

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

APPLICANTS

AND:

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

RESPONDENTS

**APPLICANTS' MOTION RECORD
(MOTION TO APPEAL ORDER OF COTTER A.J.)**

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Canada Post Corporation

The Department of Justice Canada

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Daniel Vassberg
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Counsel for the Respondent,
His Majesty the King in Right of Canada

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May 12, 2025	
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FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

APPLICANTS

AND:

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

RESPONDENTS

NOTICE OF MOTION

TAKE NOTICE THAT the Applicants enumerated in “Schedule A”, below, will make a motion to the Federal Court on as soon as this motion can be heard at 701 West Georgia St., 3rd Floor, in the City of Vancouver, British Columbia. The Applicants estimate that this hearing will take 2 hours.

THE MOTION IS FOR:

1. An appeal of the Order of Associate Judge Cotter made May 2, 2025, dismissing the Applicants’ motion for an extension of time;
2. An Order granting the Applicants an extension of time to file an appeal of the order of Associate Judge Coughlan made March 13, 2024, striking the Applicants’ claim; and,
3. Such further and other relief as this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

4. The Applicants seek to appeal the decision of Cotter A.J. dated May 2, 2025, pursuant to Rule 51(1) of the *Federal Courts Rules*, SOR/98-106.

5. The Applicants submit that Cotter A.J. erred by misapplying the legal test for granting an extension of time established in *Canada (Attorney General) v. Hennelly*, 1999 CanLII 8190 (FCA), necessitating intervention by this Court.
6. Specifically, Cotter A.J. made:
 - a. An error in principle, of mixed fact and law, by improperly balancing the interests of the parties;
 - b. An error in law by inferring that the Respondents suffered prejudice based on the passage of time alone without an evidentiary basis;
 - c. An error in law by failing to take notice of the inherent time requirements for preparing an application; and
 - d. An error in principle, of mixed fact and law, by improperly weighing the Applicants' factual evidence.
7. Accordingly, the Applicants submit that the Court should set aside the order of Cotter A.J. and grant the Applicants an extension of time to file an appeal of the order of Coughlan A.J. striking the Applicants' claim.

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

1. Affidavit #3 of Jodi Kaldestad, affirmed May 12, 2025; and
2. Such further and other material as this Honourable Court may allow.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of May, 2025.



Jason Gratl
Counsel for the Applicants

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Counsel for the Defendant, Canada Post Corporation

AND TO: **Department of Justice Canada**
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His Majesty the King in right of Canada and
The Attorney General of Canada

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Schedule A

Julia Alvarez
Ali Bahri
Robert Bourbonniere
Line Bujold-Lavalle
Jennifer Comin
Esterina Costa
Wayne Cowan
Selena Cvitan
Mark Daggett
Jana Dancakova
Marlice Deptuch
Gisele Desharnais
Karen Desrosiers
Tanya Docanto-Cordeiro
Sarah Frangione
Joy Esdaille
Raquel Ferreira
Karen Gibeault
Peter Heidebrecht
Stephanie Johnston
Riina Kapp
Marietta Kirby
Damir Kramaric
Lorraine Light
Paul Lussier
Tanya Mandel
Tracy Matlock
Daniel Matti
Bozena Mazur
Szilvia Mertl
Lisa Nicoll
Christopher Pillon
Kimberlee Priest
Dolores Relic
Amber Ricard
Helene (Lena) Ricci
Russel Sawchuk
Stephen See

Marion Serink
John Serrambana
Dewitt Shainline
Shrikant Sharma
Alan Shum
Wanita Siklenka
Karine Solakian
Roberta Strickland
Lindsay Sunthgolam
Lori Taylor-Ribero
Lara Trenaman
Leonardo de Jesus Vasquez
Jennifer Vogelgesang
Maria Visic
Carrie Visser
Shanda Vorrath
Mariam Wali
Nancy Whitcome
Yvonne Yuctuc
Carson Zorget
Michael Zottola

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

APPLICANTS

AND:

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

RESPONDENTS

AFFIDAVIT

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

1. I am a paralegal at Gratl & Company where I work with 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. Attached to this affidavit as **Exhibit "A"** is the Applicants' Motion Record, dated November 14th, 2024, consisting of the entirety of the Applicants' document record before Cotter A.J. on the hearing of the application to extend the deadline to appeal. Exhibit "A" consists of the following:

- c. Affidavit of Karine Solakian, dated November 14, 2024;
 - d. Affidavit #1 of Jodi Kaldestad, dated November 14, 2024, containing:
 - i. Exhibit “A” — Draft Notice of Motion to Appeal;
 - ii. Exhibit “B” — Draft Memorandum of Fact and Law;
 - iii. Exhibit “C” — Letter to Federal Court of Canada from Connor Farquhar of GWS LLP;
 - e. Affidavit #2 of Jodi Kaldestad, dated January 10, 2025, containing:
 - i. Exhibit “A” — Letter from counsel for the Applicants in response to Respondents’ requests for documents;
 - f. Transcript of Cross-Examination on Affidavit of Karine Solakian; and
 - g. Written Representations of the Applicants, dated February 14, 2025.
3. Attached as **Exhibit “B”** is the Motion Record of the Respondent, Canada Post Corporation, dated February 28, 2025. Exhibit “B” consists of the following:
- a. Order of Associate Judge Catherine A. Coughlan dated March 13, 2024; and
 - b. Canada Post Corporation’s Written Representations, dated February 28, 2025.
4. Attached as **Exhibit “C”** is the Motion Record of the Respondent, His Majesty the King in Right of Canada. Exhibit “C” consists of the following:
- a. Amended Amended Statement of Claim;
 - b. Affidavit of John Deveen, dated August 18, 2023 (excerpts);
 - c. Affidavit of Charlotte Harper, dated August 16, 2023;

- d. Transcript of Cross-Examination on Affidavit of Karine Solakian;
 - e. Direction of Coughlan A.J. dated April 23, 2024; and
 - f. His Majesty the King in Right of Canada's Written Representations, dated February 27, 2025.
5. Attached as **Exhibit "D"** is Order of Associate Judge John C. Cotter, dated May 2, 2025, dismissing the Applicants' motion for an extension of time.

AFFIRMED BEFORE ME at the City of)
 Vancouver, in the Province of British)
 Columbia, this 12th day of May, 2025)



 A Commissioner for taking Affidavits)
 within British Columbia.)

Jodi Kaldestad

JODI KALDESTAD

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

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

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Counsel for the Respondent
His Majesty the King in right of Canada

This is Exhibit "A" referred to in the
Affidavit of Jodi Kaldstad
sworn (or affirmed) before me at
Vancouver, BC
this 12 day of May 2025.


A Commissioner for Taking Affidavits for British Columbia

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	Exhibit "C" – Letter to Federal Court of Canada from Connor Farquhar of GWS LLP	April 18, 2024	43
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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.



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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]

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

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.



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Counsel for Canada Post Corporation

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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 Styrzczula
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

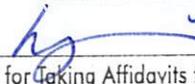
Defendants

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 
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@gwsllp.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

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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

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*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]

FW: Re: Inquiry

████████████████████████████████████████
To: Karine Solakian <KarineS68@hotmail.com>
Sent: Wednesday, August 7 at 7:07 p.m.

Sent from my Galaxy

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

From: kepriest66 <kepriest66@gmail.com>
Date: 2024-07-29 8:58 p.m. (GMT-07:00)
To: Leighton Grey <L_Grey@gwsllp.ca>
Cc: Karine Solakian <KarineS68@hotmail.com>,
████████████████████████████████████████
████████████████████████████████████████

Subject: Re: Inquiry

Dear Leighton:

████████████████████████████████████████
We've waited patiently since April 8.24 to have our motion to request an extension to appeal to be filed.

A brief timeline of communication with respect to filing the motion:

- April 8.24 you advised David Hersey would present the motion with your supervision.
- April 10.24 you sought each individual plaintiffs position on appealing or not.
- May 13.24 we reached out requesting an update.
- May 15.24 Connor responded that there was fine tuning required.
- June 6.24 we reached out again
- June 19.24 we called and left Connor a voicemail requesting an update.
- July 4.24 Connor advised that Ms. Trignani who was tasked with our file was no longer with the firm and

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 <L_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]
[REDACTED]
[REDACTED]
[REDACTED]
[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]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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

[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 signature]

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
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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
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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

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

FOR THE PLAINTIFFS/APPLICANTS:

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1 FOR THE DEFENDANT CANADA POST CORPORATION:

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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 _____

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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 J. GRATL: That 's a wrap.
2 (WHICH WAS ALL THE EVIDENCE TAKEN AT 12:29 PM)

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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

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1 UNDERTAKINGS GIVEN IN THE QUESTIONING OF
 2 KARINE SOLAKIAN
 3 JANUARY 7, 2025

5 Undertakings are inserted and indexed as a
 6 courtesy service to be utilized at the discretion
 7 of counsel. They are interpretations by the
 8 court reporter, and it is requested counsel refer
 9 to the appropriate page to ensure accuracy.

12 Description	Page
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15 that was sent to the plaintiffs requesting	
16 their position on whether or not they would	
17 appeal (Subject to solicitor-client privilege)	
18	
19 UNDERTAKING 2 - To provide the May 13, 2024,	40
20 email from Karine Solakian to Leighton Grey	
21 requesting an update on how the appeal was	
22 proceeding (Subject to redactions for	
23 solicitor-client privilege)	
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2	2024, response by GWS LLP to Karine Solakian's	
3	May 13, 2024, email (Subject to	
4	solicitor-client privilege)	
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17	provided by Connor Farquhar to Karine Solakian	
18	on July 4, 2024 (Subject to redaction for	
19	solicitor-client privilege)	
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21	UNDERTAKING 7 - To provide the July 22, 2024,	47
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23	GWS LLP (Subject to redactions for	
24	solicitor-client privilege)	
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1 UNDERTAKING 8 - To provide the September 4, 55
2 2024, email from Leighton Grey advising that
3 GWS LLP would no longer be working on the
4 action (Subject to redactions for
5 solicitor-client privilege)
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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

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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.

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Jason Gratl
Counsel for the Applicants

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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

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

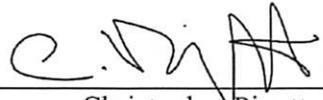
Plaintiffs / Applicants

and

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

Defendants / Respondents

**MOTION RECORD OF THE RESPONDENT, CANADA POST
CORPORATION**



Christopher Pigott

February 28, 2025

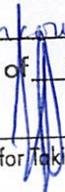
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Lawyers for the Defendant/Respondent,
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This is Exhibit " B " referred to in the
Affidavit of Jodi Kaldestad
sworn (or affirmed) before me at
Vancouver, BC
this 12 day of May 20 25.


A Commissioner for Taking Affidavits for British Columbia

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FEDERAL COURT

B E T W E E N:

BERNARD ALBERT AND OTHERS

Plaintiffs / Applicants

and

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

Defendants / Respondents

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TAB 1

Federal Court



Cour fédérale

Date: 20240313

Docket: T-1436-22

Citation: 2024 FC 420

Vancouver, British Columbia, March 13, 2024

PRESENT: Madam Associate Judge Catherine A. Coughlan**BETWEEN:**

**BERNARD ALBERT, MARIE ALLCHURCH, JULIA ALVAREZ,
 JASON AMARO, VANESSA APOSTOLOVSKI, MARIA ARENA,
 ALI BAHRI, RAYMOND. S. BAKER, DAVID BAKHUYZEN, KIM
 BANDO, ADILA BASIC, ANJA BATTIE, KELLI BATTYANYI,
 MICHAEL BECKER, JASON MATTHEW BERARD, WANDA
 BERG, LAURIE BERNES, ANDREA BIALOWAS, THERESA
 BICKLE, ANGELLA BLIER, MARK BOIKOVITIS,
 ERIK BOUCHARD, ROBERT BOURBONNIERE,
 BROOKE BOUTANG, VERONIQUE BRETON, NATASHA BUDY,
 JENNIFER-LYNN BULLICK, MARY BURKE, CATHERINE
 CABRAL-MCKEAND, EDUARDO CAETANO,
 ANTHONY CAETANO, JENNIFER CAUDRON, TRACY CHASE,
 NATACHA CHEVARIE, MIMI CHOO, WILLIAM CHOW,
 CHERYL CHOW, ANGELINA CLARK, PAUL CLEMENTS,
 SANDRA COLE, JENNIFER COMIN, ANTHONY COMMISSO,
 TANYA DOCANTO CORDEIRO, ESTERINA COSTA, ROCCO
 COTUGNO, FRANCESCO "FRANK" COTUGNO, RICHARD
 COUTURIER, WAYNE COWAN, KENTON CROOK,
 MICHAEL CURRIE, SELENA CVITAN, MARK DAGGETT,
 MARCO DALL'ANTONIA, JANA DANCAKOVA, AMANDA
 DEMPSEY, JASON DENTINGER, MARLICE DEPTUCH,
 ANTHONY DEROSE, LORRAINE DESCHAMPS, GISELE
 DESHARNAIS, KAREN DESROSIERS, JOHN DEVINE, SUSAN
 DEWALD, EZIO DIFONZO, DONALD WAYNE DUNHAM,
 BRANDY DUPAS, TERESA ELLISON, JOHN EMMANOUIL,
 JOHANNA EMMANOUIL, SHELLEY ESCOBAR, JOY
 ESDAILLE, WILLIAM FAUSTINO, RAQUEL FERREIRA,
 SHERRY FERREIRA, PAXTON FIRTH, MICHELINE FLEURY,
 SARAH FRANGIONE, ERIN FULLER, MICHAEL GAIREY,
 JESSICA GASKIN, KAREN GIBEAULT, SHEILA RAE GOW,
 JAYDE GRAVEL, MICHAEL GRIGORATOU, URVASHI**

GURUNG, RYAN HAMER, CHARLENE HANSON, JASMIN HARRISON, CARLY HART, TAMMY HAYES, JAYSON PETER JAMES HEIDEBRECHT, DENISE HERBERT, JORGIE HIDALGO, TIMOTHY HIEBERT, DONNA HISCOCK, DENISE HOHN, ELAINA HUDYMA, KATHRYN (KATIE) HUNT, TANYA HUTCHINSON, ZDZISŁAW JABŁOŃSKI, MARTINE JARRY, CARLA JENKINS, STEPHANIE KATHLEEN JOHNSTON, NICHOLAS JOHNSTON, RIINA KAPP, RUDY KERN, MARK KILLEEN, SABRINA KINCAID, MARIETTA KIRBY, SANDRA KOSTENKO, CALVIN KOTOWICH, DAMIR KRAMARIC, SANDRA KRASINKIEWICZ, ROCKY KUJALA, HELENE LA ROCHELLE, AVINASH LALOO, MEGAN LANE-KARRAS, MARTINE LAROCQUE, LINE LAVALLEE, KEVIN LAWRES, CHUNG LE, LUC LEBLANC, DONNA LEEDER, PATRICK LESSARD, LISA LEVESQUE, LORRAINE LIGHT, GISELE LIRETTE, RANDY LOGAN, SANDRA M LOPES, KIM LUMSDEN, WENDY LUNDVALL, PAUL LUSSIER, PAUL LYNN, NICOLA MACDONALD, MICHAEL MAFILOVSKI, VIJAY MAHARAJ, CAROLINE MAHEUX, TANYA MANDEL, TRACY MA-PRICE, MARIE MARCOTTE, ANNA MARRO, DEVANMARSHALL, JUDY MARTENS, JOSYANNE MARTIN, JENNA MATHIES, TRACEY MATLOCK, DANIEL MATTI, WILLIAM GRANT MAYER, BOZENA MAZUR, DAWN MCFARLANE, MARGARET MCGEACHIE, CHRIS MCGRATH, LUCAS MCIVOR, KAREN MCQUADE, SZILVIA MERTL, ROCCO MESSERE, ANNA MIASIK, SARAH MICKALKO, JASON MIELKE, LAWRENCE (LARRY) MILLSON, SERGIO A MOLINA C, JAMES MORRIS, JAMES MORRISON, RACHEL MULLARKEY, PAUL NAHIRNIAK, DIDI (PREVIOUSLY DANIELLE) NAVALES (PREVIOUSLY FREEMAN), MARGARET NEB, AMANDA NEIL, SCOTT NEIL, TRACEY NELLIS, JOCELYN NELSON, GEORGE NICOLAIDES, LISA NICOLL, JULIE NOBLE, CHAD NORMANDEAU, CHERISE O'CONNOR, GERALDINE OLSON, MARC ORICHEFSKY, RYAN ORYDZUK, STEVEN OVERHOLT, KRISTY PACHOLKA FORD, FANY PELLETIER-GOUGEON, CHRIS PILLON, LESLIE J POLLOCK, ELZBIETA PONIKIEWSKA, KIMBERLEE PRIEST, NATHAN RAE (AKA ADAN EDEY), TRACEY RALSTON, KARL RATCHINSKY, DANIEL RAYO, ANTONIO REDA, JULIE REEVES, CORELEI REICHERT, DOLORES RELIC, AMBER RICARD, LENA (HELENE) RICCI, SHEILA RIDDELL, BREEANNE RIDGE, KEENAN ROBINSON, MICHAEL ROBITAILLE, MYRA ROBITAILLE, ROBERT ROBSON, JODI RODDY, DJ (DEBBY) RODNEY, AMANDA (GOOD) ROOSMETS, JEAN-FRANCOIS ROSA, SANDRA ROSSETTO, ANGELA

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TOEWS, ZVONIMIR TOMAS, JOSHUA DON TORRES,
ENRIQUE TOSI, ERIC TOUPIN-SELINGER, TIMOTHY
DOUGLAS TRACY, CATY TRAN, HUGO TREJO, LARA
TRENAMAN, MELISA TREPANIER, CAROL-ANNE
VALCOURT, LEONARDO VASQUEZ, MELANIE VENDRYES,
LUIZA VISIC, CARRIE VISSER, JENNIFER VOGELGESANG,
SHANDA VORRATH, MARY VUK, PAMELA WAGNER,
MARIAM WALL, HEIDI WANJON, JOEL WAZNICKY, CORY
WEGE, ELVIN WEGNER, NANCY WHITCOME, WARREN
WHITE, JOHANN WILSON, JAMES WINNING, LINDEN
WRIGHT, SHANE YAWORSKI, YVONNE YUTUC, CARSON
ZORGET, MICHAEL ZOTTOLA, MARCIA HEWETT-HICKS**

Plaintiffs

and

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

Defendants

ORDER AND REASONS

I. Overview

[1] The Defendants, Canada Post Corporation (Canada Post) and His Majesty the King in Right of Canada (Canada), bring motions pursuant to Rule 221 of the *Federal Courts Rules*, SOR/98-106 (*Rules*) seeking to strike the entirety of the Plaintiffs' Amended Amended Statement of Claim (Claim). The Plaintiffs' Claim raises issues with Canada Post's Mandatory Vaccination Practice (Practice).

[2] Canada Post alleges that the Federal Court's jurisdiction regarding claims against the Crown does not capture Canada Post, as per sections 17(1) and 17(2) of the *Federal Courts Act*, RSC, 1985, c F-7 (*FCA*). Alternatively, Canada Post asserts that the Plaintiffs, who are all unionized employees, are governed by collective agreements with their respective unions and Canada Post. As such, all workplace claims must be resolved through the exclusive jurisdiction of labour arbitrators under the collective agreements.

[3] Canada asserts that the Claim fails to plead or disclose any causative connection with Canada and it is plain and obvious that it does not disclose a cause of action against Canada. Further, Canada says that the Claim is scandalous, frivolous or vexatious because the pleading lacks any material facts to support the numerous causes of actions plead.

[4] For the reasons that follow, I am striking the Claim without leave to amend.

[5] These Reasons will outline the general background of the dispute, the legal principles that inform motions to strike, a review of the evidence adduced on these motions, the issues and an analysis of the parties' positions.

II. Background

[6] The Plaintiffs commenced the underlying action on July 12, 2022, amending the original Statement of Claim for the first time on June 19, 2023. On June 28, 2023, the Plaintiffs served a further amended Claim on the Defendants, but it was not filed with the Court until February 28, 2024. The Claim originally named 281 Plaintiffs who are current or former employees of Canada Post and who “resigned or retired under duress because of the Practice.” The Claim states that the majority of the Plaintiffs have not been vaccinated against COVID-19 (partially nor fully).

[7] The Claim alleges that an October 6, 2021 news release issued by Canada constituted an “Order” requiring mandatory vaccination or the disclosure of vaccination status under threat of administrative and/or disciplinary measures ranging from unpaid leave to termination of employment. The Plaintiffs say the Order constitutes a serious human rights violation that effectively deprived them of their rights under sections 2(a), 7, and 15 of the *Canadian Charter of Rights and Freedoms (Charter)*. The Plaintiffs further allege that the Order made Canada Post an “agent of Canada in implementing public health and economic policies on behalf of and for Canada.”

[8] The Claim seeks a variety of relief against Canada Post and Canada arising from the implementation and enforcement of the Practice as follows:

- (i) a declaration pursuant to section 24(1) of the *Constitution Act, 1982* that Canada's October 6, 2021 announcement, violates sections 2(a), 7, 8 and 15 of the Plaintiffs' constitutional rights and freedoms protected by the *Charter*;
- (ii) a declaration pursuant to section 24(1) of the *Constitution Act, 1982* that the Practice violates sections 2(a), 2(d), 7, 8, and 15 of the *Charter*;
- (iii) a declaration that Canada Post and Canada discriminated against the Plaintiffs contrary to section 7(b) of the *Canadian Human Rights Act (CHRA)*, and deprived the Plaintiffs of employment opportunities contrary to sections 10(a) and 10(b) of the *CHRA*;
- (iv) damages in the amount of \$500,000 per Plaintiff under section 24(1) of the *Constitution Act, 1982*;
- (v) damages in the amount of \$200,000 per Plaintiff for intentional infliction of mental suffering;
- (vi) damages in the amount of \$200,000 per Plaintiff for tortious interference in economic relations;
- (vii) damages in the amount of \$200,000 per Plaintiff for tortious assault and battery;
- (viii) punitive and exemplary damages in the amount of \$500,000 per Plaintiff;
- (ix) special damages in an amount to be determined, including but not limited to past or future loss of income, medical expenses, and out of pocket expenses;

- (x) punitive damages pursuant to the *Quebec Charter*; and
- (xi) damages for inducing breach of contract, interference with contractual relations, and negligence.

[9] In November 2023, the parties sought the appointment of a case management judge and the suspension of the timelines. Consequently, the Defendants were relieved of the obligation to file Statements of Defence until after the within motion was determined.

[10] It is noteworthy that by the time the motion was heard, some 132 Plaintiffs had discontinued their action.

III. The Legal Principles

[11] There is no dispute as to the test for striking pleadings under Rule 221(1). A pleading will only be struck if it is plain and obvious, assuming the facts pleaded are true or capable of being proved, that the pleading discloses no reasonable cause of action: *Odhavji Estate v Woodhouse*, 2003 SCC 69 at para 15, [2003] 3 SCR 263; *Hunt v Carey Canada Inc*, [1990] 2 SCR 959 at p 980, 1990 CanLII 90 (SCC); *R v Imperial Tobacco Canada Ltd*, 2011 SCC 42 at para 17, [2011] 3 SCR 45; *Jensen v Samsung Electronics Co Ltd*, 2023 FCA 89 at para 15.

[12] In deciding a Rule 221(1) motion, the Court must read the pleading generously, with allowance for drafting deficiencies.

[13] Rule 221(1)(c) authorizes the Court to strike pleadings that are scandalous, frivolous or vexatious. Scandalous pleadings include those that improperly cast a derogatory light on

someone's moral character. A frivolous claim is one for which there is no rational argument based upon the evidence or law in support of the claim. A vexatious claim is one that does not sufficiently reveal the facts on which a plaintiff's cause of action is based such that the defendant will be unable to answer it: *Carten v Canada*, 2010 FC 857 at paras 33-34.

[14] Making bald, conclusory allegations of bad faith or abuse of power without any evidentiary foundation is an abuse of process within the meaning of Rule 221(1)(f): *Merchant Law Group v Canada Revenue Agency*, 2010 FCA 184 at para 34; *AstraZeneca Canada Inc v Novopharm Limited*, 2010 FCA 112 at para 5; *Apotex Inc v Allergan, Inc*, 2011 FCA 134 at para 4.

[15] Striking a pleading without leave to amend is a power that must be exercised with caution. If a pleading shows a scintilla of a cause of action, it will not be struck out if it can be cured by amendment: *Al Omani v Canada*, 2017 FC 786 at paras 32-35.

[16] The threshold for striking a pleading is high. Pursuant to Rule 221(2), no evidence is permitted on a motion to strike pursuant to Rule 221(1)(a). Instead, the Court is required to limit its examination to the matters set out in the pleadings.

[17] The Federal Court of Appeal has confirmed that there are no separate rules of pleadings for *Charter* cases. The requirement to plead material facts applies equally to pleadings of *Charter* infringement as it does to causes of action rooted in the common law. The Supreme Court of Canada (SCC) has clearly defined the substantive content of each *Charter* right and a plaintiff must plead sufficient material facts to satisfy the criteria applicable to the provisions in question. This is not a technicality, but rather is essential to the proper presentation of *Charter* issues:

Mancuso v Canada (National Health and Welfare), 2015 FCA 227 para 25; *MacKay v Manitoba*, [1989] 2 SCR 357 at pp 361-367.

[18] While evidence is not generally admissible on a motion to strike on the basis of failing to disclose a reasonable cause of action, it may be admitted where a jurisdictional question is raised. Where a court is asked to decline jurisdiction in favour of an alternate process, evidence may be necessary to permit the court's determination of whether it ought to decline jurisdiction in favour of the alternate administrative remedies: *Canada v Greenwood*, 2021 FCA 186 at paras 95-96.

IV. The Evidence

[19] In the present matter, each party filed an affidavit in support of their position.

A. *Mr. Deveen*

[20] Canada Post filed the affidavit of John Deveen, sworn August 18, 2023. Mr. Deveen is the General Manager, Labour Relations for Canada Post. His affidavit provides comprehensive evidence on a number of matters including:

1. The corporate structure of Canada Post;
2. Canada Post's relationship to Canada;
3. Canada Post's health and safety obligations under the *Canada Labour Code*, RSC, 1985, c L-2 (Code);

4. Canada Post's response to the COVID-19 pandemic generally and its response to the Prime Minister's October 6, 2021 announcement concerning the vaccination of the federal public service;
5. Canada Post's decision to implement the Vaccination Practice as well as its decision to suspend the Vaccination Practice;
6. Information on each named Plaintiff and the union to which each Plaintiff had membership;
7. Copies of the collective agreements for each of the four unions: Canadian Postmasters Assistants Association (CPAA); Canadian Union of Postal Workers (CUPW); Association of Postal Officials (APOC) and Public Service Alliance of Canada (PSAC);
8. A list of 178 Plaintiffs who have filed at least one grievance challenging the Vaccination Practice;
9. A list of Plaintiffs who have filed a complaint with the Canadian Human Rights Commission concerning the Vaccination Practice;
10. A list of the 10 policy grievances launched by the four unions under their respective collective agreements, the Code and the *CHRA* and the current status of each grievance; and
11. A summary of the other complaints made to the Canadian Industrial Relations Board by some of the Plaintiffs.

[21] Of particular relevance for this motion is Mr. Deveen's evidence that Canada Post is a Crown Corporation created and governed by the *Canada Post Corporation Act*, RSC, 1985, c C-10 (*CPCA*). Pursuant to section 10(1) of the *CPCA*, a Board of Directors is responsible for the affairs of Canada Post. While Canada is the sole shareholder of Canada Post, it has limited operational involvement with Canada Post and its day-to-day operations. However, pursuant to section 22 of the *CPCA*, the Minister responsible may give Canada Post directives with which Canada Post is required to comply. Similarly, under section 89 of the *Financial Administration Act*, RSC, 1985, c F-11, the Governor in Council may give directives to a Crown Corporation, which must be implemented. Mr. Deveen deposes that no directives were issued during the pandemic concerning a mandatory vaccination policy or the vaccination of employees more generally.

[22] In response to the COVID-19 pandemic, Mr. Deveen outlines the changes Canada Post undertook to its operations to address the scale and seriousness of the pandemic. Those measures included reduction of hours of service, physical distancing, and the suspension of delivery guarantees, to name a few. Mr. Deveen deposes that throughout the pandemic, Canada Post followed the guidance of the Public Health Agency of Canada and provincial and local health agencies. It also engaged its bargaining agents and health and safety committees to "plan, communicate and address COVID-19 related changes, plans and protocols across Canada Post's workforce."

[23] As a federally regulated employer, Mr. Deveen deposes that Canada Post must abide by the health and safety obligations set out in Part II of the Code. Under section 124 of the Code, there is a duty on the employer to ensure that the health and safety at work of every person

employed by the employer is protected. Mr. Deveen states that Canada Post's response to the pandemic regarding employees was based in large part on these obligations.

[24] Mr. Deveen notes that on October 6, 2021, Prime Minister Trudeau announced the Core Public Administration Policy on Vaccination. That policy required the mandatory vaccination of all core public servants. At the same time, the Prime Minister asked that all Crown Corporations implement mandatory vaccination policies. A letter dated October 25, 2021 from the Honourable Anita Anand, then Minister of Public Services and Procurement, followed that request reiterating her expectation that all other federal institutions, including Crown Corporations would align with the Core Administration Policy on Vaccination.

[25] Mr. Deveen notes that on October 22, 2021, Canada Post approved a mandatory Vaccination Practice under its overarching Health and Safety Policy. That policy required all employees, contractors and visitors to Canada Post facilities to be fully vaccinated unless they could not be vaccinated due to a prohibited ground of discrimination as defined in the *CHRA*.

[26] Employees were required to attest to their vaccination status as fully vaccinated; partially vaccinated and intending to become fully vaccinated; unwilling to be vaccinated; or unable to be vaccinated.

[27] Canada Post suspended the Practice on July 6, 2022. Mr. Deveen deposes that all employees who were on leave without pay as a result of non-compliance with the Practice were invited back to work.

B. Ms. Solakian

[28] In response, the Plaintiffs filed the affidavit of Karine Solakian, sworn September 15, 2023. Ms. Solakian deposes that she was employed by Canada Post for three years as an acting Lead Hand, Retail Counter Clerk. She states that she was placed on involuntary unpaid leave on or around November 26, 2021 for refusing to attest to her vaccination status as required by the Practice.

[29] She further deposes that prior to the implementation of the Practice, none of the Plaintiffs were required to receive the COVID-19 vaccine as a condition of employment with Canada Post. She asserts that throughout 2020 and most of 2021, she worked without interruption in service.

[30] Ms. Solakian acknowledges that the collective bargaining agreements referred to by Mr. Deveen's in his affidavit are the agreements at issue in this motion.

[31] At paragraph 15 of her affidavit, Ms. Solakian describes the testimony of the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance, at the Public Order Emergency Commission before Justice Rouleau. There, Ms. Solakian notes that the Deputy Prime Minister testified that the purpose of the vaccine mandate for the transport industry was to encourage as many Canadians as possible to get vaccinated.

[32] Ms. Solakian then deposes as to the application of the Practice within Canada Post and the procedure by which employees were required to attest as to the vaccination status. This, she says, was implemented by a series of pre-recorded telephone messages that did not allow employees to make a statement. She notes that while the Practice provided for limited accommodations, she understands that only a minute number of accommodations were granted. She provides no basis

or source for this belief. She advises that she did not seek an accommodation and was not willing to provide a third party with her personal medical information.

[33] She asserts that because she was placed on involuntary leave, she lost her sole source of income and her privacy was breached.

[34] Further, she claims that the Practice was not a matter of workplace safety but was a public policy matter. She claims, again without any source for her belief, that COVID-19 disproportionately affects people past retirement age and that Canada Post was used as a pawn for public policy reasons. She claims there was no *bona fide* requirement for the Practice and she did not agree to vaccinations as a term of employment. She asserts, “it was unilaterally forced upon me, and agreed to by my union.” Thus, she believes that she cannot expect fair treatment from her union and the grievance process.

[35] Both Mr. Deveen and Ms. Solakian were cross-examined on their affidavits.

[36] In its Memorandum of Fact and Law, Canada Post relies on a number of admissions obtained from the cross-examination of Ms. Solakian. Specifically, she acknowledged:

- (a) she had no involvement in or knowledge of the management of Canada Post’s operations;
- (b) she had no involvement in the discussions, development, and implementation of the Practice and has no knowledge of such matters;
- (c) she had no involvement in any discussions or interactions between Canada Post and the Federal Government concerning the Practice, and has no knowledge of such discussions or interactions;

- (d) she has no basis to disagree with Canada Post's evidence that it adopted the Practice for reasons related to workplace safety;
- (e) she does not know the reasons why Canada Post implemented the Practice;
- (f) she only became involved in the Claim after her union lost its grievance challenging the Practice and the CIRB rejected a related complaint.

C. *Ms. Harper*

[37] Canada filed the affidavit of Charlotte Harper, sworn August 16, 2023. Ms. Harper's affidavit attaches, without commentary, a news release from the Treasury Board of Canada Secretariat dated August 13, 2021 and October 6, 2021 announcing Canada's intention to require vaccination of the federally regulated transportation sector and the implementation of mandatory vaccination requirements for federally regulated transportation employees and travellers.

V. The Issues

[38] In my view, two issues emerge for the Court's consideration:

- 1) Does this Court have jurisdiction to entertain the Claim?
- 2) Assuming the Court has jurisdiction, is Canada a proper party?

[39] In addition to the two broad issues above, a preliminary issue arises that warrants consideration.

[40] Rule 174 requires that every pleading shall contain a concise statement of the material facts on which the party relies. Failure to plead material facts renders a pleading vexatious.

[41] Although the Plaintiffs have amended their Claim twice, it is clear that even on a generous reading, the Claim fails to plead any material facts in support of the various causes of action plead. For example, it is entirely unclear if every Plaintiff is asserting a breach of subsection 2(a) of the *Charter*.

[42] An assertion of infringement of subsection 2(a) requires that 1) the claimant sincerely believes in a belief or practice that has a nexus with religion; and 2) the impugned measure interferes with the claimant's ability to act in accordance with his or her religious beliefs in a manner that is more than trivial or insubstantial: *Alberta v Hutterian Brethren of Wilson Colony*, 2009 SCC 37 at paras 8-9 and 40-42, [2009] 2 SCR 567 (*Hutterian Brethren*). Here, the Plaintiffs merely assert that the Practice and the Government announcement offend their beliefs. That form of pleading fails to address the two-fold requirement set out in *Hutterian Brethren*.

[43] Indeed, in my view, the Plaintiffs simply plead bald conclusions of law without the requisite material facts. This failing is particularly acute given the host of appellate jurisprudence from across Canada dismissing actions and applications alleging *Charter* and other violations stemming from the public health response to the pandemic: *Spencer v Canada (Attorney General)*, 2023 FCA 8; *Turmel v Canada*, 2022 FCA 166; *Harjee v Ontario*, 2023 ONCA 716 (CanLII); *Ontario (Attorney General) v Trinity Bible Chapel*, 2023 ONCA 134 (CanLII) (SCC leave denied); *Beaudoin v British Columbia (Attorney General)*, 2022 BCCA 427 (CanLII).

[44] In this Court, Associate Chief Justice Gagné thoroughly canvassed the body of unsuccessful actions and applications in both the federal and provincial superior courts concerning the imposition of health measures during the pandemic: *Ben Naoum v Canada (Attorney General)*, 2022 FC 1463 at para 42. In the face of that extensive body of jurisprudence, it was incumbent

upon the Plaintiffs to plead material facts that would meet the legal test and would distinguish their case from the litany of unsuccessful applications and actions. They failed to do so.

[45] From my reading of the Claim, I must too conclude that it fails to plead, with sufficient particularity, the constituent elements of any cause of action. In short, it fails to disclose to the Defendant the who, when, where, how and what gives rise to its liability: see *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 19.

[46] This is a sufficient basis for the Court to strike the Claim. However, as I must assess whether leave to amend should be granted, I will address the remaining issues.

VI. Does the Court have jurisdiction?

[47] As noted at the outset of these Reasons, Canada Post advances two distinct arguments asserting this Court has no jurisdiction to entertain the Claim.

[48] First, it argues that as a Crown Corporation, the Federal Court lacks jurisdiction over Canada Post pursuant to sections 17(1), 17(2) and 17(5) of the *FCA*. Citing the oft-quoted decision in *ITO-Int'l Terminal Operators v Miida Electronics*, [1986] 1 SCR 752 (SCC), Canada Post argues that none of the three-part test for jurisdiction is met: There is no statutory grant of jurisdiction by the Federal Parliament; there is no existing body of federal law which is essential to the disposition of the case and which nourishes a statutory grant of jurisdiction; and this is not a case based on the “law of Canada” under section 101 of the *Constitution Act, 1867*.

[49] Further, Canada Post relies on the recent decision of Associate Judge Horne in *Van Sluytman v Canada*, 2022 FC 545 at para 56, for the proposition 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: *Committee for Monetary and Economic Reform v Canada*, 2014 FC 380 at paras 87-88; affirmed 2015 FCA 20.

[50] In its responding memorandum of fact and law, the Plaintiffs do not address this argument directly. Rather, they assert that the Federal Government acting under statutory and constitutional law effectively controls Canada Post. To bolster their position, they point to section 91(5) of the *Constitution Act* where the Government of Canada has exclusive authority over postal services. Any arguments that suggest that Canada Post is not an agent of the Federal Government, the Plaintiffs say, amounts to “legal sophistry”.

[51] I do not accept the Plaintiffs’ argument. In my view, 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. Indeed the evidence of Mr. Deveen is unequivocal that Canada Post received no directives from Canada with respect to the implementation of the Practice. Equally, Mr. Deveen was clear that the October 6, 2021, announcement from the Prime Minister regarding the Core Public Administration Policy on Vaccination certainly influenced Canada Post’s decision to implement the Practice, but at no time was it ordered to do so.

[52] 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.

[53] That conclusion is sufficient to dispose of the motion as against Canada Post. However, in the interests of completeness, I propose to address Canada Post's second argument.

[54] Canada Post argues that the Claim, properly characterized, raises workplace issues that require adjudication in the grievance arbitration processes available to unionized employees. Canada Post asserts that numerous defendants in other actions involving Crown Corporations, the Federal Government and private employers alike have moved to strike similar claims where grievance processes were available.

[55] In response, the Plaintiffs argue that the Court should exercise its residual discretion to take jurisdiction because the essential character of the Claim is not captured by the collective agreements. Rather, the Plaintiffs assert that the Claim is about government coercion that affects human dignity. Before the Court, Counsel argued that the Practice subjected the Plaintiffs to "what amounts to an experimental drug trial." In doing so, Canada "weaponized" Canada Post and thus violated the Plaintiffs' human rights.

[56] Moreover, the Plaintiffs say that grievance processes are inadequate when one's bodily integrity has been violated.

[57] I do not accept the Plaintiffs' arguments. First, each of the Plaintiffs have brought at least one grievance. In the National Policy Grievance filed by the CUPW on November 15, 2021, and exhibited to Mr. Deveen's affidavit at Exhibit "M", the union characterized the Practice as a violation of the Collective Agreement, the *Charter*, the Code and the general law. Further, it asserted that the implementation of the Practice was "an unreasonable, exercise of management rights and causes prejudice and is unreasonable, unjust and unfair to employees." The Grievance further asserted that the requirement that employees be fully vaccinated constitutes coercion, breach of privacy, and is unreasonable and unnecessary to protect the Health and Safety of employees.

[58] In my view, the causes of action raised in the Claim are the same as those raised in the National Policy Grievance and accordingly engage workplace issues. Those issues are factually related to the rights and obligations under the collective agreements. I am bolstered in my view by Ms. Solakian's admission that she has no basis to disagree with Canada Post's evidence that it adopted the Practice for reasons related to workplace safety and that she only became involved in the Claim after her union lost its grievance.

[59] Second, as the Supreme Court of Canada found in *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 at para 13, affirming the principles established in *Weber v Ontario Hydro* [1995] 2 SCR 929, it is "settled law that the scope of a labour arbitrator's jurisdiction precludes curial recourse in disputes that arise from a collective agreement, even where such disputes also give rise to common law or statutory claims."

[60] Once again, courts across Canada have consistently concluded that disputes regarding mandatory vaccination policies must be adjudicated within the grievance process. As the Ontario Court of Appeal observed in *National Organized Workers Union v Sinai Health System*, 2022 ONCA 802 at para 41:

It is not uncommon for employees to have to make choices in the context of their employment that they might not choose to make absent workplace considerations. In a unionized environment, if the employee objects to the requirements of a workplace policy, the remedy is a grievance carried by the union. If the employee chooses not to comply with the policy pending the grievance arbitration, they may face workplace discipline, including, depending on the circumstances, termination. In these circumstances, employees sometimes have to make difficult choices. To characterize this type of choice as something other than a potential loss of employment (compensable by an arbitrator by the usual remedies of reinstatement and awards for lost wages), would jeopardize the role of arbitration as the exclusive forum to resolve workplace disputes by permitting “routine access to the courts”: *Vaughan v Canada*, 2005 SCC 11 at para 39.

[See also *Wojdan v Canada (Attorney General)*, 2021 FC 1341 at paras 27 and 34-36 (appeal dismissed as moot: 2022 FCA 120); *Lachance c Procureur général du Québec*, 2021 QCCS 4721, at paras 137 and 144; *Milka Cavic v Canadian Union of Public Employees Union Local 905*, 2022 CanLII 5015 (Ont LRB) at para 43; *Laverigne-Poitras v Canada (Attorney General)*, 2021 FC 1232 at para 7.]

[61] In the result, I am satisfied that the essential character of the Claim raises workplace issues captured by the collective agreements and within the exclusive jurisdiction of adjudicators. Moreover, there is no evidence before the Court to support the assertion that the grievance processes are inadequate. Rather, the Plaintiffs have simply failed to obtain the relief they want through those processes and now look to the Court as another avenue of redress. In short, the Plaintiffs have failed to show any real deprivation of a remedy that would allow this Court to exercise its residual discretion to take jurisdiction and I decline to do so.

[62] The action must be struck against Canada Post.

A. *Is Canada a proper party?*

[63] I am satisfied that the Claim does not plead any material facts that establish a relationship between Canada and the Plaintiffs. The Plaintiffs are all Canada Post employees. Indeed, the unchallenged evidence led on this motion makes it clear that Canada did not issue any directives to Canada Post during the pandemic. Rather, Canada's October 6, 2021 announcement was directed solely to the Core Federal Administration and not to Crown Corporations. In those circumstances, it is difficult to conceive of any relationship that could give rise to a cause of action against Canada.

[64] At the hearing of the motion, counsel for Canada noted that the Attorney General of Canada was improperly named in this proceeding. I agree.

[65] Accordingly, the style of cause is amended with immediate effect to remove the Attorney General of Canada and the Claim as against Canada is struck.

B. *Should the Plaintiffs be granted leave to amend?*

[66] Rule 221 requires that I consider whether leave should be granted to permit an amendment to the Claim. At the hearing of this motion, counsel for the Plaintiffs argued that the failure to plead material facts could be remedied by the provision of particulars. It remains, however, that given my conclusion that this Court has no jurisdiction over Canada Post, that the lack of material facts is not a defect that can be cured by amendment.

[67] Similarly, with respect to the claim against Canada, there is no amendment that will alter the fact that there is no legal relationship between Canada and the Plaintiffs that gives rise to a cause of action. In the result, leave to amend is refused.

VII. Costs

[68] At the hearing of the motion, the parties advised the Court that they had come to an agreement on the issue of costs. The agreement provides that if the moving parties were successful costs would be set at \$10,000 for each of Canada and Canada Post against the Plaintiffs on a joint and several basis. If the Plaintiffs were successful, costs would be set at \$5,000 from each of the moving parties. If success were divided, costs would be in the cause.

[69] I see no reason to deviate from the parties' agreement. In the result, Canada Post and Canada shall each have their costs, inclusive of taxes and disbursements set at \$10,000 payable, jointly and severally from the Plaintiffs.

ORDER in T-1436-22

THIS COURT ORDERS that:

1. The motions of Canada Post and Canada are allowed.
2. The Amended Amended Statement of Claim is struck without leave to amend.
3. Canada and Canada Post shall have their costs set at \$10,000 each payable by the Plaintiffs, jointly and severally.
4. The style of cause is hereby amended with immediate effect to remove any reference to the Attorney General of Canada.

"Catherine A. Coughlan"
Associate Judge

FEDERAL COURT**SOLICITORS OF RECORD****DOCKET:**

T-1436-22

STYLE OF CAUSE:

BERNARD ALBERT, MARIE ALLCHURCH, JULIA ALVAREZ, JASON AMARO, VANESSA APOSTOLOVSKI, MARIA ARENA, ALI BAHRI, RAYMOND. S. BAKER,, DAVID BAKHUYZEN, KIM BANDO, ADILA BASIC, ANJA BATTIE, KELLI BATTYANYI,, MICHAEL BECKER, JASON MATTHEW BERARD, WANDA BERG, LAURIE BERNES,, ANDREA BIALOWAS, THERESA BICKLE, ANGELLA BLIER, MARK BOIKOVITIS,, ERIK BOUCHARD, ROBERT BOURBONNIERE, BROOKE BOUTANG, VERONIQUE, BRETON, NATASHA BUDY, JENNIFER-LYNN BULLICK, MARY BURKE, CATHERINE, CABRAL-MCKEAND, EDUARDO CAETANO, ANTHONY CAETANO, JENNIFER, CAUDRON, TRACY CHASE, NATACHA CHEVARIE, MIMI CHOO, WILLIAM CHOW,, CHERYL CHOW, ANGELINA CLARK, PAUL CLEMENTS, SANDRA COLE, JENNIFER, COMIN, ANTHONY COMMISSO, TANYA DOCANTO CORDEIRO, ESTERINA, COSTA, ROCCO COTUGNO, FRANCESCO "FRANK" COTUGNO, RICHARD, COUTURIER, WAYNE COWAN, KENTON CROOK, MICHAEL CURRIE, SELENA, CVITAN, MARK DAGGETT, MARCO DALL'ANTONIA, JANA DANCAKOVA, AMANDA, DEMPSEY, JASON DENTINGER, MARLICE DEPTUCH, ANTHONY DEROSE,, LORRAINE DESCHAMPS, GISELE DESHARNAIS, KAREN DESROSIERS, JOHN, DEVINE, SUSAN DEWALD, EZIO DIFONZO, DONALD WAYNE DUNHAM, BRANDY, DUPAS, TERESA ELLISON, JOHN EMMANOUIL, JOHANNA EMMANOUIL, SHELLEY, ESCOBAR, JOY ESDAILLE, WILLIAM FAUSTINO, RAQUEL FERREIRA, SHERRY, FERREIRA, PAXTON FIRTH, MICHELINE FLEURY, SARAH FRANGIONE, ERIN, FULLER, MICHAEL GAIREY, JESSICA GASKIN, KAREN GIBEAULT, SHEILA RAE, GOW, JAYDE GRAVEL, MICHAIL GRIGORATOU, URVASHI GURUNG, RYAN,

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PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: MARCH 4 - 5, 2024

ORDER AND REASONS: COUGHLAN A.J.

DATED: MARCH 13, 2024

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TAB 2

Court File No. T-1436-22

FEDERAL COURT

B E T W E E N:

BERNARD ALBERT AND OTHERS

Plaintiffs / Applicants

and

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

Defendants / Respondents

**WRITTEN REPRESENTATIONS OF THE RESPONDENT, CANADA
POST CORPORATION**

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Court File No. T-1436-22

FEDERAL COURT

B E T W E E N:

BERNARD ALBERT AND OTHERS

Plaintiffs / Applicants

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

Defendants / Respondents

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FEDERAL COURT

B E T W E E N:

BERNARD ALBERT AND OTHERS

Plaintiffs / Applicants

and

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

Defendants / Respondents

**WRITTEN REPRESENTATIONS OF THE RESPONDENT, CANADA
POST CORPORATION****OVERVIEW**

1. In this motion, the Applicants seek an extension of time to serve and file a notice of motion to appeal an order by Associate Judge Catherine A. Coughlan (“**Associate Judge Coughlan**”) dated March 13, 2024 (the “**Decision**”)¹ outside the time limits of Rule 51(2) of the *Federal Courts Rules*, SOR/98-106 (the “**Rules**”).²

2. In the Decision, Associate Judge Coughlan struck the Applicants’ Amended Amended Statement of Claim (the “**Claim**”) as against the Respondents, Canada Post Corporation (“**Canada Post**”) and His Majesty the King in Right of Canada (“**Canada**”), without leave to amend.

¹ Decision of Associate Judge Catherine A. Coughlan dated March 13, 2024 (the “**Decision**”), Canada Post’s Responding Motion Record (“**CPC RMR**”), Tab 1.

² *Federal Courts Rules*, SOR/98-106 (“**Rules**”), [s. 51](#).

3. The Claim originally named 281 plaintiffs. Sixty-six of those plaintiffs (the “**Applicants**”) now seek permission to appeal the Decision over *seven months* after the time limits to do so have expired.

4. The Applicants have not established any factors that would weigh in favour of granting an extension of time. The interests of justice are not served by an extension of time in the circumstances. This Honourable Court should dismiss the Applicants’ motion.

PART I - STATEMENT OF FACTS

A. The Parties

5. Canada Post is a Crown corporation that operates a postal service both within Canada and between Canada and the rest of the world. Canada Post is created pursuant to the *Canada Post Corporation Act*, RSC 1985, c C-10 (the “**CPCA**”).³

6. The Applicants are current or former unionized employees of Canada Post.

B. Procedural History of the Claim

7. The Applicants commenced this action by way of a Statement of Claim filed on July 12, 2022. The Applicants delivered an Amended Statement of Claim on June 13, 2023 and the Amended Amended Statement of Claim on June 28, 2023.⁴

8. The Claim originally named 281 plaintiffs who were current or former employees of Canada Post and who were subject to Canada Post’s mandatory vaccination policy – called the

³ *Canada Post Corporation Act*, [RSC 1985, c C-10](#).

⁴ Decision, CPC RMR, Tab 1 at para. 1.

“Mandatory Vaccination Practice” (the “**Practice**”). The Claim stated that the majority of the plaintiffs were neither partially nor fully vaccinated against COVID-19, and that they “resigned or retired under duress because of the Practice”.⁵

9. The Claim alleged that an October 6, 2021 news release issued by Canada constituted an order requiring mandatory vaccination or the disclosure of vaccination status under threat of administrative and/or disciplinary measures. The Claim further alleged that Canada Post was an “agent” of Canada.⁶ Accordingly, the plaintiffs sought the following relief against Canada Post and Canada in relation to the Practice:

- (a) a declaration pursuant to section 24(1) of the *Constitution Act*, 1982 that Canada’s October 6, 2021 announcement violated sections 2(a), 7, 8 and 15 of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”);
- (b) a declaration pursuant to section 24(1) of the *Constitution Act*, 1982 that the Practice violates sections 2(a), 2(d), 7, 8, and 15 of the *Charter*;
- (c) a declaration that Canada Post and Canada discriminated against the plaintiffs contrary to section 7(b) of the *Canadian Human Rights Act*, RSC 1985, c H-6 (“**CHRA**”), and deprived the plaintiffs of employment opportunities contrary to sections 10(a) and 10(b) of the *CHRA*;
- (d) damages in the amount of \$500,000 per plaintiff under section 24(1) of the *Constitution Act*, 1982;

⁵ Decision, CPC RMR, Tab 1 at para. 6.

⁶ Decision, CPC RMR, Tab 1 at para. 7.

- (e) damages in the amount of \$200,000 per plaintiff for intentional infliction of mental suffering;
- (f) damages in the amount of \$200,000 per plaintiff for tortious interference in economic relations;
- (g) damages in the amount of \$200,000 per plaintiff for tortious assault and battery;
- (h) punitive and exemplary damages in the amount of \$500,000 per plaintiff;
- (i) special damages in an amount to be determined, including but not limited to past or future loss of income, medical expenses, and out of pocket expenses;
- (j) punitive damages pursuant to the *Quebec Charter of Human Rights and Freedoms*; and
- (k) damages for inducing breach of contract, interference with contractual relations, and negligence.

10. On August 18, 2023 Canada Post brought a motion to strike the entirety of the Claim as against Canada Post, pursuant to Rule 221(1)(a) of the *Rules*. Canada Post alleged that:

- (a) the Federal Court's jurisdiction regarding claims against the Crown did not capture Canada Post, pursuant to sections 17(1) and 17(2) of the *Federal Courts Act*, RSC 1985, c F-7 (the "*FCA*"); and

- (b) the plaintiffs were subject to collective agreements between their respective unions and Canada Post, so their workplace claims were subject to the exclusive jurisdiction of a labour arbitrator.⁷

11. Canada also brought a motion to strike the entirety of the Claim as against Canada, pursuant to Rules 221(1)(a) and 221(1)(c) of the *Rules*.

12. A hearing on the Defendants' motions to strike was held on March 4 and 5, 2024.

13. On March 13, 2024, Associate Judge Coughlan issued the Decision granting the Defendants' motions to strike the Claim as against both Canada Post and Canada, without leave to amend. In her Decision, Associate Judge Coughlan held that:

- (a) The Claim failed to plead sufficient material facts in support of any of the causes of action plead in the Claim;⁸
- (b) This Honourable Court has no jurisdiction over Canada Post, pursuant to sections 17(1) and 17(2) of the *FCA*;⁹
- (c) The essential character of the Claim raised workplace issues that were within the exclusive jurisdiction of labour arbitrators, and there was no basis for this Honourable Court to exercise its residual discretion to take jurisdiction over the Claim;¹⁰ and

⁷ Decision, CPC RMR, Tab 1 at para. 2.

⁸ Decision, CPC RMR, Tab 1 at paras. 41-46.

⁹ Decision, CPC RMR, Tab 1 at paras. 52-57.

¹⁰ Decision, CPC RMR, Tab 1 at paras. 54-62.

(d) Canada was improperly named as a party in the proceeding.¹¹

14. Associate Judge Coughlan ordered the plaintiffs (jointly and severally) to pay \$10,000 in costs to each of Canada Post and Canada, as previously agreed between the parties.¹²

15. Pursuant to Rule 51(2) of the *Rules*, the plaintiffs were required to serve and file a notice of motion to appeal the Decision within ten days of the day on which the Decision was made (i.e., by March 25, 2024).¹³

16. Over *seven months* later, on November 14, 2024, the Applicants served the Defendants with a Notice of Change of Solicitor. That same day, the Applicants brought the present motion seeking an extension of time to appeal the Decision.¹⁴

PART II - POINTS IN ISSUE

17. The only issue before this Honourable Court in this motion is whether the Applicants should be granted an extension of time to serve and file a notice of motion to appeal the Decision.

PART III - STATEMENT OF SUBMISSIONS

¹¹ Decision, CPC RMR, Tab 1 at paras. 63-65.

¹² Decision, CPC RMR, Tab 1 at paras. 68-69.

¹³ *Rules*, s. 51(2).

¹⁴ Notice of Motion dated November 14, 2024 (“**Notice of Motion**”), Plaintiffs’ Motion Record (“**MR**”), Tab 1.

A. The Test for an Extension of Time

18. An order granting or refusing an extension of time is discretionary. Rule 8 of the *Rules* allows the Court to extend the time limits provided in the *Rules* in circumstances where the party seeking the extension can demonstrate that granting it is in the interests of justice.¹⁵ The Federal Court of Appeal most recently characterized the relevant factors to be considered as follows:

- (a) the party had a continuing intention to pursue the matter, which commenced before the relevant time limit expired;
- (b) there is a reasonable explanation for the delay;
- (c) there is some merit to the party’s application; and
- (d) there is no prejudice to the opposite party.¹⁶

19. The Court must consider each factor and decide whether, on balance, the interests of justice would be served by granting the extension of time.¹⁷

20. For the following reasons, the interests of justice would not be served by granting the Applicants’ extension of time to serve and file a notice of motion to appeal the Decision.

(a) No Continuing Intention

¹⁵ *Greenblue Urban North America Inc. v. Deeproot Green Infrastructure, LLC.*, [2024 FCA 19](#) [“Greenblue”] at para. [6](#).

¹⁶ *Greenblue*, *supra*. See also *Rafique v. Canada (National Revenue)* [2023 FCA 112](#) at paras. [2-3](#); *Canada (Attorney General) v. Larkman*, [2012 FCA 204](#) [“Larkman”], at paras. [61-62](#); *Canada (Attorney General) v. Hennelly*, [1999 CanLII 8190 \(FCA\)](#) [“Hennelly”] at para. [3](#).

¹⁷ *Larkman*, *supra* at para. [62](#); *Hennelly*, *supra*.

21. The Applicants have not demonstrated that they had a continuing intention to pursue an appeal of the Decision.

22. Contrary to the Applicants' assertions, evidence of a party's inaction in completing a procedural step is relevant to a determination of whether the party demonstrated a continuing intention to pursue their proceeding.¹⁸

23. Moreover, the obligation to justify a delay applies to the *entire* period of the delay, including the time between the moment when the party realizes that the prescribed time limit could not be or was not met and the moment when the motion is filed. A party who discovers that a procedural step was not completed in a timely manner must act promptly in order to remedy the default.¹⁹

24. The uncontradicted evidence in the record demonstrates that, as of April 8, 2024, the Applicants had (a) formed an intention to appeal the Decision; and (b) understood that they needed to bring a motion for an extension of time before they could pursue their appeal.²⁰ The Applicants were also aware by April 2024 that a failure to file an appeal within the requisite time limits could jeopardize their ability to appeal the Decision at all.²¹

25. Accordingly, the Applicants must establish that their conduct between April 8, 2024 and November 14, 2024 was consistent with a continuing intention to pursue their appeal.

¹⁸ *Larkman*, *supra* at paras. 71, 82.

¹⁹ *Singh v. Canada (Citizenship and Immigration)*, [2023 FC 380](#) (FC) [*"Singh"*] at para. 36, and cases cited therein.

²⁰ Affidavit of Karine Solakian ("**Solakian Affidavit**"), MR, Tab 2, p. 7, para. 8. See also Transcript from Cross-Examination of Karine Solakian dated January 7, 2025 ("**Solakian Cross**"), MR, Tab 5, p. 99-100.

²¹ *Solakian Cross*, MR, Tab 5, p. 139.

26. The evidence does not support this conclusion. Despite being aware that they were outside the time limits to bring an appeal, as well as the consequences for failing to bring a timely appeal, the Applicants failed to take prompt or reasonable steps to come into compliance with the *Rules* over the next several months. Specifically, the evidence demonstrates that the Applicants – through Karine Solakian (“**Ms. Solakian**”), the instructing representative for the Applicants – took the following steps to pursue the appeal after April 8, 2024:

- (a) Approximately five weeks later, on May 14, 2024, Ms. Solakian sent an email to prior counsel asking for an update on the motion for an extension of time to appeal;²²
- (b) Approximately three weeks later, on June 6, 2024, Ms. Solakian sent an email to prior counsel asking for an update on the motion for an extension of time to appeal;²³
- (c) Approximately two weeks later, on June 19, 2024, Ms. Solakian called prior counsel and left a voicemail asking for an update on the motion for an extension of time to appeal;²⁴
- (d) Approximately two weeks later, on July 3, 2024, Ms. Solakian sent an email to prior counsel asking for an update on the motion for an extension of time to appeal.

For the first time, Ms. Solakian asked prior counsel how much time the Applicants

²² Affidavit of Jodi Kaldestad affirmed January 10, 2025 (the “**Second Kaldestad Affidavit**”), MR, Tab 4, Exhibit A, p. 52 – Email from Karine Solakian to Connor Farquhar dated May 14, 2024.

²³ Second Kaldestad Affidavit, MR, Tab 4, Exhibit A, p. 51 – Email from Karine Solakian to Connor Farquhar dated June 6, 2024.

²⁴ Solakian Affidavit, MR, Tab 2, p. 7, para. 11. See also Second Kaldestad Affidavit, MR, Tab 4, Exhibit A, p. 48, Q. 5.

had to submit the motion.²⁵ In response, prior counsel advised that there was no prescribed timeline to submit the request, but “the sooner... the better”;²⁶

- (e) Approximately two weeks later, on July 17, 2024, Ms. Solakian received draft motion materials from prior counsel via email. On cross-examination, Ms. Solakian testified that on July 22, 2024, she responded via email with the Applicants’ comments on the draft motion materials and “instructions to file” the motion materials.²⁷ However, the July 22, 2024 email from Ms. Solakian to prior counsel indicates only that the Applicants “look forward to further fleshing out the draft, our final review, and it being filed as promptly as possible”;²⁸
- (f) Approximately one week later, on July 29, 2024, Ms. Solakian and another Applicant, Kim Priest (“**Ms. Priest**”) sent an email to prior counsel clarifying the timeline of their communications with respect to the motion. As part of the timeline, Ms. Solakian and Ms. Priest confirm that the Applicants “responded with our comments” on the draft motion materials on July 22, 2024. Neither Ms. Solakian nor Ms. Priest follow up on revised draft motion materials in this communication, nor do they instruct prior counsel to file the motion materials;²⁹

²⁵ Second Kaldestad Affidavit, MR, Tab 4, Exhibit A, p. 54 – Email from Karine Solakian to Leighton Grey and Connor Farquhar dated July 3, 2024.

²⁶ Second Kaldestad Affidavit, MR, Tab 4, Exhibit A, p. 53 – Email from Connor Farquhar to Karine Solakian dated July 4, 2024.

²⁷ Solakian Cross, MR, Tab 6, p. 110.

²⁸ Second Kaldestad Affidavit, MR, Tab 4, Exhibit A, p. 58 – Email from Karine Solakian to Leighton Grey and Connor Farquhar dated July 22, 2024.

²⁹ Second Kaldestad Affidavit, MR, Tab 4, Exhibit A, p. 58 – Email from Kim Priest to Leighton Grey dated July 29, 2024.

- (g) Finally, on September 4, 2024, the Applicants' prior counsel sent a letter to the Applicants advising that their office could no longer work on the Applicants' appeal.³⁰ The Applicants then sought new counsel, ultimately retaining the Applicants' current counsel on September 22, 2024.³¹

27. On cross-examination, Ms. Solakian confirmed that she was not aware of *any* communications between the Applicants and their prior counsel between July 29, 2024 and September 4, 2024.³²

28. In other words, there is no evidence that Ms. Solakian or any of the other Applicants made *any* attempts to pursue their appeal over a period of *five weeks*, despite understanding that they were outside of the time limits to bring an appeal and that their ability to appeal was in jeopardy if they did not file a motion for an extension of time to appeal as soon as possible.

29. The Applicants made no attempts to follow up with their counsel for a "final review" of the revised draft motion materials or for confirmation that the motion for an extension of time to appeal had been filed.

30. Moreover, to the extent that the Applicants claim they had concerns with the timeliness or diligence of their prior counsel, they took no steps to seek new counsel or bring the motion for an extension of time to appeal themselves. It was only after the Applicants' prior counsel advised that they could no longer work on the Applicants' appeal on September 4, 2024 that the Applicants sought new representation.

³⁰ Solakian Affidavit, MR, Tab 2, p. 8, para. 14.

³¹ Solakian Affidavit, MR, Tab 2, p. 8, para. 16.

³² Solakian Cross, MR, Tab 5, p. 117.

31. In this case, the Applicants did not have a continuing intention to pursue their appeal in a timely manner.

(b) No Reasonable Explanation for Delay

32. The *Rules* are not mere guidelines – they have force of law.³³ This Court has held that only an unanticipated event that is beyond the control of the applicant will constitute a reasonable explanation for delay justifying an extension of time.³⁴

33. In their motion materials, the Applicants offer three explanations for their delay in serving and filing either a motion to appeal the Decision or a motion for an extension of time to appeal the Decision: (a) delays and errors attributed to previous counsel; (b) the “inherent” amount of time required to organize a large group of applicants; and (c) the amount of time required to retain new counsel and for new counsel to prepare a motion for an extension of time to appeal.³⁵

34. None of these explanations constitute a reasonable justification for the delay in this case.

35. First, a lack of diligence on the part of counsel has repeatedly been held as *not* constituting an unanticipated event that can justify an extension of time.³⁶

³³ *Abi-Mansour v. Canada (Passport)*, [2015 FC 363](#) at para. [32](#).

³⁴ *Nwammadu v. Canada (Minister of Citizenship and Immigration)*, [2005 FC 107](#) at para. [10](#).

³⁵ Notice of Motion, MR, Tab 1, p. 2, para. 6.

³⁶ *Singh*, *supra* at para. [38](#); *Kiflom v. Canada (Citizenship and Immigration)*, [2020 FC 205](#) at paras. [37-38](#), citing *Chin v. Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 1033 (FC) at para. 8 and *Ismael v. Canada (Citizenship and Immigration)*, [2018 FC 1191](#) [“*Ismael*”] at paras. [49-50](#). See also *Frenkel v. Canada (Minister of Citizenship and Immigration)*, [1998 CanLII 7270](#) (FC) at paras. [10-11](#); *Canada (Minister of Citizenship and Immigration) v. Singh*, [1997 CanLII 5918](#) (FC) at para. [16](#).

36. Moreover, applicants will generally be held to the consequences of their choice of counsel.³⁷ The Federal Court recently confirmed that counsel and their client “are one” for the purposes of motions to extend time:

Lastly, although counsel frequently argue that their clients should not suffer prejudice on account of their counsel's errors or negligence, counsel and client "are one" for the purposes of motions to extend time. **Counsel are acting — or failing to act — in the shoes of their clients, and clients can therefore not expect to escape the consequences of their counsel's carelessness** (*Chin v. Canada (Minister of Employment and Immigration)* [1993] FCJ No 1033, 22 Imm LR (2) 136, 69 FTR 77).³⁸ (emphasis added)

37. In “extraordinary cases”, the competency of counsel may give rise to a natural justice issue. However, the facts must be specific and clearly proven in order to justify granting relief on this basis.³⁹

38. There is no evidence before this Honourable Court that would support that the delays of the Applicants’ prior counsel rose to the level of a denial of natural justice, or that this is an extraordinary case warranting relief.

39. To the contrary, the evidence in the record demonstrates that since April 2024, the Applicants understood their obligations under the *Rules*, the consequences of their non-compliance with the *Rules*, and the actions (and inaction) of their chosen counsel in the face of this non-compliance. The Applicants cannot now escape the consequences of this inaction simply by attributing it to their chosen counsel.

³⁷ *Ismael, supra* at paras. [42-50](#), citing *Cove v. Canada (Minister of Citizenship and Immigration)*, [2001 FCT 266](#) (FC) [“*Cove*”] at paras. [6-7](#), among others.

³⁸ *Singh, supra* at para. [37](#).

³⁹ *Frenkel, supra* at para. [11](#); *Cove, supra* at para. [7](#).

40. In any event, nothing in the Applicants' motion materials in any way attempts to explain the Applicants' own lack of urgency between April and July 2024, nor their complete silence between July 29, 2024 and September 4, 2024. Contrary to the Applicants' assertions, the evidence does not support that the Applicants provided "clear instructions" to their prior counsel in July 2024 that their counsel simply ignored.⁴⁰

41. Second, the Applicants have provided no evidence to support that any period of delay was caused by difficulties obtaining legal advice or confirming instructions among a large group of applicants, beyond general assertions that this was "logistically complicated" and "time consuming".⁴¹ On cross-examination, Ms. Solakian confirmed that she did not wait for an explicit confirmation from each plaintiff before providing instructions to counsel.⁴² In any event, the "inherent" time that is associated with organizing a large group of applicants is not an unanticipated event that is beyond their control.

42. Similarly, the time associated with retaining new counsel and for new counsel to prepare a motion for an extension of time to appeal is not an unanticipated event that justifies an extension of time in these circumstances. While the Applicants had an agreement in principle to retain their current counsel on the appeal as of September 22, 2024, the Applicants' current counsel did not notify Canada Post or Canada that the Applicants intended to appeal the Decision and were seeking an extension of time to bring the appeal until November 7, 2024.

43. The Applicants have failed to provide a reasonable explanation justifying an extension of time.

⁴⁰ Second Kaldestad Affidavit, MR, Tab 4, Exhibit A, p. 58 – Email from Karine Solakian to Leighton Grey and Connor Farquhar dated July 22, 2024.

⁴¹ Solakian Affidavit, MR, Tab 2, p. 7, para. 5.

⁴² Solakian Cross, MR, Tab 5, p. 114-115.

(c) No Merit to the Appeal

44. Similarly, the evidence does not demonstrate that the merits of the appeal is a factor that should weigh in favour of an extension of time in the circumstances.

45. In their motion materials, the Applicants assert that their proposed appeal would be limited on the merits to the Applicants' claim against Canada Post and Canada pursuant to section 7 of the *Charter*. The only evidence offered by the Applicants to demonstrate the merits of this ground of appeal is a draft Memorandum of Fact and Law.⁴³

46. There are no obvious errors of law or palpable and overriding errors of fact identified in draft Memorandum of Fact and Law that would militate in favour of an extension of time in these circumstances. In the Decision, Associate Judge Coughlan was alert to, set out, and applied the correct legal principles in her analysis of whether the Applicants' claim under section 7 of the *Charter* should be struck for disclosing no cause of action.

47. Moreover, the issue at the heart of the Applicants' appeal has been repeatedly decided and settled by the courts. Associate Judge Coughlan's finding that the Claim disclosed no cause of action pursuant to section 7 of the *Charter* is entirely consistent with the existing body of judicial case law on mandatory COVID-19 vaccination policies. That case law has *repeatedly* confirmed that in the specific context of the COVID-19 pandemic, "a requirement to be vaccinated in order to practice one's profession does not amount to 'forced vaccination', or violate informed consent or bodily autonomy, or violate *Charter* rights".⁴⁴

⁴³ Affidavit of Jodi Kaldestad affirmed November 14, 2024 ("First Kaldestad Affidavit"), MR, Tab 3, Exhibit B.

⁴⁴ *Weisenburger v. College of Naturopathic Physicians of British Columbia*, [2024 BCSC 1047](#) (BC SC) at para. 89, citing *Maddock v. British Columbia*, [2022 BCSC 1605](#) (BC SC) at paras. 78–79, 83 ["Maddock"], aff'd *Kassian v. British Columbia*, [2023 BCCA 383](#) (BC CA); *Parmar v. Tribe Management Inc.*, [2022 BCSC 1675](#) (BC SC) at paras. 132–33, 153–56; *ATU, Local 113 et al v. TTC and NOWU v. Sinai Health System*, [2021 ONSC 7658](#) (ON SC) ["Sinai

48. In addition, and importantly, the Applicants do not intend to appeal Associate Judge Coughlan’s order striking the Claim as against Canada Post on the basis that the Claim (including the Applicants’ claim under section 7 of the *Charter*) raised workplace issues that were within the exclusive jurisdiction of labour arbitrators. On this basis alone, Canada Post submits that the Applicants’ proposed appeal lacks any merit on its face.

49. Accordingly, the merits of the Applicants’ appeal is not a factor that weighs in favour of granting an extension of time in the circumstances.

(d) Prejudice to Canada Post

50. Finally, Canada Post has suffered some prejudice as a result of the Applicants’ delay and subsequent motion for an extension of time to appeal the Decision. But for the Applicants’ delay, Canada Post would not have had to expend the time and resources associated with responding to the request for an extension of time. Canada Post should not be required to expend further time and resources responding to the proposed appeal of the Decision.

51. In contrast, the Applicants will suffer no prejudice if this motion for an extension of time is rejected and the Applicants are prevented from bringing their appeal of the Decision. All of the Applicants are unionized current and former employees of Canada Post. Each of the Applicants have brought at least one grievance under their applicable collective agreement in relation to the Practice.⁴⁵ The Applicants did not furnish any evidence before Associate Judge Coughlan to support that any of the grievance processes were inadequate,⁴⁶ nor have they raised

Health”] at paras. [50–52](#), aff’d *NOWU v. Sinai Health System*, [2022 ONCA 802](#) (ON CA). See also *Costa, Love, Badowich and Mandekic v. Seneca College of Applied Arts and Technology*, [2022 ONSC 5111](#) (ON SC) at paras. [64–78](#); *Hoogerbrug v. British Columbia*, [2024 BCSC 794](#) (BC SC) [“*Hoogerbrug*”] at paras. [18](#), [276–278](#).

⁴⁵ Decision, CPC RMR, Tab 1 at para. 57.

⁴⁶ Decision, CPC RMR, Tab 1 at paras. 61.

any issue in this motion or the proposed appeal with respect to the adequacy of these grievance processes.

52. The Applicants continue to have available avenues for relief should this motion be dismissed. There is no prejudice to the Applicants should this Honourable Court decline to exercise its discretion in the Applicants' favour.

53. Accordingly, this motion should be dismissed.

PART IV - STATEMENT OF THE ORDER SOUGHT

54. Canada Post respectfully requests:

- (a) An Order dismissing the Applicants' motion for an extension of time to serve and file a notice of motion to appeal the Decision;
- (b) the costs of this motion; and
- (c) such further and other relief as this Honourable Court may deem just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of February, 2025



Christopher Pigott

February 28, 2025

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PART V - LIST OF AUTHORITIES

Cases

1. *Abi-Mansour v. Canada (Passport)*, [2015 FC 363](#) (FC)
2. *ATU, Local 113 et al v. TTC and NOWU v. Sinai Health System*, [2021 ONSC 7658](#) (ON SC)
3. *Canada (Attorney General) v. Hennelly*, [1999 CanLII 8190](#) (FCA)
4. *Canada (Attorney General) v. Larkman*, [2012 FCA 204](#) (FCA)
5. *Canada (Minister of Citizenship and Immigration) v. Singh*, [1997 CanLII 5918](#) (FC)
6. *Chin v. Canada (Minister of Employment and Immigration)*, [1993] FCJ No. 1033 (FC)
7. *Costa, Love, Badowich and Mandekic v. Seneca College of Applied Arts and Technology*, [2022 ONSC 5111](#) (ON SC)
8. *Cove v. Canada (Minister of Citizenship and Immigration)*, [2001 FCT 266](#) (FC)
9. *Frenkel v. Canada (Minister of Citizenship and Immigration)*, [1998 CanLII 7270](#) (FC)
10. *Greenblue Urban North America Inc. v. Deeproot Green Infrastructure, LLC.*, [2024 FCA 19](#) (FCA)
11. *Hoogerbrug v. British Columbia*, [2024 BCSC 794](#) (BC SC)
12. *Ismael v. Canada (Citizenship and Immigration)*, [2018 FC 1191](#) (FC)
13. *Kassian v. British Columbia*, [2023 BCCA 383](#) (BC CA)
14. *Kiflom v. Canada (Citizenship and Immigration)*, [2020 FC 205](#) (FC)
15. *Maddock v. British Columbia*, [2022 BCSC 1605](#) (BC SC)
16. *NOWU v. Sinai Health System*, [2022 ONCA 802](#) (ON CA)
17. *Nwammadu v. Canada (Minister of Citizenship and Immigration)*, [2005 FC 107](#) (FC)
18. *Parmar v. Tribe Management Inc.*, [2022 BCSC 1675](#) (BC SC)
19. *Rafique v. Canada (National Revenue)* [2023 FCA 112](#) (FCA)

20. *Singh v. Canada (Citizenship and Immigration)*, [2023 FC 380](#) (FC)
21. *Weisenburger v. College of Naturopathic Physicians of British Columbia*, [2024 BCSC 1047](#) (BC SC)

Statutes and Regulations

1. *Federal Courts Rules*, SOR/98-106
2. *Canada Post Corporation Act*, RSC 1985, c C-10

APPENDIX “A” – TEXT OF STATUTES AND REGULATIONS

1. *Federal Courts Rules*, SOR/98-106, ss. 8, 51

Extension or abridgement

8 (1) On motion, the Court may extend or abridge a period provided by these Rules or fixed by an order.

Appeals of Prothonotaries’ Orders**Appeal**

51 (1) An order of a prothonotary may be appealed by a motion to a judge of the Federal Court.

Service of appeal

(2) Notice of the motion shall be served and filed 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.

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

Plaintiffs
(Moving Party, in-part)

and

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

Defendants

**RESPONDENT'S MOTION RECORD OF
HIS MAJESTY THE KING IN RIGHT OF CANADA**

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Counsel for the 66 Plaintiffs listed in Schedule
"A" of their Notice of Motion

This is Exhibit "C" referred to in the
Affidavit of Jodi Kaldestad
sworn (or affirmed) before me at
Vancouver, BC
this 12 day of May 20 25.

A Commissioner for Taking Affidavits for British Columbia

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FEDERAL COURT

BETWEEN:

BERNARD ALBERT, MARIE ALLCHURCH, JULIA ALVAREZ, JASON AMARO, VANESSA APOSTOLOVSKI, MARIA ARENA, ALI BAHRI, RAYMOND. S. BAKER, DAVID BAKHUYZEN, KIM BANDO, ADILA BASIC, ANJA BATTIE, KELLI BATTYANYI, MICHAEL BECKER, JASON MATTHEW BERARD, WANDA BERG, LAURIE BERNES, ANDREA BIALOWAS, THERESA BICKLE, ANGELLA BLIER, MARK BOIKOVITIS, ERIK BOUCHARD, ROBERT BOURBONNIERE, BROOKE BOUTANG, VERONIQUE BRETON, NATASHA BUDY, JENNIFER-LYNN BULLICK, MARY BURKE, CATHERINE CABRAL-MCKEAND, EDUARDO CAETANO, ANTHONY CAETANO, JENNIFER CAUDRON, TRACY CHASE, NATACHA CHEVARIE, MIMI CHOO, WILLIAM CHOW, CHERYL CHOW, ANGELINA CLARK, PAUL CLEMENTS, SANDRA COLE, JENNIFER COMIN, ANTHONY COMMISSO, TANYA DOCANTO CORDEIRO, ESTERINA COSTA, ROCCO COTUGNO, FRANCESCO "FRANK" COTUGNO, RICHARD COUTURIER, WAYNE COWAN, KENTON CROOK, MICHAEL CURRIE, SELENA CVITAN, MARK DAGGETT, MARCO DALL'ANTONIA, JANA DANCAKOVA, AMANDA DEMPSEY, JASON DENTINGER, MARLICE DEPTUCH, ANTHONY DEROSE, LORRAINE DESCHAMPS, GISELE DESHARNAIS, KAREN DESROSIERS, JOHN DEVINE, SUSAN DEWALD, EZIO DIFONZO, DONALD WAYNE DUNHAM, BRANDY DUPAS, TERESA ELLISON, JOHN EMMANOUIL, JOHANNA EMMANOUIL, SHELLEY ESCOBAR, JOY ESDAILLE, WILLIAM FAUSTINO, RAQUEL FERREIRA, SHERRY FERREIRA, PAXTON FIRTH, MICHELINE FLEURY, SARAH FRANGIONE, ERIN FULLER, MICHAEL GAIREY, JESSICA GASKIN, KAREN GIBEAULT, SHEILA RAE GOW, JAYDE GRAVEL, MICHAIL GRIGORATOU, URVASHI GURUNG, RYAN HAMER, CHARLENE HANSON, JASMIN HARRISON, CARLY HART, TAMMY HAYES, JAYSON PETER JAMES HEIDEBRECHT, DENISE HERBERT, JORGIE HIDALGO, TIMOTHY HIEBERT, DONNA HISCOCK, DENISE HOHN, ELAINA HUDYMA, KATHRYN (KATIE) HUNT, TANYA HUTCHINSON, ZDZISŁAW JABŁOŃSKI, MARTINE JARRY, CARLA JENKINS, STEPHANIE KATHLEEN JOHNSTON, NICHOLAS JOHNSTON, RIINA KAPP, RUDY KERN, MARK KILLEEN, SABRINA KINCAID, MARIETTA KIRBY, SANDRA KOSTENKO, CALVIN KOTOWICH, DAMIR KRAMARIC, SANDRA KRASINKIEWICZ, ROCKY KUJALA, HELENE LA ROCHELLE, AVINASH LALOO, MEGAN LANE-KARRAS, MARTINE LAROCQUE, LINE LAVALLEE, KEVIN LAWRES, CHUNG LE, LUC LEBLANC, DONNA LEEDER, PATRICK LESSARD, LISA LEVESQUE, LORRAINE LIGHT, GISELE LIRETTE, RANDY LOGAN, SANDRA M LOPES, KIM LUMSDEN, WENDY LUNDVALL, PAUL LUSSIER, PAUL LYNN, NICOLA MACDONALD, MICHAEL MAFILOVSKI, VIJAY MAHARAJ, CAROLINE MAHEUX, TANYA MANDEL, TRACY MA-PRICE, MARIE MARCOTTE, ANNA MARRO, DEVAN

MARSHALL, JUDY MARTENS, JOSYANNE MARTIN, JENNA MATHIES, TRACEY MATLOCK, DANIEL MATTI, WILLIAM GRANT MAYER, BOZENA MAZUR, DAWN MCFARLANE, MARGARET MCGEACHIE, CHRIS MCGRATH, LUCAS MCIVOR, KAREN MCQUADE, SZILVIA MERTL, ROCCO MESSERE, ANNA MIASIK, SARAH MICKALKO, JASON MIELKE, LAWRENCE (LARRY) MILLSON, SERGIO A MOLINA C, JAMES MORRIS, JAMES MORRISON, RACHEL MULLARKEY, PAUL NAHIRNIAK, DIDI (PREVIOUSLY DANIELLE) NAVALES (PREVIOUSLY FREEMAN), MARGARET NEB, AMANDA NEIL, SCOTT NEIL, TRACEY NELLIS, JOCELYN NELSON, GEORGE NICOLAIDES, LISA NICOLL, JULIE NOBLE, CHAD NORMANDEAU, CHERISE O'CONNOR, GERALDINE OLSON, MARC ORICHEFSKY, RYAN ORYDZUK, STEVEN OVERHOLT, KRISTY PACHOLKA FORD, FANY PELLETIER-GOUGEON, CHRIS PILLON, LESLIE J POLLOCK, ELZBIETA PONIKIEWSKA, KIMBERLEE PRIEST, NATHAN RAE (AKA ADAN EDEY), TRACEY RALSTON, KARL RATCHINSKY, DANIEL RAYO, ANTONIO REDA, JULIE REEVES, CORELEI REICHERT, DOLORES RELIC, AMBER RICARD, LENA (HELENE) RICCI, SHEILA RIDDELL, BREEANNE RIDGE, KEENAN ROBINSON, MICHAEL ROBITAILLE, MYRA ROBITAILLE, ROBERT ROBSON, JODI RODDY, DJ (DEBBY) RODNEY, AMANDA (GOOD) ROOSMETS, JEAN-FRANCOIS ROSA, SANDRA ROSSETTO, ANGELA RYCKMAN, STEPHANIE SAMSON, JOSHUA SAMUELSON, RUSSEL "RUSS" SAWCHUK, JUSTIN SCHEFFER, DEREK SCHOENFELDT, AARON SCHROEDER, CARMEN SCHVARCZINGER, SHAUNA SCOTT, STEPHEN SEE, JACQUELINE(JACKIE) SELK, FLAMUR SELMANI, MARION SERINK, JOHN-LUIS GABRIEL SERRAMBANA, DEWITT C. SHAINLINE, SHRIKANT (SHRE) SHARMA, DEBORAH SHAW, ALAN SHUM, WANITA SIKLENKA, NATHANIEL SLEDZ, BENJAMIN BRADLEY, ARTHUR SMITH, KARINE SOLAKIAN, JULIE SRIGLEY, DAVID STEEVES, KAREN STEVENS, MICHELENE STEWART, JAMES STEWART, SUSAN STEWART, ROBERTA STRICKLAND, MARTYNA STYRCZULA, LINDSAY SUNTHGOLAM, PAWEL SZOPA, ANTHONY PALOZZI, STEVEN TANNER, LORI TAYLOR, SINA TEHRANCHI, HOLLY THIBODEAU, CHRISTOPHER THOMPSON, JENNIFER TOBIN, VANESSA TOEWS, ZVONIMIR TOMAS, JOSHUA DON TORRES, ENRIQUE TOSI, ERIC TOUPIN-SELINGER, TIMOTHY DOUGLAS TRACY, CATY TRAN, HUGO TREJO, LARA TRENAMAN, MELISA TREPANIER, CAROL-ANNE VALCOURT, LEONARDO VASQUEZ, MELANIE VENDRYES, LUIZA VISIC, CARRIE VISSER, JENNIFER VOGELGESANG, SHANDA VORRATH, MARY VUK, PAMELA WAGNER, MARIAM WALI, HEIDI WANJON, JOEL WAZNICKY, CORY WEGE, ELVIN WEGNER, NANCY WHITCOME, WARREN WHITE, JOHANN WILSON, JAMES WINNING, LINDEN WRIGHT, SHANE YAWORSKI, YVONNE YUTUC, CARSON ZORGET, MICHAEL ZOTTOLA, MARCIA HEWETT-HICKS

Plaintiffs

and

CANADA POST CORPORATION, HER HIS MAJESTY THE QUEEN KING IN RIGHT OF CANADA, THE ATTORNEY GENERAL OF CANADA

Defendants

AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the Federal Courts Rules.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: _____

Issued by:
(Registry Officer) _____

Address of local office: Edmonton Registry Office
Scotia Place
10060 Jasper Avenue
Tower 1, Suite 530
Edmonton, Alberta T5J 3R8

TO: CANADA POST CORPORATION
 Head Office
 1200-2701 Riverside Dr
 Ottawa, ON K1A 0B1

TO: ~~HER~~ **HIS** MAJESTY THE ~~QUEEN~~ **KING** IN RIGHT OF CANADA
 Office of the Deputy Attorney General of Canada
 284 Wellington Street
 Ottawa, Ontario K1A 0H8

TO: THE ATTORNEY GENERAL OF CANADA
 Prairie Regional Office - Edmonton
 Department of Justice Canada
 10423 101 Street
 3rd Floor, Epcor Tower
 Edmonton, Alberta T5H 0E7

CLAIM

A. RELIEF SOUGHT BY THE PLAINTIFFS

1. The Plaintiffs claim:

- a. A Declaration pursuant to section 24(1) of the *Constitution Act, 1982* that the Government of Canada's 6 October 2021 announcement that employers in federally regulated industries be required to establish vaccination policies ensuring that their employees are fully vaccinated (the "Order") violates ~~stated~~ expectation that Crown corporations require full vaccination for COVID-19 (the "~~Expectation~~") ~~violated~~ sections 2(a), 7, 8, and 15 of the Plaintiffs' constitutional rights and freedoms protected by the *Canadian Charter of Rights and Freedoms* (the "**Charter**"), as set out below, in a manner not demonstrably justified under section 1 of the *Charter*;
- b. A Declaration pursuant to section 24(1) of the *Constitution Act, 1982* that Canada Post Corporation's subsequent Mandatory Vaccination Practice (the "**Practice**") violates sections 2(a), 7, 8, and 15 of the Plaintiffs' constitutional rights and freedoms protected by the *Charter*, as set out below, in a manner not demonstrably justified under section 1 of the *Charter*;

- c. A Declaration that Canada Post Corporation, His Majesty the King in Right of Canada (the “Crown”), and the Attorney General of Canada (the “Attorney General”) (collectively, jointly, and severally, the “Defendants”), discriminated against the Plaintiffs, on the grounds of genetic characteristics and religion, by adversely differentiating against the Plaintiffs due to their vaccine status contrary to section 7(b) of the *Canadian Human Rights Act (the “Act”)*;
- d. A Declaration that the Order and Practice deprives the Plaintiffs of employment opportunities, on the grounds of genetic characteristics and religion, due to their vaccine status contrary to sections 10(a)-(b) of the *Act*;
- e. Damages pursuant to section 24(1) of the Constitution Act, 1982 for violation of the Plaintiffs’ rights pursuant to sections 2(a), 7, 8, and 15 of the *Charter rights* in the amount of \$500,000.00 per Plaintiff;
- f. Damages for intentional infliction of mental suffering in the amount of \$200,000.00 per Plaintiff;
- g. Damages for tortious interference in economic relations in the amount of \$200,000.00 per Plaintiff;
- h. Damages for tortious assault and battery against the Plaintiffs in the amount of \$200,000.00 per Plaintiff.
- ~~f. A Declaration pursuant to section 217, 217.1 & 219(1) of the *Criminal Code*, 1985, that the Canada Post Corporation mandatory vaccination practice for covid-19 violates sections 124 & 125 of the *Canada Labour Code*, specifically sections (q),(s),(w) and (y), wherein the corporation demonstrated criminal negligence causing harm by not providing their employees the necessary “Informed Consent” regarding any of the potential adverse effects or dangers associated with the vaccines they provided their employees as options.~~
- ~~g. A Declaration pursuant to section 217, 217.1 & 219(1) of the *Criminal Code*, 1985, that the Canada Post Corporation violated sections 124, 125 of the *Canada Labour Code*, specifically sections z.03, z.04, z.05, z.06, z.11, z.13 & z.19, by failing to capture within each of the national safety minutes, any discussion to either educate, review, or document any of the potential hazards or dangers associated with their vaccination options on any of the national collective bargaining agencies that operate under Canada Post.~~
- ~~h. A Declaration pursuant to section 217, 217.1 & 219(1) of the *Criminal Code*, 1985, that the Canada Post Corporation violated sections 124, 125 of the *Canada Labour Code*, specifically sections (t), (v), (w) & (z), by implementing several different covid 19 vaccines as personal protective equipment in the work place. Not only failing to provide their employees with the knowledge and understanding necessary to properly use the corporation’s newly implemented~~

personal protective equipment, the corporation also failed to ensure that said personal protective equipment be deemed safe under "...ALL conditions of their intended use."

- i. ~~A Declaration pursuant to section 217, 217.1 & 219 of the *Criminal Code*, 1985, that the Canada Post Corporation violated section 127.1(1) & 128 of the *Canada Labour Code*, by refusing to properly investigate thousands of employee health and safety concerns regarding the vaccine products mandated for use by the Canada Post Corporation, instead, deeming the employees as "non-compliant" in the process by placing them on leave without pay status.~~
- j. ~~A Declaration pursuant to section 217, 217.1 & 219 of the *Criminal Code*, 1985, that the Canada Post Corporation violated all applicable clauses — (a) through (g) — within section 125.1 of the *Canada Labour Code*, by failing to review, document and disclose to their employees, the proprietary ingredients recognized as known dangerous goods contained within the vaccines that they were assigning their employees as personal protective equipment, and, by failing to inform their employees of the potential direct exposure to ethylene oxide as it pertains to the nasopharyngeal swabs used at Canada Post rapid testing sites, their employee home testing kits and when requiring their employees to confirm their positive or negative covid status by means of their mandatory PCR test process.~~
- k. ~~A Declaration pursuant to section 3(1) of the *Genetic Non-Discrimination Act*, 2017, that the Canada Post Corporation Defendants violated clause (b) specifically, by requiring them the Plaintiffs to undergo PCR testing that sampled RNA genetic material (covid-19 virus) to continue their employment at Canada Post, as per the corporation's Defendants' mandatory vaccination practice~~
- l. ~~A Declaration pursuant to section 2(g) and 5(1)(f) of the *Assisted Human Reproduction Act*, 2004, wherein the Canada Post Corporation Defendants potentially irreparably and permanently damaged their employees' the Plaintiffs' genetic makeup by suggesting through their vaccination practice, the use of mRNA vaccine technologies from Pfizer and Moderna.~~
- m. ~~A Declaration pursuant to section 265.(1) of the *Criminal Code*, 1985, that the Canada Post Corporation mandatory vaccination practice for covid-19 violated section 122.(1) & 122.1 of the *Canada Labour Code*, by not only subjecting their employees to confusing and ineffective work place processes and expectations in relation to their covid 19 protocols, but also by subjecting their unvaccinated employees to regular psychological violence in the form of coercion or ridicule from their peers and management representatives at Canada Post.~~

- ~~n. Damages for violation of the Plaintiffs' rights pursuant to sections 2, 122, 124, 125, 125.1, 127.1(1), and 128 of the *Canada Labour Code* as well as section 217(1) of the *Criminal Code*, in the amount of \$500,000.00 per Plaintiff;~~
- ~~o. Damages for the violation of the Plaintiffs' rights pursuant to sections 122(1) & 122.1 of the *Canada Labour Code* in the amount of \$500,000.00 per Plaintiff;~~
- ~~p. i. Punitive and exemplary damages in the amount of \$500,000.00 per Plaintiff;~~
- ~~q. j. Prejudgment and post judgment interest pursuant to the *Federal Courts Rules*, as amended;~~
- ~~r. k. Costs on a full indemnity scale plus any applicable taxes;~~
- l. Special damages in an amount to be determined, including but not limited to past or future loss of income, medical expenses and out of pocket expenses;
- m. Exemplary and punitive damages;
- n. Damages pursuant to the *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, s. 24(1) (the "Charter");
- o. Punitive damages pursuant to the *Charter of Human Rights and Freedoms*, C.Q.L.R. c.C-12, s. 49 and the *Civil Code of Québec*, C.Q.L.R. c. C-1991, s. 1621 (the "Québec Charter");
- p. Damages for inducing breach of contract, interference with contractual relations, and negligence;
- q. A declaration that the Order violates the Plaintiffs' rights to life, liberty and security of the person and is not in accordance with the principles of fundamental justice, contrary to s.7 of the *Charter* and is not demonstrably justifiable under section 1 of the *Charter*;
- r. A declaration that the Order violates the Plaintiffs' rights to equality, contrary to s.15(1) of the *Charter*, and this violation is not demonstrably justifiable under section 1 of the *Charter*;
- s. A declaration that the Order violates the Plaintiffs' rights to freedom of conscience to s.2(a) of the *Charter*, and this violation is not demonstrably justifiable under section 1 of the *Charter*;
- t. A declaration that the Order violates the Plaintiffs' rights to freedom of association to s.2(d) of the *Charter*, and this violation is not demonstrably justifiable under section 1 of the *Charter*; and

- e. u. Such further and other relief as this Honourable Court may permit.

DEFINITIONS

2. The following definitions apply for the purposes of this Statement of Claim:

- a. ~~“Employee” means all permanent, temporary, casual, student, and fixed term employees on the company payroll of Canada Post Corporation.~~
- b. ~~“Employer” means a person who employs one or more employees and includes an employers’ organization and any person who acts on behalf of an employer.~~
- e. a. **“Employment Insurance Benefits”** (“EI Benefits”) means those benefits established under the *Employment Insurance Act*, SC 1996, c 23;
- d. b. **“Harassment and violence”** means any action, conduct or comment, including of a sexual nature, that can reasonably be expected to cause offence, humiliation or other physical or psychological injury or illness to an employee, including any prescribed action, conduct or comment.
- e. c. **“Hazardous substance”** includes a hazardous product and a chemical, biological or physical agent that, by reason of a property that the agent possesses, is hazardous to the safety or health of a person exposed to **it**.
- f. d. **“Health and safety representative”** means a person who is appointed as a health and safety representative under section 136.
- g. e. **“Policy committee”** means a policy health and safety committee established under section 134.1.
- h. f. **“Safety”** means protection from danger and hazards arising out of, linked with or occurring in the course of employment.
- i. g. **“Senior Officer”** includes everyone who has an important role in:
 - i. Setting policy (which is the current Canadian law); or
 - ii. Managing an important part of the organization's activities.
- j. h. **“Work place committee”** means a work place health and safety committee established under section 135 of *Occupational Health and Safety*.

- k. **i. “Partially Vaccinated”** means having received the first dose of a two-dose series of a Health Canada approved vaccine that provides protection against COVID-19.
- l. **j. “Fully Vaccinated”** means having received the complete series of doses (or a single dose of the Janssen (Johnson & Johnson) COVID-19 vaccine) of a Health Canada approved vaccine that provides protection against COVID-19, and having allowed the time recommended by public health authorities to produce an immune response to COVID-19 elapse (14 days from receipt of a single-dose vaccine or of the second dose of a two-dose series). In time, being Fully Vaccinated may mean having received booster shots, when and as recommended by the applicable public health authorities.
- m. **k. “Proof of Vaccination”** means providing to Canada Post Corporation official documentation issued by the government or the non-governmental entity that is authorized to issue the evidence of COVID-19 vaccination in the jurisdiction in which the vaccine was administered (including a QR code, if issued by the applicable authorities) confirming receipt of the complete series of doses (or a single dose of the Janssen (Johnson & Johnson) COVID-19 vaccine) of a Health Canada approved vaccine that provides protection against COVID-19. In time, this may require providing proof of receipt of booster shots, when and as recommended by the applicable public health authorities.
- n. **l. “Privacy”** means the fundamental right of individuals to create boundaries limiting access to their person, communications, or personal information, including but not limited to, medical and health records.
- o. **m. “Informed Consent”** means the ability to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion, with sufficient knowledge and comprehension of the elements of the subject matter involved as to enable the individual to make an understanding and enlightened decision (~~The Nuremberg Code, 1947~~).
- p. **n. “Danger”** means any hazard, condition or activity that could reasonably be expected to be an imminent or serious threat to the life or health of a person exposed to it before the hazard or condition can be corrected or the activity altered.
- q. **o. “Disclose”** includes to authorize disclosure.
- r. **p. “Genetic test”** means a test that analyzes DNA, RNA or chromosomes for purposes such as the prediction of disease or vertical transmission risks, or monitoring, diagnosis or prognosis.
- s. **q. “Gene”** includes a nucleotide sequence, and an artificially created gene or nucleotide sequence.

- †. **r. “Genome”** means the totality of the deoxyribonucleic acid sequence of a particular cell.
- ‡. **s. “Hazardous product”** means any product, mixture, material or substance that is classified in accordance with the regulations made under subsection 15(1) in a category or subcategory of a hazard class listed in Schedule 2.
- ¶. **t. “Label”** means a group of written, printed or graphic information elements that relate to a hazardous product, which group is designed to be affixed to, printed on or attached to the hazardous product or the container in which the hazardous product is packaged.
- w. **u. “Safety data sheet”** means a document that contains, under the headings that, by virtue of the regulations made under subsection 15(1), are required to appear in the document, information about a hazardous product, including information related to the hazards associated with any use, handling or storage of the hazardous product in a work place.
- ✕. **v. “Substance”** means any chemical element or chemical compound — that is in its natural state or that is obtained by a production process — whether alone or together with:
 - i. any additive that is necessary to preserve the stability of the chemical element or chemical compound,
 - ii. any solvent that is necessary to preserve the stability or composition of the chemical element or chemical compound, or
 - iii. any impurity that is derived from the production process;

B. OVERVIEW OF THE ACTION

The Plaintiffs

3. All of the Plaintiffs are ~~E~~**e**mployees of Canada Post Corporation and subject to the Practice or were ~~E~~**e**mployees but either resigned or retired under duress because of the Practice.
4. The majority of the Plaintiffs are neither Partially nor Fully Vaccinated against COVID-19. The Plaintiffs oppose being Partially Vaccinated or Fully Vaccinated (collectively referred to as “**Vaccinated**”) against COVID-19 for reasons which vary, as described below.
5. The Plaintiffs all oppose being required to attest to their medical records regarding the COVID-19 vaccination ~~as a condition of their employment~~ as a broader public policy objective to increase vaccination rates, coerced through the termination of employment and or administrative disciplinary measures.

6. The Plaintiffs claim that vaccination absent informed consent and forced disclosure of their private health information about their COVID-19 vaccination status to Canada Post Corporation under the threat of administrative and/or disciplinary measures ranging from unpaid leave to termination of employment, constitutes serious human rights and *Charter* violations.
7. The Plaintiffs claim that the Practice 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.
8. The Plaintiffs plead that the Order tortiously induced the breach of the Plaintiffs' contractual employment agreements absent justification.
7. 9. Most of the Plaintiffs perform their work outside or in close proximity to only a few colleagues.

The Defendants

8. 10. The Defendant, Canada Post Corporation ("**Canada Post**"), is a Parent Crown corporation, as listed in Schedule III, Part I of the *Financial Administration Act*, and established under the *Canada Post Corporation Act*. In exercising its powers and duties, Canada Post must comply with any such directives as the Minister of Public Services and Procurement (the "**Minister**") may give. As a Crown corporation, Canada Post is bound by the *Charter*.
9. 11. Canada Post has the sole and exclusive privilege of collecting, transmitting and delivering letters within Canada and is subject to federal employment and labour relations legislation including the *Canada Labour Code* (the "**Code**") and *Canadian Human Rights Act* (the "**Act**").
- ~~10.~~ 12. The Defendant, Her ~~His~~ Majesty the Queen ~~King~~ in right of Canada (the "**Crown**") is represented by the Attorney General of Canada on behalf of the Governor General in Council ("**GIC**").
- ~~11.~~ 13. The Defendant, the Minister, Honourable Filomena Tassi, is responsible for the oversight of Canada Post.
14. The Defendant, His Majesty the King ("Canada"), is liable for the acts, omissions, negligence and malfeasance of the employees, agents and management of Transport Canada, pursuant to the Crown Liability and Proceedings Act, R.S.C. 1985, c C-50.

Standing

15. The Plaintiffs assert both private and public interest standing to bring this claim.

16. The Plaintiffs have private interest standing because they are directly affected by the Minister of Transport's decision to issue the Order and thereby induce the breach of their contractual employment agreements leading to significant financial and ancillary harm.
17. The Plaintiffs also have public interest standing. They raise a serious justifiable issue of public import respecting the constitutionality of the Minister of Transport's Order which has created, contributed to, and sustained a deprivation of individuals rights guaranteed under the Charter, ss.2a, 7, and 15.
18. The Plaintiffs have a real stake in the Minister of Transport's conduct and are both directly and genuinely interested in the resolution of this claim.
19. This claim advances a reasonable and effective method of bringing the issues before the Court in all of the relevant circumstances. Many individuals impacted by the conduct of the Minister of Transport and the Order have had their contractual employment agreements breached and Charter rights infringed upon and lack the resources to bring forward such a claim.

Background of the Order

20. In 1996, the *Canadian National Report on Immunization*, prepared by the Canadian Department of Health, reported that in Canada compulsory vaccination is unconstitutional and cannot be made mandatory because of the Canadian Constitution.
21. On 2 June 2020, Canada's Chief Public Health Officer, Dr. Theresa Tam ("**Dr. Tam**") announced that COVID-19 vaccination would not be mandatory in Canada.
22. On 31 August 2020, the Honourable Patty Hadju, Minister of Health, stated that COVID-19 vaccines would not be mandatory in Canada and that people will have the choice to become vaccinated with a COVID-19 vaccine or not.
23. On 12 February 2021, the Right Honourable Prime Minister Justin Trudeau (the "**Prime Minister**") announced that COVID-19 vaccines would not be mandatory in Canada.
24. On 13 July 2021, the Prime Minister announced that in Canada, people will have a choice on whether to get COVID-19 vaccines and that COVID-19 vaccination mandates would not be implemented in Canada.
25. On 5 August 2021, the Prime Minister announced that he instructed the clerk of the Privy Council to make COVID-19 vaccinations mandatory for all federal employees, employees of federal Crown corporations, and employees of federally regulated industries.

26. On 5 August 2021, Dr. Tam, announced that mandatory vaccination in Canada was necessary for the purpose of public health and for the purpose of protecting the greater community of Canada and the world.
27. On 12 August 2021, Dr. Tam announced the federal government was making the COVID-19 vaccines mandatory in Canada.
28. On 13 August 2021, the Treasury Board Secretariat of Canada announced that the Order was implemented by Canada to ensure protection of public health in Canada and across the world.
29. On 6 September 2021, the Prime Minister announced that the Government of Canada would protect Canada Post from legal liability for requiring the vaccination of Canada Post employees and in all matters related to the implementation of the Policy.
30. In the months leading up to the Order, and in particular on 16 September 2021, the Prime Minister made pejorative and discriminatory statements toward Canadians who made the decision to not receive the COVID-19 vaccine by calling them racists, misogynists and asking if Canadians should tolerate these people, referring to the unvaccinated.
31. On 6 October 2021, the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance (“**Deputy Prime Minister**”) announced that the Order will permit the Canadian government to keep the economy open and keep school aged children attending in-person schooling.
32. On 21 January 2022, Dr. Tam announced that the Canadian public-health agency would be changing its terminology for COVID-19 vaccination status. The term “fully vaccinated” would be replaced with the term “up-to-date vaccination status” (“**Up-To-Date**”) which includes a complete primary series of authorized COVID-19 vaccines and a booster dose of an authorized COVID-19 vaccine (“**Booster**”).
33. On 16 June 2022, the Honourable Jean-Yves Duclos, Minister of Health, announced that Canada further revised the definition of Up-To-Date to mean an individual who has received a complete primary series of authorized COVID-19 vaccines, plus a Booster within the previous 9 months, with Booster doses to be administered to that individual every 9 months on an ongoing basis for an indeterminate period of time.
34. The National Advisory Committee on Immunization of Canada (“NACI”) reports to the Public Health Agency of Canada on COVID-10 vaccination in Canada. On 1 September 2022, the NACI announced that people in Canada will require a booster dose of the COVID-19 vaccine every 90 days to stay up-to-date.
35. It was a term of the Order that if the Practice was implemented by federally regulated industries, including Canada Post, the government of Canada would not resort to further lockdown measures affecting Canadian businesses and the economy.

36. Under the terms of the Order, Canada Post, became an agent of Canada in implementing public health and economic policies on behalf of and for Canada. In the alternative, even if Canada Post is not considered an agent of the Crown pursuant to the terms of the Order, it has effected Crown public health and economic policy by issuing the Practice.

The Practice

12- 37. On 13 August 2021, the Government of Canada published an announcement stating it “expects that Crown corporations” will “require vaccination for their employees.”

13- 38. On 29 October 2021, Canada Post implemented the Practice which states:

Canada Post has formalized a vaccination practice in line with the federal government’s approach...Our practice requires all employees to be fully vaccinated.

...

Canada Post is committed to a healthy and safe environment for all employees. Vaccination has been shown to be effective in reducing the transmission of COVID-19 and protecting individuals from severe consequences of this virus.

14- 39. The Practice required all Employees actively at work to attest to their current vaccination status by 12 November 2021. Failure to attest by 26 November 2021 would result in the Employee being placed on leave without pay. Employees who attested to being Partially Vaccinated had until 29 January 2022, at which point if they did not attest to their Fully Vaccinated status, they would also be placed on leave without pay. Vaccinated Employees were required to conduct COVID-19 testing three times per week until Fully Vaccinated or once again, would be placed on leave without pay.

15- 40. This Practice unlawfully requires every Plaintiff to disclose their private health information, namely their COVID-19 vaccination status as a condition of their employment.

16- 41. The Practice has created a hostile and toxic work environment at Canada Post and no viable alternatives were offered following 26 November 2021.

42. The Practice required the Plaintiffs to receive the COVID-19 vaccine, a medical treatment, outside the premises of Canada Post. The Practice required the Plaintiffs to receive the medical treatment from a health professional operating as an officer, contractor, employee or agent of Canada.

43. The Practice was implemented to further the objectives of Canada, to protect the healthcare system of Canada and to protect the economy of Canada. The Practice 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. Additionally, federally regulated employees were used as “examples” by the Crown to demonstrate the necessity to be vaccinated against COVID-19, and the supposed effectiveness of the COVID-19 vaccines.

17. ~~44.~~ The Practice provides for accommodation, “due to a medical, religious or other prohibited ground of discrimination under the Canadian Act.” However, these limited accommodations “will only be granted where sufficient evidence is provided based on one of the prohibited grounds of discrimination.”

18. ~~45.~~ No information was provided regarding what qualified as “sufficient evidence” leaving the quantum of proof to be arbitrary and inconsistent, and therefore inherently unreasonable.

19. ~~46.~~ However, these stated accommodations were illusory at best, and it has become clear that Canada Post failed to take requests for accommodations seriously despite being bound by the Act.

20. ~~47.~~ Finally, the Practice states:

Requests for human rights accommodations will be denied if...the request **merely alleges a violation of the Canadian Charter of Rights and Freedoms**...[Emphasis added]

21. ~~48.~~ This brazen statement made despite Canada Post being a Crown corporation and therefore bound by the *Charter*.

22. ~~49.~~ While the very act of having to ask for an accommodation is discriminatory as the individual is forced to disclose their personal information, many Plaintiffs applied for an exemption; the vast majority of them were denied despite legitimate grounds.

23. ~~50.~~ The Practice discriminates against an identifiable group of Canadians (those who have not received a COVID-19 vaccine) and does not provide exemptions for Canadians who have natural immunity to COVID-19 or those with conscientious objections or for those working remotely or with little to no contact with other colleagues.

24. ~~51.~~ The Practice also discriminates by mandating that all ~~Employees~~ the Plaintiffs attest to their medical status regarding the COVID-19 vaccine. Those who do not were put on leave without pay and threatened termination. This discriminates against an identifiable group based upon medical records.

25. ~~52.~~ As ~~E~~mployees of Canada Post, the Plaintiffs are subject to the Practice, which requires that they be Fully Vaccinated against COVID-19 as defined above and that they disclose their vaccination status to Canada Post by way of telephone. While Canada Post’s employee overview of the Practice states “your privacy will be

protected”, this was not the case, as Canada Post collected this personal health information and used it to punish any Employee one of the Plaintiffs not in compliance.

26. 53. Pursuant to the Practice, the Plaintiffs were placed on an involuntary unpaid leave of absence despite there being no authorization within any agreement between the Defendants, the Unions, or the Plaintiffs.
27. 54. The Practice does not allow mandatory COVID-19 testing to be implemented as an appropriate alternative to the COVID-19 vaccination for those who do not consent to vaccination or who do not consent to providing their vaccination status to their employer. Between 12 November 2021 and 29 January 2022, Canada Post admitted that COVID-19 testing was a sufficient alternative means of maintaining the health and safety of employees in the workplace by allowing Employees the Plaintiffs to continue working and use such tests instead of being Fully Vaccinated.
28. 55. In fact, according to the Arbitration Award, dated 27 April 2022, between Canada Post and CUPW, prior to the implementation of the Practice, Canada Post had been considering a less intrusive policy which would have required Employees the Plaintiffs to be Fully Vaccinated ~~ed~~ OR undergo COVID-19 rapid antigen testing twice per week. There is no reason to implement the Practice when less intrusive alternatives were readily available.
29. 56. The Practice discriminates against those who do not consent to the vaccination or who do not consent to providing their vaccination record to their employer, effectively forcing these individuals to consent to a medical treatment they cannot accept or risk losing their employment.
30. ~~On 15 October 2021, Employment and Social Development Canada (“ESDC”) announced new codes for the Record of Employment (“ROE”) relating to the termination of employees in relation to COVID-19.~~
31. ~~The ESDC’s announcement demanded that employers who terminate an employee because of failure to comply with a mandatory COVID-19 vaccination policy are to indicate **code M** (dismissal) on that employee’s ROE, disqualifying them from eligibility.~~
32. ~~The ESDC website has been further updated to advise potential claimants that “[i]n most cases, if you lose or quit your job because you didn’t comply with your employer’s mandatory COVID-19 vaccination policy, you won’t be eligible for EI regular benefits.”~~

33. The ESDC website states:

~~When the employee doesn't report to work because they refuse to comply with your mandatory COVID-19 vaccination policy, use **code E (quit)** or **code N (leave of absence)**.~~

~~When you suspend or terminate an employee for not complying with your mandatory COVID-19 vaccination policy, use **code M (dismissal or suspension)**.~~

~~If you use these codes, we may contact you to determine:~~

- ~~• if you had adopted and clearly communicated to all employees a mandatory COVID-19 vaccination policy~~
- ~~• if the employees were informed that failure to comply with the policy would result in loss of employment~~
- ~~• if the application of the policy to the employee was reasonable within the workplace context~~
- ~~• if there were any exemptions for refusing to comply with the policy~~

34. The ESDC uses the facts provided by the employer and the terminated employee to determine if the employee will be entitled to EI Benefits, which they will likely not be, by the ESDC's own admission.

35. The Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion, stated in a CBC Radio interview on 21 October 2021 that Employees who do not comply with the Policy will be ineligible for EI Benefits, stating that if getting vaccinated is "a condition of employment that hasn't been met and the employer [is] choosing to terminate someone for that reason, [then that] would make that person ineligible for EI".

36. 57. As of either 26 or 29 November 2021, the Plaintiffs all lost their sole or primary source of income and were rendered ineligible for EI Benefits.

37. 58. The Practice is not expressly or implicitly, directly or indirectly part of any collective agreement between the Plaintiffs' employer and the Unions.

38. 59. The subject matter of this Statement of Claim is not directly nor indirectly, expressly nor tacitly, addressed or provided for in any collective agreement between the unionized Plaintiffs, their respective unions and Canada Post.

39. 60. The dispute raised in this Statement of Claim is not a dispute within the meaning of the Plaintiffs' collective agreements. Rather, the Practice was implemented for broad public policy reasons, namely public health objectives, political objectives, and economic objectives. Collective bargaining agreements are interpreted liberally by Canadian case law, but still only within the bounds of labour and employment matters, not provincial or federal public health or economic policy.

- 40-61. No grievance, arbitration, nor adjudication procedure provided for in the Plaintiffs' respective collective agreements or any applicable law applies to the present issue.
- 41-62. Consequently, no arbitrator, adjudicator, nor board has exclusive jurisdiction over 5 issues raised in the present Statement of Claim.
- 42-63. The policies relating to mandatory COVID-19 vaccination for the Employees Plaintiffs and their potential to obtain EI Benefits if terminated are rapidly evolving.

The Vaccine

- 43-64. Four vaccines were authorized in Canada to treat symptoms of COVID-19 at the time the Practice was implemented: AstraZeneca, Moderna, Pfizer, and Johnson & Johnson. All COVID-19 vaccines are still undergoing clinical trials until 2023 or later. None of these vaccines prevent the infection or transmission of COVID-19, or any of its variants. Nor has a complete list of the ingredients of any of these vaccines been published.
- 44-65. These vaccines are experimental. Long-term effects have not yet been sufficiently studied and there are significant risks. These vaccines have not undergone the same stringent scientific approval process by Health Canada as have previous vaccines and medications. The vaccines could cause other side effects that remain unknown at this time due to their relatively recent development. No one can be certain about the long-term effects of a vaccine that has not been in existence for the long term and has not been studied over a span of years.
- 45-66. The COVID-19 vaccines recommended by Canadian public health authorities, are also known to cause severe adverse effects and injuries for some individuals. Health Canada has warned about various serious reactions from the COVID-19 vaccinations, including myocarditis, pericarditis, Bell's Palsy, thrombosis, immune thrombocytopenia, venous thromboembolism, and even infant syphilis.
- 46-67. Vaccinated and unvaccinated Canadians can be infected with and transmit COVID-19. The vaccines do not provide full immunity to COVID-19 or its known variants. They merely claim to provide some "benefits" or "protection" that in certain circumstances at best lessens severity of symptoms or potentially reduces the risk of hospitalization.
- 47-68. The "benefits" or "protection" of the vaccines vary depending on numerous factors that are still being observed and studied, including any underlying health conditions, the individual's age, and when the vaccine was administered in relation to any variant of concern.
- 48-69. The recent and continued release of Post Authorization Adverse Events Reports, by the US Food and Drug Administration ("**FDA**") regarding the Pfizer COVID-19 vaccine, indicate that adverse reactions and side-effects, up to and including death, are not only more severe, but more frequent than anticipated based on initial data released to the public. The FDA's own documentation reports that during the Reporting

Interval alone, 1,223 deaths were reported with 9,400 cases having an unknown outcome.

Tortious Inducement to Breach Contractual Relations

70. The Plaintiffs have either refused to share their vaccination status or are otherwise unvaccinated and thus did not conform to the Order and were placed on leave without pay, effectively a suspension, and some were subsequently terminated from employment.

71. The Plaintiffs allege that the following actions taken by federally regulated transportation providers (“the Employers”) [Employers](#) were in breach of their contractual employment agreements and induced by the Order:

- a. Disclosure of private medical information;
- b. Being placed on a leave without pay; and
- c. Termination of their employment.

72. The Plaintiffs state that at all material times, their employment contracts were valid and binding upon their Employers [Canada Post](#). As their Employers [Canada Post](#) have [has](#) unlawfully purported to suspend or terminate the Plaintiffs’ contractual agreements and have refused to pay the sums owing to the Plaintiffs, ~~the Employers are~~ [Canada Post is](#) in breach of their contractual employment agreements.

73. The Defendant, Canada, was aware of the existence of the contractual employment agreements when it decided to issue the Order.

74. The Plaintiffs allege that ~~the Defendants~~ [Canada](#) intended to and caused and/or induced ~~the Employers~~ [Canada Post](#) to breach contractual employment agreements by their actions in relation to: the disclosure of private medical information; imposition of a leave without pay; and/or unlawful termination by ordering ~~the Employers~~ [Canada Post](#) to enforce the Order absent justification. The breaches of contractual employment agreements are therefore a direct result of the unlawful inducement of the breach as herein before particularized and as a result of unlawful interference by the Defendants [Canada](#), in the contractual relationship between the Plaintiffs and ~~their Employers~~ [Canada Post](#).

75. The Plaintiffs allege that the conduct of the Defendants, [Canada](#), in inducing the breach of Contract was unjustified and thus unlawful.

76. The Plaintiffs allege that as a result of the Defendants’ [Canada’s](#) interference with the Plaintiffs’ contractual relationship with the Employers [Canada Post](#), ~~the Defendants~~ [Canada](#) [have](#) [has](#) caused the Plaintiffs to suffer damages.

**Lack of Justification for the Inducement of Breach of Contract
Covid-19 Vaccination as a Means to Prevent Transmission**

77. All Health Canada approved COVID-19 vaccinations have filed product monographs which are available to inform the public of the effects of the vaccination. There are currently six (6) COVID-19 vaccines available to the public in Canada. Listed below is the manufacturer with the name of vaccine in brackets.

- a. Pfizer/BioNTech (Comirnaty)
- b. Moderna (Spikevax)
- c. Janssen and Johnson & Johnson (Jcovden)
- d. AstraZeneca (Vaxsevia)
- e. Medicago (Covifenz)
- f. Novavax (Nuvaxovid)

Each of the COVID-19 vaccines presented above have a Product Monograph.

78. A Product Monograph is a factual, scientific document on a drug product that, devoid of promotional material, describes the properties, claims, indications, and conditions of use for the drug, and that contains any other information that may be required for optimal, safe, and effective use of the drug.

79. The Product Monograph of the Pfizer vaccine, Comirnaty, does not include any information related to the transmission of COVID-19. Prevention of viral transmission is NOT an approved indication for Comirnaty. The word 'transmission' or any of its correlates indicating viral conveyance to another person, does not appear in this document and therefore the Plaintiffs plead that the Defendant cannot claim Comirnaty prevents viral transmission of COVID-19 to other people.

80. The Product Monograph of Moderna's vaccine, Spikevax does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim Spikevax prevents viral transmission of COVID-19 to other people.

81. The Product Monograph of VAXZEVRA™, manufactured by AstraZeneca does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim VAXZEVRA™ prevents viral transmission of COVID-19 to other people.

82. The Product Monograph of JCOVDEN™, manufactured by Janssen, does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim JCOVDEN™ prevents viral transmission of COVID-19 to other people.

83. The Product Monograph of COVIFENZ™, manufactured by Medicago does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim COVIFENZ™ prevents viral transmission of COVID-19 to other people.
84. The Product Monograph of NUVAXOVID™, manufactured by Novavax does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim NUVAXOVID™ prevents viral transmission of COVID-19 to other people.
85. The Plaintiffs plead that the Defendant had no basis in fact to justify the Order as a measure to prevent transmission of COVID-19.
86. The Plaintiffs rely on the torts of inducing breach of contract and tortious interference with contractual relations.
87. As a result of Canada's interference with and inducement of breach of contract, absent justification, the Plaintiffs have suffered damages in that they have had terms and conditions of employment imposed upon them resulting in a loss of private medical information, being placed on leave without pay and being terminated from their employment with the Employers

Charter Violations

- 49-~~88~~. The Plaintiffs say that their *Charter* right to freedom of conscience protected under section 2(a) is violated by the ~~Expectation~~ Order and the Practice requiring attestation of being Fully Vaccinated as this offends their conscientiously held beliefs in a matter that is more than trivial or insubstantial.
- 50-~~89~~. The Plaintiffs say that their *Charter* right to freedom of religion as protected under section 2(a) is violated by the ~~Expectation~~ Order and the Practice requiring attestation of being Fully Vaccinated as this offends their sincerely held religious beliefs in a manner that is more than trivial or insubstantial.
- 51-~~90~~. The Plaintiffs say that their right to life interest as protected under section 7 of the *Charter* is violated by the ~~Expectation~~ Order and the Practice requiring attestation of being Fully Vaccinated as it is the direct result of state action imposing an increased risk of death not in accordance with the fundamental principles of justice.
- 52-~~91~~. The Plaintiffs say that their right to liberty under section 7 of the *Charter* is violated by the ~~Expectation~~ Order and the Practice requiring attestation of being Fully Vaccinated as this interferes with the protected sphere of personal autonomy involving private choices and the right to refuse medical treatment. The ~~Expectation~~ Order and Practice are state interferences that are not in accordance with the principles of fundamental justice.

- 53-92. The Plaintiffs say that their right to security of the person interest protected under section 7 of the *Charter* is violated by the ~~Expectation~~ Order and the Practice requiring attestation of being Fully Vaccinated as this interferes with personal autonomy, and one's ability to control their own physical or psychological integrity. Such state action that seriously impairs their physical health and has caused severe psychological harm that is not in accordance with the principles of fundamental justice. It has also caused the deprivation of economic rights fundamental to human survival that are not in accordance with the principles of fundamental justice.
- 54-93. The Plaintiffs say that their privacy rights protected by sections 7 and 8 of the Charter are violated by the ~~Expectation~~ Order and the Practice requiring attestation of being Fully Vaccinated as they require the disclosure of personal medical information.
- 55-94. The Plaintiffs claim discrimination, in violation of equality rights under section 15 of the *Charter* by the ~~Expectation~~ Order and the Practice requiring attestation of being Fully Vaccinated. Being forced to either attest or be put on unpaid leave of absence under the threat of discipline or termination is discrimination based on medical status.
- 56-95. The Plaintiffs say that the ~~Expectation~~ Order, Practice and ESDC announcement are a form of state control and state sanction for exercising their *Charter* rights, by pressuring Canada Post to suspend Employees the Plaintiffs without pay as of and depriving them of any EI Benefits.
- 57-96. The ~~Expectation~~ Order and subsequent Practice violate the Plaintiffs' *Charter* rights and punish them for the lawful exercise of their fundamental constitutional rights and freedoms.
- 58-97. The ~~Expectation~~ Order and Practice are not demonstrably justified under section 1 of the *Charter*. They are not in the public interest, nor a rational means to pursue the stated objective as there is no evidence to show that terminating the employment of those who do not attest to being vaccinated reduces the spread of COVID-19. Neither the Order nor the Practice cause minimal impairment to the rights of the Plaintiffs. Further, the deleterious and negative impacts of the Order and the Practice are disproportionate to the minimal or non-existent benefits they may have.
98. The Plaintiffs plead that s. 2.d of the Charter protects their rights as employees to associate in a process of collective action to achieve workplace goals. As such Laws or state actions that prevent or deny meaningful discussion and consultation about working conditions between employees and their employer may substantially interfere with the activity of collective bargaining, as may laws that unilaterally nullify significant negotiated terms in existing collective agreements.
99. The Plaintiffs plead that the Defendants unilaterally inserted a fundamental term and condition of employment into their agreements and as such they have had their rights under s. 2.d infringed upon

C. TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS

100. In directing and ordering Canada Post to develop and implement the Policy, Canada knew, or ought to have known, that the Plaintiffs would be put on an involuntary unpaid leave of absence or would be terminated from their employment for non-compliance and that the Plaintiffs would suffer economic losses.

D. INTENTIONAL INFLICTION OF MENTAL SUFFERING

101. The Plaintiffs plead that the Defendants intentionally caused mental suffering to them, through threats and intimidation during their employment because of their vaccination status and their general distrust and hesitation over the COVID-19 vaccine specifically.

E. ASSAULT AND BATTERY

102. The Plaintiffs plead that the Defendants committed a tortious assault on the Plaintiffs by mandating the administration of an experimental vaccine, under the threat of termination of employment.

103. The Defendants intentionally committed assault on the Plaintiffs by forcing an experimental medical procedure on them, without consent; the punishment of not doing so was termination from their long-standing employment.

104. The Plaintiffs were placed in a position where they were forced to decide whether to lose their employment in a difficult job market, or put themselves in the position of an offensive physical administration of a COVID-19 vaccine that does not yet have studies on its long-term effects.

105. It is insufficient for the Defendants to hide behind the theory that the Plaintiffs were “not forced” to take the vaccine because they could have quit their jobs. The Plaintiffs were coerced to take an unconsented medical treatment, under threat of termination by their employer. This was ultimately directed, and condoned, by Canada.

F. HUMAN RIGHTS VIOLATIONS

106. The Plaintiffs plead discrimination and a breach of the *Canadian Human Rights Act*. The Defendants were legally obliged to respect the autonomy and dignity of the Plaintiffs, as well as the confidentiality of their medical information.

107. The Plaintiffs plead discrimination and a breach of the *Canadian Human Rights Act* on the basis of religion or other protected grounds of discrimination as shall be proven at a trial of this action. The Plaintiffs also plead discrimination on the basis of their COVID-19 vaccination status.

G. CHARTER VIOLATION DAMAGES AND AGGRAVATED, PUNITIVE AND “BAD FAITH” DAMAGES

59. **108.** The Plaintiffs have suffered significant mental and physical anguish as a result of the rapidly evolving situation. They are left to contemplate whether or not they will have the funds available to meet their basic needs, including the purchase of food, clothing, and shelter for themselves and their families.
60. **109.** The Plaintiffs claim punitive damages for the prejudice suffered by them and their families as a result of the implementation of the Order and the Practice, which is discriminatory. The Plaintiffs reserve their rights to amend the amounts claimed for punitive damages to account for future economic losses, including but not limited to loss of income due to suspension or dismissal as a result of their refusal to comply with the Practice.
61. **110.** In addition to damages for *Charter* violations, the Defendants are liable for further aggravated and punitive damages stemming from the unduly harsh, insensitive manner in which it carried out the suspensions (~~*Honda Canada Inc v Keays*, [2008] 2 SCR 362~~).
62. **111.** The Plaintiffs have suffered measurable damages, including mental distress, anxiety, and, in particular, injury to dignity and self-respect. The Plaintiffs are therefore entitled to significant damages due to the manner in which Canada Post suspended their employment, including a claim for punitive aggravated damages arising from flagrant human rights and *Charter* violations.
63. **112.** Scientific data shows that the COVID-19 virus poses no serious health risk to 99.97% of Canadians, and that nearly all deaths directly attributable to the virus occur in persons over 80 years of age suffering from multiple co-morbidities and compromised immune systems. Such persons are not part of the Canadian workforce. The risk of serious illness or death to persons under the age of 60, which includes the majority of the Plaintiffs, remains vanishingly low.
64. **113.** The best scientific data available shows that there is but a 0.7% risk of asymptomatic spread of the COVID-19 virus—even among persons living in the same household.
65. **114.** There is no scientific data to support the conclusion that the COVID-19 vaccines have had any impact upon reducing the spread of the virus. In fact, Israel is the most universally vaccinated nation in the world, and yet is experiencing a huge spike in new cases.

66. 115. There are many reasonable and practical alternatives to mandatory vaccination that are more effective at controlling the spread of the virus among Canada Post employees, all of which are far less prejudicial than summary termination of loyal employees exercising their human right and civil liberty to not attest as to their medical record status regarding the COVID-19 vaccination.

67. 116. The collection of vaccine status is not confidential. When ~~an Employee is~~ the Plaintiffs were placed on unpaid leave, their status is was immediately apparent.

68. 117. As a result of these breaches, the Plaintiffs have each suffered the following damages:

- a. Severe and permanent psychological, physical and emotional trauma;
- b. Loss of employment opportunities;
- c. Worsening physical health because of inadequate medical support;
- d. Threats and assaults;
- e. Loss of sleep;
- f. Loss of trust in others;
- g. Loss of self-confidence;
- h. Loss of income;
- i. Loss of opportunity for future income;
- j. Post-traumatic stress disorder; and
- k. Other such damages as will be proven at the trial of this action.

69. 118. The Defendants actively, knowingly, and willfully participated in harming the Plaintiffs. The Defendants' conduct was high handed and improper.

70. 119. The Plaintiffs seek all of their common law and or statutory entitlements.

71. 120. The Plaintiffs plead and rely upon the following:

- a. *Federal Courts Act*, RSC 1985, c F-7;
- b. *Federal Courts Rules*, SOR/98-106;
- c. *Constitution Act, 1867*, 30 & 31 Victoria, c 3 (UK);
- d. *Constitution Act, 1982*, s. 35(1), being Schedule B to the *Canada Act, 1982* (UK) c 11;

- e. *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s 91(24);
 - f. *Canadian Human Rights Act*, RSC, 1985, c. H-6;
 - g. *Financial Administration Act*, RSC, 1985, c. F-11;
 - h. ~~*Criminal Code*, R.S.C. 1985, c. C-46;~~
 - i. ~~*Canada Labour Code* (R.S.C., 1985, c. L-2);~~
 - j. ~~*Genetic Non-Discrimination Act* (S.C., 2017, c. 3);~~
 - k. ~~*Assisted Human Reproduction Act* (S.C., 2004, c. 2)~~
 - l. i. *Canada Post Corporation Act*, RSC, 1985, c. C-10;
 - m. j. *Hazardous Products Act* (R.S.C., 1985, c. H-3); and
 - n. k. *Canada Post's Mandatory Vaccination Practice*; and
- l. Such further and other authorities and legislation as counsel may advise and this Honourable Court may accept.

The Plaintiffs propose that this action be tried at Edmonton, Alberta.

8 July 2022



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**FORM 80A – Rule 80
AFFIDAVIT**

ACTION

FEDERAL COURT

Court File No.: T-1436-22

BETWEEN:

BERNARD ALBERT, MARIE ALLCHURCH, JULIA ALVAREZ, JASON AMARO, VANESSA APOSTOLOVSKI, MARIA ARENA, ALI BAHRI, RAYMOND. S. BAKER, DAVID BAKHUYZEN, KIM BANDO, ADILA BASIC, ANJA BATTIE, KELLI BATTYANYI, MICHAEL BECKER, JASON MATTHEW BERARD, WANDA BERG, LAURIE BERNES, ANDREA BIALOWAS, THERESA BICKLE, ANGELLA BLIER, MARK BOIKOVITIS, ERIK BOUCHARD, ROBERT BOURBONNIERE, BROOKE BOUTANG, VERONIQUE BRETON, NATASHA BUDY, JENNIFER-LYNN BULLICK, MARY BURKE, CATHERINE CABRAL-MCKEAND, EDUARDO CAETANO, ANTHONY CAETANO, JENNIFER CAUDRON, TRACY CHASE, NATACHA CHEVARIE, MIMI CHOO, WILLIAM CHOW, CHERYL CHOW, ANGELINA CLARK, PAUL CLEMENTS, SANDRA COLE, JENNIFER COMIN, ANTHONY COMMISSO, TANYA DOCANTO CORDEIRO, ESTERINA COSTA, ROCCO COTUGNO, FRANCESCO "FRANK" COTUGNO, RICHARD COUTURIER, WAYNE COWAN, KENTON CROOK, MICHAEL CURRIE, SELENA CVITAN, MARK DAGGETT, MARCO DALL'ANTONIA, JANA DANCAKOVA, AMANDA DEMPSEY, JASON DENTINGER, MARLICE DEPTUCH, ANTHONY DEROSE, LORRAINE DESCHAMPS, GISELE DESHARNAIS, KAREN DESROSIERS, JOHN DEVINE, SUSAN DEWALD, EZIO DIFONZO, DONALD WAYNED UNHAM, BRANDY DUPAS, TERESA ELLISON, JOHN EMMANOUIL, JOHANNA EMMANOUIL, SHELLEY ESCOBAR, JOY ESDAILLE, WILLIAM FAUSTINO, RAQUEL FERREIRA, SHERRY FERREIRA, PAXTON FIRTH, MICHELINE FLEURY, SARAH FRANGIONE, ERIN FULLER, MICHAEL GAIREY, JESSICA GASKIN, KAREN GIBEAULT, SHEILA RAE GOW, JAYDE GRAVEL, MICHAEL GRIGORATOU, URVASHI GURUNG, RYAN HAMER, CHARLENE HANSON, JASMIN HARRISON, CARLY HART, TAMMY HAYES, JAYSON PETER JAMES HEIDEBRECHT, DENISE HERBERT, JORGIE HIDALGO, TIMOTHY HIEBERT, DONNA HISCOCK, DENISE HOHN, ELAINA HUDYMA, KATHRYN (KATIE) HUNT, TANYA HUTCHINSON, ZDZISLAW JABLONSKI, MARTINE JARRY, CARLA JENKINS, STEPHANIE KATHLEEN JOHNSTON, NICHOLAS JOHNSTON, RIINA KAPP, RUDY KERN, MARK KILLEEN, SABRINA KINCAID, MARIETTA KIRBY, SANDRA KOSTENKO, CALVIN KOTOWICH, DAMIR KRAMARIC, SANDRA KRASINKIEWICZ, ROCKY KUJALA, HELENE LA ROCHELLE, AVINASH LALOO, MEGAN LANE-KARRAS, MARTINE LAROCQUE, LINE LAVALLEE, KEVIN LAWRES, CHUNG LE, LUC LEBLANC, DONNA LEEDER, PATRICK LESSARD, LISA LEVESQUE, LORRAINE LIGHT, GISELE LIRETTE, RANDY LOGAN, SANDRA M LOPES, KIM LUMSDEN, WENDY LUNDVALL, PAUL LUSSIER, PAUL LYNN, NICOLA MACDONALD, MICHAEL MAFILOVSKI, VIJAY MAHARAJ, CAROLINE MAHEUX, TANYA MANDEL,

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Plaintiffs

and

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

Defendants

AFFIDAVIT OF JOHN DEVEEN
Sworn on August 18, 2023

I, John Deveen, of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the General Manager, Labour Relations for Canada Post Corporation (“**Canada Post**”). In this role, I am responsible for labour relations at Canada Post, including with respect to the administration of collective agreements and relationships with our bargaining agents. As such, I have knowledge of the matters in this affidavit. Where I rely on information in this affidavit, I state the source of my information and I believe the information to be true.

Company Background

2. Canada Post is a Crown corporation that operates a postal service both within Canada and between Canada and the rest of the world. Canada Post is created pursuant to the *Canada Post Corporation Act*, R.S.C., 1985, c. C-10 (the “*CPCA*”). The *CPCA* governs the operations and the administration of Canada Post.
3. Under the *CPCA*, Canada Post has a mandate to provide a high-quality of postal service at a reasonable price to all Canadians – rural and urban, individuals and businesses – in a secure and financially self-sustaining manner.
4. Pursuant to Section 10(1) of the *CPCA*, the Board of Directors is responsible for managing the affairs of Canada Post Corporation (the “**Board**”). The Board consists of the Chairperson, the President and Chief Executive Officer, and nine (9) directors appointed in accordance with the *CPCA*.
5. The Board supervises the management of the business and affairs of Canada Post. The Board is responsible to approve corporate strategy and engage in the general oversight and governance of the Corporation.
6. Pursuant to Section 11 of the *CPCA*, the Board may make by-laws:

- (a) for the administration, management, and control of the property of affairs of Canada Post;
 - (b) for the regulation of proceedings of the Board, including the establishment of committees of the Board, the time and place for the holding of meetings of the Board or of any committee thereof, and the quorum and procedure at all such meetings;
 - (c) prescribing the functions, duties and powers of any committee of the Board and of the Chairperson, President, directors, officers, agents and employees of Canada Post; and
 - (d) respecting administration of contracts relating to any business of Canada Post.
7. Under section 22 of the *CPCA*, the Minister responsible for Canada Post may give Canada Post directives, with which Canada Post is required to comply. During the pandemic, the Minister did *not* give Canada Post any directives under this provision concerning a mandatory vaccination policy, or the vaccination of employees more generally.
8. Similarly, Canada Post as a Crown corporation is bound by certain provisions in the *Financial Administration Act* (R.S.C., 1985, c. F-11) (the “*FAA*”). Under section 89 of the *FAA*, the Governor in Council may give a directive to a Crown corporation (including Canada Post). In turn, under section 89.1 of the *FAA*, the directors of a Crown corporation must ensure that such a directive is implemented in a prompt and efficient manner. During the pandemic, the Governor in Council did *not* give Canada Post any directives under this provision concerning a mandatory vaccination policy, or the vaccination of employees more generally.
9. The federal government is Canada Post’s sole shareholder. However, the federal government has limited operational involvement with Canada Post and does not control Canada Post’s day-to-day operations and decisions. Operational decisions such as the review, creation, implementation, and revocation of practices and policies are solely within Canada Post’s control, as are human resources and labour relations matters. While Canada Post actively works with key stakeholders and related entities, including but not limited to

its shareholder, Canada Post remains at the helm of its operations. Canada Post's management team, led by the President and CEO, is responsible for the day-to-day operation of Canada Post

Canada Post's COVID-19 Response and Vaccination Policy

10. In March 2020, when the scale and seriousness of the COVID-19 pandemic became clear, Canada Post quickly initiated changes to its delivery operations and retail postal network. In late March 2020, Canada Post made changes to reduce hours of service at many post offices operated by Canada Post, implemented physical distancing, eliminated customer interactions at the door during parcel delivery, and suspended service delivery guarantees for all parcel services. Later in 2020, Canada Post introduced a policy under which face coverings were mandatory in all Canada Post facilities and for employees while working. These operations changes were made by Canada Post, not the federal government.
11. Canada Post's operations continually responded to changes in protocols throughout the COVID-19 pandemic, including in response to the significant impact from the Omicron variant that emerged in 2021.
12. Throughout the COVID-19 pandemic, Canada Post followed the guidance of the Public Health Agency of Canada ("PHAC"), and provincial and local public health agencies. Canada Post engaged its bargaining agents and joint health and safety committees to plan, communicate and address COVID-19 related changes, plans and protocols across Canada Post's workforce.

i) Canada Post's Health and Safety Obligations under the Canada Labour Code

13. As a federally-regulated employer, Canada Post must abide by the health and safety obligations set out in Part II of the *Canada Labour Code* (the "**Code**").
14. The purpose of Part II is set out in s. 122.1: "to prevent accidents, occurrences of harassment and violence and physical or psychological injuries and illnesses arising out of, linked with or occurring in the course of employment to which this Part applies." Part II of the *Code* imposes duties on employers and employees.

layer of protection that will work with other preventive practices to combat the pandemic.

- (f) All employees, including those on telework and remote work, are expected to remain available to attend on-site, at least occasionally. For example, they may have to attend scheduled meetings or events, access sensitive information, or address urgent operational requirements. All employees need to be vaccinated to protect themselves, colleagues, and others from COVID-19.
 - (g) The principles of this framework will apply to Interchange Canada participants and volunteers.
 - (h) In addition, organizations continue to update their departmental Hazard Prevention Program including adopting any applicable infection prevention and control measures as per Public Service Occupational Health Program guidance, such as preventive practices, administrative measures such as remote working, staggered work shifts, and engineering controls until advised otherwise.
24. Canada Post, as a Crown corporation, is not an organization that falls within the core public administration. As a result, the Core Public Administration Policy on Vaccination does not apply to Canada Post.

(vi) Crown Corporations Asked to Implement Mandatory Vaccination Policies

25. In the federal government's October 6, 2021 announcement regarding the introduction of the Core Public Administration Policy on Vaccination, Prime Minister Trudeau stated that Crown corporations were being "asked" to implement mandatory vaccination policies:

administration, including Crown corporations, to align with the Core Public Administration Policy on Vaccination by ensuring that employees attest to their vaccination status no later than November 30, 2021.

29. Notably, however, Minister Anand's letter was *not* a directive to Canada Post under the *CPCA* or the *FAA*.

iv) Decision to Implement a Mandatory Vaccination Practice

30. After carefully considering the Core Public Administration Policy on Vaccination, and the public health evidence and information available at that time, Canada Post decided to implement a similar mandatory vaccination policy.

31. At the time, it was well-established that COVID-19 posed very serious risks – including the risk of death – to anyone who became infected. As well, COVID-19 vaccines had been approved by Health Canada and were proven to be safe and effective at preventing severe illness, hospitalization, and death, including against the variants of concern. In light of this, Canada Post determined that the risk posed by an unvaccinated workforce to other Canada Post employees and Canada Post's customers was far too high.

32. Ultimately, Canada Post's rationale for implementing a mandatory vaccination policy was simple: the federal government had sent a clear message that the federal public service and Crown corporations should have a vaccinated workforce. More generally, the evidence and public health guidance was that vaccination was by far the best mitigation measure to reduce the transmission of COVID-19 in the workplace. Canada Post decided to adopt a mandatory vaccination policy in order to keep Canada Post employees, contractors, customers, visitors and their families safe, and fulfill its employer obligations under the

Code by taking every precaution reasonable, in the circumstances, for the protection of the health and safety of employees.

33. At no time did the federal government order or require Canada Post – through a regulation, order, directive, or other legal mandate - to implement a mandatory vaccination policy.

(v) Description of the Mandatory Vaccination Practice

34. Canada Post approved the Mandatory Vaccination Practice (the “**Practice**”) on October 22, 2021, under its overarching Health and Safety Policy, with an effective date of October 29, 2021. The Practice would remain in effect until it was no longer required for health and safety purposes. A copy of the Practice is attached as **Exhibit “E”**.
35. The Practice required all Canada Post employees, contractors (providing a service in a Canada Post facility), and visitors to Canada Post facilities, to be fully vaccinated against COVID-19, unless they could not be fully vaccinated due to a prohibited ground of discrimination as defined in the *CHRA*.
36. As defined under the Practice, fully vaccinated means an individual who, at least fourteen (14) days prior has:
- (a) Received both doses of a Health Canada authorized COVID-19 vaccine that requires 2 doses to complete the vaccination series (as of September 16, 2021): Pfizer-BioNTech Comirnaty COVID-19 vaccine, Moderna Spikevax COVID-19 vaccine, or AstraZeneca Vaxzevria COVID-19 vaccine;
 - (b) Received a mixed dose COVID-19 vaccination series aligned with the National Advisory Committee on Immunization (“**NACI**”) recommendations on the use of COVID-19 vaccines;

AFFIRMED REMOTELY BY John Deveen of)
the City of Ottawa, in the Province of Ontario,)
before me at the City of Toronto, in the Province)
of Ontario, on August 18, 2023 in accordance with)
O. Reg. 431/20, Administering Oath or)
Declaration Remotely.

DocuSigned by:
John Deveen
F136C61B84A94FB

(Signature of deponent)

DocuSigned by:
Grace McDonell
A73B01482E984CF...

Commissioner for Taking Affidavits
(or as may be)

August 18, 2023

Grace McDonell
A Commissioner, etc., Province of Ontario

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

Plaintiffs

and

**CANADA POST CORPORATION, HIS MAJESTY THE KING IN RIGHT OF
CANADA, THE ATTORNEY GENERAL OF CANADA**

Defendants

AFFIDAVIT OF CHARLOTTE HARPER

I, Charlotte Harper, Paralegal, of the City of Edmonton, in the Province of Alberta,

SWEAR THAT:

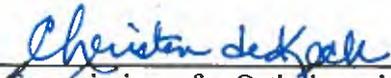
1. I am employed as a Paralegal with the Department of Justice Canada in Edmonton, Alberta. As a result of my employment, I have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information or belief, and where so stated I believe the same to be true.

2. Attached as **Exhibit "A"** is a news release from the Treasury Board of Canada Secretariat titled "Government of Canada to require vaccination of federal workforce and federally regulated transportation sector", dated August 13, 2021.

3. Attached as **Exhibit "B"** is a news release from the Treasury Board of Canada Secretariat titled "Mandatory COVID-19 vaccination requirements for federally regulated transportation employees and travellers", dated October 6, 2021.

4. I make this affidavit in support of His Majesty the King in Right of Canada and the Attorney General of Canada's motion and for no other or improper purpose.

Sworn before me at the City of
Edmonton in the Province of Alberta
on August 16, 2023.



Commissioner for Oaths in and for
Alberta



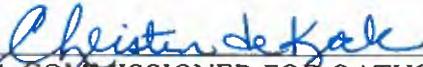
Charlotte Harper

CHRISTEN SHERYLL de KOCK
A Commissioner for Oaths
In and for the Province of Alberta
My Commission Expires Oct. 31 

This is **Exhibit "A"** referred to in the
Affidavit of

CHARLOTTE HARPER

Sworn before me this 16th day
of August, A.D., 2023


A COMMISSIONER FOR OATHS IN AND FOR
THE PROVINCE OF ALBERTA

CHRISTEN SHERYLL de KOCK
A Commissioner for Oaths
In and for the Province of Alberta
My Commission Expires Oct. 31, 2024



Government of Canada to require vaccination of federal workforce and federally regulated transportation sector

From: [Treasury Board of Canada Secretariat](#)

News release

August 13, 2021 – Ottawa, Ontario – Treasury Board of Canada Secretariat

Vaccination is the most effective tool to reduce the risk of COVID-19 for Canadians and to protect broader public health. It is our most important instrument and so we continue to take action to get as many Canadians vaccinated as possible.

The Government of Canada today announced its intent to require vaccination as early as the end of September across the federal public service.

Vaccinations are our best line of defence and for those few who are unable to be vaccinated, accommodation or alternative measures, such as testing and screening, may be determined in each situation, to protect broader public health by reducing the risk of COVID-19.

As the country's largest employer, the Government of Canada is committed to playing a leadership role by further protecting the health and safety of public servants and the communities where they live and work across Canada and around the world.

In addition, as soon as possible in the fall and no later than the end of October, the Government of Canada will require employees in the federally regulated air, rail, and marine transportation sectors to be vaccinated. The vaccination requirement will also extend to certain travellers. This includes all commercial air travellers, passengers on interprovincial trains, and passengers on large marine vessels with overnight accommodations, such as cruise ships.

The government will engage with key stakeholders, including bargaining agents and transportation sector operators, as we plan for the implementation of these initiatives. Details will be communicated as the work unfolds. The process will include determining how this requirement will be implemented, through confirmation of COVID-19 vaccination and other means of protection, such as testing when necessary.

Further, the Government of Canada expects that Crown corporations and other employers in the federally regulated sector will also require vaccination for their employees. The government will work with these employers to ensure this result.

Today's announcement comes in recognition of the dynamic public health situation in Canada. Since the start of the vaccination campaign in mid-December, less than 1% of COVID-19 cases have been among those who were fully protected by the vaccine. These measures will contribute to reaching the overall levels of vaccination Canada needs to sustain a resilient economic recovery in the face of more transmissible and dangerous COVID-19 variants of concern. More than 71% of eligible people in Canada are fully vaccinated, and more than 82% have had their first shot. However, more than 6 million eligible people in Canada are still unvaccinated. We are urging all of you to get out there and get vaccinated now. Doing so will help keep our communities safe.

The Government of Canada is also calling on all organizations beyond the federally regulated sector to put in place their own vaccination strategies, drawing on the advice and guidance available from public health authorities and the Canadian Centre for Occupational Health and Safety.

Quotes

“We know vaccinations are the best way to help protect our fellow Canadians from COVID-19 variants of concern. We are encouraged by the many federal employees who have already been vaccinated and hope that vaccination rates will continue to climb as the Government of Canada moves ahead on its vaccination strategy.”

– *The Honourable Dominic LeBlanc, President of the Queen’s Privy Council for Canada and Minister of Intergovernmental Affairs*

“Driving vaccine uptake in Canada to as high a level as possible is one of the most effective, and least disruptive, means at our disposal to sustain the gains we have made in recent months, and ensure that we continue on our path to economic recovery, and a healthier and more equitable future. With this announcement, we are doing more to protect the health and safety of Canadians and reduce the risk of COVID-19.”

– *The Honourable Jean-Yves Duclos, President of the Treasury Board*

“There are enough doses in Canada for every person to be fully vaccinated across the country. By getting vaccinated, you are protecting yourself, your family and your community. By being fully vaccinated, you are also protecting the safety of your workplaces. If you haven’t been vaccinated yet, please make a plan to do so.”

– *The Honourable Patty Hajdu, Minister of Health*

The Government of Canada is leading by example in requiring vaccinations for public service employees, and we are asking all federally regulated employers to develop vaccine plans to ensure their employees and workplaces are safe. This is the right thing to do and will ensure Canada continues to build back better from the global COVID-19 pandemic.”

– *The Honourable Omar Alghabra, Minister of Transport*

Quick facts

- The majority of public servants (173,358 [57.7%])* are located outside the National Capital Region. This includes the core public administration and separate agencies.

**As of March 2020. The most recent numbers on the population of the public service by province can be found here: [Population of the federal public service by province - Canada.ca](#).*

- There are approximately 18,500 employers in federally regulated industries, including federal Crown corporations, that together employ 955,000 employees (or 6.2% of the Canadian workforce), the vast majority (87%) of whom work in medium-size to large firms (in other

words those with 100 or more employees). These numbers exclude the federal public service. With the federal public service, there are approximately 19,000 employers and 1,235,000 employees (8% of all workers in Canada).

- The Treasury Board Secretariat is collecting data from federal departments and separate agencies regarding the number of confirmed COVID-19 cases among employees working remotely and on-site. As of July 29, 2021, 5,311 cases of COVID-19 have been reported in the federal public service. These figures represent cumulative and not active cases.

Associated links

- [President of the Treasury Board urges all eligible federal public servants to get vaccinated against COVID-19](#)
- [COVID-19 vaccination coverage in Canada](#)
- [List of federally regulated industries and workplaces](#)

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Date modified:

2021-08-13

This is **Exhibit "B"** referred to in the
Affidavit of

CHARLOTTE HARPER

Sworn before me this 16th day
of August, A.D., 2023



A COMMISSIONER FOR OATHS IN AND FOR
THE PROVINCE OF ALBERTA

CHRISTEN SHERYLL de KOCK
A Commissioner for Oaths
In and for the Province of Alberta
My Commission Expires Oct. 31 *2024*



Mandatory COVID-19 vaccination requirements for federally regulated transportation employees and travellers

From: [Transport Canada](#)



Latest border and travel measures

This news release may not reflect the current border and travel measures. Check [COVID-19: Travel, testing and borders](#) for the latest requirements to enter Canada.

Backgrounder

October 6, 2021

Vaccinations are our best line of defense against COVID-19 and its variants.

On August 13, 2021, the [Government of Canada announced its intent to require COVID-19 vaccination](#) for employees in the federally regulated air, rail, and marine transportation sectors and its travellers.

On October 6, [Prime Minister Justin Trudeau and Deputy Prime Minister Chrystia Freeland announced](#) that, as of October 30, the Government of Canada will require employers in the federally regulated air, rail, and marine transportation sectors to establish vaccination policies for their employees.

Also effective October 30, travellers departing from Canadian airports, and travellers on VIA Rail and Rocky Mountaineer trains, will be required to be fully vaccinated in order to travel. To allow travellers time to become fully vaccinated, there will be a short transition period where they will be able to travel if they show a valid COVID-19 molecular test within 72 hours of travel as an alternative to providing proof of full vaccination. If travellers have not already started the vaccination process, or do not start soon, they risk not qualifying for travel as of November 30.

The Government of Canada is committed to keeping the transportation sector, including employees and travellers, safe and secure. Mandatory vaccination for the federally regulated air, rail, and marine sectors helps limit the risk of spreading COVID-19 and helps prevent against future outbreaks.

Vaccine requirements for employees in the federally regulated transportation sector

As of October 30, employers in the federally regulated air and rail, and as of November 1, marine transportation sectors will be required to establish vaccination policies for their organizations. Specifically, the vaccination requirement will apply to:

- airlines and airports, and other organizations who have employees who enter restricted areas of airports, such as concession and hospitality workers
- federally regulated railways, and their rail crew and track employees
- marine operators with Canadian vessels that operate with 12 or more crew

Transport Canada will use its specific regulatory and oversight authorities related to operations of federally regulated air, rail, and marine transportation service providers to ensure that the transportation system and these

workplaces are safe through vaccination mandates. Each organization will be required to implement a rigorous policy, which must:

- Include a provision for employee attestation/declaration of their vaccination status;
- Include a description of consequences for employees who do not comply or who falsify information; and
- Meet standards consistent with the approach taken by the Government of Canada for the Core Public Administration.

After a short phase-in period, each organization is required to guarantee employees are fully vaccinated or they will be unable to work.

The Government of Canada is engaged with industry and labour groups to discuss the details to ensure an effective implementation of the requirements.

Vaccine requirements for travellers

Effective October 30, air passengers departing from Canadian airports, travellers on VIA Rail and Rocky Mountaineer trains, and travellers on non-essential passenger vessels on voyages of 24 hours or more, such as cruise ships, will need to be vaccinated.

Effective October 30, travellers will need to be fully vaccinated in order to board. Specifically, the vaccination requirement will apply to all travellers 12 years of age and older who are:

- Air passengers flying on domestic, transborder or international flights departing from airports in Canada
- Rail passengers on VIA Rail and Rocky Mountaineer trains

For travellers who are in the process of being vaccinated, there will be a short transition period where they will be able to travel if they can show a valid COVID-19 molecular test within 72 hours of travel. By November 30, all

travellers must be fully vaccinated, with very limited exceptions to address specific situations such as emergency travel, and those medically unable to be vaccinated.

In addition, this vaccination mandate will include specific accommodation to recognize the unique needs of travellers from small, remote communities (some of which are not accessible by road) to ensure they will be able to travel to obtain essential services in support of their medical, health, or social well-being, and return safely to their homes. This accommodation will be informed by engagement with Indigenous organizations and provinces and territories in the coming days.

Enforcement

Transport Canada will oversee compliance by means of inspections and enforcement tools—including Administrative Monetary Penalties—using oversight systems in place for each mode.

For those who falsify information or otherwise fail to comply, there will be serious consequences. For example:

- Railway companies could be subjected to compliance actions up to \$250,000 per violation, per day, under the *Railway Safety Act*
- In the air sector, individuals—either travellers or employees—could be fined up to \$5,000 per violation under the *Aeronautics Act*, and operators could be fined up to \$25,000 per violation
- In the marine sector, employees and travellers could be fined for being non-compliant with the obligation to provide proof of vaccination up to \$250,000 per violation, per day, and operators could be fined up to \$250,000 per violation, per day, for non-compliance to the Interim Order made pursuant to the *Canada Shipping Act, 2001*

Pan-Canadian Proof of Vaccination

A pan-Canadian, secure, and standardized proof of vaccination for international travel was announced on August 11, 2021, and is being developed in partnership with provinces and territories. This document, which will be available to travellers in digital formats, will be easily recognized and trusted.

This credential will make it easy and quick for travellers to provide transportation operators and border officials in other countries with their validated COVID-19 vaccination history needed to facilitate travel.

Vaccination is one of the most effective ways to fight COVID-19 and the Government of Canada will continue to take action to get as many Canadians vaccinated as possible.

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Date modified:

2021-10-30

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

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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 J. GRATL: That's a wrap.
2 (WHICH WAS ALL THE EVIDENCE TAKEN AT 12:29 PM)

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1 CERTIFICATE OF TRANSCRIPT:

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3 I, H. Postma-Strand, certify that the
4 foregoing pages are a complete and accurate
5 transcript of the proceedings conducted in
6 accordance with the Alberta Protocol for Remote
7 Questioning taken down by me in shorthand and
8 transcribed from my shorthand notes to the best
9 of my skill and ability.

10 Dated at the City of Edmonton, Province of
11 Alberta, this 15th day of January 2025.

12

13

14

15



16

H. Postma-Strand, CSR(A)

17

Official Court Reporter

18

Commissioner for Oaths Appointee No. 0743159

19

ASRA Membership No. 186

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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		

1 UNDERTAKING 8 - To provide the September 4, 55
2 2024, email from Leighton Grey advising that
3 GWS LLP would no longer be working on the
4 action (Subject to redactions for
5 solicitor-client privilege)

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Federal Court



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April 23, 2024

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Christopher J. Ray
Counsel for Canada Post Corporation

Counsel for the Defendants

**Re: Bernard Albert *et al.* v. Canada Post Corporation *et al.*
Federal Court File No.: T-1436-22**

Please be advised that on today's date the Court, Associate Judge Coughlan, has issued the following direction:

“The Court is in receipt of a letter from counsel for the Plaintiffs seeking directions from the Court with respect to bringing a motion for an extension of time to file a Rule 51 appeal. I interpret the letter as an informal motion under Rule 54. However, Rule 54 is only available as a last resort and it is not for the Court to give legal, practical or tactical advice to any party: Bernard v Canada Revenue Agency, 2015, FCA 263 at paras 39 and 43. Here, counsel has not identified any ambiguity or uncertainty in the Rules that would justify resort to Rule 54. In the result, if the Plaintiffs wish to file a motion for an extension of time to appeal, they are free to do so.”

I trust this is satisfactory. Should you require anything further, please contact the Registry at (780) 495-4651.

Sincerely,

Charlotte Torgerson
Registry Officer – Case Management

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

Plaintiffs
(Moving Party, in part)

and

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

Defendants

**WRITTEN REPRESENTATIONS OF HIS MAJESTY THE KING IN RIGHT OF
CANADA**

OVERVIEW

1. It is not in the interests of justice for an extension of time to be granted (**Motion**) for 66 of the Plaintiffs (**Applicants**) to appeal (**Appeal**) *Albert v Canada Post Corporation (Albert)*.¹ The Appeal as against His Majesty the King in Right of Canada (**Canada**) has no merit and the Applicants unreasonably missed their 10-day deadline to appeal by 234 days.²

2. The Appeal lacks any merit as against Canada. The Applicants' Amended Amended Statement of Claim (**Claim**) pleaded that certain irrelevant public service announcements by Canada (**Announcements**) bound their employer, the Canada Post Corporation (**Canada Post**), to implement its COVID-19 vaccination practice (**Practice**).³ This Court struck the Claim as against

¹ *Albert v Canada Post Corporation*, [2024 FC 420](#) [*Albert*].

² *Federal Courts Rules*, [SOR/98-106](#), [r 51\(2\)](#) [*Rules*]. The period of time between March 25, 2024 (the first non-holiday after the appeal deadline) and November 14, 2024 (the filing date of the Motion) totals 234 days.

³ Schedule 1: Amended Amended Statement of Claim at paras 14 and 16-19 [**Claim**].

Canada on the basis that the Claim did not include a connection between the Applicants and Canada.⁴ The Applicants assert a palpable and overriding error concerning that conclusion,⁵ yet fail to address the explicit and unchallenged evidence of Canada Post that “[at] no time did the federal government order or require Canada Post – through a regulation, order, directive, or other legal mandate - to implement a mandatory vaccination policy”.⁶ In any event, the only means by which the Practice could have been compelled by Canada would have been through directives pursuant to the *Canada Post Corporation Act*⁷ (**CPC Act**) or *Financial Administration Act*⁸ (**FAA**), which were not pleaded as having been utilized, and were not utilized.

3. The Applicants have also failed to provide a reasonable excuse for missing their 10-day deadline to appeal by 234 days. The Applicants experienced numerous periods of excessive delay with no explanation, each of which far exceeded the 10-day appeal deadline imposed by the *Federal Courts Rules* (**Rules**).⁹ The Applicants are responsible for any counsel delay in filing the Motion. To the extent that the Applicants attempt to avoid responsibility for delay by asserting nonfeasance or negligence by their former counsel, they have provided no evidence that they acted on that perceived nonfeasance, that they reported said nonfeasance to the applicable law society, or that they have provided their formal counsel an opportunity to respond to those allegations.

⁴ *Albert*, *supra* note 1 at [para 63](#).

⁵ Motion Record, Affidavit of Jodi Kaldestad dated November 14, 2024 at 27 (Exhibit “B”: draft Memorandum of Fact and Law (**MOFL**) at para 80) [**Kaldestad Affidavit #1**].

⁶ Schedule 2: Affidavit of John Deveen dated August 18, 2023 at paras 7, 8, 9, 24, 29, and 33 [**Deveen Affidavit**].

⁷ *Canada Post Corporation Act*, [RSC 1985, c C-10](#) [**CPC Act**].

⁸ *Financial Administration Act*, [RSC 1985, c F-11](#) [**FAA**].

⁹ *Rules*, *supra* note 2 at [r 51](#).

PRELIMINARY MATTER

4. The Applicants named the Attorney General of Canada as a defendant in the Motion. In *Albert*, the Court amended the style of cause with immediate effect to remove the Attorney General of Canada as a party, as it is not a properly named defendant in Federal Court actions.¹⁰ The Applicants have not challenged that portion of the decision through their Motion or proposed Appeal. Accordingly, the style of cause should exclusively list the Canada Post Corporation and His Majesty the King in Right of Canada as defendants.

PART I – FACTS

a) Facts concerning Canada and the Claim

5. On August 13, 2021, Canada published a news release announcing its intention to require vaccination against COVID-19 across the federal public service and for all employees and travellers in the federally regulated air, rail, and marine transportation sectors (**Transport Sector**) (collectively, **Expectation Announcement**).¹¹ The Expectation Announcement stated that Canada “expects that Crown corporations and other employers in the federally regulated sector will also require vaccination for their employees.”¹²

6. On October 6, 2021, Canada published a news release titled “Mandatory COVID-19 vaccination requirements for federally regulated transportation employees and travellers” (**Transport Announcement**).¹³ The Transport Announcement stated that, as of October 30, 2021,

¹⁰ *Albert*, *supra* note 1 at [paras 63–64](#).

¹¹ Schedule 3: Affidavit of Charlotte Harper dated August 16, 2023 at Exhibit “A” [**Harper Affidavit**]; Claim, *supra* note 3 at para 28.

¹² Harper Affidavit, *supra* note 11 at Exhibit “A”; Claim, *supra* note 3 at para 37.

¹³ Harper Affidavit, *supra* note 11 at Exhibit “B”; Claim, *supra* note 3 at paras 1(a) and 31. The Claim, at paras 1.a, d, q-t, defines this announcement as the “Order” and identifies it as the purported source of Canada’s alleged liability.

all employers in the Transport Sector were required to establish vaccination policies for their employees, and all travellers departing from Canada airports and travellers on VIA Rail and Rocky Mountaineer trains were required to be fully vaccinated.¹⁴ The Transport Announcement made no reference to the Canada Post Corporation (**Canada Post**) or any other federally regulated employers outside of the Transport Sector. The Expectation Announcement and Transport Announcement did not create or compel Canada Post’s vaccination practice (**Practice**).¹⁵

b) Facts concerning the Motion

7. On March 13, 2024, Associate Judge Coughlan issued the *Albert* decision.¹⁶
8. On or by March 16, 2024, 40 Plaintiffs, likely all of which are current Applicants, formed an intention to appeal *Albert*.¹⁷ The Applicants assert that they advised their (now former) counsel, Leighton Grey, with Grey Wowk Spencer LLP (**GWS LLP**), of the same on that date.¹⁸
9. March 25, 2024 was the Applicants’ deadline to appeal *Albert*.¹⁹
10. The Applicants’ affiant “suspected that the [appeal] deadline might be 10 days” as of March 26, 2024.²⁰ However, via a March 28, 2024 email, that affiant provided the other Plaintiffs with an April 5, 2024 deadline to advise of their individual intention to appeal *Albert*.²¹

¹⁴ Harper Affidavit, *supra* note 11 at Exhibit “B”.

¹⁵ Deveen Affidavit, *supra* note 6 at paras 7, 8, 9, 24, 29, and 33.

¹⁶ *Albert*, *supra* note 1.

¹⁷ Schedule 4: Cross-Examination Transcript of Karine Solakian dated January 7, 2025 at 25 (25 at lines 22–25) and 26 (26 at lines 2–13) [**Solakian Cross-Examination**].

¹⁸ Solakian Cross-Examination, *supra* note 17 at 27–28 (27 at lines 25–27, 28 at lines 1–15).

¹⁹ *Rules*, *supra* note 2 at [r 2](#) (“holiday”) and [51](#).

²⁰ Motion Record, Affidavit of Karine Solakian dated November 14, 2024 at para 10 [**Solakian Affidavit**]; Solakian Cross-Examination, *supra* note 17 at 37 (37 at lines 11–21).

²¹ Solakian Cross-Examination, *supra* note 17 at 29 (29 at lines 7–10); Affidavit of Jodi Kaldestad dated January 10, 2025 [**Kaldestad Affidavit #2**] at 5.

11. As of April 8, 2024, approximately 83–88 Plaintiffs had an intention to appeal *Albert*.²² Some of those Plaintiffs are not Applicants.
12. On April 10, 2024, the Applicants communicated their intention to appeal *Albert* to GWS LLP.
13. Between April 10 and May 13, 2024, the Applicants do not recall following up with GWS LLP, and have not provided any evidence of the same, to request any status updates.²³
14. On April 18, 2024, GWS LLP wrote this Court to request directions concerning a motion for an extension of time to appeal *Albert*.²⁴
15. On April 23, 2024, Associate Judge Coughlan issued directions advising that there is no ambiguity in the relevant *Rules*, and that “if the Plaintiffs wish to file a motion for an extension of time to appeal, they are free to do so”.²⁵
16. On May 14 and June 6, 2024, the Applicants requested updates from GWS LLP via email.²⁶ The Applicants’ affiant asserted that GWS LLP attributed the delay to staffing issues,²⁷ which is

²² Solakian Cross-Examination, *supra* note 17 at 26–27 (26 at lines 14–27, 27 at lines 1–2).

²³ Solakian Cross-Examination, *supra* note 17 at 41–42 (41 at lines 13–27, 42 at lines 1–3).

²⁴ Kaldestad Affidavit #1, *supra* note 5 at para 4 and Exhibit “C”.

²⁵ Schedule 5: Direction of Applications Judge Coughlan dated April 23, 2024.

²⁶ Solakian Affidavit, *supra* note 20 at para 11; Kaldestad Affidavit #2, *supra* note 21 at 2 (response to UT #2). The Applicants advised that the May 13 email referenced in the Solakian Affidavit was on May 14.

²⁷ Solakian Cross-Examination, *supra* note 17 at 42–43 (42 at lines 4–27, 43 at lines 1–12).

not reflected in the records later provided.²⁸ The Applicants purported to have emailed GWS LLP on June 19, 2024,²⁹ but now assert that was a voicemail without providing any associated records.³⁰

17. On July 4, 2024, GWS LLP advised that the materials would be provided “before the weekend”, being July 5, 2024.³¹ There is no evidence that the Applicants followed up on that missed deadline.

18. On July 17, 2024, the Applicants received progress updates and draft pleadings from GWS LLP.³² The draft pleadings were only reviewed by the four “instructing Plaintiffs”, with only the Applicants’ affiant providing instructions to GWS LLP.³³ The “instructing Plaintiffs” did not wait for the other Applicants to explicitly consent or confirm instructions.³⁴

19. On July 22, 2024, the Applicants provided comments on the draft pleadings.³⁵ The Applicants have refused to provide the comments that they assert to have made.³⁶

20. Between July 26 and September 4, 2024, the Applicants do not recall following up with GWS LLP to request any status updates, and have not provided any evidence of the same.³⁷

²⁸ Kaldestad Affidavit #2, *supra* note 21 at 7.

²⁹ Solakian Cross-Examination, *supra* note 17 at 45 (45 at lines 2–11).

³⁰ Solakian Affidavit, *supra* note 20 at para 11; Kaldestad Affidavit #2, *supra* note 21 at 5 (response to UT #5). The Applicants advised that the May 13 email referenced in the Solakian Affidavit was on May 14.

³¹ Kaldestad Affidavit #2, *supra* note 21 at 9 (response to UT #6).

³² Solakian Affidavit, *supra* note 20 at para 13.

³³ Solakian Cross-Examination, *supra* note 17 at 47 (47 at lines 2–13) and 48 (48 at lines 1–7).

³⁴ Solakian Cross-Examination, *supra* note 17 at 52 (52 at lines 10–12).

³⁵ Solakian Affidavit, *supra* note 20 at para 13.

³⁶ Kaldestad Affidavit #2, *supra* note 21 at 14 (response to UT #7).

³⁷ Solakian Cross-Examination, *supra* note 17 at 53–54 (53 at lines 19–27, 54 at lines 1–12).

21. As of September 3, 2024, the Applicants were aware that the anticipated appeal was approximately 5 months late and that GWS LLP had been unresponsive to their inquiries, and that GWS LLP had at times not followed their instructions, but made no attempts to find new counsel.³⁸

22. On September 4, 2024, GWS LLP advised via letter that it would no longer be working on the anticipated motion or appeal.³⁹ The Applicants' affiant asserted various other content but provided a heavily redacted version of that correspondence.⁴⁰

23. On September 22, 2024, the Applicants "agreed in principle" to retain their current counsel, Gratl & Company.⁴¹ The first Applicants completed their retainers and provided identification verification that same day.⁴²

24. Between September 22 and November 13, 2024, the Applicants did not file the anticipated motion or appeal, asserting that it took approximately 8 weeks to provide completed retainers and income verification.⁴³

25. On November 14, 2024, the Applicants served and filed the Motion. The "instructing Plaintiffs" did not wait for the other Applicants to explicitly consent or confirm instructions to file the Motion.⁴⁴

³⁸ Solakian Cross-Examination, *supra* note 17 at 54–55 (54 at lines 13–27, 55 at lines 1–4) and 59 (59 at lines 7–14).

³⁹ Solakian Affidavit, *supra* note 20 at para 14.

⁴⁰ Kaldestad Affidavit #2, *supra* note 21 at 19 (response to UT #8).

⁴¹ Solakian Affidavit, *supra* note 20 at para 16.

⁴² Solakian Cross-Examination, *supra* note 17 at 68 (68 at lines 6–10 and 19–22).

⁴³ Solakian Cross-Examination, *supra* note 17 at 68–69 (68 at lines 23–27, 69 at lines 1–15).

⁴⁴ Solakian Cross-Examination, *supra* note 17 at 73–74 (73 at lines 12–27, 74 at lines 1–23).

PART II – ISSUE

26. Should the Applicants be granted an extension of time to appeal the Order and Reasons of Associate Judge Coughlan dated March 13, 2024?

PART III – SUBMISSIONS

27. This Court should exercise its discretion to dismiss the Motion. It is not in the interests of justice for the Motion to be granted, primarily on the bases that the proposed Appeal has no merit as against Canada, and the Applicants have not provided a reasonable explanation for their inordinate delay.

a) Rules 8 and 51

28. Pursuant to Rule 51, an order of an associate judge may be appealed by a motion to a judge of the Federal Court, within 10 days of issuance of the order.⁴⁵

29. Pursuant to Rule 8, this Court may extend or abridge a period provided in the *Rules* or fixed by an order.⁴⁶

30. In *Canada v Hennelly* (**Hennelly**), the Federal Court of Appeal (FCA) set out the following test that a party has to meet to obtain an extension of time:⁴⁷

1. a continuing intention to pursue the matter;
2. that the underlying claim has some merit;
3. whether prejudice arises from the delay; and
4. that a reasonable explanation for the delay exists.

⁴⁵ *Rules*, *supra* note 2 at [r 51](#).

⁴⁶ *Rules*, *supra* note 2 at [r 8](#).

⁴⁷ *Canada (AG) v Hennelly*, (1999), 244 NR 399 (FCA); *Gutierrez v Canada*, [2024 FCA 93](#) at [para 4](#).

31. The overriding principle in motions for an extension of time is whether the extension is in the interests of justice.⁴⁸

32. A motion for an extension of time may be dismissed solely on the basis that it lacks merit.⁴⁹

33. The above-noted *Hennelly* factors are addressed below in order of relevance to the Motion.

b) The underlying appeal lacks merit

34. The Appeal lacks any merit as against Canada. The Applicants' merely attempt to re-litigate the same arguments raised at first instance, while ignoring the clear deficiencies in the Claim pertaining to the purported connection to Canada.⁵⁰

i) Standard of review

35. Based on the grounds of appeal and argument pleaded, the appropriate standard of review of a decision to strike a claim is palpable and overriding error.

36. The Applicants assert through the Motion and Appeal that they are exclusively challenging *Albert* as it pertains to their section 7 *Charter* arguments and the *ITO* test on the correctness standard,⁵¹ although they later assert a palpable and overriding error of fact.⁵² Notably, the grounds of appeal concerning section 7 *Charter* arguments and the *ITO* test, as outlined and argued by the Applicants, are irrelevant to Canada's involvement in the Claim.⁵³

⁴⁸ *Oleynik v Canada (AG)*, [2023 FCA 162](#) at [para 36](#) [*Oleynik*].

⁴⁹ *Oleynik*, *supra* note 49 at [paras 36–43](#).

⁵⁰ *Albert*, *supra* note 1 at [para 63](#).

⁵¹ Applicants' Written Representations dated November 14, 2024 at para 27 [**Applicants' Written Representations**].

⁵² Applicants' Written Representations, *supra* note 51 at para 30(c).

⁵³ Kaldestad Affidavit #1, *supra* note 5 at 16 and 22 (Exhibit "B": draft MOFL at paras 30 and 52).

37. The Applicants misstate the applicable standard of review. The Applicants assert that a decision to strike a claim on the basis that it does not disclose a reasonable cause of action is a question of law subject to the correctness standard of review, citing British Columbia case law.⁵⁴

38. The appropriate standard of review is palpable and overriding error. The FCA has confirmed that the decision to grant a motion to strike is discretionary, and that intervention by this Court is warranted only in cases of palpable and overriding error, absent error on a question of law or an extricable legal principle.⁵⁵ The errors alleged concern the Associate Judge's interpretation and application of the facts, and thus the palpable and overriding standard should be applied.⁵⁶ Specifically, the Applicants' bases of appeal largely concern this Court's application of the facts to section 7 of the *Charter*⁵⁷ and the *ITO* test,⁵⁸ and the assessment of whether Canada Post was acting under Canada's direction.⁵⁹

ii) *Canada did not compel Canada Post to implement the Practice*

39. The Applicants have not established any basis to undermine the factual finding that there was no supportable pleaded connection between Canada and Canada Post, or that Canada did not direct Canada Post to implement the Practice.⁶⁰ Absent a palpable and overriding error on that issue, there is no basis to establish any merit to the underlying action as against Canada, including regarding the other grounds of appeal pleaded.⁶¹ This Court in *Albert* accurately noted that “the

⁵⁴ Kaldestad Affidavit #1, *supra* note 5 at 12 (Exhibit “B”: draft MOFL at para 24).

⁵⁵ *Canada v Harris*, [2020 FCA 124](#) at [paras 20–22](#) [*Harris*].

⁵⁶ *Harris*, *supra* note 55 at [para 22](#).

⁵⁷ Kaldestad Affidavit #1, *supra* note 5 at 14 (Exhibit “B”: draft MOFL at para 30).

⁵⁸ Kaldestad Affidavit #1, *supra* note 5 at 20, 25–27 (Exhibit “B”: draft MOFL at paras 52, 68, 74–78).

⁵⁹ Kaldestad Affidavit #1, *supra* note 5 at 27–28 (Exhibit “B”: draft MOFL at paras 79–81).

⁶⁰ *Albert*, *supra* note 1 at [para 63](#).

⁶¹ Claim, *supra* note 3 at paras 21–37.

unchallenged evidence led on this motion makes it clear that Canada did not issue any directives to Canada Post during the pandemic” and that “it is difficult to conceive of any relationship that could give rise to a cause of action against Canada”.⁶²

40. The Applicants pleaded that they are employees or former employees of Canada Post.⁶³ Pursuant to section 12 of the *Canada Post Corporation Act (CPC Act)*, Canada Post exclusively fixed the terms and conditions of the Applicants’ employment.⁶⁴ Pursuant to section 13 of the *CPC Act*, Canada Post employees are not employed in the federal public administration.⁶⁵

41. The Applicants did not plead that they were employed by Canada, the Transport Sector, or Transport Canada. The Applicants pleaded that Canada is liable for the actions of Transport Canada,⁶⁶ but did not plead any personal connection to Transport Canada.

42. The Claim fails to disclose any material facts to support the bald assertion that Canada compelled Canada Post’s implementation of the Practice. The Applicants did not plead the existence of a mandatory directive pursuant to the *CPC Act*,⁶⁷ nor of a mandatory Order in Council, pursuant to the *FAA*.⁶⁸ Canada cannot have compelled Canada Post to act in the absence of the exclusive means by which action is compelled.

43. While the Expectation Announcement referred to Canada’s expectation that Crown corporations and other employers in the federally regulated sector would require vaccination for their employees, the Claim failed to plead how this expectation equates to legislative or other

⁶² *Albert*, *supra* note 1 at [para 63](#).

⁶³ *Albert*, *supra* note 1 at [para 63](#); Claim, *supra* note 3 at para 3.

⁶⁴ *CPC Act*, *supra* note 7 at [s 12](#).

⁶⁵ *CPC Act*, *supra* note 7 at [s 13](#).

⁶⁶ Claim, *supra* note 3 at paras 14 and 16–19.

⁶⁷ *CPC Act*, *supra* note 7 at [s 22](#).

⁶⁸ *FAA*, *supra* note 8 at [s 89](#).

action taken by Canada to compel Canada Post to implement the Practice. The Claim ultimately failed to connect any of Canada's actions to the Practice, which the Applicants plead as the exclusive cause of the harms alleged.

44. The Claim fundamentally concerned the employment relationship between the Applicants and Canada Post. Canada was not a party to that relationship. The Applicants' concerns regarding the Practice would be properly and fulsomely addressed through grievance or other procedures against their employer.⁶⁹

45. As there were no pleaded harms attributable to Canada, it was plain and obvious that the Claim as against Canada had no merit and was struck.⁷⁰ The Applicants have not identified a palpable and overriding error in that conclusion.

iii) Charter section 7

46. If the Applicants establish sufficient merit regarding a pleaded connection between themselves and Canada in the Claim, which is denied for the reasons outlined above, the section 7 *Charter* breach allegations do not include sufficient facts to support the claim.

47. The Applicants have not sufficiently pleaded the existence of a violation of a principle of fundamental justice. A claimant must plead sufficient facts to satisfy the 2-stage test under section 7 of the *Charter*: they must demonstrate that (1) the impugned provisions result in the deprivation of life, liberty or security of the person; and that (2) the deprivation violates principles of

⁶⁹ *Adelberg v Canada*, [2023 FC 252](#) at [para 35](#); *National Organized Workers Union v Sinai Health System*, [2022 ONCA 802](#) at [paras 38–39](#).

⁷⁰ *Albert*, *supra* note 1 at [para 63](#).

fundamental justice.⁷¹ The FCA has confirmed that there are no separate rules of pleadings for *Charter* cases.⁷²

48. The Applicants alleged that attesting to their vaccination status imposed an increased risk of death, invaded their autonomy, and infringed on their psychological and economic integrity.⁷³ The Applicants did not plead any facts substantiating that any deprivation violates a principle of fundamental justice, merely baldly repeating the phrase “not in accordance with the fundamental principles of justice”.⁷⁴ The Applicants inappropriately attempt to remedy that deficiency on Appeal through their draft written argument by pointing to various bald allegations scattered throughout the Claim.⁷⁵ Such an approach is fundamentally inconsistent with the requirement for claimants to plead, in a concise manner, material facts in support of each and every cause of action, as well as the nature of any damages.⁷⁶ It also contravenes the FCA’s caution that defendants cannot be left to speculate how the facts of the claim might be variously arranged to support various causes of action.⁷⁷

49. In any event, this Court has held that section 7 of the *Charter* is generally not infringed by vaccination mandates, because such mandates are not contrary to the principles of fundamental justice.⁷⁸ Further, this Court and appellate Courts across Canada have consistently dismissed actions and applications alleging *Charter* and other violations stemming from the public health

⁷¹ *R v JJ*, [2022 SCC 28](#) at [para 116](#).

⁷² *Albert*, *supra* note 1 at [para 17](#); *Mancuso v Canada (National Health and Welfare)*, [2015 FCA 227](#) at [para 25](#).

⁷³ Claim, *supra* note 3 at paras 90–98.

⁷⁴ Claim, *supra* note 3 at paras 1(q), 90, 91, and 92.

⁷⁵ Kaldestad Affidavit #1, *supra* note 5 at 18–20 (Exhibit “B”: draft MOFL at paras 43–51).

⁷⁶ *Rules*, *supra* note 2 at [r 174](#); *Jones v Kembell*, [2012 FC 27](#) at [para 5](#).

⁷⁷ *Mancuso v Canada*, [2015 FCA 227](#) at [para 16](#).

⁷⁸ *Qualizza v Canada*, [2024 FC 1801](#) at [para 37](#); *Lavergne-Poitras v Canada (AG)*, [2021 FC 1232](#) at [paras 62, 70, and 75](#).

response to the COVID-19 pandemic.⁷⁹ In any event, the Practice was not implemented in any way by Canada.

50. If this Court finds that there is merit to the Applicants' argument concerning section 7 of the *Charter* as against Canada Post, that conclusion should have no impact on the assessment of the merits of the Motion as against Canada.

iv) ITO test

51. The *ITO* test is inapplicable to the Claim as against Canada. Canada did not argue that the Claim as against it was outside the jurisdiction of this Court, nor was there such a conclusion in *Albert*, contrary to the Applicants' argument concerning the same.⁸⁰

52. If this Court finds that there is merit to the Applicants' argument concerning the *ITO* test and this Court's jurisdiction with regard to the Claim as against Canada Post, that conclusion should have no impact on the assessment of the merits of the Motion as against Canada.

c) There is no reasonable explanation for the exorbitant delay

53. The Applicants' delay in bringing the Motion was devoid of reasonable diligence. The Applicants experienced numerous periods of excessive delay with no explanation, each of which far exceeded the 10-day appeal deadline imposed by the *Rules*. The delay was not the result of a minor oversight or a situation where an error was promptly corrected – the Applicants, GWS LLP, and Gratl & Company were all aware of the applicable deadline, but cumulatively took 234 days to request an extension of time. There is not a reasonable explanation for the delay.

⁷⁹ *Albert*, *supra* note 1 at [paras 43–44](#).

⁸⁰ Applicants' Written Representations, *supra* note 51 at para 53.

54. The Applicants' evidence is that two⁸¹ of the 66 Applicants exhibited some diligence in seeking counsel assistance with filing an appeal or motion for an extension of time. The evidence is vague and includes significant gaps in time where no steps were taken or sufficient diligence exhibited, notwithstanding the Applicants' admission that they were aware that the Appeal was late for 7 months.⁸² The Applicants did not take reasonable steps to advance this litigation for many periods that eclipse the 10-day appeal deadline, including the following periods totalling over 22 weeks:

- a. March 14–April 7, 2024: the Applicants did not follow up with their former counsel for over 3 weeks, despite asserting that they suspected a 10-day appeal deadline applied;⁸³
- b. April 10–May 12, 2024: the Applicants assert they confirmed instructions to appeal, yet did not follow up with their former counsel for over one month;⁸⁴
- c. May 14–June 5, 2024: the Applicants waited over three weeks between attempts to contact their former counsel for an update;⁸⁵
- d. July 27–September 3, 2024: the Applicants waited over five weeks between attempts to contact their former counsel for an update, and despite having provided comments on draft motion materials on July 22, 2024,⁸⁶ and

⁸¹ Solakian Affidavit, *supra* note 20 at para 11. The only two references to Applicants contacting their former counsel include the Affiant and Kim Priest.

⁸² Solakian Affidavit, *supra* note 20 at para 10.

⁸³ Solakian Affidavit, *supra* note 20 at paras 7–10.

⁸⁴ Solakian Affidavit, *supra* note 20 at paras 9–11.

⁸⁵ Solakian Affidavit, *supra* note 20 at para 11.

⁸⁶ Solakian Affidavit, *supra* note 20 at paras 13–14.

- e. September 23–November 14, 2024: the Applicants took over 7 weeks from obtaining new counsel to finalize their retainers and file the Motion.⁸⁷

55. There was nothing preventing the Applicants, or *any* of those 66 individuals independently, from filing a Notice of Appeal within the requisite 10-day limitation period, or in the intervening 234 days. 281 Plaintiffs elected to file their Statement of Claim (**Claim**) together.⁸⁸ Prior to the Defendants’ motions to strike being heard, there were 149 Plaintiffs that had not discontinued the Claim.⁸⁹ The Plaintiffs were not obligated to obtain instructions and file an appeal as a single group, or with the same counsel, and the record shows that the 66 Applicants did not proceed with the Motion collectively with the remaining Plaintiffs in any event. There are no apparent authorities that excuse multi-Plaintiff actions from complying with the *Rules* or that would undermine the level of diligence expected of the Applicants, whether acting individually or as a collective. In any event, the Applicants’ characterization of the Motion as “logistically complicated and time-consuming for a large group of Plaintiffs”⁹⁰ is hyperbole, as all filing instructions were provided by only four “instructing Plaintiffs”.⁹¹

56. The Applicants were aware that the Appeal was late for at least 7 months before filing the Motion. The Applicants’ own evidence is that they “suspected” a 10-day deadline to appeal in March 2024, and that their former counsel confirmed the same in late April 2024.⁹² This Court has held that delay in applying for an extension of time, including insufficient diligence in obtaining

⁸⁷ Solakian Affidavit, *supra* note 20 at para 16.

⁸⁸ *Albert*, *supra* note 1 at [para 6](#).

⁸⁹ *Albert*, *supra* note 1 at [paras 6](#) and [10](#).

⁹⁰ Solakian Affidavit, *supra* note 20 at para 5.

⁹¹ Solakian Cross-Examination, *supra* note 17 at 47 (47 at lines 2–13), 48 (48 at lines 1–7), and 73–74 (73 at lines 12–27, 74 at lines 1–23).

⁹² Solakian Affidavit, *supra* note 20 at para 10.

counsel and a three month delay by the obtained counsel in filing pleadings, undermines the reasonableness of an explanation for delay.⁹³ Regardless of whether the Applicants were aware of the deadline in March or April 2024, and despite still waiting an additional 7 months to file the Motion, lack of understanding of the *Rules* does not constitute a reasonable explanation for delay.⁹⁴ Other courts, including the Court of Appeal of Alberta (**ABCA**), have repeatedly confirmed that misunderstandings related to deadlines, particularly in the absence of due diligence, generally do not form a reasonable excuse for delay.⁹⁵

57. The Applicants were insufficiently diligent in dismissing their former counsel. This Court recently held that an applicant’s decision to still be represented by counsel who missed their Rule 51 appeal deadline by 6 weeks was “illogical” and that their “submissions do not accord with their own conduct, and fall short of establishing a reasonable explanation for the delay”.⁹⁶ The Applicants in the present Motion were aware that they had missed their Rule 51 appeal deadline, yet waited 25 weeks from when *Albert* was issued, at which point the former counsel advised that his office would not be handling the appeal.⁹⁷ In any event, changes in counsel and lack of financial resources do not necessarily explain delay.⁹⁸

⁹³ *Francis v Acadia First Nation*, [2023 FC 926](#) at [paras 19–20](#).

⁹⁴ *MacDonald v Canada (AG)*, [2017 FC 2](#) at [para 32](#); *Collins v Canada (AG)*, [2023 FC 863](#) at [para 35](#); *Abikan v Canada (CI)*, [2023 FC 149](#) at [para 26](#).

⁹⁵ *Blume v Blume*, [2023 ABCA 174](#) at [paras 11–14](#); *Adderley v 1400467 Alberta Ltd.*, [2014 ABCA 291](#) at [paras 10–12](#).

⁹⁶ *Petre v Canada (RCMP)*, [2024 FC 1768](#) at [para 53](#).

⁹⁷ Solakian Affidavit, *supra* note 20 at paras 10 and 14.

⁹⁸ *Canada (AG) v Larkman*, [2012 FCA 204](#) at [para 83](#).

58. The Applicants were insufficiently diligent in instructing their former counsel. The Applicants exclusively attribute blame to their former counsel for delay between March 13 and September 4, 2024.⁹⁹ In the immigration context, the FCA has confirmed “[it] is settled that an applicant must live with the consequences of the actions of his counsel” and that “incompetence of counsel will not be upheld if there is no evidence that a complaint has been filed with the competent authorities of the bar to which the counsel belongs or without an explanation personally issued by the professional involved”.¹⁰⁰ In the context of extensions of time, this Court has held that the diligence of both counsel and the applicant must be considered,¹⁰¹ but noted that:¹⁰²

[37] It is not enough for a litigant to allege that its counsel was negligent and then to claim that it knows nothing more. A litigant in such a situation must make the necessary inquiries of its counsel to find out exactly why the filing deadline was missed and to offer clear and convincing evidence to substantiate its own lack of responsibility. Usually that is accomplished by providing an affidavit sworn by counsel admitting to the error and confirming that the client was blameless. If that evidence is not put forward, it is often because counsel has a different version of what took place. The affidavits filed here on behalf of [the applicants] are not sufficient to establish that it bears no responsibility for the filing error. In fact, the affidavits are insufficient to establish why the filing deadline was missed at all.

59. More recently, this Court has taken a more definitive position that “Counsel are acting—or failing to act—in the shoes of their clients, and clients can therefore not expect to escape the consequences of their counsel’s carelessness”.¹⁰³ Although the Court will consider such excuses in minor or trivial situations involving mere days of delay or unintentional oversights,¹⁰⁴ this is not such a scenario.

⁹⁹ Solakian Affidavit, *supra* note 20 at paras 7–14.

¹⁰⁰ *Singh v Canada (CI)*, [2016 FCA 96](#) at [paras 66–67](#); *Cove v Canada (MCI)*, [2001 FCT 266](#) at [paras 6–7](#).

¹⁰¹ *Gover v Canada*, [2007 FC 1159](#) at [para 32](#); *McBean v Canada (CI)*, [2009 FC 1149](#) at [para 16](#).

¹⁰² *Washagamis First Nation v Ledoux*, [2006 FC 1300](#) at [paras 35–37](#).

¹⁰³ *Singh v Canada (CI)*, [2023 FC 380](#) at [para 37](#); see also: *Fortin v Canada*, T-2083-24 (unreported) at 8 [Tab 1].

¹⁰⁴ *Montminy v Canada (AG)*, [2024 FC 830](#) at [paras 40–42](#).

60. The Applicants have not provided *any* documentary evidence of admitted wrongdoing by GWS LLP or that a complaint has been filed with the Law Society of Alberta regarding the adequacy of their representation. Other than cursory follow-up, and despite an admitted awareness that the applicable deadline had been long exceeded, none of the Applicants sought to file motions for an extension of time or dismissed their former counsel.

61. Between the exorbitant amount of time that the Applicants admit to having taken no or insufficient steps to bring the Motion or advance the Appeal, and the periods purportedly explained through vague and unsupported assertions of diligence, there is no basis to accept a 7-month delay as having occurred despite reasonable diligence.

d) There is prejudice from the exorbitant delay

62. Lengthy delay causes prejudice by undermining the finality of a motion to strike. Further prejudice has also resulted from the Applicants' failure to satisfy the costs award in *Albert*.

63. This Court should adopt the reasoning of the ABCA, which has held that significant delay in bringing an appeal by itself causes recognizable prejudice to the Respondent:¹⁰⁵

[31] The applicants also failed to establish that their late filing has not caused the [respondent] significant prejudice. A favourable judicial outcome is a valuable commodity. A respondent is entitled to expect that it will be able to rely on that benefit if an adverse party does not act in a timely manner to challenge it. The applicants' delay by itself causes recognizable prejudice to the [respondent].

64. The Court of Appeal for British Columbia has adopted similar reasoning regarding the filing of appeals of final decisions.¹⁰⁶

¹⁰⁵ *Ouellette, et al v Law Society of Alberta*, [2021 ABCA 99](#) at [para 31](#) (leave to appeal to a panel dismissed, *Ouellette et al v Law Society of Alberta*, [2021 ABCA 283](#)).

¹⁰⁶ *Douglas Lake Cattle Company v Nicola Valley Fish and Game Club*, [2019 BCCA 439](#) at [paras 45–46](#).

65. This Court has also referenced finality as a consideration in assessing prejudice.¹⁰⁷

66. That reasoning is consistent with the FCA's general comments regarding finality and the public interest in maintaining timeliness:¹⁰⁸

[28] I need not expound at length on the importance of the principles of res judicata and the finality of decisions ... I will confine myself to saying that these principles exist in the public interest and that Parliament's intention to protect that interest is illustrated by the short time limit allowed for challenging an administrative decision.

[29] ... Concerning this time limit, this Court writes in *Berhad*, at paragraph 60:
... The importance of that public interest is reflected in the relatively short time limits for the commencement of challenges to administrative decisions-... That time limit is not whimsical. ...

67. Lengthy delay, including delay of 234 days on a 10-day deadline, significantly prolongs the uncertainty of resolving a matter and is inherently prejudicial to the responding party. That prejudice is compounded by the Applicants' refusal to comply with this Court's costs order in *Albert*.¹⁰⁹

e) The Applicants did not action any intention to pursue the appeal

68. Canada accepts that the Applicants, or at least one of them, held a continuing attention to appeal *Albert*. This factor should not materially impact this Court's assessment as the Applicants, or any of them, did not meaningfully or promptly action their asserted intention, as outlined above.

¹⁰⁷ *Citizen for My Sea to Sky v Canada (Environment and Climate Change)*, [2023 FC 1721](#) at [paras 16–17](#) and [66](#).

¹⁰⁸ *Canada v Grenier*, [2005 FCA 348](#) at [paras 27–29](#).

¹⁰⁹ *Solakian Cross-Examination*, *supra* note 17 at 76–78.

f) It is not in the interests of justice for the Motion to be granted

69. The Applicants have not established that it is in the interests of justice for the Motion to be granted. Primarily, the proposed Appeal has no merit whatsoever as against Canada. The Applicants continue to rely on bald assertions linked to the Announcements, which had no connection to Canada Post, and overlook the repeated explicit evidence that Canada did not compel Canada Post to implement the Practice through the means available to compel such action. Secondly, the Applicants have failed to provide a reasonable excuse for numerous periods of inactivity and delay by themselves and their counsel over a 234 day period. The delay was also inherently prejudicial to Canada, and the Applicants' intention to appeal was not appropriately actioned. The *Hennelly* factors weigh against granting the Motion.

70. The proposed Appeal generally raises issues regarding *Albert* as it pertains to Canada Post, rather than Canada. To the extent that this Court distinguishes between the merits of the arguments pertaining to each defendant, the *Hennelly* factors should be assessed separately. Put simply, if there is merit to only a portion of the appeal, and that merit results in the interests of justice being served through granting the Motion in part, it should not deter this Court from dismissing the Motion as against the remaining party.

g) Adverse inferences and weight

71. This Court should draw an adverse inference against, or alternatively provide no weight to, the assertions of nonfeasance or negligence by GWS LLP and diligence by Gratl & Company, in the Affidavit of Karine Solakian affirmed November 14, 2024 (**Solakian Affidavit**).¹¹⁰ Rule 81(2) permits this Court to draw an adverse inference or attribute little or no weight to affidavits based

¹¹⁰ Solakian Affidavit, *supra* note 20 at paras 6–18.

on information and belief where insufficient explanation is provided as to why the best evidence is not available.¹¹¹ The Solakian Affidavit did not attach any corroborative documentation. After requests for undertakings at cross-examination, the Applicants provided a legal assistant affidavit attaching heavily redacted correspondence between the Applicants and GWS LLP.¹¹² That correspondence, to the extent that any content was left unredacted, does not corroborate the assertions concerning counsel or Applicant diligence in the Solakian Affidavit.

72. This Court should further draw adverse inferences from the various unreasonable refusals and objections by the Applicants to provide answers during cross-examination on the Solakian Affidavit, including objections to basic questions concerning: (i) whether any Applicants other than the four “instructing plaintiffs” (as referenced in the Solakian Affidavit) provided instructions to GWS LLP,¹¹³ (ii) how the Applicants communicated with each other concerning the Claim,¹¹⁴ (iii) whether and in what circumstances the “instructing plaintiffs” (as referenced in the Solakian Affidavit) could provide instructions on behalf of all Plaintiffs,¹¹⁵ (iv) how instructions would be communicated to GWS LLP,¹¹⁶ (v) how and when *Albert* was communicated to the Plaintiffs,¹¹⁷ (vi) whether and the extent to which there were communications between GWS LLP and the Plaintiffs between March 18 and April 7, 2024 (the 3 weeks after *Albert* was issued),¹¹⁸ (vii)

¹¹¹ *Rules*, *supra* note 2 at [r 81](#); *Rebel News Network Ltd. V Guilbeault*, [2023 FC 121](#) at [paras 81–82](#); *Aubid v Canada (CI)*, [2007 FC 228](#) at [para 8](#); *Split Lake Cree First Nation v Sinclair*, [2007 FC 1107](#) at [para 26](#).

¹¹² Kaldestad Affidavit #2, *supra* note 21. See, for example, pages 10, 12–14, and 19.

¹¹³ Solakian Cross-Examination, *supra* note 17 at 7–8 (7 at lines 1–27, 8 at lines 1–5).

¹¹⁴ Solakian Cross-Examination, *supra* note 17 at 8–9 (8 at lines 6–27, 9 at lines 1–20).

¹¹⁵ Solakian Cross-Examination, *supra* note 17 at 11–13 (11 at lines 14–27, 12 at lines 1–27; 13 at lines 1–5).

¹¹⁶ Solakian Cross-Examination, *supra* note 17 at 14–15 (14 at lines 9–27, 15 at lines 1–5).

¹¹⁷ Solakian Cross-Examination, *supra* note 17 at 15–16 (15 at lines 6–27, 16 at lines 1–4).

¹¹⁸ Solakian Cross-Examination, *supra* note 17 at 18–20 (18 at lines 20–27, 19 at lines 1–27, 20 at lines 1–24).

whether the Applicants reported their asserted nonfeasance by GWS LLP to the relevant law society,¹¹⁹ (viii) whether the Applicants served GWS LLP with the Motion and related materials in order to respond to the Applicants' various assertions of nonfeasance by GWS LLP,¹²⁰ and (ix) whether the affiant was aware of or intends to adhere to the costs award in *Albert*.¹²¹ The means by which instructions are conveyed, timing of instructions and communications, responses to GWS LLP conduct, and the Applicants' general knowledge and conduct after *Albert* was rendered are directly applicable to this Court's assessment of the factors outlined below. Refusal to answer relevant and material inquiries should be viewed as undermining the Applicants' satisfaction of the relevant factors.

PART IV – RELIEF SOUGHT

73. The Motion should be dismissed as against Canada, with costs and disbursements payable to Canada.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated at Edmonton, Alberta on February 27, 2025.

DVassberg

Daniel Vassberg/Christine Williams
Counsel for the Respondent, Canada

TO: The Registrar
Federal Court of Canada

AND TO: Christopher Pigott, counsel for the Respondent, Canada Post Corporation
Jason Gratl, counsel for the Applicants

¹¹⁹ Solakian Cross-Examination, *supra* note 17 at 59–62.

¹²⁰ Solakian Cross-Examination, *supra* note 17 at 62–63 (62 at lines 26–27, 63 at lines 1–4).

¹²¹ Solakian Cross-Examination, *supra* note 17 at 76–78.

List of Authorities

Legislation

1. *Federal Courts Rules*, [SOR/98-106](#)
2. *Canada Post Corporation Act*, [RSC 1985, c C-10](#)
3. *Financial Administration Act*, [RSC 1985, c F-11](#)

Case Law

4. *Albert v Canada Post Corporation*, [2024 FC 420](#)
5. *Rebel News Network Ltd. V Guilbeault*, [2023 FC 121](#)
6. *Aubid v Canada (CI)*, [2007 FC 228](#)
7. *Split Lake Cree First Nation v Sinclair*, [2007 FC 1107](#)
8. *Canada (AG) v Hennelly*, [\(1999\), 244 NR 399 \(FCA\)](#)
9. *Gutierrez v Canada*, [2024 FCA 93](#)
10. *Oleynik v Canada (AG)*, [2023 FCA 162](#)
11. *Canada v Harris*, [2020 FCA 124](#)
12. *Adelberg v Canada*, [2023 FC 252](#)
13. *National Organized Workers Union v Sinai Health System*, [2022 ONCA 802](#)
14. *R v JJ*, [2022 SCC 28](#)
15. *Mancuso v Canada (National Health and Welfare)*, [2015 FCA 227](#)
16. *Jones v Kemball*, [2012 FC 27](#)
17. *Qualizza v Canada*, [2024 FC 1801](#)
18. *Lavergne-Poitras v Canada (AG)*, [2021 FC 1232](#)
19. *Francis v Acadia First Nation*, [2023 FC 926](#)
20. *MacDonald v Canada (AG)*, [2017 FC 2](#)

21. *Collins v Canada (AG)*, [2023 FC 863](#)
22. *Abikan v Canada (CI)*, [2023 FC 149](#)
23. *Blume v Blume*, [2023 ABCA 174](#)
24. *Adderley v 1400467 Alberta Ltd.*, [2014 ABCA 291](#)
25. *Petre v Canada (RCMP)*, [2024 FC 1768](#)
26. *Canada (AG) v Larkman*, [2012 FCA 204](#)
27. *Singh v Canada (CI)*, [2016 FCA 96](#)
28. *Cove v Canada (MCI)*, [2001 FCT 266](#)
29. *Gover v Canada*, [2007 FC 1159](#)
30. *McBean v Canada (CI)*, [2009 FC 1149](#)
31. *Washagamis First Nation v Ledoux*, [2006 FC 1300](#)
32. *Singh v Canada (CI)*, [2023 FC 380](#)
33. *Montminy v Canada (AG)*, [2024 FC 830](#)
34. *Ouellette, et al v Law Society of Alberta*, [2021 ABCA 99](#)
35. *Ouellette et al v Law Society of Alberta*, [2021 ABCA 283](#)
36. *Douglas Lake Cattle Company v Nicola Valley Fish and Game Club*, [2019 BCCA 439](#)
37. *Citizen for My Sea to Sky v Canada (Environment and Climate Change)*, [2023 FC 1721](#)
38. *Canada v Grenier*, [2005 FCA 348](#)

Attached Authorities

Tab 1: *Fortin v Canada*, T-2083-24 (unreported)

TAB 1



Date: 20250224

Docket: T-2083-24

Vancouver, British Columbia, February 24, 2025

PRESENT: Madam Associate Judge Kathleen Ring

BETWEEN:

JOHN MARC FORTIN

Applicant

and

THE KING IN THE RIGHT OF CANADA

Respondent

ORDER

UPON MOTION in writing dated February 3, 2025, on behalf of the Applicant, pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106, for an Order for:

- a) “Leave for an extension of filing Applicant’s Record for judicial review under the *Federal Courts Act* Section 17(1) and Section 18;
- b) A judicial review of the decision of the Final authority of the Canadian Armed Forces (“CAF”), namely Colonel Christopher Cotton acting on behalf of General Wayne Eyre, Chief of Defence Staff (“CDS”), regarding the Applicant’s Personnel

Development Report (“PDR”) and Personnel Evaluation Report (“PER”) received in 2017;

- c) A Declaration that his PDR of November 2017 and his PER from actual year of 2017 but dated March 31, 2018 be revised as follows:
 - i. Section 5 POTENTIAL: Leadership criteria, revised up to outstanding, as this is the score he consistently merited except for 2017;
 - ii. Section 4 PERFORMANCE: Team Building, revised up; and
 - iii. Section 4 PERFORMANCE: Working with others, revised up;
- d) A Declaration that the Applicant may attend an Annual Selection Board for consideration of an increase in rank after a correction in his performance review;
- e) A Declaration that the PDR of 2017 be removed from the Applicant’s personnel file and destroyed within 30 days with written confirmation of same;
- f) Compensation for the loss of promotion to higher rank with increased income, pension and other benefits;
- g) Costs of this action; and
- h) Such further and other relief as this Honourable Court may deem just”;

AND UPON reading the motion record filed on behalf of the Applicant, including the Affidavit of Nette Lopez sworn on February 3, 2025 [the “Lopez Affidavit”];

AND UPON reading the Respondent’s motion record in response filed on February 10, 2025;

AND UPON there being no record of the Applicant having filed any written representations in reply within the time limit prescribed by Rule 369(3) of the *Rules*, although duly served with the Respondent's motion record in response on February 10, 2025;

The power to extend time is a discretionary one. The proper test when considering a request for an extension of time is whether the moving party has demonstrated the following: (a) a continuing intention to pursue the application; (b) the application has some merit; (c) no prejudice to the respondent arises from the delay; and (d) a reasonable explanation for the delay exists: *Canada (Attorney General) v. Hennelly* (1999), 244 NR 399 (FCA) [*Hennelly*] at para 3.

The party seeking an extension of time bears the burden of establishing the elements necessary for an extension of time. However, the moving party need not satisfy all of the factors to be successful in their application for an extension of time. The overriding consideration in an application to extend time is to ensure that justice is done between the parties: *Whitefish Lake First Nation v. Grey*, 2019 FCA 275 at para 3; *Canada (Attorney General) v. Larkman*, 2012 FCA 204 paras 62 and 85.

Here, the Court has been presented with a poorly drafted motion. The Notice of Motion appears to be a virtual duplication of the text of the Notice of Application [the "Application"]. The only apparent change in wording occurs in clause 1 on page 1 of the Notice of Motion, which has been changed from "leave to commence an application for judicial review under *Federal Courts Act* Section 17(1) and Section 18" to "leave for an extension of filing Applicant's Record for judicial review under *Federal Courts Act* Section 17(1) and Section 18".

While the Notice of Motion regurgitates the same list of remedies sought in the underlying Application, when it is read wholistically with the other materials before the Court, and in the context of the current stage of this proceeding, it is evident that the only relief that is actually sought on this motion – and indeed the only relief that can be entertained by the Court on an interlocutory motion such as this – is the request for an extension of time to serve and file the Applicant’s Record.

The deficient Notice of Motion is compounded by the fact that it also regurgitates the grounds for review set out in the underlying Application. It does not set out the grounds for the Applicant bringing the present motion for an extension of time based on the *Hennelly* factors.

The Affidavit of Nette Lopez sworn on February 3, 2025, filed in support of the Applicant’s motion, is also lacking in content. As the Respondent correctly points out, it does not identify who Nette Lopez is, how she is related to the Applicant, and how she is connected with the present proceeding. More importantly, it does not offer any explanation for the delay, nor does it address the other *Hennelly* factors, other than tangentially the question of whether the Applicant has had a continuing intention to pursue to the underlying Application.

The Respondent submits that the Applicant’s motion should be dismissed with costs because the Applicant has not shown that any of the *Hennelly* factors have been met in this instance.

I agree with the Respondent that the Applicant’s motion should be dismissed.

Starting with the first element of the test, it is well-established that the evidence of an applicant’s continuing intention to pursue his case must generally come from the applicant himself,

rather than their counsel or counsel's assistant, unless the applicant can satisfy the Court that he was unable to do so for reasons outside of his control: *Singh v. Canada (Citizenship and Immigration)*, 2023 FC 878 at para 3.

Here, the Applicant himself has provided no evidence of his continuing intention to pursue the underlying Application. Instead, the Applicant relies solely on the Lopez Affidavit. The Lopez Affidavit fails to disclose any reason why the Applicant himself has not provided evidence speaking to his continuing intention to proceed.

While the Lopez Affidavit summarizes the history of this proceeding, the affidavit does not speak to any actions taken by or on behalf of the Applicant between September 27, 2024 (when the Applicant filed his Rule 306 affidavit) and February 6, 2025 (when this motion was filed), that might be relevant to assessing the Applicant's intentions during that timeframe. As such, the Lopez Affidavit is somewhat lacking in substance on the issue of continuing intention.

In addition to the Lopez Affidavit, I have also reviewed the recorded entries for this Court file in the Proceedings Management System, which show that: (a) In August 2024, the Applicant consented to the late transmission of the certified tribunal record; (b) On September 27, 2024, the Applicant's counsel filed proof of service of the Applicant's Rule 306 affidavit, albeit late, accompanied by a Rule 7 consent from the Respondent; and (c) On November 12, 2024, the Applicant's counsel consented to the Respondent's informal request for an extension of time to file the Respondent's Rule 307 affidavit.

Viewed as a whole, I conclude that the material before the Court is marginally adequate to demonstrate that the Applicant had a continuing intention to pursue the Application.

As regards the second element of the *Hennelly* test, the moving party is required to provide a basis for the Court to conclude that there is an arguable case that warrants the exercise of discretion to grant an extension of time: *Vinogradov v. MEI*, (1994), 77 F.T.R. 296 (TD) at para 2.

Here, the Applicant has not established that the underlying Application has some merit. The Applicant's written representations contain nothing more than a bare assertion that "the justification for the final decision could not be relied upon". Paragraphs 14 and 15 state:

14. The grounds for this judicial review are supported by clear evidence that the justification for the final decision could not be relied upon for the Final Authority to make the decision that he made regarding the Applicant's, regarding the Applicant's Personnel Development Report ("PDR") and Personnel Evaluation Report ("PER") received in 2017.
15. The Applicant is gathering the necessary evidence to support these claims regarding the Colonel Cotton's decision. The evidence will be submitted within the required deadlines for the matter to be heard.

In addition to these submissions being bald assertions, they are also internally inconsistent. On the one hand, the Applicant contends that the grounds of review "are supported by *clear* evidence" (para 14), and on the other hand, he states they are in the process of "*gathering* the necessary evidence to support these claims" (para 15) [my emphasis].

The Lopez Affidavit provides no evidence as to the merit of the Application, and therefore the Court is unable to ascertain whether there is any merit: *Dun-Rite Plastics & Custom Fabrication Inc. v. Canada (Attorney General)*, 2018 FC 892 at paras 8 and 10. In this regard, the present motion is similar to the situation in *Abikan v. Canada (Citizenship and Immigration)*, 2023 FC 149, where the Court held:

[23] It is impossible for me to determine on the evidence whether there is any potential merit to the Applicant's ALJR or to the submissions made in its regard because the Application Record sought to be served and filed is not included as an exhibit on this motion. The written submissions made about the merits of the application are of no assistance to me or to the Applicant as they are not supported by any filed evidence.

[24] Given the absence of evidence as to the merits of the underlying application other than bald statements of merit in the Applicant's affidavit, I must find that there is no demonstrated potential merit to the application.

Accordingly, I find that the Applicant has not discharged his onus to show that the underlying Application has some merit.

On the question of prejudice, I find that the Respondent is prejudiced by the Applicant's delay. In the normal course, the Applicant would file his application record first, and thereafter the Respondent would file their responding record. In this case, however, the sequence of filings stipulated by the *Rules* has been effectively reversed. The Respondent served their Respondent's Record on January 29, 2025, and the Applicant now seeks an extension of time to serve and file the Applicant's Record, after having had the benefit of reading the Respondent's Record.

The Respondent was placed at a disadvantage by responding to an application without having seen the Applicant's written representations. Conversely, the Applicant will have an advantage, if he is allowed to file the Applicant's Record at this late stage, because he can craft his written arguments to squarely counter the Respondent's written representations. In effect, the Applicant will be rewarded for an apparent lack of diligence.

The final issue for consideration is whether a reasonable explanation for the delay exists. This Court has held that the explanation given for the delay must justify it for the entire period in

question, including the time between the moment when the party realizes that the prescribed time limit could not be or was not met and the moment when the motion is filed. Any laxity or failure to pursue an application as diligently as could reasonably be expected will militate strongly against the granting of an extension: *Singh v. Canada (Citizenship and Immigration)*, 2023 FC 380 at para 38 [*Singh*]; *Cornejo Arteaga v. Canada (Citizenship and Immigration)*, 2010 FC 868 at para 16; *Lesly v. Canada (Citizenship and Immigration)*, 2018 FC 272 at paras 20 and 21.

The Applicant's Record was due on January 10, 2025. There is no suggestion in the material before the Court that the Applicant was not aware of this deadline and/or overlooked it. Twenty-seven (27) days later, the Applicant filed the present motion on February 6, 2025.

What is very troubling about the Applicant's motion is that there is absolutely no explanation provided in the Lopez Affidavit or the Applicant's written representations for the substantial delay in serving and filing the Applicant's Record. Instead, counsel for the Applicant merely alleges at paragraph 2 of his written representation that he "made best efforts to serve and file the Applicant's Record pursuant to Rule 309 (1)". Similarly, he makes a bare assertion at paragraph 4 that he has "a sufficient reason for the delay in filing". Where is the evidence of a "sufficient reason" or of "best efforts" being made? The Applicant's bare assertions are wholly unsubstantiated by the evidence.

While the Applicant's written representations allege that he is gathering "necessary evidence", as set out in the earlier quotation, this cannot serve as an explanation for the delay. On a plain reading of the Applicant's motion record, the Applicant does not contemplate including this additional evidence in the Applicant's Record. To the contrary, the Applicant submits at paragraph 2 of his written representations that the Applicant's Record "is now ready for filing". In

any event, if the Applicant has any intention of filing additional evidence, he can no longer do so as of right because he already served his Rule 306 affidavit. Leave of the Court would be required under Rule 312 to file any additional evidence.

Even after the Respondent's motion record highlighted the fact that "the Applicant has not provided any explanation to justify his delay", counsel for the Applicant declined to file any written representations in reply to address the manifest flaw with the Applicant's motion.

In summary, I conclude that the Applicant's failure to pursue this matter as diligently as could reasonably be expected militates strongly against the granting of an extension of time.

I recognize that the interests of justice remain the overriding consideration on this motion. However, "the interests of justice do not exist in a vacuum, and do not absolve applicants of the duty to meet their burden of proof": *Clinique Sherbrooke Inc. v. Canada*, 2023 FC 1755 at para 37.

Having weighed each of the factors set out in *Hennelly*, and taking into account the circumstances of this case, I am not satisfied on the material before me that the Applicant has discharged his burden of proof to demonstrate that it is in the interests of justice to grant an extension of time. In reaching this conclusion, I give decisive weight to the absence of any reasonable justification for the substantial delay, and the lack of demonstration that the underlying application has merit, and the prejudice to the Respondent in granting the motion.

In the result, the Applicant's motion is dismissed.

THIS COURT ORDERS that the Applicant's motion for an extension of time to serve and file the Applicant's Record is dismissed.

"Kathleen Ring"

Associate Judge

Federal Court



Cour fédérale

Date: 20250502

Docket: T-1436-22

Toronto, Ontario, May 2, 2025

This is Exhibit " D " referred to in the
Affidavit of Jodi Kaldstad
sworn (or affirmed) before me at

PRESENT: Associate Judge John C. Cotter

Vancouver, BC
this 12 day of May 20 25.

BETWEEN:

A Commissioner for Taking Affidavits for British Columbia

BERNARD ALBERT, MARIE ALLCHURCH, JULIA ALVAREZ,
JASON AMARO, VANESSA APOSTOLOVSKI, MARIA ARENA,
ALI BAHRI, RAYMOND. S. BAKER, DAVID BAKHUYZEN, KIM
BANDO, ADILA BASIC, ANJA BATTIE, KELLI BATTYANYI,
MICHAEL BECKER, JASON MATTHEW BERARD, WANDA
BERG, LAURIE BERNES, ANDREA BIALOWAS, THERESA
BICKLE, ANGELLA BLIER, MARK BOIKOVITIS,
ERIK BOUCHARD, ROBERT BOURBONNIERE,
BROOKE BOUTANG, VERONIQUE BRETON, NATASHA BUDY,
JENNIFER-LYNN BULLICK, MARY BURKE, CATHERINE
CABRAL-MCKEAND, EDUARDO CAETANO,
ANTHONY CAETANO, JENNIFER CAUDRON, TRACY CHASE,
NATACHA CHEVARIE, MIMI CHOO, WILLIAM CHOW,
CHERYL CHOW, ANGELINA CLARK, PAUL CLEMENTS,
SANDRA COLE, JENNIFER COMIN, ANTHONY COMMISSO,
TANYA DOCANTO CORDEIRO, ESTERINA COSTA, ROCCO
COTUGNO, FRANCESCO "FRANK" COTUGNO, RICHARD
COUTURIER, WAYNE COWAN, KENTON CROOK,
MICHAEL CURRIE, SELENA CVITAN, MARK DAGGETT,
MARCO DALL'ANTONIA, JANA DANCAKOVA, AMANDA
DEMPSEY, JASON DENTINGER, MARLICE DEPTUCH,
ANTHONY DEROSE, LORRAINE DESCHAMPS, GISELE
DESHARNAIS, KAREN DESROSIERS, JOHN DEVINE, SUSAN
DEWALD, EZIO DIFONZO, DONALD WAYNE DUNHAM,
BRANDY DUPAS, TERESA ELLISON, JOHN EMMANOUIL,
JOHANNA EMMANOUIL, SHELLEY ESCOBAR, JOY
ESDAILLE, WILLIAM FAUSTINO, RAQUEL FERREIRA,
SHERRY FERREIRA, PAXTON FIRTH, MICHELINE FLEURY,
SARAH FRANGIONE, ERIN FULLER, MICHAEL GAIREY,
JESSICA GASKIN, KAREN GIBEAULT, SHEILA RAE GOW,
JAYDE GRAVEL, MICHAEL GRIGORATOU, URVASHI
GURUNG, RYAN HAMER, CHARLENE HANSON, JASMIN
HARRISON, CARLY HART, TAMMY HAYES, JAYSON PETER

JAMES HEIDEBRECHT, DENISE HERBERT, JORGIE HIDALGO, TIMOTHY HIEBERT, DONNA HISCOCK, DENISE HOHN, ELAINA HUDYMA, KATHRYN (KATIE) HUNT, TANYA HUTCHINSON, ZDZISŁAW JABŁOŃSKI, MARTINE JARRY, CARLA JENKINS, STEPHANIE KATHLEEN JOHNSTON, NICHOLAS JOHNSTON, RIINA KAPP, RUDY KERN, MARK KILLEEN, SABRINA KINCAID, MARIETTA KIRBY, SANDRA KOSTENKO, CALVIN KOTOWICH, DAMIR KRAMARIC, SANDRA KRASINKIEWICZ, ROCKY KUJALA, HELENE LA ROCHELLE, AVINASH LALOO, MEGAN LANE-KARRAS, MARTINE LAROCQUE, LINE LAVALLEE, KEVIN LAWRES, CHUNG LE, LUC LEBLANC, DONNA LEEDER, PATRICK LESSARD, LISA LEVESQUE, LORRAINE LIGHT, GISELE LIRETTE, RANDY LOGAN, SANDRA M LOPES, KIM LUMSDEN, WENDY LUNDVALL, PAUL LUSSIER, PAUL LYNN, NICOLA MACDONALD, MICHAEL MAFILOVSKI, VIJAY MAHARAJ, CAROLINE MAHEUX, TANYA MANDEL, TRACY MA-PRICE, MARIE MARCOTTE, ANNA MARRO, DEVANMARSHALL, JUDY MARTENS, JOSYANNE MARTIN, JENNA MATHIES, TRACEY MATLOCK, DANIEL MATTI, WILLIAM GRANT MAYER, BOZENA MAZUR, DAWN MCFARLANE, MARGARET MCGEACHIE, CHRIS MCGRATH, LUCAS MCIVOR, KAREN MCQUADE, SZILVIA MERTL, ROCCO MESSERE, ANNA MIASIK, SARAH MICKALCO, JASON MIELKE, LAWRENCE (LARRY) MILLSON, SERGIO A MOLINA C, JAMES MORRIS, JAMES MORRISON, RACHEL MULLARKEY, PAUL NAHIRNIAK, DIDI (PREVIOUSLY DANIELLE) NAVALES (PREVIOUSLY FREEMAN), MARGARET NEB, AMANDA NEIL, SCOTT NEIL, TRACEY NELLIS, JOCELYN NELSON, GEORGE NICOLAIDES, LISA NICOLL, JULIE NOBLE, CHAD NORMANDEAU, CHERISE O'CONNOR, GERALDINE OLSON, MARC ORICHEFSKY, RYAN ORYDZUK, STEVEN OVERHOLT, KRISTY PACHOLKA FORD, FANY PELLETIER-GOUGEON, CHRIS PILLON, LESLIE J POLLOCK, ELZBIETA PONIKIEWSKA, KIMBERLEE PRIEST, NATHAN RAE (AKA ADAN EDEY), TRACEY RALSTON, KARL RATCHINSKY, DANIEL RAYO, ANTONIO REDA, JULIE REEVES, CORELEI REICHERT, DOLORES RELIC, AMBER RICARD, LENA (HELENE) RICCI, SHEILA RIDDELL, BREEANNE RIDGE, KEENAN ROBINSON, MICHAEL ROBITAILLE, MYRA ROBITAILLE, ROBERT ROBSON, JODI RODDY, DJ (DEBBY) RODNEY, AMANDA (GOOD) ROOSMETS, JEAN-FRANCOIS ROSA, SANDRA ROSSETTO, ANGELA

**RYCKMAN, STEPHANIE SAMSON, JOSHUA SAMUELSON,
RUSSEL "RUSS" SAWCHUK, JUSTIN SCHEFFER,
DEREK SCHOENFELDT, AARON SCHROEDER,
CARMEN SCHVARCZINGER, SHAUNA SCOTT, STEPHEN SEE,
JACQUELINE(JACKIE) SELK, FLAMUR SELMANI,
MARION SERINK, JOHN-LUIS GABRIEL SERRAMBANA,
DEWITT C. SHAINLINE, SHRIKANT (SHRE) SHARMA,
DEBORAH SHAW, ALAN SHUM, WANITA SIKLENKA,
NATHANIEL SLEDZ, BENJAMIN BRADLEY, ARTHUR SMITH,
KARINE SOLAKIAN, JULIE SRIGLEY, DAVID STEEVES,
KAREN STEVENS, MICHELENE STEWART, JAMES STEWART,
SUSAN STEWART, ROBERTA STRICKLAND, MARTYNA
STYRCZULA, LINDSAY SUNTHGOLAM, PAWEL SZOPA,
ANTHONY PALOZZI, STEVEN TANNER, LORI
TAYLOR, SINA TEHRANCHI, HOLLY THIBODEAU,
CHRISTOPHER THOMPSON, JENNIFER TOBIN, VANESSA
TOEWS, ZVONIMIR TOMAS, JOSHUA DON TORRES,
ENRIQUE TOSI, ERIC TOUPIN-SELINGER, TIMOTHY
DOUGLAS TRACY, CATY TRAN, HUGO TREJO, LARA
TRENAMAN, MELISA TREPANIER, CAROL-ANNE
VALCOURT, LEONARDO VASQUEZ, MELANIE VENDRYES,
LUIZA VISIC, CARRIE VISSER, JENNIFER VOGELGESANG,
SHANDA VORRATH, MARY VUK, PAMELA WAGNER,
MARIAM WALL, HEIDI WANJON, JOEL WAZNICKY, CORY
WEGE, ELVIN WEGNER, NANCY WHITCOME, WARREN
WHITE, JOHANN WILSON, JAMES WINNING, LINDEN
WRIGHT, SHANE YAWORSKI, YVONNE YUTUC, CARSON
ZORGET, MICHAEL ZOTTOLA, MARCIA HEWETT-HICKS**

Plaintiffs

and

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

Defendants

ORDER

UPON MOTION by 66 of the plaintiffs (listed in Schedule “A” to the notice of motion)

[Moving Plaintiffs] dated November 14, 2024, and filed November 15, 2024, 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 [sic], by Associate Justice Coughlan; and
2. Such further and other relief as may be necessary to give effect to the intention of this motion.

AND UPON reviewing and considering the materials filed including:

- a) the motion record of the Moving Plaintiffs filed February 14, 2025, and titled "APPLICANTS" MOTION RECORD";
- b) the motion record of the defendant His Majesty the King in Right of Canada [Canada] filed February 27, 2025, and titled "RESPONDENT'S MOTION RECORD OF HIS MAJESTY THE KING IN RIGHT OF CANADA"; and
- c) the motion record of the defendant Canada Post Corporation [Canada Post] filed February 28, 2025, and titled "MOTION RECORD OF THE RESPONDENT, CANADA POST COPRORATION";

AND UPON hearing and considering the submissions of counsel for the parties made at the hearing of this motion held by video conference on April 8, 2025;

AND UPON considering:

[1] Unless otherwise indicated, all dates referred to in this Order are in 2024.

I. The Action

[2] This action was commenced on July 12, 2022. At that time, there were 281 plaintiffs. They were current or former employees of Canada Post. The statement of claim raised issues with Canada Post’s mandatory vaccination policy and states that the majority of the plaintiffs were neither partially nor fully vaccinated against COVID-19, and that they “resigned or retired under duress because of the [vaccination] Practice”.

II. The Decision

[3] The Order and Reasons of Associate Judge Coughlan dated March 13, 2024 [Decision] granted motions by both defendants and struck out the amended amended statement of claim without leave to amend. Specifically, it was ordered that:

1. The motions of Canada Post and Canada are allowed.
2. The Amended Amended Statement of Claim is struck without leave to amend.
3. Canada and Canada Post shall have their costs set at \$10,000 each payable by the Plaintiffs, jointly and severally.
4. The style of cause is hereby amended with immediate effect to remove any reference to the Attorney General of Canada.

[4] At the time of the hearing of the motion that resulted in the Decision there were 149 plaintiffs remaining in the action, with 132 having discontinued their action.

III. The Present Motion

[5] On November 14, after having retained new counsel, and a little more than eight months after the Decision, the Moving Plaintiffs served their notice of motion [Notice of Motion] for an extension of time in respect of the 10-day deadline to appeal the Decision. This was 234 days after the applicable deadline. The Notice of Motion was filed on November 15. In the

circumstances of this case, nothing turns on the one-day difference between the service and filing of the Notice of Motion.

[6] The affidavit evidence filed by the Moving Plaintiffs in support of this motion included an affidavit of Karine Solakian affirmed November 14 [Solakian Affidavit], on which she was cross-examined. Ms. Solakian is one of the Moving Plaintiffs, is responsible for instructing the Moving Plaintiffs' current counsel, and "was among the team of four plaintiffs who instructed the former legal counsel [Former Counsel] [...] on behalf of each of the 145 plaintiffs".

IV. Applicable deadline

[7] As per Rule 51 the applicable deadline to serve and file a notice of motion appealing an order of an Associate Judge is 10 days after the day on which the order was made (any reference in this Order to a Rule is to those in the *Federal Courts Rules*). Rule 51 states:

Appeals of Prothonotaries' Orders

Appeal

51 (1) An order of a prothonotary may be appealed by a motion to a judge of the Federal Court.

Service of appeal

(2) Notice of the motion shall be served and filed 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.

Appel des ordonnances du protonotaire

Appel

51 (1) L'ordonnance du protonotaire peut être portée en appel par voie de requête présentée à un juge de la Cour fédérale.

Signification de l'appel

(2) L'avis de la requête est signifié et déposé dans les 10 jours suivant la date de l'ordonnance frappée d'appel et au moins quatre jours avant la date prévue pour l'audition de la requête.

[8] In this case, the deadline was 10 days from March 13, resulting in a deadline of March 25, 2024 [Appeal Deadline], the 10th day having fallen on a weekend.

V. Events following the Decision

[9] As an extension of time is being sought, it is useful to set out the chronology of certain of the events following the Decision up to the filing of the Notice of Motion.

[10] The Decision was provided to the plaintiffs by their Former Counsel on March 14. As stated by Ms. Solakian, “The plaintiffs then immediately, on March 14, requested legal advice from GWS LLP [*i.e.*, Former Counsel] on the merits of an appeal” (Solakian Affidavit, para 7).

[11] By March 16, which is three days following the Decision, 40 of the plaintiffs had confirmed their intention to appeal. Ms. Solakian did not recall any of those 40 changing their mind and not participating in the current motion.

[12] According to the Solakian Affidavit (para 18) “We crystalized 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” (see also para 8). This was after the 10-day appeal period. At that point, Ms. Solakian believed that the appeal period was 30 days, although she suspected it might be 10 days. Former Counsel later advised that the appeal period was 10 days.

[13] On April 18, rather than bringing a motion for an extension of time, the Moving Plaintiffs by letter from their Former Counsel wrote to the Court indicating that they “are instructed to bring a motion to extend the timeline for filing a Motion for Appeal” of the Decision. After setting out the grounds for the motion, the letter concludes with “We seek the Court’s further direction”.

[14] The above-noted April 18 letter was the subject matter of a Direction of the Court, dated April 23, which concluded with the following “if the Plaintiffs wish to file a motion for an extension of time to appeal, they are free to do so”.

[15] Approximately five weeks later, on May 14, Ms. Solakian sent an email to Former Counsel asking for the following update:

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

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

Where are we in the process?

[16] Former Counsel responded the next day, on May 15, stating that there “is still some fine-tuning that needs to be done [...] We will provide you with an update once our Motion is finalized.”

[17] Approximately three weeks later, on June 6, Ms. Solakian sent an email to Former Counsel asking if there has “been any finalization [sic] of our Motion from the last time we contacted?”

[18] Approximately two weeks later, on June 19, Ms. Solakian attempted to contact Former Counsel by phone and left a voicemail asking for an update.

[19] Approximately two weeks later, on July 3, Ms. Solakian sent an email to Former Counsel asking for an update, and how much time they had “to submit the request” for an extension of time. Former Counsel responded by email the next day stating that that they would “endeavor to have a draft completed for your review before the weekend” and that “there is no prescribed timeline to submit the request, but the sooner we do, the better”. There is nothing to suggest that a draft was provided by that weekend, or that there was any follow-up on behalf of the Moving Plaintiffs at that point.

[20] Approximately two weeks later, on July 17, Former Counsel provided draft motion materials to Ms. Solakian by email. She provided comments on the draft materials by email on July 22.

[21] On July 29, Kim Priest sent an email to former counsel stating that “We’ve waited patiently since April 8.24 to have our motion to request an extension to appeal be filed” and set out a chronology of the communications with Former Counsel. Kim Priest, like Ms. Solakian, was one of the team of four plaintiffs responsible for instructing Former Counsel.

[22] The next development is more than a month later when Former Counsel indicated on September 4 that they were no longer able to handle the matter. Ms. Solakian confirmed on

cross-examination that as of September 3, she and the other Moving Plaintiffs “were aware that the appeal was around five months late”.

[23] The Moving Plaintiffs found their current counsel, Gratl & Company [Current Counsel] “in late September of 2024” and “agreed in principle to retain Gratl & Company to give advice on this appeal on September 22, 2024” (Solakian Affidavit, para 16).

[24] Approximately eight weeks later, on November 14, Current Counsel served a notice of change of solicitor, and the Notice of Motion for the present motion, with supporting affidavits. These documents were filed on November 15.

[25] The stated justification in the Solakian Affidavit for the almost eight-week gap between retaining Current Counsel and filing the Notice of Motion is that:

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.

[26] On cross-examination Ms. Solakian gave the following evidence regarding the almost eight weeks that passed between agreeing to retain current counsel on September 22 and the Notice of Motion being served on November 14:

Q. [...] Why did it take eight weeks to get something filed?

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

Q So it took eight weeks for some of the appellants to verify their identity and provide a retainer?

A Yes.

[27] Ms. Priest provided her identify verification to Current Counsel on September 22, with Ms. Solakian providing hers a few days later. However, other than very general statements about what was done, no other details were provided to explain what specifically was done, and when, during that process that took almost eight weeks.

[28] At no time following the Direction of the Court dated April 23, up until shortly before the Notice of Motion was served on November 14, was any notice given to the defendants that any of the plaintiffs were actually proceeding with a motion for an extension of time.

VI. Applicable principles on a motion for an extension of time

[29] The applicable principles on motion for an extension of time were aptly set out by Justice Régimbald in *Citizen for My Sea to Sky v Canada (Environment and Climate Change)*, 2023 FC 1721 [*Citizen for My Sea to Sky*]:

[14] In *Thompson v Canada (Attorney General)*, 2018 FCA 212 [*Thompson*] at paragraph 5 (see also *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 62 [*Larkman*]; *Grenier c. Canada (Procureur général)*, 2023 CAF 186; *Gagnon v Canadian Association of Professional Employees*, 2023 FCA 59), the Court of Appeal established the four factors that the Court must consider when determining whether an extension of time should be granted:

a) Did the moving party have a continuing intention to pursue the judicial review application?

b) Does the moving party have a reasonable explanation for the delay?

c) Is there some potential merit to the application for judicial review?

d) Is there prejudice to the other party from the delay?

[15] It is not necessary to satisfy each of the four criteria, nor does the criteria constitute an exhaustive list of questions that may be relevant in a given case. Instead, the Court must consider each factor and decide whether, on balance, the interests of justice would be served by granting the extension of time (*Thompson* at para 6; *Larkman* at para 62; *Heddle Marine Service (NL) Inc. v Kydy Sea (Ship)*, 2019 FC 1140; *Canada (Attorney General) v Hennelly*, 1999 CanLII 8190 (FCA)).

[30] As explained by the Federal Court of Appeal in *Canada (Attorney General) v Larkman*, 2012 FCA 204 [*Larkman*]:

[62] These questions guide the Court in determining whether the granting of an extension of time is in the interests of justice: *Grewal, supra* at pages 277-278. The importance of each question depends upon the circumstances of each case. Further, not all of these four questions need be resolved in the moving party's favour. For example, "a compelling explanation for the delay may lead to a positive response even if the case against the judgment appears weak, and equally a strong case may counterbalance a less satisfactory justification for the delay": *Grewal*, at page 282. In certain cases, particularly in unusual cases, other questions may be relevant. The overriding consideration is that the interests of justice be served. See generally *Grewal*, at pages 278-279; *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 at paragraph 33; *Huard v. Canada (Attorney General)*, 2007 FC 195, 89 Admin LR (4th) 1.

VII. Analysis

[31] I have considered the four questions set out in the case law, and conclude that it is not in the interests of justice to grant an extension of time. The prejudice from the delay, and the lack of a reasonable explanation for the delay, both auger heavily against the Moving Plaintiffs. While

the Moving Plaintiffs did have a continuing intention to appeal the Decision, even if I assume there is merit in the appeal, it is not in the interests of justice to grant the extension. Stated differently, even if there is merit in the appeal, that combined with the Moving Plaintiffs' continuing intention to pursue the appeal, is not sufficient to conclude that it is in the interests of justice to grant an extension of time, having regard to the prejudice from the delay, and the lack of a reasonable explanation for the delay. I discuss each of the four questions below.

A. *Does the moving party have a reasonable explanation for the delay?*

[32] The period of delay can be broken into two stages. There is the initial delay of almost six months, for which the Moving Plaintiffs blame Former Counsel. The second stage is the 53-day period from September 22, when Current Counsel was retained, until the Notice of Motion was served on November 14. Whether there is a reasonable explanation for the delay applies to the entire period of the delay (*Singh v Canada (Citizenship and Immigration)*, 2023 FC 380 [*Singh* 2023] at para 36). As a result, for the Moving Parties to have a reasonable explanation for the delay, they must have a reasonable explanation for both the initial delay of almost six months, as well as the subsequent delay of 53-days after Current Counsel was engaged.

[33] I will deal with the 53-day period first.

[34] As of September 22, when Current Counsel was retained, it was almost six months past the Appeal Deadline. Even if I were to conclude that there was a reasonable explanation for the that delay of almost six months (which is considered below), once Current Counsel was retained it was incumbent on the Moving Plaintiffs to act quickly. The very general excuses provided for

the delay of 53 days until the Notice of Motion was served are not sufficient to constitute a reasonable explanation for that delay. Stated differently, it is not possible to conclude that there is a reasonable explanation for that delay based on the very general evidence provided seeking to justify it.

[35] A delay of 53 days is significant, and there is a no reasonable explanation for it. As per *Singh 2023* the question is whether the Moving Plaintiffs have a reasonable explanation for the entire delay from the March 25 Appeal Deadline to the service of the Notice of Appeal on November 14. Since they do not have a reasonable explanation for a significant portion of the period, namely 53 days, it is not possible to conclude that they have a reasonable explanation for the delay. The outcome of the analysis of the initial delay of almost six months will not change this conclusion.

[36] While it may not be necessary to also consider the initial delay of almost six months given the above conclusion, I will do so for completeness. The initial delay is the period from the Appeal Deadline of March 25 until Current Counsel was engaged on September 22. As noted above, the Moving Plaintiffs blame Former Counsel for that delay. The defendants advanced various arguments in response, the general tenor of which is that: a) clients must live with their choice of counsel and counsel's actions (subject to limited exceptions which the defendants say do not apply), with clients and counsel being treated as one for the purposes of a motion to extend time; and b) that the Moving Plaintiffs were insufficiently diligent in following up with Former Counsel in the circumstances of this case. The Moving Plaintiffs argued in response that the cases that have held that errors or inadvertence of counsel is not a reasonable explanation for

a delay are all immigration cases (for example, *Singh v Canada (Citizenship and Immigration)*, 2016 FCA 96 at para 66; *Cove v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 266 at paras 6-7; *Singh 2023* at para 37); and that this approach should not apply more generally because of the specific legislative regime that governs immigration cases. However, I note that those cases all use the same analytical framework as in this case, asking the same four questions and considering whether it is in the interests of justice to grant an extension of time. In any event, that debate turns out to be of no consequence in this case.

[37] Using the approach advocated for by the defendants, namely that errors or inadvertence of counsel is not a reasonable explanation for the delay, then there is no reasonable explanation for the delay. However, if that approach is not used, it is appropriate to consider the behavior of the Moving Plaintiffs during that period (*McBean v Canada (Citizenship and Immigration)*, 2009 FC 1149 at paras 14-16; see also *Cornejo Arteaga v Canada (Citizenship and Immigration)*, 2010 FC 868 at para 17; *Gover v Canada*, 2007 FC 1159 at para 32). Considering the conduct of the Moving Plaintiffs during that period of delay does not assist them. They knew that the Appeal Deadline had been missed, and that the filing of a motion for an extension of time was lagging considerably (and more so as time went on). However, despite that, there was only occasional follow-up by the Moving Plaintiffs. Having regard to what transpired during that initial period of almost six months, it is not possible to conclude that the Moving Plaintiffs diligently addressed the situation.

[38] As a result, regardless of the approach used, there is also no reasonable explanation for the initial delay of approximately six months.

B. *Have the defendants been prejudiced from the delay?*

[39] The delay in this case from the Appeal Deadline (March 25) until service of the Notice of Motion (November 14) was 234 days. Such a significant delay is itself prejudicial. The Alberta Court of Appeal held in *Ouellette v Law Society of Alberta*, 2021 ABCA 99, leave to appeal to ABCA refused, 2021 ABCA 283, that significant delay in bringing an appeal by itself causes recognizable prejudice to a respondent, concluding that:

[31] The applicants also failed to establish that their late filing has not caused the Law Society significant prejudice. A favourable judicial outcome is a valuable commodity. A respondent is entitled to expect that it will be able to rely on that benefit if an adverse party does not act in a timely manner to challenge it. The applicants' delay by itself causes recognizable prejudice to the Law Society.

[40] Such an approach is consistent with the importance of the principle of finality of decisions. That principle was discussed by the Federal Court of Appeal in *Canada v Grenier*, 2005 FCA 348. Although the issue in that case was not an extension of time, the principle applies equally in the present context. The Court stated:

[27] To allow a proceeding under section 17, whether in the Federal Court or in the provincial courts, in order to have decisions of federal agencies declared invalid, is also to allow an infringement of the principle of finality of decisions and the legal security that this entails.

[28] I need not expound at length on the importance of the principles of *res judicata* and the finality of decisions. Similarly, I need not say much about the abundant case law that recognizes and promotes these principles. I will confine myself to saying that these principles exist in the public interest and that Parliament's intention to protect that interest is illustrated by the short time limit allowed for challenging an administrative decision.

[41] Similarly, Justice Régimbald stated the following in *Citizen for My Sea to Sky* in discussing the 30-day period for commencing an application for judicial review. In my view, these comments also generally apply to the 10-day appeal period set out in Rule 51(2):

[16] As noted in *Larkman*, “[t]he need for finality and certainty underlies the thirty-day deadline. When the thirty-day deadline expires and no judicial review has been launched against a decision ... , parties ought to be able to proceed on the basis that the decision ... will stand.” Further, the Court of Appeal stated that “[f]inality and certainty must form part of our assessment of the interests of justice” (at para 87).

[17] Similarly, in *Canada v Berhad*, 2005 FCA 267 at paragraph 60, the Court of Appeal highlighted that the 30-day deadline to challenge administrative decisions is “not whimsical.” Rather, “[i]t exists in the public interest, in order to bring finality to administrative decisions so as to ensure their effective implementation without delay and to provide security to those who comply with the decision or enforce compliance....”

[...]

[66] As the Court of Appeal held in *Larkman* at paragraph 86, “Many authorities suggest that unexplained periods of delay, even short ones, can justify the refusal of an extension of time.” Moreover, at paragraph 87, the Court of Appeal held that:

[87] The need for finality and certainty underlies the thirty-day deadline. When the thirty-day deadline expires and no judicial review has been launched against a decision or order, parties ought to be able to proceed on the basis that the decision or order will stand. Finality and certainty must form part of our assessment of the interests of justice.

[42] The length of the delay in this case, namely 234 days, is significant and prejudicial. I pause here to note that in this case, even if the length of the delay did not itself constitute prejudice, I would consider the significant length of the delay as an additional factor in assessing the interests of justice, as the four questions are not an exhaustive list (*Larkman* at para 62; *Citizen for My Sea to Sky* at para 15).

C. *Did the moving party have a continuing intention to pursue the proceeding?*

[43] I am satisfied that the Moving Plaintiffs, through their instructing representative, had a continuing intention to seek to appeal the Decision. This can be seen in the steps taken by the Moving Plaintiffs' instructing representative, Ms. Solakian, including the emails sent to Former Counsel. In the circumstances of this case, whether or not those steps were taken in a timely manner is properly considered in assessing whether there is a reasonable explanation for the delay, which is dealt with above.

D. *Is there some merit to the proceeding?*

[44] As noted at the outset of the analysis, even if there were some merit to the appeal, it would not be sufficient to conclude that it is in the interests of justice to grant an extension of time. Because of the significance in this case of prejudice from the delay, and the lack of a reasonable explanation for the delay, my analysis proceeded as if there is some merit to the appeal.

VIII. Conclusion

[45] For these reasons, it is not in the interests of justice to grant the extension of time.

IX. Costs

[46] Counsel had not come to any agreement on costs, or discussed costs prior to the hearing of the motion. The Moving Plaintiffs requested costs of \$1,000 payable by each of the defendants. The defendants each requested costs of \$9,000, payable jointly and severally by the

Moving Plaintiffs. Although not specifically stated by any of the parties, I take these submissions as being the amounts sought if they are successful on the motion.

[47] Having regard to Rules 400 and 401(1), including the factors articulated in Rule 400(3), as well as Tariff B, costs are awarded to the defendants, fixed in the amount of \$5,000 per defendant, payable by the Moving Plaintiffs, jointly and severally.

THIS COURT ORDERS that:

1. The motion of the Moving Plaintiffs for an extension of time is dismissed.
2. Costs are awarded to the defendants, fixed in the amount of \$5,000 per defendant, payable by the Moving Plaintiffs, jointly and severally.

"John C. Cotter"
Associate Judge

FEDERAL COURT

BETWEEN:

BERNARD ALBERT AND OTHERS

APPLICANTS

AND:

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

RESPONDENTS

WRITTEN REPRESENTATIONS

OVERVIEW

1. The Applicants bring this motion pursuant to Rule 51(1) *Federal Courts Rules*¹ to appeal the Order of Associate Judge Cotter made May 2, 2025, dismissing the Applicants' motion for an extension of time to appeal the Order of Associate Judge Coughlan made March 13, 2024, striking the Applicants' claim.
2. The Applicants request that this Court set aside the Order of Cotter A.J. and make an Order extending time to appeal. The Applicants submit that Cotter A.J. erred in law by misapplying the legal test for granting an extension of time established in *Hennelly*,² necessitating review by this Court on a standard of correctness. Alternatively, Cotter A.J. erred in principle on a issue of mixed fact and law, and/or made a palpable and overriding error when improperly balancing the interests of the parties and improperly reviewing the Applicants' factual evidence.

¹ *Federal Courts Rules*, SOR/98-106.

² *Canada (Attorney General) v. Hennelly*, 1999 CanLII 8190 (FCA) at para. 3.

PART I. STATEMENT OF FACTS

Background

1. The Applicants³ are employees of Canada Post Corporation (“Canada Post”) who were placed on unpaid leave for failing to comply with Canada Post’s policy requiring its employees to submit to vaccination. The Applicants initiated their proceeding against the Respondents on July 12, 2022. On March 13, 2024, Associate Judge Coughlan dismissed the Applicants’ claim on a motion to strike brought by the Respondents.⁴
2. From the date of receipt of Coughlan A.J.’s decision, the Applicants demonstrated a continued interest in appealing the decision and communicated their intention to appeal to their former counsel shortly after the decision was released. Former counsel, apparently due to human resources issues, failed to appeal Coughlan A.J.’s decision within the appropriate time. The Applicants repeatedly followed up and urged their counsel to file the application to extend the deadline. In September 2024, the Applicants were unexpectedly told that their former counsel was unable to act on the appeal, and promptly began a search for new counsel.⁵
3. On September 22, 2024, the Applicants retained new counsel who proceeded to orient themselves to the file, complete the necessary due diligence incumbent upon them, and filed a notice of motion on November 15, 2024, seeking an extension of time to appeal the motion to strike.⁶ The motion was heard by Associate Judge Cotter on April 8, 2025, and a decision was released on May 2, 2025 dismissing the motion.⁷

Dismissal of Motion for an Extension of Time

³ Listed in Schedule A of the Notice of Motion.

⁴ *Albert v. Canada Post Corporation*, 2024 FC 420.

⁵ Affidavit #3 of Jodi Kaldestad, Ex. A: Affidavit of Karine Solakian, November 14, 2024.

⁶ Affidavit #3 of Jodi Kaldestad, Ex. A: Affidavit of Karine Solakian, November 14, 2024.

⁷ Affidavit #3 of Jodi Kaldestad, Ex. D: Cotter A.J.’s Order dismissing the Applicants’ Motion for Extension of Time, dated May 2, 2025 [“Motion Decision”].

4. Cotter A.J. relied on the *Hennelly* factors, as articulated by Justice Régimbald in *Citizen for My Sea to Sky v. Canada (Environment and Climate Change)*, 2023 FC 1721, to determine whether to grant the Applicants' motion:
 - a. Did the moving party have a continuing intention to pursue the judicial review application?
 - b. Does the moving party have a reasonable explanation for the delay?
 - c. Is there some potential merit to the application for judicial review?
 - d. Is there prejudice to the other party from the delay?
5. On the first factor, Cotter A.J. was satisfied that the Applicants had sufficiently demonstrated a continuing intention to pursue the proceeding based on the evidence before him.⁸
6. With regard to the second factor, Cotter A.J. assessed the periods before and after the Applicants retained new counsel, determining that there was not a reasonable explanation for either period of delay, separately and in toto. Cotter A.J. held that the Applicants' "very general excuses" and "very general evidence provided" explaining the 53-day period of delay after retaining new counsel were not sufficient to satisfy this factor. A similar determination was made for the 6-month period caused by former counsel.⁹
7. Cotter A.J. provided a cursory analysis of the third factor, proceeding on the basis "as if there is some merit to the appeal."¹⁰
8. Finally, Cotter A.J. assessed whether the delay had caused the respondent prejudice, holding that "[s]uch a significant delay is itself prejudicial."¹¹ Cotter A.J. relied on the Alberta Court of Appeal's decision *Ouellette*,¹² supported by the

⁸ Motion Decision at para. 43.

⁹ Motion Decision at para. 34.

¹⁰ Motion Decision at para. 44.

¹¹ Motion Decision at para. 39.

¹² *Ouellette v. Law Society of Alberta*, 2021 ABCA 99.

“principle of finality” considered by the Federal Court of Appeal in *Grenier*,¹³ in assessing that it was not in the interests of justice to grant the extension of time.

9. Ultimately, Cotter A.J. rendered a decision largely based on the second and fourth factors, stating that “prejudice from the delay, and the lack of a reasonable explanation for the delay, both auger heavily against [the Applicants].”¹⁴ He determined that it was not in the interests of justice to grant the extension and dismissed the motion, in effect terminating the Applicants’ claim.

PART II. POINTS IN ISSUE

10. Did Cotter A.J. err by improperly balancing the interests of the parties?
11. Did Cotter A.J. err by inferring prejudice against the Respondents without an evidentiary basis?
12. Did Cotter A.J. err by finding there was no reasonable explanation for delay, and by failing to account for the inherent time requirements to prepare an application to extend the deadline in this context?

PART III. SUBMISSIONS

Standards of Review

13. Findings of fact are reviewed on a standard of palpable and overriding error, while findings of law are reviewed on a standard of correctness. Findings of mixed fact and law “lie along a spectrum,” and “a failure to consider a required element of a legal test, or similar error in principle” is subject to a standard of correctness.¹⁵

Issue #1: Cotter A.J. Failed to Balance the Interests of the Parties

¹³ *Canada v. Grenier*, 2005 FCA 348.

¹⁴ Motion Decision at para. 31.

¹⁵ *Housen v. Nikolaisen*, 2002 SCC 33 at para. 36.

14. The *Hennelly* factors, in and of themselves, are not determinative of whether to grant an extension of time; “the overarching consideration and real test is whether justice will be done between the parties if the extension is not granted.”¹⁶ This analysis “requires the interests of the parties to be balanced.”¹⁷
15. The overarching principle that the interests should be balanced should have guided Cotter A.J.’s analysis; however, the Associate Judge instead applied the *Hennelly* factors in a selective and determinative manner without sufficiently balancing each party’s interests, reflecting an error of law to be reviewed on a standard of correctness.
16. In particular, Cotter A.J. failed to assess the prejudice to the Applicants for dismissing the extension, which vastly outweighed any prejudice to the Respondents by granting the extension. This is an error in principle. By dismissing the motion, Cotter A.J. effectively terminated the Applicants’ claim by removing an opportunity to appeal the motion to strike, let alone have their claim heard on its merits.
17. Conversely, granting the extension would have only placed the Respondents in the position of responding to an appeal of a motion to strike, somewhat delayed but with sufficient time to prepare. Stated plainly, the Respondents would have remained on the higher ground. Had the extension been granted, however, the Applicants would still be required to successfully appeal the motion to strike, meet their burden in that instance, and then be required to prove their case on the merits — the lower ground, in any practical or legal sense.

Issue #2: Prejudice Caused by Delay Must be Substantiated by Evidence

18. When the responding party does not lead evidence of prejudice, the moving party, “by default,” satisfies this *Hennelly* factor.¹⁸ This Court found that “[a] claim of

¹⁶ *Koch v. Borgatti Estate*, 2022 FCA 201 at para. 58.

¹⁷ *Koch v. Borgatti Estate*, 2022 FCA 201 at para. 59.

¹⁸ *Tanczos v. Canada (Attorney General)*, 2024 FC 232, at para. 7. See also *Singh v. Canada (Immigration, Refugees and Citizenship)*, 2023 CanLII 113232 (FC).

prejudice is not a self-evident truth. In order to substantiate such a claim, specific evidence must be adduced to support it.”¹⁹ Similarly, this Court has held that “delay in and of itself [does] not necessarily cause prejudice.”²⁰

19. The Respondents tendered no evidence of prejudice arising from the delay. Instead of following the well-established line of authority, Cotter A.J. inferred prejudice from the passage of time alone, relying on *Ouellette*.²¹ It was an error in law to rely on the Alberta Court of Appeal decision in *Ouellette*, which is predicated on a different test than what is stated in *Hennelly*.²²

Issue #3: The Applicants Provided Reasonable Explanations for the Delay

20. The Applicants submit that the explanations for delay caused by former counsel were reasonable and were substantiated by sufficient evidence.
21. It was an error in principle for Cotter, J.A. to apply the standards and approach taking in the *Immigration and Refugee Protection Act* (“*IRPA*”)²³ context to assess this action. To apply the *IRPA* case authorities outside the *IRPA* context without a statutory or policy basis for doing so is an error in principle and should be corrected. The *IRPA* context differs fundamentally from this context because applicants, typically who are subject to deportation at the conclusion of proceedings, have an enormous incentive to delay the proceedings. Statutory provisions and policy grounds underlie a stricter approach to timelines that are intended to counteract the incentives to delay. Those statutory provisions and policy grounds do not exist for this case.

¹⁹ *Canada (Attorney General) v. Burnell*, 1997 CanLII 5362 (FC), at paras. 26-27.

²⁰ *Budget Steel Ltd. v. Seaspan 175 (The)*, 2003 FCT 390 (CanLII), at para. 39.

²¹ *Ouellette, et al v Law Society of Alberta*, 2021 ABCA 99.

²² In *Cairns v. Cairns*, 1931 CanLII 471 (AB CA), p. 69, the leading authority cited in *Ouellette*, the corresponding factor on an application for extension of time to appeal a decision of a lower court requires the moving party “to show that the other side was not so seriously prejudiced thereby as to make it unjust, having regard to the position of both parties, to disturb the judgment.”

²³ *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

22. Outside the *IRPA* context, this Court in *Washagamis* stated that “where a litigant establishes that it clearly instructed its counsel to proceed on a timely basis and that the failure to do so was solely the result of an error by counsel, the litigant should not be constructively held to have been a party to the error.”²⁴
23. The Applicants demonstrated an ongoing intention to appeal Coughlan A.J.’s decision, and instructed former counsel to pursue an appeal and extend the deadline as soon as they learned that the deadline had been missed. **Through no fault of the Applicants, former counsel missed the initial deadline and failed to apply to extend the deadline. The Applicants followed up with former counsel at reasonable intervals to ask whether the application had been filed and to urge former counsel to take action. The Applicants then took prompt action to retain new counsel once informed that former counsel could not represent them.** It is an error in principle, inconsistent with the overriding interests of justice, to find that the Applicants’ intervals of following up with counsel did not meet the legal standard to explain that the clients were not the cause of the delay.
24. Newly retained counsel moved expeditiously given the circumstances, which required new counsel to (1) review the file for grounds of appeal; (2) prepare a draft Memorandum of Argument on the substance of appeal (given the time already passed); (3) prepare the supporting material to extend the deadline. Cotter, A.J. erred in principle by making no allowance for and conducting no analysis of the inherent time requirements to prepare these materials.
25. The Applicants’ circumstances are analogous to the proposition in *Washagamis*, and they should not be held as the party in error for any failures of former counsel.
26. The Applicants provided affidavit evidence for the delay and on cross-examination substantiated the circumstances giving rise to the delay based on the difficulties presented by the number of applicants involved; whether general or specific, these

²⁴ *Washagamis First Nation v. Ledoux*, 2006 FC 1300 at para. 33 [emphasis original] [“*Washagamis*”].

explanations were reasonable explanations for delay that should have been properly considered by Cotter A.J., and a failure to do so amounted to a palpable and overriding error.

Conclusion

27. The Applicants respectfully submit that Cotter A.J. erred in law and/or mixed fact and law, and as such this Court should grant the Applicants' appeal and underlying motion for an extension of time.

PART IV. ORDERS SOUGHT

28. An order setting aside the order of Associate Judge Cotter made May 2, 2025, dismissing the Applicants' motion for an extension of time;

29. An order granting the Applicants an extension of time to file an appeal of the order of Associate Judge Coughlan made March 13, 2024, striking the Applicants' claim;

30. The costs of this motion, if opposed; and,

31. Such further and other relief as this Honourable Court may allow.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of May, 2025.



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PART V. LIST OF AUTHORITIES

Legislation	
1	<i>Federal Courts Rules</i> , <u>SOR/98-106</u>
Caselaw	
2	<i>Budget Steel Ltd. v. Seaspán 175 (The)</i> , <u>2003 FCT 390</u> (CanLII)
3	<i>Cairns v. Cairns</i> , <u>1931 CanLII 471</u> (AB CA)
4	<i>Canada (Attorney General) v. Burnell</i> , <u>1997 CanLII 5362</u> (FC)
5	<i>Canada (Attorney General) v. Hennelly</i> , <u>1999 CanLII 8190</u> (FCA)
6	<i>Canada v. Grenier</i> , <u>2005 FCA 348</u>
7	<i>Housen v. Nikolaisen</i> , <u>2002 SCC 33</u>
8	<i>Koch v. Borgatti Estate</i> , <u>2022 FCA 201</u>
9	<i>Ouellette v. Law Society of Alberta</i> , <u>2021 ABCA 99</u>
10	<i>Singh v. Canada (Immigration, Refugees and Citizenship)</i> , <u>2023 CanLII 113232</u>
11	<i>Tanczos v. Canada (Attorney General)</i> , <u>2024 FC 232</u>
12	<i>Washagamis First Nation v. Ledoux</i> , <u>2006 FC 1300</u>