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February 28, 2025		
Lindsay Krieger		
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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

**MOTION RECORD OF THE RESPONDENT, CANADA POST
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February 28, 2025

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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
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ERIK BOUCHARD, ROBERT BOURBONNIERE,
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JENNIFER-LYNN BULLICK, MARY BURKE, CATHERINE
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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; *Lavergne-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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HARRISON, CARLY HART, TAMMY HAYES,,
JAYSON PETER JAMES HEIDEBRECHT, DENISE
HERBERT, JORGIE HIDALGO,, TIMOTHY
HIEBERT, DONNA HISCOCK, DENISE HOHN,
ELAINA HUDYMA,, KATHRYN (KATIE) HUNT,
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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
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MCFARLANE, MARGARET MCGEACHIE, CHRIS
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NICOLL, JULIE NOBLE, CHAD NORMANDEAU,,
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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**

February 28, 2025

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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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F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
February 28, 2025		
Lindsay Krieger		
EDM	64	

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****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. Deeprout 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.