, 13,14,19,22 20:5, 18,23 22:3,18 23:10,15,21 25:8, 15,16,21,22 26:2, 11,23 28:13,17, 19,22 29:12,16, 20,25 30:23 31:22 33:4 36:14 40:12,26 47:7,10 48:3,5,9,10,20, 23,25 49:5,15,18, 23,26 50:1 51:27 52:11 53:9,21 54:16 56:5 59:19 60:11 62:27 63:10 64:3,22 65:2 69:9,11 72:23 73:1,25 76:18 77:6,13 83:15	prejudice 76:23 78:2	83:22	putting 31:10 50:22
payment 79:3,7		preparation 36:5 56:5	proceedings 4:1 81:5	<hr/> Q <hr/>
pending 14:26		prepare 32:5 35:18 69:20	process 50:25 51:3 66:24 67:7 68:14	qualifier 64:15
people 20:2,15 35:7 50:27 63:26 71:27 73:27		prepared 31:23 32:2 42:17	produce 35:18 44:14 46:21 47:20	question 6:7 7:8, 22 8:3 9:14,18 10:20 11:1 12:13, 14 13:26 16:1 18:15 19:25 20:13,22 23:26 24:4,22,27 25:6 32:19 36:3 40:21 41:14 49:9,19 51:19,22 52:4 57:3 58:14 59:6 60:1,2,9,10,17 61:4,14,15,17,19 62:7,11,14,17,20 65:7 71:25 72:11 73:23 74:9 77:26 78:4
period 8:26 15:20 18:13 20:2 22:27 66:14 69:1		preparing 31:3 36:24 37:6 70:14, 16	production 46:9	questioned 4:2
permit 9:14 62:10,16		pretty 35:6	promptly 9:5 42:17	questioning 73:6,9 81:7 82:1 83:1
permitted 12:20, 27		previous 12:16 17:13 60:3 79:14, 16	properly 9:12	questions 8:25 20:17 21:14,19, 20 23:17,18,26 50:5 74:10 75:9, 11,13,19,24 76:13 77:1 78:22, 26 79:23
person 8:17 31:20 48:7		previously 23:8, 21 33:27 55:27 64:12 67:27	Protocol 81:6	quit 61:24
personal 23:4		Priest 5:22,25 6:1,17,22 7:1,3, 15 8:6,10 52:13, 24 54:5 68:13	provide 12:20,27 14:4,11,16 21:20 28:19 29:23 30:21 39:25 40:2, 4 42:22 43:2,6,8 44:11,16 46:12, 24 47:14,17,23 48:20 55:13,18, 20 65:2 66:4 69:13 71:4 83:14, 19 84:1,6,11,16, 21 85:1	quote 13:19,21
personally 71:12		primarily 39:19	provided 10:2,5, 21,24,27 27:21 28:16 32:4 46:18, 25 47:6,11 48:3,7 50:18,19 55:8 59:2,8,11 60:23 65:14 66:5,12,18 67:13 68:6,20 69:2,3 70:25 71:1 73:14 74:8,15,16 79:10,15,16,19 84:17	<hr/> R <hr/>
phone 38:16 41:27 54:5 64:5	plaintiffs' 4:14 57:12,24	prior 25:26 40:27 49:6 52:1 54:23 55:1 58:20 70:19, 22 74:17,19	providing 60:3 65:18 67:11 68:14	random 22:23
phrases 4:19	pleadings 38:27 48:26 49:6	private 8:15,19 9:8 71:13	Province 81:10	range 55:27
piece 34:7	PM 80:2	privilege 11:21 19:7 30:6,10,13, 19,26 34:23 40:3, 10 43:7,12 44:15, 20 46:11,16,23 47:1,22,27 55:19, 25 83:17,23 84:4, 9,14,19,24 85:5	purpose 77:6,8	Re-questions 78:27
pieces 32:7	point 17:4 20:24 37:4 43:20 49:14, 26	privately 8:15,19 9:8 71:13	put 43:19	read 5:17 9:23 16:7 24:10 26:17
Pigott 51:5 75:13,14,15,16 76:23,27 77:3,18, 23,25 78:3,7,10, 14,17,21 79:26	points 17:6	problem 35:24 51:20		
place 10:17 22:4 53:25 54:8	position 29:25 30:7,23 83:16	problems 61:7		
plaintiff 11:24 13:13,20 14:25 17:23 19:17 29:1 33:23 42:23 68:6 74:3	possibly 29:21 41:26	proceed 77:1		
plaintiff's 15:19	post 4:22 5:8 48:16 75:16 76:19,24 77:5,11, 20 79:2,6,27	proceeding 39:27 40:8 41:25		
plaintiffs 5:18,20 6:3,23 7:2,3,12, 16,18,27 8:7,13, 25 9:4,26 10:3,4, 13,22,23,25 11:4, 6,11,15,17 12:7, 20,22 13:7,15 14:3,6,10 15:13, 14,15 16:8 17:24	posted 48:10,13, 14 50:3 52:7 72:1			
	Postma-strand 81:3,16			
	potential 64:23 76:5			
	predicated 62:20			

27:8 32:16,23
36:10 37:11,16,
20 38:8 50:4 59:1
63:6 65:13 66:22
69:17 76:14

reason 32:4
42:20

reasonable 10:18
20:6 69:19

reasonableness
15:19

reasoning 55:8
68:23

reasons 16:2
61:17

recall 26:10 29:8
31:9 38:13,14
41:26 42:1 44:3
45:7,14,15,17
55:27 56:24
63:17 68:2,4

receive 14:25
29:4 45:12 46:8
49:22 53:8 70:17,
21 71:19

received 15:7,23
16:20,23 24:9
28:21 36:18 47:3
48:12 51:26 53:3
72:14,25,27

receiving 24:18
25:9

recess 74:25

recollection
45:19

record 31:14
44:23,24 61:27
75:5

records 38:23,26
45:16

redacted 30:2,16
redaction 46:10,
15,22,27 84:13,
18

redactions 40:2,
9 44:15,19 47:21,
26 55:18,24
83:22 84:8,23
85:4

redirect 78:26

refer 4:21,25 5:3,
7,12 6:1 45:4
58:25 76:1 83:8

reference 45:25
60:27 61:2 68:15

referring 4:23
5:1,5,10,14 6:4,
16,17 8:9 12:14
13:17 33:26 67:2,
5,26

refusal 62:10

refuse 9:13 12:4

refusing 7:24
20:11 62:16,18,
19

related 35:24

relevance 7:10
8:22 9:2,7,17
10:9 14:22 15:17
60:17 62:20
76:22 78:5,12,19

relevant 7:17
10:13 35:19
49:16 61:18
65:22 72:17

remain 75:4

remaining 11:16
12:21 14:6

remarkably 16:3

remarks 60:3

remember 43:24
63:21

reminder 75:4

Remote 81:6

remotely 31:12

rendered 8:1,27
12:18 15:21 29:2,
17 37:17

repeat 10:20

rephrase 49:3

reported 60:22

reporter 78:23
81:17 83:8

represents 77:12

request 13:24
14:4 16:15,16,21
24:4 29:7,20

34:16,17 37:6
39:14 43:14,17,
19,23 44:4,8,10
45:2,10,12 46:4,
13 52:14 79:3
84:12

requested 13:12,
19,23 16:9,12,14
28:11,24 29:9
34:26 35:2 39:8,
10,21 45:7 83:8

requesting 13:14
29:25 30:23
33:19 39:26 40:7
41:24 53:10
83:15,21

requests 14:17,
18

required 37:8
51:3

requirement
74:23

research 69:20

respond 14:27
29:3 42:4,6,7,15
57:8 60:24

responded 27:12
46:7 50:6,9
64:11,16,18

respondents
77:22

responds 56:17

response 16:20
24:27 25:3 28:24,
25 29:4,7 43:3,9
45:12,15,17,18,

24 46:18,25
47:15 48:7 53:4,
7,8 57:5 75:23
84:2,16

responses 57:1
71:19 72:14

restate 66:2

result 56:7

resulted 61:7
retained 67:23
77:6,15

retainer 34:18
35:18 36:7 56:7
68:20 69:10,14

retainers 66:26
68:15

review 30:5
42:24 46:9 48:20
50:20 70:17 74:9,
25

reviewed 48:8
49:5 58:23

room 8:15,19

round 25:19,20

S

schedule 22:6

send 44:1

sender 30:8

separate 64:23
68:14,18

September 7:6
53:16 54:1,2,10,
13,23 55:2,14,21
56:3 63:10,16,18,
19,23 64:26 66:9,
19 67:22 68:11,
20,24,27 69:5
70:1 85:1

served 62:27
68:25

service 83:6

set 53:14

severally 23:17

shape 50:6

short 4:18

shorthand 81:7,8

shortly 24:13,14
31:26 32:2 42:27
67:24,25 68:3

should've 57:4

show 50:24

sic 6:17 78:4

similarly 68:19

simpler 51:6

simply 5:8 72:26

SIMULTANEO
US 43:25

single 28:27 51:4
73:19

sir 50:11 51:10,
16,23 53:23 59:1
72:12

situation 8:18

skill 81:9

small 49:18 50:26

Society 59:21
60:12,22

Solakian 4:2,5
8:11 9:14,21
10:11 12:5,12
13:6,26 15:6 16:5
18:20 19:11
20:25 21:22 22:1
23:14,20 24:6,23
25:5 29:23 30:8,
27 31:7,11 35:21
36:1 39:26 40:6,
11 43:2,13 44:12,
18,26 46:4,14,19,
26 47:2,19,25
48:1 49:21 50:13
51:7,15,25 52:5
55:13 56:20,22
57:21 58:7,16
59:7 60:8 61:3

62:10,16,26 66:3 70:6 73:3,12 75:3,7,15 76:12 77:3 78:8,14 79:1 82:2 83:2,20 84:7,12,17,22 Solakian's 11:23 43:10 84:2 solicit 17:27 19:6 solicitor-client 11:20 13:3 17:27 19:7 30:5,9,13, 19,25 34:22 40:3, 9 43:7,11 44:15, 19 46:10,15,22 47:1,21,26 55:19, 25 83:17,23 84:4, 8,14,19,24 85:5 sooner 28:20 sought 49:27 SOUND 12:8 sounds 17:26 19:5 speak 11:13 53:1 SPEAKERS 58:10 speaking 14:2 28:8 70:12 specific 18:15 31:27 41:23 42:2 48:16 52:20,23 54:8 56:11 70:23 specifically 8:16 13:11 16:12 19:10 20:6 26:11, 13 33:12 38:12, 17 44:4 45:7 52:26 60:21 63:11 65:9 66:10, 15 67:18 73:13, 16,18 specifics 41:18 spell 5:24 Spencer 5:12	spent 64:3 staff 70:12 staffing 42:21 45:21 61:7 start 18:19 35:27 57:15 58:21 state 5:16 9:23 16:6 26:16 31:14 32:23 36:10 38:7 61:14 63:6 66:21 69:16 stated 27:17 37:11 40:25 states 6:22 stating 27:13 56:24 status 53:11 steps 7:12 20:7 55:1 77:21 78:7 stipulates 6:14 stipulating 6:10 streamlined 50:25 51:3 student-at-law 31:1 32:11,17 subject 17:2 19:7 30:9,25 40:2,8 43:6,11 44:14,18 46:10,14,22,27 47:21,25 55:18, 24 75:10 83:17, 22 84:3,8,13,18, 23 85:4 substantive 6:14, 20 suggesting 51:18,20 78:1 summarized 21:15 supervise 31:21 support 4:13 10:10 60:25 suspected 37:12, 15	swear 21:2 swore 4:9 sworn 10:11 synopsis 18:17 <hr/> T <hr/> T-1436-22 4:8 5:3 26:20 taking 45:20 67:9 talk 30:11 54:13 talked 27:16 talking 41:10 64:4 72:12 team 5:18 6:22 Telegram 48:15 telephone 15:2 53:4 things 11:8 33:9 35:10,14 thought 25:1 28:7 36:19,23 57:4 thoughts 21:16 three-week 20:2 time 7:5,14 9:25 10:15 12:17 14:24 15:12,22 20:2,8,18,24 24:5 26:26 29:16 31:4, 24 32:6 36:25 37:7 38:24 39:18 41:27 48:9 49:19 52:21 54:6,15 57:5,6 63:1,27 64:2 66:26 71:27 72:19 75:8,10,20 76:3,9 timeline 4:15 17:1,3,11 20:9 42:22 53:14 76:6 times 11:2,4 20:14	timing 23:23 37:5 today 52:23 Today's 22:25 told 31:1,6 37:10 tort 62:4,21,24 transcribed 81:8 transcript 81:1,5 true 67:11 69:27 type 10:26 types 10:16 <hr/> U <hr/> Uh-huh 15:24 74:5 unable 22:8 unapproved 65:19 unavailable 61:25 unaware 52:20, 23 uncommon 44:1 understand 4:21,27 11:1 18:14 19:27 37:5 50:4,23 51:12,16 53:20 65:20 68:26 70:10 understanding 17:1,8 74:2 understood 76:4 undertaking 29:23 30:21 39:25 40:4 43:2,8 44:11,16 46:3,12, 18,24 47:17,23 55:13,20 83:14, 19 84:1,6,11,16, 21 85:1 undertakings 75:11,12 83:1,5	unfathomable 73:10 unobjectionable 60:5 UNREPORTABLE 12:8 unresponsive 54:19 56:25 update 39:10,14, 21,27 40:7 41:24 43:14,17,19 45:2, 8 46:4,13 83:21 84:12 updates 39:8 52:14 53:10 urgency 39:2,6 utilized 83:6 <hr/> V <hr/> vagueness 58:14 Vassberg 4:3,4,5 6:8,12,15,21,27 7:1,9,11,24 8:6, 23 9:3,9,13,19,21 10:10,21 11:19, 22 12:1,4,9,17 13:6 14:21,23 15:6,18,25 16:5 18:1,6,11,19,20 19:9,21 20:4,20, 25 22:1 23:13,20 24:1,6,25 25:4,5 29:22 30:7,14,27 32:16,20 34:20, 25 35:3,13,16,27 39:24 40:11,20, 23 41:1,7 43:1,13 44:3,10,22,26 46:2,17 47:2,16 48:1 49:3,10,21 50:12,21 51:1,15, 24 52:5 53:24 55:12,26 56:19, 22 57:15,21 58:1, 6,11,16 59:5,7,27
--	--	---	---	--

60:7,8,18 61:1,9,
12,22,26 62:6,9,
15,24,26 63:5,22,
27 65:8,18 66:1,3
70:3,6 72:13,18
73:3,12,24 74:1,
14,24 75:3,7,14
79:24

Vassberg's
75:23

verbiage 37:18

verification
66:25 68:7,17

verified 67:19
69:9

verify 52:18
69:13

verifying 66:26
67:7

versus 11:4 15:1,
2

W

wait 27:26 28:1
40:16 41:14
48:24 49:4 50:8,
17 52:10 63:18

waited 50:5

waiting 50:2
63:25

wanted 11:9
14:13 22:21 23:9
26:24 27:18,25
28:13 33:4,12,15,
20,22 35:8 40:13
48:22 52:8

wasted 20:23

wasting 20:18

ways 51:12

week 22:6

weeks 22:14,27
69:5,7,12 70:2

wished 22:19

28:20

wishing 28:22

word 24:7,23,26
25:2 26:10 27:5

words 50:22

work 13:10

worked 69:19

working 32:7
55:6,15,23 85:3

works 74:27

Wowk 5:12

wrap 80:1

writing 71:13

written 5:7 66:26
68:15,19

Y

young 61:24

Z

Zoom 11:9 29:14

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
February 14, 2025		
Lindsay Krieger		
EDM	58	

Court File No. T-1436-22

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

Plaintiffs

and

CANADA POST CORPORATION and
HIS MAJESTY THE KING IN RIGHT OF CANADA

Defendants

APPLICANTS' WRITTEN REPRESENTATIONS**Gratl & Company**Barristers and Solicitors
511-55 Cordova Street East
Vancouver, BC V6A 0A5Jason Gratl
jason@gratlandcompany.com
Tel: 604-694-1919
Fax: 604-608-1919

Counsel for the Applicants

Fasken Martineau DumoulinBarristers and Solicitors
333 Bay Street, Suite 2400
Toronto, ON M5H 2T6Christopher D. Pigott
cpigott@fasken.com
Tel: 416-865-5475
Fax: 416-364-7813Grace P. McDonell
gmcdonell@fasken.com
Tel: 416-865-4538
Fax: 416-364-7813Counsel for the Respondent
Canada Post Corporation**The Department of Justice Canada**300, 10423-101 Street NW
Edmonton, AB T5H 0E7Daniel Vassberg
daniel.vassberg@justice.gc.ca
Tel: 587-545-3097
Fax: 780-495-8491Counsel for the Respondent
His Majesty the King in right of Canada

TABLE OF CONTENTS

OVERVIEW	1
PART I. STATEMENT OF FACTS	2
PART II. POINTS IN ISSUE	4
PART III. SUBMISSIONS	5
LEGAL PRINCIPLES FOR EXTENDING TIME UNDER RULE 8	5
CONTINUING INTENTION	5
POTENTIAL MERIT TO THE PROCEEDING	6
NO PREJUDICE FROM THE DELAY.....	7
REASONABLE EXPLANATION FOR DELAY	8
PART IV. ORDERS SOUGHT	9
PART V. LIST OF AUTHORITIES	12

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

Plaintiffs

and

CANADA POST CORPORATION and
HIS MAJESTY THE KING IN RIGHT OF CANADA

Defendants

APPLICANTS' WRITTEN REPRESENTATIONS**OVERVIEW**

1. The Applicants enumerated in Schedule A of the Notice of Motion dated November 14, 2024 (the "Applicants") seek an Order to extend the filing deadline for an appeal under Rule 51(2) of the *Federal Courts Rules*. The Applicants propose to appeal the order and decision to dismiss the Applicants' claim, made on March 13, 2024, by Coughlan A.J., and indexed as *Albert v. Canada Post Corporation*, 2024 FC 420 (the "Decision").
2. Under Rule 51(2), the Applicants were required to serve and file a motion to appeal "within 10 days after the day on which the order under appeal was made and at least four days before the day fixed for the hearing of the motion". The Applicants missed the deadline.
3. The delay in filing up to November 14, 2024, is principally attributable to previous counsel for the Applicants, who did not follow the Applicants' instructions to file an application to appeal and application to extend the deadline to appeal. There is some delay attributable to the inherent time requirements for 66 potential appellants to obtain legal advice and give instructions. Some delay is attributable to the Applicants needing to find new counsel after their former legal counsel unexpectedly

stated after five months that they were not able to act on the appeal. The Applicants had an early and continuing intention to appeal the Decision and the delay in filing is due to factors beyond their control.

4. The delay from November 14, 2024, until the hearing date is principally due to the inherent time requirements of the Respondents' preparation of a response, and the Respondents' wish to set a long schedule to enable them to file responsive affidavits (which they have not done) and to cross-examine on the Applicants' affidavit, which was done but had little effect.
5. The Court may exercise its discretion under Rule 8 of the *Federal Courts Rules* to extend the deadline under Rule 51. The Court has provided a list of factors that should be considered when determining whether to extend the deadline under Rule 8, with the overriding consideration being whether it is in the interests of justice to grant the extension. The Applicants say that the factors are in favour of extending the deadline to appeal and that it is in the interests of justice to grant them an extension to file the motion to appeal.

PART I. STATEMENT OF FACTS

6. The Applicants are employees of Canada Post Corporation ("CP").
7. CP placed the Applicants on unpaid leave for failing to comply with CP's policy requiring CP employees to submit to vaccination (the "CP Vaccination Requirement").
8. Coughlan A.J. made the Decision on March 13, 2024. The Applicants' previous counsel at Grey Wowk Spencer LLP ("GWS LLP") provided the Applicants with a copy of the Decision on March 14, 2024. That same day, the Applicants requested legal advice on the merits of an appeal. The Applicants were initially told that the deadline for appeal was 30 days.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

9. A core group of plaintiffs, which included all of the Applicants, communicated their instructions to appeal to Mr. Grey of GWS LLP on April 8, 2024. By April 10, 2024, each of the Applicants individually confirmed their instructions to GWS LLP to appeal.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

10. As of April 10, 2024, the Applicants were led to believe that the deadline for appealing was 30 days from the date of the Decision. GWS LLP first advised the clients of the 10-day deadline in late April of 2024, after the deadline had passed. GWS LLP apparently wrote to the Court to seek directions on the process for initiating an appeal or extending the deadline to appeal on April 18, 2024. On April 23, 2024, the Court effectively directed GWS LLP that counsel was at liberty to file an application to extend at any time.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

Affidavit #1 of Jodi Kaldestad, affirmed November 14, 2024, Ex.C

11. Instructing client for the Applicants, Ms. Solakian, requested an update from GWS LLP on the appeal process on May 13, June 6, and June 19, 2024. Another Applicant repeatedly sought updates from GWS LLP and urged GWS LLP to file the notice of motion to extend the deadline.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

12. On July 4, 2024, Mr. Farquhar of GWS LLP advised Ms. Solakian that an associate lawyer at GWS LLP who had been dealing with the application to extend was no longer with the firm and that he, Mr. Farquhar, would personally prepare the notice of motion to extend the deadline for the appeal.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

13. On July 17, 2024, Ms. Solakian received materials pertaining to the motion to extend the deadline from GWS LLP. Ms. Solakian promptly provided comments and again instructed counsel to file the motion to extend the deadline of the appeal.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

14. On September 4, 2024, Mr. Grey of GWS LLP informed Ms. Solakian that Mr. Farquhar and another associate lawyer who was engaged with the appeal had left GWS LLP and that he, Mr. Grey, was unable to take on the Applicants' appeal.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

15. The Applicants immediately began looking for another lawyer. The Applicants retained Jason Gratl to give legal advice on September 22, 2024.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

16. The Law Society of British Columbia requires lawyers to undergo a client identification and verification process. In this case, that process was required for each of the 66 Applicants. The Applicants are dispersed across Canada. The client identification and verification process and verification of written retainers was time consuming.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

17. Gratl & Company worked with reasonable diligence to orient themselves to a new file with complex legal issues and to prepare an appeal factum and notice of motion with supporting affidavits to extend the deadline of the appeal. The notice of motion to appeal and memorandum of fact and law dealing with the substance of the appeal is ready for filing and no further delay is anticipated.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

PART II. POINTS IN ISSUE

18. Do the four factors relevant to the extension of the deadline to appeal support an extension, and is it in the interests of justice for the Court to exercise its discretion under Rule 8 to extend the deadline for filing a notice of motion to appeal under Rule 51(2) of the *Federal Courts Rules*?

PART III. SUBMISSIONS

Legal Principles for Extending Time under Rule 8

19. The Court may exercise its discretion under Rule 8 of the *Federal Courts Rules* to extend the 10-day deadline under Rule 51. In doing so, the Court should take into account four factors:

- a. Did the moving party have a continuing intention to pursue the proceeding?
- b. Is there some potential merit to the proceeding?
- c. Has the respondent been prejudiced by the delay?
- d. Does the moving party have a reasonable explanation for the delay?

Wood v. Canada (Attorney General), 2024 FC 182 at para 9
Canada (Attorney General) v. Larkman, 2012 FCA 204 at para 61
Canada (Attorney General) v. Hennelly, 1999 CanLII 8190 (FCA) at para 3

20. All four questions need not be resolved in the moving party's favor. The overriding consideration is whether granting the extension is in the interests of justice.

Wood at para 10

21. The *Wood* factors support an extension of the deadline to appeal. It is in the interests of justice for the Court to grant the Applicants an extension to file the motion to appeal.

A. Continuing Intention

22. The Applicants had a continuing intention to pursue an appeal of the Decision. It is not relevant at this stage whether the Applicants were slow in their pursuit to continue the appeal.

Larkman at para 71

23. The Applicants formed the intention to appeal by April 8, 2024, and expressed instructions to their counsel to commence an appeal on that date. The intention to appeal has continued unbroken to the present day. Although April 8, 2024, is beyond

the 10 day deadline, previous counsel had told the Applicants that the deadline was 30 days. The Applicants did not learn until late April that the real deadline was 10 days.

24. The Applicants immediately requested legal advice on the merits of an appeal when they received the Decision.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

25. Instructions to appeal from the group were communicated to counsel on April 8, 2024, and individual Applicants instructed counsel to appeal on April 10, 2024. Previous counsel appears not to have followed their clients' instructions.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

26. The Applicants manifested their ongoing intention to appeal by repeatedly requesting updates from their former counsel on the appeal process and urging their former counsel to file the application to extend. Ms. Solakian reiterated specific instructions to counsel to file specific motion material to extend the deadline in July 2024.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

B. Potential Merit to the Proceeding

27. The Court must determine whether the Applicants' motion to appeal has sufficient merit to warrant granting the extension of time. It is preferable (but not necessary) for the prospective appellants to submit a draft motion of appeal to establish such merit. This is not a high burden on the Applicants; the Court needs to merely "see the nub of the arguments they wish to raise".

Larkman at para 75

Dakota Plains Wahpeton Oyate First Nation v. Smoke, 2023 FCA 129 at paras 13, 15

28. The Applicants have in this case prepared a detailed draft notice of motion to appeal and draft memorandum of fact and law to convey to the Court that the Applicants

are serious about the appeal and to demonstrate that no further delay is likely. The draft memorandum of fact and law is limited to the merits of a claim under s.7 of the *Charter* and the jurisdiction of the Federal Court under s.17 of the *Federal Courts Act*. The Applicants do not seek to appeal the decision to strike the many other causes of action set out in the Statement of Claim.

Affidavit #1 of Jodi Kaldestad, affirmed November 14, 2024, Ex.B

29. The proposed appeal set out in the detailed memorandum of fact and law has sufficient merit to support extending the deadline to appeal under Rule 8.

Affidavit #1 of Jodi Kaldestad, affirmed November 14, 2024, Ex. A and Ex. B

30. The Applicants raise three grounds of appeal:
- a. Coughlan A.J. erred in law when she held that there was no reasonable prospect of success for the s. 7 *Charter* claims;
 - b. Coughlan A.J. erred in law by failing to apply the correct test for determining whether the Federal Court had jurisdiction; and
 - c. Coughlan A.J. made a palpable and overriding error by finding as a fact that there was no evidence that the Minister directed CP to implement and enforce the CP Vaccination Requirement.

Affidavit #1 of Jodi Kaldestad, affirmed November 14, 2024, Ex. A and Ex. B

C. No Prejudice from the Delay

31. The Applicants must establish that they will suffer prejudice from the delay. The prospective respondents cannot argue that the appeal itself prejudices them, merely the delay in bringing the appeal.

Dakota Plains Wahpeton Oyate First Nation at para 16

32. The prospective respondents in this case have not been prejudiced by the delay because the delay does not impact the availability of evidence. The Applicants are prepared to consent to an accelerated timeline for the appeal if the respondents consider themselves prejudiced.

D. Reasonable Explanation for Delay

33. The Applicants must establish a reasonable explanation for the delay. The reason for delay can favor the Applicants even if the explanation does not adhere to “a model of diligence and promptness”.

Dakota Plains Wahpeton Oyate First Nation at para 21

34. The Applicants have a reasonable explanation for missing the 10-day deadline. The Applicants also have a reasonable explanation for the delay in filing a notice of motion to extend the deadline. Previous counsel simply did not follow their clients’ instructions to appeal in a timely fashion, and then quit five months after receiving those instructions, forcing the Applicants to find new counsel who needed to become familiar with the file.
35. The Applicants’ previous counsel did not notify the Applicants of the 10-day deadline until after the deadline had passed. The Applicants originally believed that they had a 30-day deadline to appeal the Decision.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

36. The Applicants were delayed in filing the current notice of motion to extend the appeal deadline because previous counsel failed to file the notice of motion despite clear instructions from the Applicants. Previous counsel took no actions to pursue the appeal for approximately five months before notifying the Plaintiffs that they were not able to work on the appeal. Previous counsel appears to have been vexed by the departure of three associate lawyers from the firm who had been assigned to work on this appeal and the extension application.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

37. The Applicants experienced some logistical complications coordinating their group of 66 individuals. Ms. Solakian's experience was that it was time consuming coordinating this group of individuals to obtain legal advice and give instructions. The Applicants acted quite quickly in the face of these logistical challenges to obtain legal advice and provide instructions to counsel to continue the appeal. The Applicants did what they could to move this appeal forward.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

38. The Applicants were delayed in filing the notice of motion to extend the appeal deadline because their current counsel needed to meet the Law Society of British Columbia's requirements for client identification and verification, obtain written retainer agreements from all 66 individuals across Canada, to prepare a detailed memorandum of fact and law and prepare arguments on the substance of the appeal.

Affidavit #2 of Karine Solakian, affirmed November 14, 2024

PART IV. ORDERS SOUGHT

39. The Applicants request an Order granting them an extension to the deadline under Rule 51(2) of the *Federal Courts Rules* to file a notice of motion to appeal the order made on March 13, 2024, by Coughlan A.J.;
40. The costs of this motion, if opposed; and
41. Such further and other relief as may be necessary to give effect to the intention of this application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of February, 2025.

Jason Gratl

Jason Gratl
Counsel for the Applicants

Gratl & Company
Barristers and Solicitors
511-55 Cordova Street East
Vancouver, BC V6A 0A5
jason@gratlandcompany.com
Tel: 604-694-1919
Fax: 604-608-1919

TO: **Fasken Martineau Dumoulin**
Barristers and Solicitors
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Christopher D. Pigott
cpigott@fasken.com
Tel: 416-865-4538
Fax: 416-364-7813

Grace McDonnell
gmcdonell@fasken.com
Tel: 416-865-4538
Fax: 416-364-7813

Counsel for the Defendant, Canada Post Corporation

AND TO: **Department of Justice Canada**
10423 101 Street
3rd Floor, Epcor Tower
Edmonton, AB T5H 0E7

Daniel Vassberg
daniel.vassberg@justice.gc.ca
Tel: 587-545-3097
Fax: 780-495-8491

Counsel for the Defendants
His Majesty the King in right of Canada and
The Attorney General of Canada

Federal Court
Vancouver Local Office
Pacific Centre
701 Georgia Street West, 3rd Floor
Vancouver, British Columbia V7Y 1K8
Tel: 604-666-3232
Fax: 604-666-8181

PART V. LIST OF AUTHORITIES

Legislation	
1	<i>Federal Courts Rules</i> , SOR/98-106
Caselaw	
2	<i>Canada (Attorney General) v. Hennelly</i> , 1999 CanLII 8190 (FCA)
3	<i>Canada (Attorney General) v. Larkman</i> , 2012 FCA 204
4	<i>Dakota Plains Wahpeton Oyate First nation v. Smoke</i> , 2023 FCA 129
5	<i>Wood v. Canada (Attorney General)</i> , 2024 FC 182