

FEDERAL COURT OF APPEAL

BETWEEN:

KAREN ADELBERG ET AL.

- and -

HIS MAJESTY THE KING ET AL.

F I L E D	FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE		D É P O S É
	24-APR-2023		
Tina Duguay Appellants		5	
TOR			

Respondents

APPEAL BOOK

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Solicitor for the Appellants

TO:

Adam Gilani
Ontario Regional Office
National Litigation Sector
Government of Canada
Suite 400, 120 Adelaide Street West, Toronto
Ontario M5H 1T1

Solicitor for the Respondents

TAB 1

Court File No.: **A-67-23****FEDERAL COURT OF APPEAL**

Karen Adelberg, Matthew **Anderson**, Wyatt George **Baiton**, Paul **Barzu**, Neil **Bird**, Curtis **Bird**, Beau **Bjarnason**, Lacey **Blair**, Mark **Bradley**, John **Doe #1**, Daniel **Bulford**, John **Doe #2**, Shawn **Carmen**, John **Doe #3**, Jonathan Corey **Chaloner**, Cathleen **Collins**, Jane **Doe #1**, John **Doe #4**, Kirk **Cox**, Chad **Cox**, Neville **Dawood**, Richard **de Vos**, Stephane **Drouin**, Mike **Desson**, Jane **Doe #2**, Stephane **Drouin**, Sylvie **Filteau**, Kirk **Fisler**, Thor **Forseth**, Glen **Gabruch**, Brett **Garneau**, Tracy Lynn **Gates**, Kevin **Gien**, Jane **Doe #3**, Warren **Green**, Jonathan **Griffioen**, Rohit **Hannraj**, Kaitlyn **Hardy**, Sam **Hilliard**, Richard **Huggins**, Lynne **Hunka**, Joseph **Islietson**, Leposava **Jankovic**, John **Doe #5**, Pamela **Johnston**, Eric **Jones-Gatineau**, Annie **Joyal**, John **Doe #6**, Marty (Martha) **Klassen**, John **Doe #7**, John **Doe #8**, John **Doe #9**, Ryan **Koskela**, Jane **Doe #4**, Julians **Lazoviks**, Jason **Lefebvre**, Kirsten **Link**, Morgan **Littlejohn**, John **Doe #10**, Diane **Martin**, John **Doe #11**, Richard **Mehner**, Celine **Moreau**, Robin **Morrison**, Morton **Ng**, Gloria **Norman**, Steven **O'Doherty**, David **Obirek**, John Robert **Queen**, Nicole **Quick**, Ginette **Rochon**, Louis-Marie **Roy**, Emad **Sadr**, Matt **Silver**, Jinjer **Snider**, Maureen **Stein**, John **Doe #12**, John **Doe #13**, Robert **Tumbas**, Kyle **Van de Sype**, Chantelle **Vien**, Joshua (Josh) **Vold**, Carla **Walker**, Andrew **Wedlock**, Jennifer **Wells**, John **Wells**, Melanie **Williams**, David George John **Wiseman**, Daniel **Young**, Gratchen **Grisson**, (officers with the **Royal Canadian Mountain Police**)

- and -

Nicole **Auclair**, Michael **Baldock**, Sabrina **Baron**, William Dean **Booth**, Charles **Borg**, Marie-Ève **Caron**, Thomas **Dalling**, Joseph Israel Marc Eric De **Lafontaine**, Ricardo **Green**, Jordan **Hartwig**, Rodney **Howes**, Christopher Mark **Jacobson**, Jane **Doe #5**, Pascal **Legendre**, Kimberly **Lepage**, Kim **MacDonald**, Cindy **Mackay**, Kim Martin-**McKay**, David **Mason**, Alexandra Katrina **Moir**, Joseph Daniel Eric **Montgrain**, Radoslaw **Niedzielski**, Leanna June **Nordman**, Donald **Poole**, Edward Dominic **Power**, Norman L. **Reed**, Jane **Doe #6**, Brenden **Sangster**, Timothy Joseph **Seibert**, Ann-Marie Lee **Traynor**, Carl Barry **Wood**, Eddie Edmond **Andrukaitis**, Ruby **Davis**, Jennifer **Schroeder**, Joseph **Shea** employed by the (**Department of National Defence**)

- and -

Stefanie **Allard**, Jake Daniel **Boughner**, Brent **Carter**, Brian **Cobb**, Laura **Constantinescu**, Sonia **Dinu**, Aldona **Fedor**, Jane **Doe #7**, Malorie **Kelly**, Matthew Stephen **MacDonald**, Mitchell **Macintyre**, Hertha **McLendon**, Marcel **Mihailescu**, Michael **Munro**, Sebastian **Nowak**, Diana **Rodrigues**, Natalie **Holden**, Adam Dawson **Winchester**, (**Canada Border Services Agency**)

- and -

Christine **Clouthier**, Debbie **Gray**, Jennifer **Penner**, Dale **Wagner**, Joseph **Ayoub**, (**Agriculture and Agri-food Canada**)

- 2 -

- and -

Jane Doe #8, (Atlantic Canada Opportunities Agency)

- and -

Melanie DuFour, (Bank of Canada)

- and -

Jennifer Auciello, Sharon Ann Joseph, Eric Munro, (Canada Mortgage and Housing Corporation)

- and -

Jane Doe #9, (Canada Pension Plan)

- and -

Natalie Boulard, Beata Bozek, John Doe #14, Nerin Andrea Carr, Sara Jessica Castro, Debbie (Dubravka) Cunko, Josée Cyr, Jane Doe #10, Carol Gaboury, Tania Gomes, Julita Grochocka, Monique Harris, William Hooker, Kirstin Houghton, Leila Kostyk, Michelle Lamarre, Nicolas LeBlond, Suana-Lee Leclair, Paulette Morissette, Jennifer Neave, Pierre-Alexandre Racine, Benjamin Russell, Robert Snowden, Aabid Thawer, Heidi Wiener, Svjetlana Zelenbaba, Nadia Zinck, Aaron James Thomas Shorrock, Deirdre McIntosh , (Canada Revenue Agency)

- and -

Tamara Stammers, (Canada School of the Public Service)

- and -

Jasmin Bourdon, (Canada Space Agency)

- and -

Sharon Cunningham, Allen Lynden, Rory Matheson, (Canadian Coast Guard)

- and -

Tatjana Coklin, John Doe #15, Raquel Delmas, Jane Doe #11, Chelsea Hayden, Helene Joannis, Zaklina Mazur, Jane Doe #12, Jessica Simpson, Katarina Smolkova, (Canadian Food Inspection Agency)

- 3 -

- and -

Alexandre **Charland**, (Canadian Forestry Service)

- and -

Catherine **Provost**, Kristina **Martin**, (Canadian Heritage)

- and -

Jane **Doe #13**, (Canadian Institutes of Health Research)

- and -

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

- and -

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

- and -

Octavia **La Prairie**, (Canadian Security Intelligence Service)

- and -

Robert **Bestard**, (City of Ottawa Garage Fed regulated)

- and -

Kimberly Ann **Beckert**, (Core Public Service)

- and -

Sarah **Andreychuk**, Francois **Bellehumeur**, Pamela **Blaikie**, Natasha **Cairns**, Angela **Ciglenecki**,
Veronika **Colnar**, Randy **Doucet**, Kara **Erickson**, Jesse **Forcier**, Valérie **Fortin**, Roxane **Gueutal**,
Melva **Isherwood**, Milo **Johnson**, Valeria **Luedee**, Laurie **Lynden**, Annette **Martin**, Craig
McKay, Isabelle **Methot**, Samantha **Osypchuk**, Jane **Doe #14**, Wilnive **Phanord**, Alexandre
Richer **Levasseur**, Kathleen **Sawyer**, Trevor **Scheffel**, (Correctional Service of Canada)

- and -

Jordan **St-Pierre**, (Courts Administration Service)

- and -

- 4 -

Brigitte Surgue, Jane Doe #15, (Department of Canadian Heritage)

- and -

Ghislain Cardinal, Heather Halliday, Paul Marten, Celine Rivier, Ngozi Ukwu, Jeannine Bastarache, Jane Doe #16, Hamid Naghdian-Vishteh, (Department of Fisheries and Ocean)

- and -

Ishmael Gay-Labbe, Jane Doe #17, Leanne James, (Department of Justice)

- and -

Danielle Barabe-Bussieres, (Elections Canada)

- and -

Tanya Daechert, Jane Doe #18, Francois Arseneau, Chantal Authier, Nathalie Benoit, Aerie Biafore, Rock Briand, Arnaud Brien-Thiffault, Sharon Chiu, Michel Daigle, Brigitte Daniels, Louise Gaudreault, Karrie Gevaert, Mark Gevaert, Peter Iversen, Derrik Lamb, Jane Doe #19, Anna Marinic, Divine Masabarakiza, James Mendham, Michelle Marina Micko, Jean Richard, Stephanie Senecal, Jane Doe #20, Ryan Sewell, Kari Smythe, Olimpia Somesan, Lloyd Swanson, Tyrone White, Elissa Wong, Jenny Zambelas, Li yang Zhu, Patrice Lever, (Employment and Social Development Canada)

-and-

Jane Doe #21, Brian Philip Crenna, Jane Doe #22, Bradley David Hignell, Andrew Kalteck, Dana Kellett, Josée Losier, Kristin Mensch, Elsa Mouana, Jane Doe #23, Jane Doe #24, Valentina Zagorenko, (Environment and Climate Change Canada)

- and -

Pierre Trudel, (Export Development Canada)

- and -

Stephen Alan Colley, (Federal Economic Development Agency for Southern Ontario)

- and -

Vladimir Raskovic, (Garda Security Screeing Inc)

- and -

- 5 -

Mélanie **Borgia**, Jonathan Kyle **Smith**, Donna **Stainfield**, Annila **Tharakan**, Renee Michiko **Umezuki**, (**Global Affairs Canada**)

- and -

Dennis **Johnson**, (**Global Container Terminals Canada**)

- and -

Alexandre **Guilbeault**, Tara (Maria) **McDonough**, France **Vanier**, (**Government of Canada**)

- and -

Alex **Braun**, Marc **Lescelleur-Paquette**, (**House of Commons**)

- and -

Aimee **Legault**, (**Human Resource Branch**)

- and -

Dorin Andrei **Boboc**, Jane **Doe #25**, Sophie **Guimard**, Elisa **Ho**, Kathy **Leal**, Caroline **Legendre**, Diana **Vida**, (**Immigration, Refugees and Citizenship Canada**)

- and -

Nathalie Joanne **Gauthier**, (**Indigenous and Northern Affairs Canada**)

- and -

Christine **Bizier**, Amber Dawn **Kletzel**, Verona **Lipka**, Kerry **Spears**, (**Indigenous Services Canada**)

- and -

Sun-Ho **Paul Je**, (**Innovation, Science and Economic Development Canada**)

- and -

Giles **Roy**, (**National Film Board of Canada**)

- and -

- 6 -

Ray **Silver**, Michelle **Dedyulin**, Letitia **Eakins**, Julie-Anne **Kleinschmit**, Marc-Andre **Octeau**,
Hugues **Scholaert**, (**National Research Council Canada**)

- and -

Felix **Beauchamp**, (**National Security and Intelligence Review Agency**)

- and -

Julia May **Brown**, Caleb **Lam**, Stephane **Leblanc**, Serryana **Whiteside**, (**Natural Resources Canada**)

- and -

Nicole **Hawley**, Steeve **L'italien**, Marc **Lecocq**, Tony **Mallet**, Sandra **McKenzie**, (**NAV Canada**)

- and -

Muhammad **Ali**, (**Office of the Auditor General of Canada**)

- and -

Ryan **Rogers**, (**Ontario Northland Transportation Commission**)

- and -

Theresa **Stene**, Michael **Dessureault**, John **Doe #16**, (**Park Canada**)

- and -

Charles-Alexandre **Beauchemin**, Brett **Oliver**, (**Parliamentary Protection Service**)

- and -

Carole **Duford**, (**Polar Knowledge Canada**)

- and -

Joanne Gabrielle **de Montigny**, Ivana **Eric**, Jane **Doe #26**, Salyna **Legare**, Jane **Doe #27**, Angie
Richardson, Jane **Doe #28**, (**Public Health Agency of Canada**)

- and -

Fay Anne **Barber**, (**Public Safety Canada**)

- 7 -

- and -

Denis Laniel, (Public Sector Pension Investment Board)

- and -

Kathleen Elizabeth Barrette, Sarah Bedard, Mario Constantineau, Karen Fleury, Brenda Jain, Megan Martin, Jane Doe #29, Isabelle Paquette, Richard Parent, Roger Robert Richard, Nicole Sincennes, Christine Vessia, Jane Doe #30, Pamela McIntyre, (Public Services and Procurement Canada)

- and -

Isabelle Denis, (Registrar of the Supreme Court of Canada)

- and -

Jane Bartmanovich, (Royal Canadian Mint)

- and -

Nicole Brisson, (Service Canada)

- and -

Denis Audet, Mathieu Essiambre, Alain Hart, Andrea Houghton, Natalia Kwiatak, Dany Levesque, David McCarthy, Pascal Michaud, Mervi Pennanen, Tonya Shortill, Stephanie Tkachuk, Marshall Wright, (Shared Services Canada)

- and -

Eve Marie Blouin-Hudon, Marc-Antoine Boucher, Christopher Huszar, (Statistics Canada)

- and -

Steve Young, (Telestat Canada)

- and -

Nathan Aligizakis, Stephen Daniel, Alain Douchant, Krystal McColgan, Debbie Menard, Clarence Ruttle, Dorothy Barron, Robert McLachlan, (Transport Canada)

- and -

Scott Erroll Henderson, Denis Theriault, (Treasury Board of Canada)

- 8 -

- and -

Josiane **Brouillard**, Alexandra **McGrath**, Nathalie **Ste-Croix**, Jane **Doe #31**, (**Veterans Affairs Canada**)

- and -

Olubusayo (Busayo) **Ayeni**, John **Doe #17**, Cynthia **Bauman**, Jane **Doe #32**, , Laura Crystal **Brown**, Ke(Jerry) **Cai**, Nicolino **Campanelli**, Donald Keith **Campbell**, Colleen **Carder**, Kathy **Carriere**, Melissa **Carson**, David **Clark**, Bradley **Clermont**, Laurie **Coelho**, Estee **Costa**, Antonio **Da Silva**, Brenda **Darvill**, Patrick **Davidson**, Eugene **Davis**, Leah **Dawson**, Marc **Fontaine**, Jacqueline **Genaille**, Eldon **Goossen**, Joyce **Greenaway**, Lori **Hand**, Darren **Hay**, Krista **Imiola**, Catherine **Kanuka**, Donna **Kelly**, Benjamin **Lehto**, Anthony **Leon**, Akemi **Matsumiya**, Jane **Doe #33**, Jane **Doe #34**, Jane **Doe #35**, Anne Marie **McQuaid-Snider**, Lino **Mula**, Pamela **Opersko**, Gabriel **Paquet**, Christine **Paquette**, Carolin **Jacqueline Paris**, Jodie **Price**, Kevin **Price**, Giuseppe **Quadrini**, Saarah **Quamina**, Shawn **Rossiter**, Anthony **Rush**, Anthony **Shatzko**, Charles **Silva**, Ryan **Simko**, Norman **Sirois**, Brandon **Smith**, Catharine **Spiak**, Sandra **Stroud**, Anita **Talarian**, Daryl **Toonk**, Ryan **Towers**, Leanne **Verbeem**, Eran **Vooy**, Robert **Wagner**, Jason **Weatherall**, Melanie **Burch**, Steven **Cole**, Toni **Downie**, Jodi **Stammis**, (**Canada Post**)

- and -

Nicolas **Bell**, John **Doe #18**, John **Doe #19**, Jane **Doe #36**, John **Doe #20**, Paola Di **Maddalena**, Nathan **Dodds**, John **Doe #21**, Jane **Doe #37**, Nunzio **Gioliti**, Mario **Girard**, Jane **Doe #38**, Jane **Doe #39**, You-Hui **Kim**, Jane **Doe #40**, Sebastian **Korak**, Ada **Lai**, Mirium **Lo**, Melanie **Mailloux**, Carolyn **Muir**, Patrizia **Paba**, Radu **Rautescu**, Aldo **Reano**, Jacqueline Elisabeth **Robinson**, John **Doe #22**, Frederick **Roy**, John **Doe #23**, Taeko **Shimamura**, Jason **Sisk**, Beata **Sosin**, Joel **Szostak**, Mario **Tcheon**, Rebecca Sue **Thiessen**, Jane **Doe #41**, Maureen **Yearwood**, (**Air Canada**)

- and -

John **Doe #24**, JOSÉE **Demeule**, Jacqueline **Gamble**, Domenic **Giancola**, Sadna **Kassan**, Marcus **Steiner**, Christina **Trudeau**, (**Air Canada Jazz**)

- and -

John **Doe #25**, Emilie **Despres**, (**Air Inuit**)

- and -

Rejean **Nantel**, (**Bank of Montreal**)

- and -

Lance Victor **Schilka**, (**BC Coast Pilots Ltd**)

- 9 -

- and -

Elizabeth Godler, (BC Ferries)

- and -

John Doe #26, Jane Doe #42, Tamara Davidson, Jane Doe #43, Brad Homewood, Chad Homewood, Charles Michael Jefferson, John Doe #27, Janice Laraine Kristmanson, Jane Doe #44, Darren Louis Lagimodiere, John Doe #28, John Doe #29, Mirko Maras, John Doe #30, John Doe #31, John Doe #32, John Doe #33, John Doe #34, Jane Doe #45, John Doe #35, Kendal Stace-Smith, John Doe #36, Steve Wheatley, (British Columbia Maritime Employers Association)

- and -

Paul Veerman, (Brookfield Global Integrated Solutions)

- and -

Mark Barron, Trevor Bazilewich, John Doe #37, Brian Dekker, John Gaetz, Ernest Georgeson, Kyle Kortko, Richard Letain, John Doe #38, Dale Robert Ross, (Canadian National Railway)

- and -

Tim Cashmore, Rob Gebert, Micheal Roger Mailbiot, (Canadian Pacific Railway)

- and -

Karin Lutz, (DP World)

- and -

Crystal Smeenk, (Farm Credit Canada)

- and -

Sylvie M.F. Gelinas, Susie Matias, Stew Williams, (G4S Airport Screening)

- and -

Shawn Corman, (Geotech Aviation)

- and -

- 10 -

Juergen **Bruschkewitz**, Andre **Deveaux**, Bryan **Figueira**, David **Spratt**, Guy **Hocking**, Sean **Grant**, (**Greater Toronto Airports Authority**)

- and -

Dustin **Blair**, (**Kelowna Airport Fire Fighter**)

- and -

Hans-Peter **Liechti**, (**National Art Centre**)

- and -

Bradley **Curruthers**, Lana **Douglas**, Eric **Dupuis**, Sherri **Elliot**, Roben **Ivens**, Jane **Doe #46**, Luke **Van Hoekelen**, Kurt **Watson**, (**Ontario Power Generation**)

- and -

Theresa **Stene**, Michael **Dessureault**, Adam **Pidwerbeski**, (**Parks Canada**)

-and-

John **Doe #39**, (**Pacific Pilotage Authority**)

- and -

Angela **Gross**, (**Purolator Inc.**)

- and -

Gerhard **Geertsema**, (**Questral Helicopters**)

- and -

Amanda **Randall**, Jane **Doe #47**, Frank **Veri**, (**RBC Royal Bank**)

- and -

James (Jed) **Forsman**, (**Rise Air**)

- and -

Jane **Doe #48**, (**Rogers Communications Inc**)

- and -

- 11 -

Jerrilynn **Rebeyka**, (**SaskTel**)

- and -

Eileen **Fahlman**, Mary **Treichel**, (**Scotiabank**)

- and -

Judah Gaelan **Cummins**, (**Seaspan Victoria Docks**)

- and -

Darin **Watson**, (**Shaw**)

- and -

Richard Michael Alan **Tabak**, (**SkyNorth Air Ltd**)

- and -

Deborah **Boardman**, Michael **Brigham**, (**Via Rail Canada**)

- and -

Kevin Scott **Routly**, (**Wasaya Airways**)

- and -

Bryce **Sailor**, (**Waterfront Employers of British Columbia**)

- and -

Joseph **Bayda**, Jamie **Elliott**, John **Doe #40**, Randall **Mengering**, Samantha **Nicastro**,
Veronica **Stephens**, Jane **Doe #49**, (**WestJet**)

- and -

Melvin **Gerein**, (**Westshore Terminals**)

PLAINTIFFS
APPELLANTS 93

- 12 -

AND:

93
JAM
~~Her Majesty The Queen~~, Prime Minister Justin **Trudeau**, Deputy Prime Minister and Minister of Finance Chrystia **Freeland**, Chief Medical Officer Teresa **Tam**, Minister of Transport Omar **Alghabra**, Deputy Minister of Public Safety Marco **Mendicino**, Johns and Janes **Doe**

DEFENDANTS**RESPONDENTS** *93***NOTICE OF APPEAL****TO THE RESPONDENT:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears below.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits). *Chambre Toronto 93*

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341A prescribed by the Federal Courts Rules and serve it on the appellant's solicitor, or, if the appellant is self-represented, on the appellant, WITHIN 10 DAYS after being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341B prescribed by the Federal Courts Rules instead of serving and filing a notice of appearance.

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 OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN IN YOUR
ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

Issued by:

**REBECCA DUONG
REGISTRY OFFICER
AGENT DU GREFFE**

Address of the local office:

Federal Court of Appeal
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

TO:

Adam Gilani
Ontario Regional Office
National Litigation Sector
Government of Canada
Suite 400, 120 Adelaide Street West, Toronto
Ontario M5H 1T1

APPEAL

THE APPELLANTS APPEAL to the Federal Court of Appeal, pursuant to s. 27 of the *Federal Courts Act*, from the order of the Federal Court, Mr. Justice Fothergill, dated February 21st, 2023 in Federal Court Docket # T-1089-22, by which the Federal Court struck the claim, with prejudice, with respect to two thirds of the Plaintiffs, and further struck the claim with respect to one third of the Plaintiffs, with leave to amend.

THE APPELLANT ASKS that:

- (a) The decision be set aside and that the matter proceed to trial with the Plaintiffs permitted to pursue the relief sought in this Statement of Claim;
- (b) The order (judgment) of granting costs against the Plaintiffs be set aside;
- (c) Costs of the motion to strike and within appeal, and,
- (d) in accordance with *Native Womens Assn. of Canada v Canada {1994} 3 SCR 627* such further and other relief as counsel may request and this Honourable Court deems just.

THE GROUNDS OF APPEAL are as follows:

- (a) That the Learned motions judge erred, in law, and contrary to the jurisprudence with respect to Justice Fothergill' ruling on *in rem* declaratory and other relief;
- (b) That the Learned motions judge erred in ruling that two thirds of the Plaintiffs were required to pursue the Labour dispute regime under Federal Law and, in doing so:
 - (i) Blatantly ignored, and did not respond to, submissions from counsel, that the analysis in *Weber (SCC)* required a review of the terms of employment under the labour bargaining agreement which was *not* before the Court on the motion to strike;
 - (ii) That the claim was restricted to:

- A. Declaratory relief (**in rem**) on constitutional grounds; and
 - B. Common-law, and constitutional torts, **all** grounded in misfeasance of public office;
 - C. Did not address, and biasedly ignored, counsel's submissions **and jurisprudence** which ruled that the tort of public misfeasance **can** be pursued within the context of unionized employees under a collective bargaining agreement;
- (iii) Breached the Plaintiffs' rights to intelligible reasons for Appellate review contrary to, **inter alia**, *Sheppard (SCC)*, and further breached the Plaintiffs' right to reasons in refusing to address counsel's submissions that took both a central part of the Plaintiffs' Memorandum of Argument, as well as the lion's share of the Plaintiffs' oral submissions before the Court, contrary to *Baker (SCC)* and the Appellate jurisprudence that a Court must directly address counsel submissions in the reasons, as set out by **inter alia**, *Johnson (Ont. C.A)* and *Taylor (BCCA)*;
- (iv) Ruling that the pleadings were "deficient" and "bad beyond argument" without setting out what is deficient about them, but blindly applying a ruling from another case which is not similar case to this one, nor on point;
- (v) Exhibited clear (reasonable apprehension of) bias.

- (c) The Learned judge further erred, in law, contrary to the Supreme Court of Canada jurisprudence on the test to be applied on a motion to dismiss/strike;
 - (d) The Learned motions judge erred, in law, in ruling sufficient facts were not pleaded to support the causes of action advanced;
 - (e) The Learned motions judge erred, in law, in usurping the function of the trial judge, and making determinations of fact, mixed fact and law, on the basis of bare pleading(s);
 - (f) Awarded of costs to the Defendants in circumstances where no costs should have been awarded, or an order of costs in the cause should have been awarded, in that the results of the motion were split;
 - (g) Such further and other grounds as counsel may advise and this Honourable Court permit
- The Appellants propose that this appeal be heard in Toronto.

March 3rd, 2023



ROCCO GALATI LAW FIRM
PROFESSIONAL CORPORATION
Rocco Galati, B.A., LL.B., LL.M.
1062 College Street, Lower Level
Toronto, Ontario M6H 1A9

TEL: (416) 530-9684
FAX: (416) 530-8129

Email: rglfpc@gmail.com

Solicitor for the Appellants

- 17 -

Court File No.:

FEDERAL COURT OF APPEAL**B E T W E E N:**

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants

NOTICE OF APPEAL

ROCCO GALATI LAW FIRM
PROFESSIONAL CORPORATION
Rocco Galati, B.A., LL.B., LL.M.
1062 College Street, Lower Level
Toronto, Ontario M6H 1A9

TEL: (416) 530-9684

FAX: (416) 530-8129

Email: rocco@idirect.com

Solicitor for the Appellants

TAB 2

Federal Court



CANADA

Cour fédérale

February 8, 2023

VIA EMAIL

Rocco Galati
ROCCO GALATI LAW FIRM PC
rocco@idirect.com

Adam Gilani
DEPARTMENT OF JUSTICE
Adam.gilani@justice.gc.ca

**RE: T-1089-22 KAREN ADELBERG ET AL v. HER MAJESTY THE
 QUEEN ET AL.**

Please be advised of the following oral direction of the Court (Mr. Justice Fothergill) dated February 8, 2023:

"The parties are directed to confirm the accuracy of the lists of employers in the attached Schedule A and Schedule B within ten (10) days of the date of this Direction."

Sincerely,

Jonathan Macena
 Registry Officer

Pursuant to section 20 of the *Official Languages Act* all decisions, orders and judgments, including any reasons given therefor, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.

Conformément à l'article 20 de la *Loi sur les langues officielles*, les décisions, ordonnances et jugements finals, avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l'une des deux langues officielles, une copie de la version dans l'autre langue officielle sera transmise, sur demande, dès qu'elle sera disponible.

ADDRESS ALL COMMUNICATIONS TO THE CHIEF ADMINISTRATOR - ADRESSER TOUTE CORRESPONDANCE À L'ADMINISTRATEUR EN CHEF

Schedule "A"**PLAINTIFFS WHO ARE MEMBERS OF THE
CORE PUBLIC ADMINISTRATION**

Persons employed within the following organizations:

- Atlantic Canada Opportunities Agency
- Canada Border Services Agency
- Canada Revenue Agency
- Canada School of Public Service
- Canadian Coast Guard
- Canadian Food Inspection Agency
- Canadian Forestry Service
- Canadian Institutes of Health Research
- Canadian Nuclear Safety Commission
- Canadian Radio-television and Telecommunications Commission
- Canada Revenue Agency
- Canadian Security Intelligence Service
- Core Public Service
- Canadian Space Agency
- Correctional Service of Canada
- Courts Administration Service
- Department of Agriculture and Agri-Food
- Department of Canadian Heritage
- Department of Employment and Social Development
- Department of Fisheries and Oceans
- Department of Justice
- Department of National Defence
- Department of Natural Resources
- Department of Transport
- Department of Veterans Affairs.
- Elections Canada
- Environment and Climate Change Canada
- Federal Economic Development Agency for Southern Ontario
- Global Affairs Canada
- Government of Canada
- Immigration, Refugees and Citizenship Canada
- Indigenous and Northern Affairs Canada
- Indigenous Services Canada
- National Film Board of Canada
- National Research Council Canada

- Office of the Auditor General of Canada
- Parks Canada
- Public Health Agency of Canada
- Public Safety Canada
- Public Services and Procurement Canada
- Royal Canadian Mounted Police
- Service Canada
- Shared Services Canada
- Staff of the Supreme Court
- Statistics Canada
- Treasury Board

Schedule "B"**PLAINTIFFS WHO ARE NOT MEMBERS OF THE
CORE PUBLIC ADMINISTRATION**

Persons employed within the following organizations:

- Air Canada
- Air Canada Jazz
- Air Inuit
- Bank of Canada
- Bank of Montreal
- BC Coast Pilots Ltd
- BC Ferries
- British Columbia Maritime Employers Association
- Brookfield Global Integrated Solutions
- Canada Mortgage and Housing Corporation
- Canada Pension Plan
- Canada Post
- Canadian National Railway
- Canadian Pacific Railway
- City of Ottawa Garage Fed Regulated
- DP World
- Export Development Canada
- Farm Credit Canada
- G4S Airport Screening
- Garda Security Screening Inc
- Geotech Aviation
- Global Container Terminals Canada
- Greater Toronto Airports Authority
- House of Commons
- Human Resources Branch, Innovation, Science and Economic Development Canada
- Kelowna Airport Fire Fighters
- National Arts Centre
- National Film Board of Canada
- National Security and Intelligence Review Agency
- NAV Canada
- Ontario Northland Transportation Commission
- Ontario Power Generation
- Pacific Pilotage Authority
- Parliamentary Protection Service
- Polar Knowledge Canada

- Public Sector Pension Investment Board
- Purolator Inc
- Questral Helicopters
- RBC Royal Bank
- Rise Air
- Rogers Communications Inc
- Royal Canadian Mint
- Sasktel
- Scotiabank
- Seaspan Victoria Docks
- Shaw
- Skynorth Air Ltd
- Telesat Canada
- Via Rail Canada
- Wasaya Airways
- Waterfront Employers of British Columbia
- Westjet
- Westshore Terminals

TAB 3

Federal Court



Cour fédérale

Date: 20230221

Docket: T-1089-22

Citation: 2023 FC 252

Toronto, Ontario, February 21, 2023

PRESENT: The Honourable Mr. Justice Fothergill**BETWEEN:**

KAREN ADELBERG, MATTHEW ANDERSON, WYATT GEORGE BAITON, PAUL BARZU, NEIL BIRD, CURTIS BIRD, BEAU BJARNASON, LACEY BLAIR, MARK BRADLEY, JOHN DOE #1, DANIEL BULFORD, JOHN DOE #2, SHAWN CARMEN, JOHN DOE #3, JONATHAN COREY CHALONER, CATHLEEN COLLINS, JANE DOE #1, JOHN DOE #4, KIRK COX, CHAD COX, NEVILLE DAWOOD, RICHARD DE VOS, STEPHANE DROUIN, MIKE DESSON, PHILIP DOBERNIGG, JANE DOE #2, STEPHANE DROUIN, SYLVIE FILTEAU, KIRK FISLER, THOR FORSETH, GLEN GABRUCH, BRETT GARNEAU, TRACY LYNN GATES, KEVIN GIEN, JANE DOE #3, WARREN GREEN, JONATHAN GRIFFIOEN, ROHIT HANNSRAJ, KAITLYN HARDY, SAM HILLIARD, RICHARD HUGGINS, LYNNE HUNKA, JOSEPH ISLIEFSON, LEPOSAVA JANKOVIC, JOHN DOE #5, PAMELA JOHNSTON, ERIC JONES-GATINEAU, ANNIE JOYAL, JOHN DOE #6, MARTY (MARTHA) KLASSEN, JOHN DOE #7, JOHN DOE #8, JOHN DOE #9, RYAN KOSKELA, JANE DOE #4, JULIANS LAZOVIKS, JASON LEFEBVRE, KIRSTEN LINK, MORGAN LITTLEJOHN, JOHN DOE #10, DIANE MARTIN, JOHN DOE #11, RICHARD MEHNER, CELINE MOREAU, ROBIN MORRISON, MORTON NG, GLORIA NORMAN, STEVEN O'DOHERTY, DAVID OBIREK, JOHN ROBERT QUEEN, NICOLE QUICK, GINETTE ROCHON, LOUIS-MARIE ROY, EMAD SADR, MATT SILVER, JINJER SNIDER, MAUREEN STEIN, JOHN DOE #12, JOHN DOE #13, ROBERT TUMBAS, KYLE VAN DE SYPE, CHANTELE VIENT, JOSHUA (JOSH) VOID, CARLA WALKER, ANDREW WEDLOCK, JENNIFER WELLS, JOHN WELLS, MELANIE WILLIAMS, DAVID GEORGE JOHN WISEMAN, DANIEL YOUNG, GRATCHEN GRISON, (OFFICERS WITH THE ROYAL CANADIAN MOUNTAIN POLICE)

and

NICOLE AUCLAIR, MICHAEL BALDOCK, SABRINA BARON, WILLIAM DEAN BOOTH, CHARLES BORG, MARIE-EVÉ CARON, THOMAS DALLING, JOSEPH ISRAEL MARC ERIC DE LAFONTAINE, RICARDO GREEN, JORDAN HARTWIG, RODNEY HOWES, CHRISTOPHER MARK JACOBSON, JANE DOE #5, PASCAL

**LEGENDRE, KIMBERLY LEPAGE, KIM MACDONALD, CINDY MACKAY, KIM
MARTIN MCKAY, DAVID MASON, ALEXANDRA KATRINA MOIR, JOSEPH
DANIEL ERIC MONTGRAIN, RADOSLAW NIEDZIELSKI, LEANNA JUNE
NORDMAN, DONALD POOLE, EDWARD DOMINIC POWER, NORMAN L. REED,
JANE DOE #6, BRENDEN SANGSTER, TIMOTHY JOSEPH SEIBERT, ANN-MARIE
LEE TRAYNOR, CARL BARRY WOOD, EDDIE EDMOND ANDRUKAITIS, RUBY
DAVIS, JENNIFER SCHROEDER, JOSEPH SHEA EMPLOYED BY THE
(DEPARTMENT OF NATIONAL DEFENCE)**

and

**STEFANIE ALLARD, JAKE DANIEL BOUGHNER, BRENT CARTER, BRIAN
COBB, LAURA CONSTANTINESCU, SONIA DINU, ALDONA FEDOR, JANE DOE
#7, MALORIE KELLY, MATTHEW STEPHEN MACDONALD, MITCHELL
MACINTYRE, HERTHA MCLENDON, MARCEL MIHAILESCU, MICHAEL
MUNRO , SEBASTIAN NOWAK, DIANA RODRIGUES, NATALIE HOLDEN ,
ADAM DAWSON WINCHESTER, (CANADA BORDER SERVICES AGENCY)**

and

**CHRISTINE CLOUTHIER, DEBBIE GRAY, JENNIFER PENNER, DALE WAGNER,
JOSEPH AYOUB, (AGRICULTURE AND AGRI-FOOD CANADA)**

and

JANE DOE #8, (ATLANTIC CANADA OPPORTUNITIES AGENCY)

and

MELANIE DUFOUR, (BANK OF CANADA)

and

**JENNIFER AUCIELLO, SHARON ANN JOSEPH, ERIC MUNRO, (CANADA
MORTGAGE AND HOUSING CORPORATION)**

and

JANE DOE #9, (CANADA PENSION PLAN)

and

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

**BENJAMIN RUSSELL, ROBERT SNOWDEN, AABID THAWER, HEIDI WIENER,
SVJETLANA ZELNBABA, NADIA ZINCK, AARON JAMES THOMAS
SHORROCK, DEIRDRE MCINTOSH, (CANADA REVENUE AGENCY)**

and

TAMARA STAMMIS, (CANADA SCHOOL OF THE PUBLIC SERVICE)

and

JASMIN BOURDON, (CANADA SPACE AGENCY)

and

**SHARON CUNNINGHAM, ALLEN LYNDEN, RORY MATHESON, (CANADIAN
COAST GUARD)**

and

**TATJANA COKLIN, JOHN DOE #15, RAQUEL DELMAS, JANE DOE #11,
CHELSEA HAYDEN, HELENE JOANNIS, ZAKLINA MAZUR, JANE DOE #12,
JESSICA SIMPSON, KATARINA SMOLKOVA, (CANADIAN FOOD INSPECTION
AGENCY)**

and

ALEXANDRE CHARLAND, (CANADIAN FORESTRY SERVICE)

and

CATHERINE PROVOST, KRISTINA MARTIN, (CANADIAN HERITAGE)

and

JANE DOE #13, (CANADIAN INSTITUTES OF HEALTH RESEARCH)

and

**BETH BLACKMORE, ROXANNE LORRAIN, (CANADIAN NUCLEAR SAFETY
COMMISSION)**

and

**RÉMI RICHER, (CANADIAN RADIO-TELEVISION AND
TELECOMMUNICATIONS COMMISSION)**

and

OCTAVIA LA PRAIRIE, (CANADIAN SECURITY INTELLIGENCE SERVICE)

and

ROBERT BESTARD, (CITY OF OTTAWA GARAGE FED REGULATED)

and

KIMBERLY ANN BECKERT, (CORE PUBLIC SERVICE)

and

**SARAH ANDREYCHUK, FRANCOIS BELLEHUMEUR, PAMELA BLAIKIE,
NATASHA CAIRNS, ANGELA CIGLENECKI, VERONIKA COLNAR, RANDY
DOUCET, KARA ERICKSON, JESSE FORCIER, VALÉRIE FORTIN, ROXANE
GUEUTAL, MELVA ISHERWOOD, MILO JOHNSON, VALERIA LUEDEE, LAURIE
LYNDEN, ANNETTE MARTIN, CRAIG MCKAY, ISABELLE METHOT,
SAMANTHA OSYPOCHUK, JANE DOE #14, WILNIVE PHANORD, ALEXANDRE
RICHER LEVASSEUR, KATHLEEN SAWYER, TREVOR SCHEFFEL,
(CORRECTIONAL SERVICE OF CANADA)**

and

JORDAN ST-PIERRE, (COURTS ADMINISTRATION SERVICE)

and

BRIGITTE SURGUE, JANE DOE #15, (DEPARTMENT OF CANADIAN HERITAGE)

and

**GHISLAIN CARDINAL, HEATHER HALLIDAY, PAUL MARTEN, CELINE
RIVIER, NGOZI UKWU, JEANNINE BASTARACHE, JANE DOE #16, HAMID
NAGHDIAN-VISHTEH, (DEPARTMENT OF FISHERIES AND OCEAN)**

and

**ISHMAEL GAY-LABBE, JANE DOE #17, LEANNE JAMES, (DEPARTMENT OF
JUSTICE)**

and

DANIELLE BARABE-BUSSIÉRES, (ELECTIONS CANADA)

and

**TANYA DAECHERT, JANE DOE #18, FRANCOIS ARSENEAU, CHANTA
AUTHIER, NATHALIE BENOIT, AERIE BIAFORE, ROCK BRIAND, AMAUD
BRIEN THIFFAULT, SHARON CHIU, MICHEL DAIGLE, BRIGITTE DANIELS,
LOUISE GAUDREAU, KARRIE GEVAERT, MARK GEVAERT, PETER
IVERSEN, DERRIK LAMB , JANE DOE #19, ANNA MARINIC, DIVINE**

MASABARAKIZA, JAMES MENDHAM, MICHELLE MARINA MICKO, JEAN RICHARD, STEPHANIE SENEAL, JANE DOE #20, RYAN SEWELL, KARI SMYTHE, OLIMPIA SOMESAN, LLOYD SWANSON, TYRONE WHITE, ELISSA WONG, JENNY ZAMBELAS, LI YANG ZHU, PATRICE LEVER, (EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA)

and

JANE DOE #21, BRIAN PHILIP CRENNAN, JANE DOE #22, BRADLEY DAVID HIGNELL, ANDREW KALTECK, DANA KELLETT, JOSÉE LOSIER, KRISTIN MENSCH, ELSA MOUANA, JANE DOE #23, JANE DOE #24, VALENTINA ZAGORENKO, (ENVIRONMENT AND CLIMATE CHANGE CANADA)

and

PIERRE TRUDEL, (EXPORT DEVELOPMENT CANADA)

and

STEPHEN ALAN COLLEY, (FEDERAL ECONOMIC DEVELOPMENT AGENCY FOR SOUTHERN ONTARIO)

and

VLADIMIR RASKOVIC, (GARDA SECURITY SCREEING INC)

and

MÉLANIE BORGIA, JONATHAN KYLE SMITH, DONNA STAINFELD, ANNILA THARAKAN, RENEE MICHIKO UMEZUKI, (GLOBAL AFFAIRS CANADA)

and

DENNIS JOHNSON, (GLOBAL CONTAINER TERMINALS CANADA)

and

ALEXANDRE GUILBEAULT, TARA (MARIA) MCDONOUGH, FRANCE VANIER, (GOVERNMENT OF CANADA)

and

ALEX BRAUN, MARC LESCELLEUR-PAQUETTE, (HOUSE OF COMMONS)

and

AIMEE LEGAULT, (HUMAN RESOURCE BRANCH)

and

DORIN ANDREI BOBOC, JANE DOE #25, SOPHIE GUIMARD, ELISA HO, KATHY LEAL, CAROLINE LEGENDRE, DIANA VIDA, (IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA)

and

NATHALIE JOANNE GAUTHIER, (INDIGENOUS AND NORTHERN AFFAIRS CANADA)

and

CHRISTINE BIZIER, AMBER DAWN KLETZEL, VERONA LIPKA, KERRY SPEARS, (INDIGENOUS SERVICES CANADA)

and

SUN-HO PAUL JE, (INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA)

and

GILES ROY, (NATIONAL FILM BOARD OF CANADA)

and

RAY SILVER, MICHELLE DEDYULIN, LETITIA EAKINS, JULIE-ANNE KLEINSCHMIT, MARC-ANDRE OCTEAU, HUGUES SCHOLAERT, (NATIONAL RESEARCH COUNCIL CANADA)

and

FELIX BEAUCHAMP, (NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY)

and

JULIA MAY BROWN, CALEB LAM, STEPHANE LEBLANC, SERRYNA WHITESIDE, (NATURAL RESOURCES CANADA)

and

NICOLE HAWLEY, STEEVE L'ITALIEN, MARC LECOCQ, TONY MALLET, SANDRA MCKENZIE, (NAV CANADA)

and

MUHAMMAD ALI, (OFFICE OF THE AUDITOR GENERAL OF CANADA)

and

RYAN ROGERS, (ONTARIO NORTHLAND TRANSPORTATION COMMISSION)

and

THERESA STENE, MICHAEL DESSUREAULT, JOHN DOE #16, (PARK CANADA)

and

**CHARLES-ALEXANDRE BEAUCHEMIN, BRETT OLIVER, (PARLIMENTARY
PROTECTION SERVICE)**

and

CAROLE DUFORD, (POLAR KNOWLEDGE CANADA)

and

**JOANNE GABRIELLE DE MONTIGNY, IVANA ERIC, JANE DOE #26, SALYNA
LEGARE, JANE DOE #27, ANGIE RICHARDSON, JANE DOE #28, (PUBLIC
HEALTH AGENCY OF CANADA)**

and

FAY ANNE BARBER, (PUBLIC SAFETY CANADA)

and

DENIS LANIEL, (PUBLIC SECTOR PENSION INVESTMENT BOARD)

and

**KATHLEEN ELIZABETH BARRETTE, SARAH BEDARD, MARIO
CONSTANTINEAU, KAREN FLEURY, BRENDA JAIN, MEGAN MARTIN, JANE
DOE #29, ISABELLE PAQUETTE, RICHARD PARENT, ROGER ROBERT
RICHARD, NICOLE INCENNES, CHRISTINE VESSIA, JANE DOE #30, PAMELA
MCINTYRE, (PUBLIC SERVICES AND PROCUREMENT CANADA)**

and

ISABELLE DENIS, (REGISTRAR OF THE SUPREME COURT OF CANADA)

and

JANE BARTMANOVICH, (ROYAL CANADIAN MINT)

and

NICOLE BRISSON, (SERVICE CANADA)

and

DENIS AUDET, MATHIEU ESSIAMBRE, ALAIN HART, ANDREA HOUGHTON,
NATALIA KWIATEK, DANY LEVESQUE, DAVID MCCARTHY, PASCAL
MICHAUD, MERVIN PENNANEN, TONYA SHORTILL, STEPHANIE TKACHUK,
MARSHALL WRIGHT, (SHARED SERVICES CANADA)

and

EVE MARIE BLOUIN-HUDON, MARC-ANTOINE BOUCHER, CHRISTOPHER
HUSZAR, (STATISTICS CANADA)

and

STEVE YOUNG, (TELESTAT CANADA)

and

NATHAN ALIGIZAKIS, STEPHEN DANIEL, ALAIN DOUCHANT, KRYSTAL
MCCOLGAN, DEBBIE MENARD, CLARENCE RUTTLE, DOROTHY BARRON,
ROBERT MCLACHLAN, (TRANSPORT CANADA)

and

SCOTT ERROLL HENDERSON, DENIS THERIAULT, (TREASURY BOARD OF
CANADA)

and

JOSIANE BROUILLARD, ALEXANDRA MCGRATH, NATHALIE STE-CROIX,
JANE DOE #31, (VETERANS AFFAIRS CANADA)

and

OLUBUSAYO (BUSAYO) AYENI, JOHN DOE #17, CYNTHIA BAUMAN, JANE DOE
#32, LAURA CRYSTAL BROWN, KE(JERRY) CAI, NICOLINO CAMPANELLI,
DONALD KEITH CAMPBELL, COLLEEN CARDER, KATHY CARRIERE,
MELISSA CARSON, DAVID CLARK, BRADLEY CLERMONT, LAURIE COELHO,
ESTEE COSTA, ANTONIO DA SILVA, BRENDA DARVILL, PATRICK DAVIDSON,
EUGENE DAVIS, LEAH DAWSON, MARC FONTAINE, JACQUELINE GENAILLE,
ELDON GOOSSEN, JOYCE GREENAWAY, LORI HAND, DARREN HAY, KRISTA
IMIOLA, CATHERINE KANUKA, DONNA KELLY, BENJAMIN LEHTO, ANTHONY
LEON, AKEMI MATSUMIYA, JANE DOE #33, JANE DOE #34, JANE DOE #35,
ANNE MARIE MCQUAID-SNIDER, LINO MULA, PAMELA OPERSKO, GABRIEL
PAQUET CHRISTINE PAQUETTE, CAROLIN JACQUELINE PARIS, JODIE
PRICE, KEVIN PRICE, GIUSEPPE QUADRINI, SAARAH QUAMINA, SHAWN
ROSSITER, ANTHONY RUSH, ANTHONY SHATZKO, CHARLES SILVA, RYAN
SIMKO, NORMAN SIROIS, BRANDON SMITH, CATHARINE SPIAK, SANDRA

**STROUD, ANITA TALARIAN, DARYL TOONK, RYAN TOWERS, LEANNE
VERBEEM, ERAN VOOYS, ROBERT WAGNER, JASON WEATHERALL,
MELANIE BURCH, STEVEN COLE, TONI DOWNIE, AMBER RICARD, JODI
STAMMIS, (CANADA POST)**

and

**NICOLAS BELL, JOHN DOE #18, JOHN DOE #19, JANE DOE #36, JOHN DOE #20,
PAOLA DI MADDALENA, NATHAN DODDS, JOHN DOE #21, JANE DOE #37,
NUNZIO GIOLTI, MARIO GIRARD, JANE DOE #38, JANE DOE #39, YOU-HUI
KIM, JANE DOE #40, SEBASTIAN KORAK, ADA LAI, MIRIUM LO, MELANIE
MAILLOUX, CAROLYN MUIR, PATRIZIA PABA, RADU RAUTESCU, ALDO
REANO, JACQUELINE ELISABETH ROBINSON, JOHN DOE #22, FREDERICK
ROY, JOHN DOE #23, TAEKO SHIMAMURA, JASON SISK, BEATA SOSIN, JOEL
SZOSTAK, MARIO TCHEON, REBECCA SUE THIESSEN, JANE DOE #41,
MAUREEN YEARWOOD, (AIR CANADA)**

and

**JOHN DOE #24, JOSÉE DEMEULE, JACQUELINE GAMBLE, DOMENIC
GIANCOLA, SADNA KASSAN, MARCUS STEINER, CHRISTINA TRUDEAU, (AIR
CANADA JAZZ)**

and

JOHN DOE #25, EMILIE DESPRES, (AIR INUIT)

and

REJEAN NANTEL, (BANK OF MONTREAL)

and

LANCE VICTOR SCHIIKA, (BC COAST PILOTS LTD)

and

ELIZABETH GODLER, (BC FERRIES)

and

**JOHN DOE #26, JANE DOE #42, TAMARA DAVIDSON, JANE DOE #43, KARTER
CUTHBERT FELDHOFF DE LA NUEZ, JEFFREY MICHAEL JOSEPH
GOUDREAU, BRAD HOMEWOOD, CHAD HOMEWOOD, CHARLES MICHAEL
JEFFERSON, JOHN DOE #27, JANICE LARAINÉ KRISTMANSON, JANE DOE #44,
DARREN LOUIS LAGIMODIERE, JOHN DOE #28, JOHN DOE #29, MIRKO
MARAS, JOHN DOE #30, JOHN DOE #31, JOHN DOE #32, JOHN DOE #33, JOHN
DOE #34, JANE DOE #45, JOHN DOE #35, KENDAL STACE-SMITH, JOHN DOE**

**#36, STEVE HEATLEY, (BRITISH COLUMBIA MARITIME EMPLOYERS
ASSOCIATION)**

and

PAUL VEERMAN, (BROOKFIELD GLOBAL INTEGRATED SOLUTIONS)

and

**MARK BARRON, TREVOR BAZILEWICH, JOHN DOE #37, BRIAN DEKKER,
JOHN GAETZ, ERNEST GEORGESON, KYLE KORTKO, RICHARD LETAIN,
JOHN DOE #38, DALE ROBERT ROSS, (CANADIAN NATIONAL RAILWAY)**

and

**TIM CASHMORE, ROB GEBERT, MICHEAL ROGER MAILHIOT, (CANADIAN
PACIFIC RAILWAY)**

and

KARIN LUTZ, (DP WORLD)

and

CRYSTAL SMEENK, (FARM CREDIT CANADA)

and

**SYLVIE M.F. GELINAS, SUSIE MATIAS, STEW WILLIAMS, (G4S AIRPORT
SCREENING)**

and

SHAWN CORMAN, (GEOTECH AVIATION)

and

**JUERGEN BRUSCHKEWITZ, ANDRE DEVEAUX, BRYAN FIGUEIRA, DAVID
SPRATT, GUY HOCKING, SEAN GRANT, (GREATER TORONTO AIRPORTS
AUTHORITY)**

and

DUSTIN BLAIR, (KELOWNA AIRPORT FIRE FIGHTER)

and

HANS-PETER LIECHTI, (NATIONAL ART CENTRE)

and

**BRADLEY CURRUTHERS, LANA DOUGLAS, ERIC DUPUIS, SHERRI ELLIOT,
ROBEN IVENS, JANE DOE #46, LUKE VAN HOEKELLEN, KURT WATSON,
(ONTARIO POWER GENERATION)**

and

**THERESA STENE, MICHAEL DESSUREAULT, ADAM PIDWERBESKI, (PARKS
CANADA)**

and

JOHN DOE #39, (PACIFIC PILOTAGE AUTHORITY)

and

ANGELA GROSS, (PUROLATOR INC.)

and

GERHARD GEERTSEMA, (QUESTRAL HELICOPTERS)

and

AMANDA RANDALL, JANE DOE #47, FRANK VERI, (RBC ROYAL BANK)

and

JAMES (JED) FORSMAN, (RISE AIR)

and

JANE DOE #48, (ROGERS COMMUNICATIONS INC)

and

JERRILYNN REBEYKA, (SASKTEL)

and

EILEEN FAHLMAN, MARY TREICHEL, (SCOTIABANK)

and

JUDAH GAELAN CUMMINS, (SEASPAN VICTORIA DOCKS)

and

DARIN WATSON, (SHAW)

and

RICHARD MICHAEL ALAN TABAK, (SKYNORTH AIR LTD)

and

DEBORAH BOARDMAN, MICHAEL BRIGHAM, (VIA RAIL CANADA)

and

KEVIN SCOTT ROUTLY, (WASAYA AIRWAYS)

and

SAILOR, (WATERFRONT EMPLOYERS OF BRITISH COLUMBIA)

and

**BAYDA, JAMIE ELLIOTT, JOHN DOE #40, RANDALL MENERING,
SAMANTHA NICASTRO, VERONICA STEPHENS, JANE DOE #49, (WESTJET)**

and

MELVIN GEREIN, (WESTSHORE TERMINALS)

Plaintiffs

and

**HIS MAJESTY THE KING, PRIME MINISTER JUSTIN TRUDEAU, DEPUTY
PRIME MINISTER AND MINISTER OF FINANCE CHRYSTIA FREELAND, CHIEF
MEDICAL OFFICER TERESA TAM, MINISTER OF TRANSPORT OMAR
ALGHABRA, DEPUTY MINISTER OF PUBLIC SAFETY MARCO MENDICINO,
JOHNS AND JANES DOE**

Defendants

ORDER AND REASONS

I. Overview

[1] The Defendants have brought a motion pursuant to Rule 221(1)(a) of the *Federal Courts Rules*, SOR/98-106 [Rules] to strike the Plaintiffs' Statement of Claim in its entirety, without leave to amend.

[2] The Statement of Claim was filed on May 30, 2022. The Plaintiffs comprise approximately 600 individuals who allege they suffered harm as a result of the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* issued by the Treasury Board of Canada on October 6, 2021 [TB Policy], and the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61* issued by Transport Canada on April 24, 2022 [Interim Order].

[3] The Plaintiffs are current or former employees of the Government of Canada, federal Crown corporations, and federally-regulated businesses or organizations. The precise circumstances of the Plaintiffs' employment are not pleaded in the Statement of Claim.

[4] Unusually, the style of cause groups the Plaintiffs by their employers. For example, the first group of Plaintiffs is identified as employed by the Royal Canadian Mounted Police; the second as employed by the Department of National Defence; the third as employed by the Canada Border Services Agency; and so on.

[5] There are numerous groups of Plaintiffs identified as employees of a wide variety of federal government institutions and Crown corporations. Other Plaintiffs are identified as employees of federally-regulated businesses or organizations such as Air Canada, Bank of Montreal, BC Ferries, Canadian National Railway, Ontario Power Generation, Purolator, and Rogers Communications.

[6] According to the Defendants, approximately two-thirds of the Plaintiffs appear to be employed within the Core Public Administration [CPA], as defined in the *Financial Administration Act*, RSC 1985, c F-11, s 11(1) and Schedules I, IV [FAA]. The Defendants say these Plaintiffs' claims are barred by s 236 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [FPSLRA].

[7] The remaining one-third of the Plaintiffs appear to fall within two other categories: employees of federal Crown corporations and employees of businesses or organizations that operate in a variety of federally-regulated sectors, principally transportation, telecommunications, logistics, finance, and courier services. The Defendants do not dispute the Court's potential jurisdiction over the claims brought by these Plaintiffs, but nevertheless maintain that the Statement of Claim fails to disclose any reasonable causes of action.

[8] With respect to those Plaintiffs who are subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety without leave to amend. With respect to those Plaintiffs who are not subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety, but with leave to amend.

II. Issues

[9] The issues raised by the Defendants' motion are whether the Statement of Claim should be struck and, if so, whether leave should be granted to amend the pleading.

A. *Plaintiffs Subject to the FPSLRA*

[10] The Plaintiffs who are employed within the organizations listed in Schedule A hereto are members of the CPA, as defined in the FAA. Persons employed within the CPA are subject to s 236 of the FPSLRA. This provision reads as follows:

No Right of Action

Disputes relating to employment

236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.

Application

(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.

[...]

Absence de droit d'action

Différend lié à l'emploi

236 (1) Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

Application

(2) Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.

[...]

[11] The right to grieve is available to employees as defined in s 206(1) of the FPSLRA. Both unionized and non-unionized employees may file a grievance. The Defendants say that the Plaintiffs' right to grieve encompasses the allegations contained in the Statement of Claim, because they concern their "terms and conditions of employment", as that expression is used in s 208 of the FPSLRA:

Right of employee

208 (1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved (a) by the interpretation or application, in respect of the employee, of

(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or

(ii) a provision of a collective agreement or an arbitral award; or

(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.

Droit du fonctionnaire

208 (1) Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé a) par l'interprétation ou l'application à son égard :

(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,

(ii) soit de toute disposition d'une convention collective ou d'une décision arbitrale;

b) par suite de tout fait portant atteinte à ses conditions d'emploi.

[12] In *Hudson v Canada*, 2022 FC 694 [*Hudson*], I granted the defendant's motion to strike the statement of claim without leave to amend on the ground that the plaintiffs' claims were barred by s 236 of the FPSLRA. The analysis that follows is adapted from the one I applied in *Hudson*.

[13] Subsection 236(1) of the FPSLRA has been recognized as an “explicit ouster” of the courts’ jurisdiction (*Bron v Canada (Attorney General)*, 2010 ONCA 71 [*Bron*] at para 4). Once it is established that a matter must be the subject of a grievance, the grievance process cannot be circumvented, even for reasons of efficiency, by relying on a court’s residual jurisdiction (*Bouchard c Procureur général du Canada*, 2019 QCCA 2067).

[14] Subsection 236(1) of the FPSLRA was enacted in 2005 in direct response to the Supreme Court of Canada’s decisions in *Vaughan v Canada*, 2005 SCC 11 [*Vaughan*] and *Weber v Ontario Hydro*, [1995] 2 SCR 929 [*Weber*] (see *Attorney General of Canada, on behalf of Correctional Service of Canada v Robichaud and MacKinnon*, 2013 NBCA 3 [*Robichaud*] at para 3). *Vaughan* and *Weber* stand for the proposition that courts should usually decline to exercise any residual jurisdiction they may have to intervene in employment-related matters. Before a court will intervene in an employment-related dispute, there must be a gap in labour adjudication that causes a “real deprivation of ultimate remedy” (*Weber* at para 57).

[15] This principle was succinctly stated by the Federal Court of Appeal in *Canada v Greenwood*, 2021 FCA 186 [*Greenwood*] at paragraph 130 (leave to appeal ref’d, 2022 CanLII 19060 (SCC)):

Vaughan and the cases that apply it hold that, in most instances, claims from employees subject to federal public sector labour legislation in respect of matters that are not adjudicable before the FPSLREB should not be heard by the courts, as this would constitute an impermissible incursion into the statutory scheme. However, an exception to this general rule allows courts to hear claims that may only be grieved under internal grievance mechanisms if the internal mechanisms are incapable of providing effective redress.

[16] The Defendants say the effect of s 236 of the FPSLRA is to remove any residual discretion this Court may have to intervene in labour disputes involving employees with grievance rights. The Defendants argue that s 236 serves to revoke any statutory grant of jurisdiction this Court might otherwise possess.

[17] Following the enactment of s 236 of the FPSLRA, it appears that no court has intervened in a labour dispute that involves employees who possess grievance rights. The most one can find in the jurisprudence is *obiter* commentary suggesting that an exception might be found if the integrity of the grievance procedure is shown to be compromised based on the evidence presented in a particular case (*Lebrasseur v Canada*, 2007 FCA 330 [*Lebrasseur*]). The onus of establishing that there is room for the exercise of a court's residual discretion lies with a plaintiff (*Lebrasseur* at paras 18-19).

[18] In *Robichaud*, the Court of Appeal of New Brunswick suggested that if the residual discretion to hear a labour dispute continues to exist despite s 236 of the FPSLRA, it will be only in "exceptional" cases: "The truly problematic cases will be those where the grievance process is itself 'corrupt'" (at para 10).

[19] While evidence is not generally admissible on a motion to strike, it may be admitted where a jurisdictional question arises. Evidence as to the nature and efficacy of the suggested alternate processes is necessary to provide a basis for the Court's determination of whether it ought to decline jurisdiction in favour of the alternate administrative remedies (*Greenwood* at paras 95-96).

[20] The Defendants have adduced evidence in support of their motion to strike, but this consists only of an affidavit appending the relevant policy documents as exhibits. No evidence has been tendered respecting “the nature and efficacy of the suggested alternate processes”, as contemplated in *Greenwood* (at para 95).

[21] The Defendants maintain that it is sufficient for them to invoke the FAA to demonstrate that the claims of approximately two-thirds of the Plaintiffs are barred by s 236 of the FPSLRA. The Defendants note that the Plaintiffs do not allege the available internal grievance process is “corrupt” or incapable of providing redress. Indeed, the Statement of Claim is silent regarding the potential availability or adequacy of alternative remedies.

[22] It would have been helpful for the Defendants to provide evidence, or alternatively detailed legal submissions, regarding which of the Plaintiffs are subject to s 236 of the FPSLRA and which are not. Instead, considerable time was expended during the hearing of this motion reviewing the Schedules to the FAA in order to determine which groups of Plaintiffs are employed within the CPA. Following the hearing of the motion, the Court directed the parties to confirm the accuracy of the lists of employers that appear in Schedules A and B hereto. Schedules A and B were subsequently approved by the parties through their counsel. To their credit, this was done on consent.

[23] According to paragraph 6 of the Statement of Claim:

The Plaintiffs are all either:

- (a) Federal (former) Employees of various agencies and Ministries of the Government of Canada and servants, officials, and/or agents of the Crown;
- (b) Employees of Federal Crown Corporations; and
- (c) Employees of federally regulated sectors;

As set out and categorized in the style of cause in the within claim.

[24] While this manner of pleading is unorthodox, it is sufficiently clear. In effect, the categories of employment disclosed in the style of cause are incorporated by reference into the body of the pleading. For the purposes of the Defendants' motion to strike, the Plaintiffs' assertions respecting their places of employment, as identified in the style of cause, must be assumed to be true.

[25] Taken at face value, I am satisfied the pleading confirms that the majority of the Plaintiffs are employed within the CPA. Their claims are therefore barred by s 236 of the FPSLRA.

[26] Before determining whether to exercise any discretion to consider a proceeding, the Court must first be satisfied that the grievance process is not available and would not provide any remedy (*Murphy v Canada (Attorney General)*, 2022 FC 146 [*Murphy*], at para 32, citing *Public Service Alliance of Canada v Canada (Attorney General)*, 2020 FC 481). As Prothonotary (now Associate Judge) Mireille Tabib explained in *Murphy* in paragraph 33:

Consequently, and as also suggested in *Lebrasseur v Canada*, 2007 FCA 330, at para 19, once it is established that a person has recourse to a statutory grievance scheme, it is up to the applicant, and not the respondent seeking to have the application dismissed as premature, to establish that the procedure is clearly not available. That is the necessary conclusion, since concluding otherwise and allowing access to the courts whenever the admissibility of a

grievance is challenged would have the effect of bypassing the exhaustive scheme Parliament intended. It would amount to asking the Court to prejudge the admissibility of a grievance and to usurp the role of the grievance authority in respect of the interpretation and application of the provisions governing the grievance procedure.

[27] Associate Judge Tabib's ruling in *Murphy* was recently upheld by Justice Vanessa Rochester in *Murphy v Canada (Attorney General)*, 2023 FC 57 [*Murphy (Appeal)*].

[28] Even at this preliminary stage, the onus is on the Plaintiffs to establish the Court's jurisdiction over the claims advanced in the Statement of Claim (*Hudson* at para 91; *Murphy (Appeal)* at para 82). I am not persuaded that the Plaintiffs who are employed within the CPA have done so.

[29] On a motion to strike, a plaintiff will satisfy the requirement that the pleadings disclose a reasonable cause of action unless, assuming all facts pleaded to be true, it is plain and obvious that the plaintiff's claim cannot succeed (*Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57 at para 63). However, this does not mean that the Plaintiffs' assertions respecting this Court's jurisdiction must be assumed to be true. As Justice Rochester explained in *Murphy (Appeal)* at paragraph 86:

It is clear that on a motion to strike an application for judicial review, the facts asserted by the applicant in its Notice of Application must be presumed to be true (*Prairies Tubulars (2015) Inc v Canada (Border Services Agency)*, 2018 FC 991 at para 26 and the cases cited therein). This presumption does not extend to the arguments that an applicant may make or any evidence they may submit in response to a motion to strike the Notice of Application. Concluding otherwise would run counter to the teaching of the Federal Court of Appeal in [*Canada (National Revenue) v JP Morgan Asset Management (Canada) Inc*, 2013

FCA 250] and have the effect of rendering such motions to strike incapable of success, thereby hampering the Court's power to restrain the misuse or abuse of its process (*JP Morgan* at para 48).

[30] Plaintiffs who enjoy statutory grievance rights and allege they have been harmed by the TB Policy or Interim Order must exhaust the grievance process before seeking redress in this Court (*Murphy (Appeal)* at paras 75-76). As I held in *Wojdan v Canada (Attorney General)*, 2021 FC 1341 at paragraph 31, permitting premature access to the Court:

[...] would have the effect of undermining the labour grievance process enacted by Parliament. The Court would be preempting the primary role of labour adjudicators in determining questions that pertain to the application of the Vaccination Policy, the extent to which it may be said to infringe employees' rights, whether any infringement can be justified on the grounds of public health, and if not, whether the Applicants are entitled to financial or other compensation. Premature judicial intervention would not be complementary to fundamental principles of labour relations, but destructive of them.

[31] The Plaintiffs argue that their claims are not barred by s 236 of the FPSLRA, because some of the remedies they seek are beyond the powers of a labour adjudicator to grant. They emphasize the declaratory relief sought in the Statement of Claim regarding the constitutional validity of the TB Policy and Interim Order, citing ss 91 and 92(10) of the *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App II, No 5 and the *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 [Charter].

[32] The Plaintiffs cannot escape the operation of s 236 of the FPSLRA by pleading that their claims are not ordinary workplace disputes, or that some of the remedies they seek are not

available through the internal grievance process. As the Ontario Court of Appeal held in *Bron*, the right to grieve is “very broad” and “[a]lmost all employment-related disputes can be grieved under s 208 of the FPSLRA” (at paras 14-15).

[33] In *Ebadi v Canada*, 2022 FC 834 [*Ebadi*], the plaintiff advanced the argument (at para 35) that:

[...] *Bron* maintains the court’s residual discretion to hear a claim when a grievance procedure does not provide an adequate remedy. Further, the Court may assume jurisdiction over claims that, in the usual course, may be barred by section 236, where there is a gap in the statutory scheme, where the events produce a difficulty unforeseen by the scheme, or where “no adequate alternative remedy already exists,” as set out in *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v Canadian Pacific Ltd.*, [1996] 2 SCR 495 at para 8 [*Brotherhood*].

[34] Justice Henry Brown rejected this argument, holding that alleged Charter violations may be addressed through the grievance process under the FPSLRA (*Ebadi* at 43-44, citing *Green v Canada (Border Services Agency)*, 2018 FC 414 at paras 10-11). He also affirmed that the grievance procedure operates “in lieu of any right of action”, even when a plaintiff’s preferred remedy (in that case third-party adjudication) is not available (at paras 49-50):

In accordance with the analysis in *Green*, the Plaintiff could have challenged the Harassment Policy and Grievance Procedure themselves under sections 208 and 236 of the *FPSRLA*. In addition and in my respectful view, the statutory bar to court litigation set out in subsection 236(2) pre-empts any cause of action in this Court notwithstanding there is no access to third party-adjudication.

Here, the ONCA’s reasoning in *Bron* is again relevant:

[32] Finally, the appellant argues that a superior court must maintain an inherent jurisdiction despite whatever language may be used in s. 236. He relies on *Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd.*, 1996 CanLII 215 (SCC), [1996] 2 S.C.R. 495, [1996] S.C.J. No. 42, at para. 8. As I read that case, it stands for the proposition that a superior court has inherent jurisdiction to provide a remedy where the relevant statutory scheme does not speak to the circumstances at hand. In other words, the court's inherent jurisdiction can fill remedial lacunae in legislation. There is no legislative gap here. Section 236 speaks directly to workplace complaints that are grievable under the legislation. For those complaints, even when there is no access to third-party adjudication, the grievance procedure operates "in lieu of any right of action". [Emphasis added]

[35] Canadian courts have consistently found that harms allegedly suffered by employees as a result of their employers' policies and practices in response to the COVID-19 pandemic are properly addressed by way of grievance, in both unionized and non-unionized workplaces (see *National Organized Workers Union v Sinai Health System*, 2022 ONCA 802 [*Sinai Health*] at para 39 and the cases cited therein). As the Court of Appeal for Ontario held in *Sinai Health* (at para 38):

At its core, the harm at issue was the potential for being placed on leave without pay or terminated under the Policy, if an employee chose to remain unvaccinated. The appellant's members were not being forced to be vaccinated, denied bodily autonomy, or denied the right to give informed consent to vaccination. They could choose to be vaccinated or not. If they chose not to be vaccinated, they faced being placed on unpaid leave or having their employment terminated. This potential harm is fundamentally related to employment. It is harm which an arbitrator has the tools to remedy. If the appellant were to prevail in the arbitration, an arbitrator could order reinstatement without loss of seniority and compensation for lost wages. There is no palpable and overriding error in the application judge's conclusion that there was no remedial gap in the labour relations regime that warranted the exercise of the Superior Court's residual jurisdiction.

[36] The Plaintiffs who are subject to s 236 of the FPSLRA have not demonstrated that their circumstances constitute “exceptional cases”, or that there is a gap in labour adjudication that causes a “real deprivation of ultimate remedy” (*Weber* at para 57; *Vaughan* at paras 22, 39). For these Plaintiffs, the Statement of Claim must be struck in its entirety without leave to amend.

B. *Plaintiffs Not Subject to the FPSLRA*

[37] The Plaintiffs who are employed within the organizations listed in Schedule B hereto are not members of the CPA, as defined in the FAA. The Defendants concede that these Plaintiffs’ claims potentially fall within this Court’s jurisdiction.

[38] The Defendants nevertheless maintain that the Statement of Claim is drafted so poorly that it fails to disclose any reasonable causes of action. They therefore argue that the Statement of Claim must be struck in its entirety without leave to amend, regardless of whether or not the Plaintiffs are subject to s 236 of the FPSLRA.

[39] The Rules that govern pleadings in this Court provide in relevant part:

Form of pleadings

173 (1) Pleadings shall be divided into consecutively numbered paragraphs.

Allegations set out separately

(2) Every allegation in a pleading shall, as far as is practicable, be set out in a separate paragraph.

Modalités de forme

173 (1) Les actes de procédure sont divisés en paragraphes numérotés consécutivement.

Présentation

(2) Dans la mesure du possible, chaque prétention contenue dans un

Material facts

174 Every pleading shall contain a concise statement of the material facts on which the party relies, but shall not include evidence by which those facts are to be proved.

[...]

Particulars

181 (1) A pleading shall contain particulars of every allegation contained therein, including

(a) particulars of any alleged misrepresentation, fraud, breach of trust, wilful default or undue influence; and

(b) particulars of any alleged state of mind of a person, including any alleged mental disorder or disability, malice or fraudulent intention.

acte de procédure fait l'objet d'un paragraphe distinct.

Exposé des faits

174 Tout acte de procédure contient un exposé concis des faits substantiels sur lesquels la partie se fonde; il ne comprend pas les moyens de preuve à l'appui de ces faits.

[...]

Précisions

181 (1) L'acte de procédure contient des précisions sur chaque allégation, notamment :

a) des précisions sur les fausses déclarations, fraudes, abus de confiance, manquements délibérés ou influences indues reprochés;

b) des précisions sur toute allégation portant sur l'état mental d'une personne, tel un déséquilibre mental, une incapacité mentale ou une intention malicieuse ou frauduleuse.

[40] It is fundamental to the trial process that a plaintiff plead material facts in sufficient detail to support the claim and the relief sought (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 [*Mancuso*] at para 16). Pleadings play an important role in providing notice and defining the issues to be tried.

[41] The Court and defendants cannot be left to speculate as to how the facts might be variously arranged to support various causes of action. If the Court were to allow parties to plead

bald allegations of fact, or mere conclusory statements of law, the pleadings would fail to perform their role in identifying the issues (*Mancuso* at paras 16-17).

[42] A plaintiff must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or legal ground raised. The pleading must tell the defendant who, when, where, how and what gave rise to its liability. Plaintiffs cannot file inadequate pleadings and rely on a defendant to request particulars, nor can they supplement insufficient pleadings to make them sufficient through particulars (*Mancuso* at paras 19-20).

[43] To establish a reasonable cause of action, a statement of claim must “(1) allege facts that are capable of giving rise to a cause of action; (2) indicate the nature of the action which is to be founded on those facts; and (3) indicate the relief sought, which must be of a type which the action could produce and the court has jurisdiction to grant” (*Zbarsky v Canada*, 2022 FC 195 at para 13, citing *Bérubé v Canada*, 2009 FC 43 at para 24, *aff’d*, 2010 FCA 276).

[44] As Justice Beth Allen of the Ontario Superior Court of Justice observed in *Guillaume v Toronto (City)*, 2010 ONSC 5045 (at para 54):

The importance of clearly drafted and structured pleadings does not require much explanation. Pleadings should be drafted with sufficient clarity and precision so as to give the other party fair notice of the case they are required to meet and of the remedies being sought. The role of pleadings is to assist the court in its quest for the truth. Clearly, confusing, run on and poorly organized pleadings cannot accomplish those goals. Courts have held a pleading may be struck out on the grounds it is unintelligible and lacks clarity [...]

[45] The Statement of Claim in this proceeding is almost 50 pages long. Nine pages are devoted to the remedies sought. There are allegations of constitutional invalidity and criminal culpability, broad assertions of scientific knowledge regarding the COVID-19 pandemic, and a claim that some of the public health measures instituted by the Government of Canada amounted to crimes against humanity. Some of the requested remedies are unavailable in a civil action, including administrative declarations and injunctive relief.

[46] For example, the Statement of Claim seeks a declaration that “vaccine passports” violate the Plaintiffs’ right to move freely within Canada, or to enter and leave Canada, contrary to s 6 of the Charter. However, the pleading does not particularize any facts suggesting that any of the Plaintiffs were prevented from travelling either within or outside Canada.

[47] The Statement of Claim includes claims for re-instatement of lost employment, payment of back pay, and various benefits. But the pleading is devoid of any material facts pertaining to the personal circumstances of any of the Plaintiffs’ employment.

[48] The Statement of Claim alleges that the Defendants have “knowingly engaged in the misfeasance of their public office, and abuse of authority, through their public office” by “[e]xercising a coercive power to force unwanted “vaccination”” under the TB Policy and Interim Order. However, the pleading fails to engage with the substance of the TB Policy and Interim Order, which do not force vaccination and also offer various exemptions and accommodations.

[49] In *Turmel v Canada*, 2021 FC 1095, aff'd, 2022 FCA 166, Justice Russel Zinn upheld a decision of Prothonotary (now Justice) Mandy Aylen to strike a statement of claim challenging certain measures implemented by the Government of Canada to address the COVID-19 pandemic. The plaintiff in that case alleged violations of Charter rights, but neglected to plead material facts or to particularize the alleged Charter infringements. As in this case, the pleading consisted largely of bare assertions.

[50] The Defendants say the Statement of Claim in this proceeding is comparable to the one filed by the same counsel on behalf of the plaintiffs in *Action4Canada v British Columbia (Attorney General)*, 2022 BCSC 1507 [*Action4Canada*]. In that case, the plaintiffs sought damages and other relief from various government entities and employees for harms they allegedly suffered as a result of various restrictions instituted in British Columbia due to the COVID-19 pandemic (*Action4Canada* at para 1).

[51] Justice Alan Ross of the British Columbia Supreme Court granted the defendants' motion to strike the pleading in its entirety, holding as follows (*Action4Canada* at paras 45-48):

[...] the [Notice of Civil Claim [NOCC]], in its current form, is not a pleading that can properly be answered by a responsive pleading. It describes wide-ranging global conspiracies that may, or may not, have influenced either the federal or the provincial governments. It seeks rulings of the court on issues of science. In addition, it includes improper allegations, including criminal conduct and "crimes against humanity". In my opinion, it is "bad beyond argument".

[46] I further find that it is not a document that the court can mend by striking portions. I find that this NOCC is analogous to the Statement of Claim considered by Justice K. Smith (as he then

was) in *Homalco Indian Band v. British Columbia* (1998), 25 C.P.C. (4th) 107 (B.C.S.C.) [*Homalco*]. He wrote:

[11] In my view, the statement of claim is an embarrassing pleading. It contains much that appears to be unnecessary. As well, it is constructed in a manner calculated to confuse the defendants and to make it extremely difficult, if not impossible, to answer. As a result, it is prejudicial. Any attempt to reform it by striking out portions and by amending other portions is likely to result in more confusion as to the real issues. ...

[47] As was the case in *Homalco*, attempting to bring the NOCC into compliance with the Rules by piecemeal striking and amending would invite more confusion and greater expenditure of the resources of all concerned.

[48] I find that the NOCC is prolix. It is not a proper pleading that can be answered by the defendants. It cannot be mended. Given that finding, I have no hesitation in ruling that it must be struck in whole.

[52] The Statement of Claim in this proceeding is similarly “bad beyond argument”. For substantially the same reasons identified by Justice Ross in *Action4Canada*, it must be struck in its entirety.

[53] Justice Ross granted leave to the plaintiffs in *Action4Canada* to amend their pleading. However, he specified that numerous claims, some of which are also advanced in the present proceeding, are improper in a civil action (*Action4Canada* at paras 52-53). These include allegations of criminal behaviour, broad declarations respecting the current state of medical and scientific knowledge, and a declaration that administering medical treatment without informed consent is a crime against humanity.

[54] To this list of impermissible claims must be added the remedies sought in paragraph 4 of the Statement of Claim, which may be obtained only on judicial review and not by action (see *Wojdan v Canada*, 2021 FC 1244):

(a) An interim stay/injunction of the Federal “vaccine mandates” and “passports” *nunc pro tunc*, effective the day before they were announced and/or implemented;

(b) A final stay/injunction of the Federal “vaccine mandates” and “passports” *nunc pro tunc*, effective the day before they were announced and/or implemented.

[55] For those Plaintiffs who are employed outside the federal public administration, *e.g.*, with airlines, banks, transportation companies, *etc.*, any amended pleading will have to allege sufficient material facts to provide a basis for the federal Crown’s liability.

[56] The Plaintiffs who are not subject to s 236 of the FPSLRA have standing to question whether the TB Policy and Interim Order infringed their rights. There is a prospect that the Plaintiffs could put forward a valid claim that certain COVID-related health measures instituted by the Government of Canada contravened their Charter rights. It is possible that other valid claims may exist.

[57] It will be for the Plaintiffs to plead those causes of action in accordance with the Rules. The claims must be framed in a manner that is intelligible and allows the Defendants to know the case they have to meet. The claims must also be confined to matters that are capable of adjudication by this Court, and seek relief this Court is capable of granting (*Action4Canada* at para 71).

III. Conclusion

[58] The Plaintiffs who are employed within the CPA have not established that the available internal recourse mechanisms are incapable of providing them with adequate redress. This Court is therefore without jurisdiction to determine the claims advanced in the Statement of Claim, or should decline to exercise any residual discretion it may have. For those Plaintiffs who are subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety without leave to amend.

[59] For those Plaintiffs who are not subject to s 236 of the FPSLRA, the Statement of Claim must be struck in its entirety, but with leave to amend. Should the Plaintiffs who are not subject to s 236 of the FPSLRA wish to proceed with a civil action respecting the TB Policy and Interim Order, they must plead their causes of action in accordance with the Rules. The claims must be framed in a manner that is intelligible and allows the Defendants to know the case they have to meet. The claims must also be confined to matters that are capable of adjudication by this Court, and seek relief this Court is capable of granting.

ORDER

THIS COURT ORDERS that:

1. The Statement of Claim is struck in its entirety without leave to amend in respect of all Plaintiffs who are subject to s 236 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2.
2. For the remaining Plaintiffs, the Statement of Claim is struck in its entirety with leave to amend in accordance with the Reasons that accompany this Order.
3. Costs are awarded to the Defendants, payable forthwith and in any event of the cause, in the all-inclusive sum of \$5,000.

"Simon Fothergill"

Judge

Schedule "A"

PLAINTIFFS WHO ARE MEMBERS OF THE CORE PUBLIC ADMINISTRATION

Persons employed within the following organizations and who therefore have grievance rights under the *Federal Public Sector Labour Relations Act* (Schedule I, Schedule IV and Schedule V of the *Financial Administration Act*):

- Atlantic Canada Opportunities Agency
- Canada Border Services Agency
- Canada Revenue Agency
- Canada School of Public Service
- Canadian Coast Guard (Department of Fisheries and Oceans)
- Canadian Food Inspection Agency*
- Canadian Forestry Service (Department of Natural Resources)
- Canadian Institutes of Health Research*
- Canadian Nuclear Safety Commission*
- Canadian Radio-television and Telecommunications Commission
- Canada Revenue Agency*
- Canadian Security Intelligence Service*
- Core Public Service
- Canadian Space Agency
- Correctional Service of Canada
- Courts Administration Service
- Department of Agriculture and Agri-Food
- Department of Canadian Heritage
- Department of Employment and Social Development
- Department of Fisheries and Oceans
- Department of Justice
- Department of National Defence
- Department of Natural Resources
- Department of Transport
- Department of Veterans Affairs
- Elections Canada ("Office of the Chief Electoral Officer" and "The portion of the federal public administration in the Office of the Chief Electoral Officer in which the employees referred to in section 509.3 of the Canada Elections Act occupy their positions")
- Environment and Climate Change Canada (Department of the Environment)
- Federal Economic Development Agency for Southern Ontario
- Global Affairs Canada (Department of Foreign Affairs, Trade and Development)
- Government of Canada

- Immigration, Refugees and Citizenship Canada (Department of Citizenship and Immigration)
- Indigenous and Northern Affairs Canada (Department of Crown-Indigenous Relations and Northern Affairs)
- Indigenous Services Canada (Department of Indigenous Services)
- Innovation, Science and Economic Development Canada
- National Film Board of Canada (National Film Board)*
- National Research Council Canada*
- National Security and Intelligence Review Agency (National Security and Intelligence Review Agency Secretariat)*
- Office of the Auditor General of Canada*
- Parks Canada*
- Polar Knowledge Canada (Canadian High Arctic Research Station)*
- Public Health Agency of Canada
- Public Safety Canada (Department of Public Safety and Emergency Preparedness)
- Public Services and Procurement Canada
- Royal Canadian Mounted Police**
- Service Canada (Department of Employment and Social Development)
- Shared Services Canada
- Staff of the Supreme Court
- Statistics Canada
- Treasury Board

NOTES:

All organizations are part of the core public administration as defined at s 11(1) of the *Financial Administration Act* (Schedules I and IV), except as noted.

* Organizations that are portions of the federal public administration listed in Schedule V (Separate Agencies of the *Financial Administration Act*, whose employees have rights to grieve under the *Federal Public Sector Labour Relations Act*).

** The RCMP is part of the core public administration and is listed in Schedule IV of the *Financial Administration Act*; RCMP members have limited rights to grieve under s 238.24 the *Federal Public Sector Labour Relations Act*, but have other grievance rights under the *Royal Canadian Mounted Police Act*.

Schedule "B"**PLAINTIFFS WHO ARE NOT MEMBERS OF THE
CORE PUBLIC ADMINISTRATION**

Persons employed within the following organizations:

- Air Canada
- Air Canada Jazz
- Air Inuit
- Bank of Canada
- Bank of Montreal
- BC Coast Pilots Ltd
- BC Ferries
- British Columbia Maritime Employers Association
- Brookfield Global Integrated Solutions
- Canada Mortgage and Housing Corporation
- Canada Pension Plan
- Canada Post
- Canadian National Railway
- Canadian Pacific Railway
- City of Ottawa Garage Fed Regulated
- DP World
- Export Development Canada
- Farm Credit Canada
- G4S Airport Screening
- Garda Security Screening Inc
- Geotech Aviation
- Global Container Terminals Canada
- Greater Toronto Airports Authority
- House of Commons
- Human Resources Branch, Innovation
- Kelowna Airport Fire Fighters
- National Arts Centre
- NAV Canada
- Ontario Northland Transportation Commission
- Ontario Power Generation
- Pacific Pilotage Authority
- Parliamentary Protection Service
- Public Sector Pension Investment Board
- Purolator Inc
- Questral Helicopters

- RBC Royal Bank
- Rise Air
- Rogers Communications Inc
- Royal Canadian Mint
- Sasktel
- Scotiabank
- Seaspans Victoria Docks
- Shaw
- Skynorth Air Ltd
- Telesat Canada
- Via Rail Canada
- Wasaya Airways
- Waterfront Employers of British Columbia
- Westjet
- Westshore Terminals

FEDERAL COURT**SOLICITORS OF RECORD**

DOCKET: T-1089-22

STYLE OF CAUSE: KAREN ADELBERG ET AL. v HIS MAJESTY THE KING ET AL.

PLACE OF HEARING: TORONTO, ONTARIO

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DATED: FEBRUARY 21, 2023

APPEARANCES:

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FOR THE PLAINTIFFS

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TAB 4

From: "Gilani, Adam" <Adam.Gilani@justice.gc.ca>
Subject: T-1089-22/KAREN ADELBERG ET AL. v. HIS MAJESTY THE KING ET AL.
Date: Thu, February 16, 2023 4:45 pm
To: "rocco@idirect.com" <rocco@idirect.com>
Cc: "Koilpillai, Renuka" <Renuka.Koilpillai@justice.gc.ca>

Hello,

Please see attached a courtesy draft of the Crown's response to the Court following His Honour's Direction dated February 8, 2023.

If you can advise of your agreement with the attached response by 1pm tomorrow, we will file the same as a joint response on behalf of the parties.

Thank you,

Adam Gilani

Counsel / Avocat
Department of Justice / Ministère de la Justice
adam.gilani@justice.gc.ca / Tel: 647-256-1672

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Attachments:

untitled-[1.1]
Size: 0.9 k
Type: text/plain

T-1089-22 (Adelberg) Schedules A and B - AGC Blackline FINAL.pdf
Size: 869 k
Type: application/pdf
Info: T-1089-22 (Adelberg) Schedules A and B - AGC Blackline FINAL.pdf



Rocco Galati <rglfpc@gmail.com>

T-1089-22/KAREN ADELBERG ET AL. v. HIS MAJESTY THE KING ET AL.

3 messages

Rocco Galati <rglfpc@gmail.com>

Thu, Feb 16, 2023 at 5:41 PM

To: Adam.Gilani@justice.gc.ca

Cc: Renuka.Koilpillai@justice.gc.ca

PLEASE NOTE: We will be transitioning my email to this email rglfpc@gmail.com over the next few weeks as rocco@idirect.com has been experiencing issues.

Hello Adam,

I will send you an email by 1pm to confirm.

Thanks

—
ROCCO GALATI LAW FIRM
PROFESSIONAL CORPORATION
Rocco Galati, B.A., LL.B., LL.M.
1062 College Street, Lower Level
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"Oh why, oh why, does the wind never blow backwards?"---Woody Guthrie

Rocco Galati <rglfpc@gmail.com>

Fri, Feb 17, 2023 at 11:31 AM

To: Adam.Gilani@justice.gc.ca

Cc: Renuka.Koilpillai@justice.gc.ca

Hey Adam,

We consent and agree to the list you provided.

Thank you,

[Quoted text hidden]

Gilani, Adam <Adam.Gilani@justice.gc.ca>

Fri, Feb 17, 2023 at 11:34 AM

To: Rocco Galati <rglfpc@gmail.com>

Cc: "Koilpillai, Renuka" <Renuka.Koilpillai@justice.gc.ca>

Good Morning,

Thank you very much for the quick response. I appreciate it.

Adam

[Quoted text hidden]

TAB 5

Schedule "A"

Portions of the Federal Public Administration with grievance rights under the *Federal Public Sector Labour Relations Act* (Schedule I, Schedule IV and Schedule V of the *Financial Administration Act*)

- Atlantic Canada Opportunities Agency
- Canada Border Services Agency
- Canada Revenue Agency
- Canada School of Public Service
- Canadian Coast Guard (Department of Fisheries and Oceans)
- Canadian Food Inspection Agency*
- Canadian Forestry (Department of Natural Resources)
- Canadian Institutes of Health Research*
- Canadian Nuclear Safety Commission*
- Canadian Radio-television and Telecommunications Commission
- Canada Revenue Agency*
- Canadian Security Intelligence Service*
- Core Public Service
- Canadian Space Agency
- Correctional Service of Canada
- Courts Administration Service
- Department of Agriculture and Agri-Food
- Department of Canadian Heritage
- Department of Employment and Social Development
- Department of Fisheries and Oceans
- Department of Justice
- Department of National Defence
- Department of Natural Resources
- Department of Transport
- Department of Veterans Affairs.
- Elections Canada ("Office of the Chief Electoral Officer" and "The portion of the federal public administration in the Office of the Chief Electoral Officer in which the employees referred to in section 509.3 of the Canada Elections Act occupy their positions")
- Environment and Climate Change Canada (Department of the Environment)
- Federal Economic Development Agency for Southern Ontario
- Global Affairs Canada (Department of Foreign Affairs, Trade and Development)
- Government of Canada
- Immigration, Refugees and Citizenship Canada (Department of Citizenship and Immigration)
- Indigenous and Northern Affairs Canada (Department of Crown-Indigenous Relations and Northern Affairs)
- Indigenous Services Canada (Department of Indigenous Services)
- Innovation, Science and Economic Development Canada
- National Film Board of Canada (National Film Board)*
- National Research Council Canada*
- National Security and Intelligence Review Agency (National Security and Intelligence Review Agency Secretariat)*

- Office of the Auditor General of Canada*
- Parks Canada*
- Polar Knowledge Canada (Canadian High Arctic Research Station)*
- Public Health Agency of Canada
- Public Safety Canada (Department of Public Safety and Emergency Preparedness)
- Public Services and Procurement Canada
- Royal Canadian Mounted Police**
- Service Canada (Department of Employment and Social Development)
- Shared Services Canada
- Staff of the Supreme Court
- Statistics Canada
- Treasury Board

NOTES:

All organizations are part of the core public administration as defined at section 11(1) of the *Financial Administration Act* (Schedules I and IV of that act), except as noted.

* Organizations that are portions of the federal public administration listed in Schedule V (Separate Agencies) of the *Financial Administration Act*, whose employees have rights to grieve under the *Federal Public Sector Labour Relations Act*.

** The RCMP is part of the core public administration and is listed in Schedule IV of the *Financial Administration Act*; RCMP members have limited rights to grieve under section 238.24 the *Federal Public Sector Labour Relations Act* but have other grievance rights under the *Royal Canadian Mounted Police Act*.

Schedule “B”

Other organizations

- Air Canada
- Air Canada Jazz
- Air Inuit
- Bank of Canada
- Bank of Montreal
- BC Coast Pilots Ltd
- BC Ferries
- British Columbia Maritime Employers Association
- Brookfield Global Integrated Solutions
- Canada Mortgage and Housing Corporation
- Canada Pension Plan
- Canada Post
- Canadian National Railway
- Canadian Pacific Railway
- City of Ottawa Garage Fed Regulated
- DP World
- Export Development Canada
- Farm Credit Canada
- G4S Airport Screening
- Garda Security Screening Inc
- Geotech Aviation
- Global Container Terminals Canada
- Greater Toronto Airports Authority
- House of Commons
- Human Resources Branch, ~~Innovation, Science and Economic Development Canada~~
- Kelowna Airport Fire Fighters
- National Arts Centre
- ~~National Film Board of Canada~~
- ~~National Security and Intelligence Review Agency~~
- NAV Canada
- Ontario Northland Transportation Commission
- Ontario Power Generation
- Pacific Pilotage Authority
- Parliamentary Protection Service
- ~~Polar Knowledge Canada~~
- Public Sector Pension Investment Board
- Purolator Inc
- Questral Helicopters
- RBC Royal Bank
- Rise Air
- Rogers Communications Inc
- Royal Canadian Mint
- Sasktel
- Scotiabank
- Seaspan Victoria Docks

- Shaw
- Skynorth Air Ltd
- Telesat Canada
- Via Rail Canada
- Wasaya Airways
- Waterfront Employers of British Columbia
- Westjet
- Westshore Terminals

TAB 6

Court File No.: T-1089-22

FEDERAL COURT

BETWEEN:

KAREN ADELBERG, MATTHEW ANDERSON, WYATT GEORGE BAITON, PAUL BARZU, NEIL BIRD, CURTIS BIRD, BEAU BJARNASON, LACEY BLAIR, MARK BRADLEY, JOHN DOE #1, DANIEL BULFORD, JOHN DOE #2, SHAWN CARMEN, JOHN DOE #3, JONATHAN COREY CHALONER, CATHLEEN COLLINS, JANE DOE #1, JOHN DOE #4, KIRK COX, CHAD COX, NEVILLE DAWOOD, RICHARD DE VOS, STEPHANE DROUIN, MIKE DESSON, PHILIP DOBERNIGG, JANE DOE #2, STEPHANE DROUIN, SYLVIE FILTEAU, KIRK FISLER, THOR FORSETH, GLEN GABRUCH, BRETT GARNEAU, TRACY LYNN GATES, KEVIN GIEN, JANE DOE #3, WARREN GREEN, JONATHAN GRIFFIOEN, ROHIT HANNSRAJ, KAITLYN HARDY, SAM HILLIARD, RICHARD HUGGINS, LYNNE HUNKA, JOSEPH ISLIEFSON, LEPOSAVA JANKOVIC, JOHN DOE #5, PAMELA JOHNSTON, ERIC JONES-GATINEAU, ANNIE JOYAL, JOHN DOE #6, MARTY (MARTHA) KLASSEN, JOHN DOE #7, JOHN DOE #8, JOHN DOE #9, RYAN KOSKELA, JANE DOE #4, JULIANS LAZOVIKS, JASON LEFEBVRE, KIRSTEN LINK, MORGAN LITTLEJOHN, JOHN DOE #10, DIANE MARTIN, JOHN DOE #11, RICHARD MEHNER, CELINE MOREAU, ROBIN MORRISON, MORTON NG, GLORIA NORMAN, STEVEN O'DOHERTY, DAVID OBIREK, JOHN ROBERT QUEEN, NICOLE QUICK, GINETTE ROCHON, LOUIS-MARIE ROY, EMAD SADR, MATT SILVER, JINJER SNIDER, MAUREEN STEIN, JOHN DOE #12, JOHN DOE #13, ROBERT TUMBAS, KYLE VAN DE SYPE, CHANTELE VIE, JOSHUA (JOSH) VOID, CARLA WALKER, ANDREW WEDLOCK, JENNIFER WELLS, JOHN WELLS, MELANIE WILLIAMS, DAVID GEORGE JOHN WISEMAN, DANIEL YOUNG, GRATCHEN GRISON, (OFFICERS WITH THE ROYAL CANADIAN MOUNTAIN POLICE)

and

NICOLE AUCLAIR, MICHAEL BALDOCK, SABRINA BARON, WILLIAM DEAN BOOTH, CHARLES BORG, MARIE-EVÉ CARON, THOMAS DALLING, JOSEPH ISRAEL MARC ERIC DE LAFONTAINE, RICARDO GREEN, JORDAN HARTWIG, RODNEY HOWES, CHRISTOPHER MARK JACOBSON, JANE DOE #5, PASCAL LEGENDRE, KIMBERLY LEPAGE, KIM MACDONALD, CINDY MACKAY, KIM MARTIN MCKAY, DAVID MASON, ALEXANDRA KATRINA MOIR, JOSEPH DANIEL ERIC MONTGRAIN, RADOSLAW NIEDZIELSKI, LEANNA JUNE NORDMAN, DONALD POOLE, EDWARD DOMINIC POWER, NORMAN L. REED, JANE DOE #6, BRENDEN SANGSTER, TIMOTHY JOSEPH SEIBERT, ANN-MARIE LEE TRAYNOR, CARL BARRY WOOD, EDDIE EDMOND ANDRUKAITIS, RUBY DAVIS, JENNIFER SCHROEDER, JOSEPH SHEA EMPLOYED BY THE (DEPARTMENT OF NATIONAL DEFENCE)

and

**STEFANIE ALLARD, JAKE DANIEL BOUGHNER, BRENT CARTER, BRIAN COBB,
LAURA CONSTANTINESCU, SONIA DINU, ALDONA FEDOR, JANE DOE #7,
MALORIE KELLY, MATTHEW STEPHEN MACDONALD, MITCHELL MACINTYRE,
HERTHA MCLENDON, MARCEL MIHAILESCU, MICHAEL MUNRO , SEBASTIAN
NOWAK, DIANA RODRIGUES, NATALIE HOLDEN , ADAM DAWSON
WINCHESTER, (CANADA BORDER SERVICES AGENCY)**

and

**CHRISTINE CLOUTHIER, DEBBIE GRAY, JENNIFER PENNER, DALE WAGNER,
JOSEPH AYOUB, (AGRICULTURE AND AGRI-FOOD CANADA)**

and

JANE DOE #8, (ATLANTIC CANADA OPPORTUNITIES AGENCY)

and

MELANIE DUFOUR, (BANK OF CANADA)

and

**JENNIFER AUCIELLO, SHARON ANN JOSEPH, ERIC MUNRO, (CANADA
MORTGAGE AND HOUSING CORPORATION)**

and

JANE DOE #9, (CANADA PENSION PLAN)

and

**NATALIE BOULARD, BEATA BOZEK, JOHN DOE #14, NERIN ANDREA CARR,
SARA JESSICA CASTRO, DEBBIE (DUBRAVKA) CUNKO, JOSÉE CYR, JANE
DOE #10, CAROL GABOURY, TANIA GOMES, JULITA GROCHOCKA, MONIQUE
HARRIS, WILLIAM HOOKER, KIRSTIN HOUGHTON, LEILA KOSTYK,
DIANE C LABBÉ, MICHELLE LAMARRE, NICOLAS LEBLOND, SUANA-LEE
LECLAIR, PAULETTE MORISSETTE, JENNIFER NEAVE, PIERRE-ALEXANDRE
RACINE, BENJAMIN RUSSELL, ROBERT SNOWDEN, AABID THAWER, HEIDI
WIENER, SVJETLANA ZELENBABA, NADIA ZINCK, AARON JAMES THOMAS
SHORROCK, DEIRDRE MCINTOSH, (CANADA REVENUE AGENCY)**

and

TAMARA STAMMIS, (CANADA SCHOOL OF THE PUBLIC SERVICE)

and

JASMIN BOURDON, (CANADA SPACE AGENCY)

and

**SHARON CUNNINGHAM, ALLEN LYNDEN, RORY MATHESON, (CANADIAN
COAST GUARD)**

and

**TATJANA COKLIN, JOHN DOE #15, RAQUEL DELMAS, JANE DOE #11, CHELSEA
HAYDEN, HELENE JOANNIS, ZAKLINA MAZUR, JANE DOE #12, JESSICA
SIMPSON, KATARINA SMOLKOVA, (CANADIAN FOOD INSPECTION AGENCY)**

and

ALEXANDRE CHARLAND, (CANADIAN FORESTRY SERVICE)

and

CATHERINE PROVOST, KRISTINA MARTIN, (CANADIAN HERITAGE)

and

JANE DOE #13, (CANADIAN INSTITUTES OF HEALTH RESEARCH)

and

**BETH BLACKMORE, ROXANNE LORRAIN, (CANADIAN NUCLEAR SAFETY
COMMISSION)**

and

**RÉMI RICHER, (CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS
COMMISSION)**

and

OCTAVIA LA PRAIRIE, (CANADIAN SECURITY INTELLIGENCE SERVICE)

and

ROBERT BESTARD, (CITY OF OTTAWA GARAGE FED REGULATED)

and

KIMBERLY ANN BECKERT, (CORE PUBLIC SERVICE)

and

**SARAH ANDREYCHUK, FRANCOIS BELLEHUMEUR, PAMELA BLAIKIE,
NATASHA CAIRNS, ANGELA CIGLENECKI, VERONIKA COLNAR, RANDY
DOUCET, KARA ERICKSON, JESSE FORCIER, VALÉRIE FORTIN, ROXANE
GUEUTAL, MELVA ISHERWOOD, MILO JOHNSON, VALERIA LUEDEE, LAURIE
LYNDEN, ANNETTE MARTIN, CRAIG MCKAY, ISABELLE METHOT, SAMANTHA
OSYPCHUK, JANE DOE #14, WILNIVE PHANORD, ALEXANDRE RICHER
LEVASSEUR, KATHLEEN SAWYER, TREVOR SCHEFFEL, (CORRECTIONAL
SERVICE OF CANADA)**

and

JORDAN ST-PIERRE, (COURTS ADMINISTRATION SERVICE)

and

BRIGITTE SURGUE, JANE DOE #15, (DEPARTMENT OF CANADIAN HERITAGE)

and

**GHISLAIN CARDINAL, HEATHER HALLIDAY, PAUL MARTEN, CELINE RIVIER,
NGOZI UKWU, JEANNINE BASTARACHE, JANE DOE #16, HAMID NAGHDIAN-
VISHTEH, (DEPARTMENT OF FISHERIES AND OCEAN)**

and

**ISHMAEL GAY-LABBE, JANE DOE #17, LEANNE JAMES, (DEPARTMENT OF
JUSTICE)**

and

DANIELLE BARABE-BUSSIÉRES, (ELECTIONS CANADA)

and

**TANYA DAECHERT, JANE DOE #18, FRANCOIS ARSENEAU, CHANTAL AUTHIER,
NATHALIE BENOIT, AERIE BIAFORE, ROCK BRIAND, AMAUD BRIEN-THIFFAULT,
SHARON CHIU, MICHEL DAIGLE, BRIGITTE DANIELS, LOUISE GAUDREAU,
KARRIE GEVAERT, MARK GEVAERT, PETER IVERSEN, DERRIK LAMB, JANE
DOE #19, ANNA MARINIC, DIVINE MASABARAKIZA, JAMES MENDHAM,
MICHELLE MARINA MICKO, JEAN RICHARD, STEPHANIE SENEAL, JANE DOE**

**#20, RYAN SEWELL, KARI SMYTHE, OLIMPIA SOMESAN, LLOYD SWANSON,
TYRONE WHITE, ELISSA WONG, JENNY ZAMBELAS, LI YANG ZHU, PATRICE
LEVER, (EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA)**

and

**JANE DOE #21, BRIAN PHILIP CRENNAN, JANE DOE #22, BRADLEY DAVID
HIGNELL, ANDREW KALTECK, DANA KELLETT, JOSÉE LOSIER, KRISTIN
MENSCH, ELSA MOUANA, JANE DOE #23, JANE DOE #24, VALENTINA
ZAGORENKO, (ENVIRONMENT AND CLIMATE CHANGE CANADA)**

and

PIERRE TRUDEL, (EXPORT DEVELOPMENT CANADA)

and

**STEPHEN ALAN COLLEY, (FEDERAL ECONOMIC DEVELOPMENT AGENCY FOR
SOUTHERN ONTARIO)**

and

VLADIMIR RASKOVIC, (GARDA SECURITY SCREEING INC)

and

**MÉLANIE BORGIA, JONATHAN KYLE SMITH, DONNA STAINFELD, ANNILA
THARAKAN, RENEE MICHIKO UMEZUKI, (GLOBAL AFFAIRS CANADA)**

and

DENNIS JOHNSON, (GLOBAL CONTAINER TERMINALS CANADA)

and

**ALEXANDRE GUILBEAULT, TARA (MARIA) MCDONOUGH, FRANCE VANIER,
(GOVERNMENT OF CANADA)**

and

ALEX BRAUN, MARC LESCELLEUR-PAQUETTE, (HOUSE OF COMMONS)

and

AIMEE LEGAULT, (HUMAN RESOURCE BRANCH)

and

DORIN ANDREI BOBOC, JANE DOE #25, SOPHIE GUIMARD, ELISA HO, KATHY LEAL, CAROLINE LEGENDRE, DIANA VIDA, (IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA)

and

NATHALIE JOANNE GAUTHIER, (INDIGENOUS AND NORTHERN AFFAIRS CANADA)

and

CHRISTINE BIZIER, AMBER DAWN KLETZEL, VERONA LIPKA, KERRY SPEARS, (INDIGENOUS SERVICES CANADA)

and

SUN-HO PAUL JE, (INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA)

and

GILES ROY, (NATIONAL FILM BOARD OF CANADA)

and

RAY SILVER, MICHELLE DEDYULIN, LETITIA EAKINS, JULIE-ANNE KLEINSCHMIT, MARC-ANDRE OCTEAU, HUGUES SCHOLAERT, (NATIONAL RESEARCH COUNCIL CANADA)

and

FELIX BEAUCHAMP, (NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY)

and

JULIA MAY BROWN, CALEB LAM, STEPHANE LEBLANC, SERRYNA WHITESIDE, (NATURAL RESOURCES CANADA)

and

NICOLE HAWLEY, STEEVE L'ITALIEN, MARC LECOCQ, TONY MALLET, SANDRA MCKENZIE, (NAV CANADA)

and

MUHAMMAD ALI, (OFFICE OF THE AUDITOR GENERAL OF CANADA)

and

RYAN ROGERS, (ONTARIO NORTHLAND TRANSPORTATION COMMISSION)

and

THERESA STENE, MICHAEL DESSUREAULT, JOHN DOE #16, (PARK CANADA)

and

CHARLES-ALEXANDRE BEAUCHEMIN, BRETT OLIVER, (PARLIMENTARY PROTECTION SERVICE)

and

CAROLE DUFORD, (POLAR KNOWLEDGE CANADA)

and

JOANNE GABRIELLE DE MONTIGNY, IVANA ERIC, JANE DOE #26, SALYNA LEGARE, JANE DOE #27, ANGIE RICHARDSON, JANE DOE #28, (PUBLIC HEALTH AGENCY OF CANADA)

and

FAY ANNE BARBER, (PUBLIC SAFETY CANADA)

and

DENIS LANIEL, (PUBLIC SECTOR PENSION INVESTMENT BOARD)

and

KATHLEEN ELIZABETH BARRETTE, SARAH BEDARD, MARIO CONSTANTINEAU, KAREN FLEURY, BRENDA JAIN, MEGAN MARTIN, JANE DOE #29, ISABELLE PAQUETTE, RICHARD PARENT, ROGER ROBERT RICHARD , NICOLE INCENNES, CHRISTINE VESSIA, JANE DOE #30, PAMELA MCINTYRE, (PUBLIC SERVICES AND PROCUREMENT CANADA)

and

ISABELLE DENIS, (REGISTRAR OF THE SUPREME COURT OF CANADA)

and

JANE BARTMANOVICH, (ROYAL CANADIAN MINT)

and

NICOLE BRISSON, (SERVICE CANADA)

and

**DENIS AUDET, MATHIEU ESSIAMBRE, ALAIN HART, ANDREA HOUGHTON,
NATALIA KWIATEK, DANY LEVESQUE, DAVID MCCARTHY, PASCAL MICHAUD,
MERVI PENNANEN, TONYA SHORTILL, STEPHANIE TKACHUK, MARSHALL
WRIGHT, (SHARED SERVICES CANADA)**

and

**EVE MARIE BLOUIN-HUDON, MARC-ANTOINE BOUCHER, CHRISTOPHER
HUSZAR, (STATISTICS CANADA)**

and

STEVE YOUNG, (TELESTAT CANADA)

and

**NATHAN ALIGIZAKIS, STEPHEN DANIEL, ALAIN DOUCHANT, KRYSTAL
MCCOLGAN, DEBBIE MENARD, CLARENCE RUTTLE, DOROTHY BARRON,
ROBERT MCLACHLAN, (TRANSPORT CANADA)**

and

**SCOTT ERROLL HENDERSON, DENIS THERIAULT, (TREASURY BOARD OF
CANADA)**

and

**JOSIANE BROUILLARD, ALEXANDRA MCGRATH, NATHALIE STE-CROIX, JANE
DOE #31, (VETERANS AFFAIRS CANADA)**

and

**OLUBUSAYO (BUSAYO) AYENI, JOHN DOE #17, CYNTHIA BAUMAN, JANE DOE
#32, LAURA CRYSTAL BROWN, KE(JERRY) CAI, NICOLINO CAMPANELLI,
DONALD KEITH CAMPBELL, COLLEEN CARDER, KATHY CARRIERE, MELISSA**

CARSON, DAVID CLARK, BRADLEY CLERMONT, LAURIE COELHO, ESTEE COSTA, ANTONIO DA SILVA, BRENDA DARVILL, PATRICK DAVIDSON, EUGENE DAVIS, LEAH DAWSON, MARC FONTAINE, JACQUELINE GENAILLE, ELDON GOOSSEN, JOYCE GREENAWAY, LORI HAND, DARREN HAY, KRISTA IMIOLA, CATHERINE KANUKA, DONNA KELLY, BENJAMIN LEHTO, ANTHONY LEON, AKEMI MATSUMIYA, JANE DOE #33, JANE DOE #34, JANE DOE #35, ANNE MARIE MCQUAID-SNIDER, LINO MULA, PAMELA OPERSKO, GABRIEL PAQUET, CHRISTINE PAQUETTE, CAROLIN JACQUELINE PARIS, JODIE PRICE, KEVIN PRICE, GIUSEPPE QUADRINI, SAARAH QUAMINA, SHAWN ROSSITER, ANTHONY RUSH, ANTHONY SHATZKO, CHARLES SILVA, RYAN SIMKO, NORMAN SIROIS, BRANDON SMITH, CATHARINE SPIAK, SANDRA STROUD, ANITA TALARIAN, DARYL TOONK, RYAN TOWERS, LEANNE VERBEEM, ERAN VOOYS, ROBERT WAGNER, JASON WEATHERALL, MELANIE BURCH, STEVEN COLE, TONI DOWNIE, AMBER RICARD, JODI STAMMIS, (CANADA POST)

and

NICOLAS BELL, JOHN DOE #18, JOHN DOE #19, JANE DOE #36, JOHN DOE #20, PAOLA DI MADDALENA, NATHAN DODDS, JOHN DOE #21, JANE DOE #37, NUNZIO GIOLTI, MARIO GIRARD, JANE DOE #38, JANE DOE #39, YOU-HUI KIM, JANE DOE #40, SEBASTIAN KORAK, ADA LAI, MIRIUM LO, MELANIE MAILLOUX, CAROLYN MUIR, PATRIZIA PABA, RADU RAUTESCU, ALDO REANO, JACQUELINE ELISABETH ROBINSON, JOHN DOE #22, FREDERICK ROY, JOHN DOE #23, TAEKO SHIMAMURA, JASON SISK, BEATA SOSIN, JOEL SZOSTAK, MARIO TCHEON, REBECCA SUE THIESSEN, JANE DOE #41, MAUREEN YEARWOOD, (AIR CANADA)

and

JOHN DOE #24, JOSÉE DEMEULE, JACQUELINE GAMBLE, DOMENIC GIANCOLA, SADNA KASSAN, MARCUS STEINER, CHRISTINA TRUDEAU, (AIR CANADA JAZZ)

and

JOHN DOE #25, EMILIE DESPRES, (AIR INUIT)

and

REJEAN NANTEL, (BANK OF MONTREAL)

and

LANCE VICTOR SCHIIKA, (BC COAST PILOTS LTD)

and

ELIZABETH GODLER, (BC FERRIES)

and

JOHN DOE #26, JANE DOE #42, TAMARA DAVIDSON, JANE DOE #43, KARTER CUTHBERT FELDHOFF DE LA NUEZ, JEFFREY MICHAEL JOSEPH GOUDREAU, BRAD HOMEWOOD, CHAD HOMEWOOD, CHARLES MICHAEL JEFFERSON, JOHN DOE #27, JANICE LARAINÉ KRISTMANSON, JANE DOE #44, DARREN LOUIS LAGIMODIERE, JOHN DOE #28, JOHN DOE #29, MIRKO MARAS, JOHN DOE #30, JOHN DOE #31, JOHN DOE #32, JOHN DOE #33, JOHN DOE #34, JANE DOE #45, JOHN DOE #35, KENDAL STACE-SMITH, JOHN DOE #36, STEVE HEATLEY, (BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION)

and

PAUL VEERMAN, (BROOKFIELD GLOBAL INTEGRATED SOLUTIONS)

and

MARK BARRON, TREVOR BAZILEWICH, JOHN DOE #37, BRIAN DEKKER, JOHN GAETZ, ERNEST GEORGESON, KYLE KORTKO, RICHARD LETAIN, JOHN DOE #38, DALE ROBERT ROSS, (CANADIAN NATIONAL RAILWAY)

and

TIM CASHMORE, ROB GEBERT, MICHAEL ROGER MAILHIOT, (CANADIAN PACIFIC RAILWAY)

and

KARIN LUTZ, (DP WORLD)

and

CRYSTAL SMEENK, (FARM CREDIT CANADA)

and

SYLVIE M.F. GELINAS, SUSIE MATIAS, STEW WILLIAMS, (G4S AIRPORT SCREENING)

and

SHAWN CORMAN, (GEOTECH AVIATION)

and

**JUERGEN BRUSCHKEWITZ, ANDRE DEVEAUX, BRYAN FIGUEIRA, DAVID
SPRATT, GUY HOCKING, SEAN GRANT, (GREATER TORONTO AIRPORTS
AUTHORITY)**

and

DUSTIN BLAIR, (KELOWNA AIRPORT FIRE FIGHTER)

and

HANS-PETER LIECHTI, (NATIONAL ART CENTRE)

and

**BRADLEY CURRUTHERS, LANA DOUGLAS, ERIC DUPUIS, SHERRI ELLIOT,
ROBEN IVENS, JANE DOE #46, LUKE VAN HOEKELLEN, KURT WATSON,
(ONTARIO POWER GENERATION)**

and

**THERESA STENE, MICHAEL DESSUREAULT, ADAM PIDWERBESKI, (PARKS
CANADA)**

and

JOHN DOE #39, (PACIFIC PILOTAGE AUTHORITY)

and

ANGELA GROSS, (PUROLATOR INC.)

and

GERHARD GEERTSEMA, (QUESTRAL HELICOPTERS)

and

AMANDA RANDALL, JANE DOE #47, FRANK VERI, (RBC ROYAL BANK)

and

JAMES (JED) FORSMAN, (RISE AIR)

and

JANE DOE #48, (ROGERS COMMUNICATIONS INC)

and

JERRILYNN REBEYKA, (SASKTEL)

and

EILEEN FAHLMAN, MARY TREICHEL, (SCOTIABANK)

and

JUDAH GAELAN CUMMINS, (SEASPAN VICTORIA DOCKS)

and

DARIN WATSON, (SHAW)

and

RICHARD MICHAEL ALAN TABAK, (SKYNORTH AIR LTD)

and

DEBORAH BOARDMAN, MICHAEL BRIGHAM, (VIA RAIL CANADA)

and

KEVIN SCOTT ROUTLY, (WASAYA AIRWAYS)

and

BRYCE SAILOR, (WATERFRONT EMPLOYERS OF BRITISH COLUMBIA)

and

**JOSEPH BAYDA, JAMIE ELLIOTT, JOHN DOE #40, RANDALL MENGERING,
SAMANTHA NICASTRO, VERONICA STEPHENS, JANE DOE #49, (WESTJET)**

and

MELVIN GEREIN, (WESTSHORE TERMINALS)

Plaintiffs

and

HIS MAJESTY THE KING, PRIME MINISTER JUSTIN TRUDEAU, DEPUTY PRIME MINISTER AND MINISTER OF FINANCE CHRYSIA FREELAND, CHIEF MEDICAL OFFICER TERESA TAM, MINISTER OF TRANSPORT OMAR ALGHABRA, DEPUTY MINISTER OF PUBLIC SAFETY MARCO MENDICINO, JOHNS AND JAMES DOE

Defendants

RESPONDENT'S MOTION RECORD
(Motion to Strike)

November 4, 2022

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TAB A

Court File No.: T-1089-22

FEDERAL COURT

BETWEEN:

KAREN ADELBERG ET AL

Plaintiffs

and

HIS MAJESTY THE KING ET AL

Defendants

NOTICE OF MOTION
(Motion to Strike)

TAKE NOTICE THAT the Respondent makes a motion to the Court under Rule 221 of the *Federal Courts Rules* (the "*Rules*"). The Respondent requests that this motion be heard in writing under Rule 369 of the *Rules* and be decided based on written representations.

THE MOTION IS FOR:

- i. an Order striking out the Statement of Claim issued on May 30, 2022 pursuant to Rule 221 (1) (a), (c), and (f) of the *Rules*, without leave to amend;
- ii. costs of this motion and of the Action; and,
- iii. such further and other relief as the Court may deem appropriate.

THE GROUNDS FOR THE MOTION ARE:

1. Pursuant to Rule 221 of the *Rules*, this Court may order that a pleading, or anything contained therein, be struck out on various enumerated grounds. These grounds include: that the pleading discloses no reasonable cause of action; is scandalous, frivolous, or vexatious; and, is otherwise an abuse of process. Pleadings may be struck out with or without leave to amend.
2. On May 30, 2022, the Statement of Claim (the "Claim") in the present matter was issued in the Federal Court.
3. Approximately 600 individual Plaintiffs bring the Claim. These Plaintiffs are current or former employees of the Government of Canada, federal Crown corporations, and organizations operating in federally regulated sectors.
4. The Plaintiffs' challenge the constitutionality of the Treasury Board of Canada ("Treasury Board") *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (the "Treasury Board Policy") and Transport Canada's *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61* (the "Interim Order").
5. The Treasury Board Policy was implemented on October 6, 2021 and was suspended on June 20, 2022.
6. The Interim Order was made on April 24, 2022 and was repealed on May 6, 2022. The vaccination requirements ceased to have effect on June 20, 2022 and on September 30, 2022, a subsequent version to the Interim Order issue, which was the latest and only remaining regulation, was repealed.
7. The Plaintiffs not only seek to recover alleged damages, but also declarations of invalidity regarding government action in general and specifically to set aside the Treasury Board Policy and the Interim Order. In order to set aside the decisions of a federal decision maker, the Plaintiffs must proceed by judicial review. This form of relief is not available through an action for damages.
8. Even if the Plaintiffs were permitted to reconstitute portions of the Claim as an application for judicial review, such an application would be moot as the Treasury

Board Policy and the Interim Order are no longer in force. The Court should not expend valuable and scarce judicial resources where an applicant has already obtained the result sought and where any outcome would have no real or concrete effect. Any ruling on any possible application will have no practical benefit to any of the parties.

9. The *FPSLRA* establishes a comprehensive scheme for resolving employment-related disputes in the federal public sector for employees in the core public administration and separate agencies. Section 236 states that "The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute."
10. Pursuant to s. 236, the procedures under the *FPSLRA* are the exclusive means for resolution of grievable employment-related disputes. The *FPSLRA* is an explicit ouster of the courts' jurisdiction.
11. There is no indication that the Plaintiffs employed in the federal public administration (CPA Plaintiffs and Plaintiffs employed by separate agencies) could not have filed grievances in relation to the matters in the Claim.
12. Plaintiffs who are not persons employed within the core public service are not subject to the Treasury Board Policy and have no basis upon which they can bring a challenge or seek damages emanating from the Treasury Board Policy.
13. Plaintiffs that wish to challenge the requirements under the Interim Order and to set aside the government decision-making may not do so by way of an action.
14. None of the Plaintiffs set out any material facts that may serve as a foundation for any cause of action. The Plaintiffs cannot seek compensatory damages or challenge government action including the Treasury Board Policy or the Interim Orders in a vacuum.
15. Bare conclusions without a factual basis are insufficient to support a cause of action. The requirement to plead material facts applies equally to *Charter* claims.

16. Allegations including fraud, malice, and misrepresentations, must be pleaded with sufficient particulars of each allegation. Bald allegations of bad faith, ulterior motives, or *ultra vires* conduct are both scandalous, frivolous, and vexatious and are an abuse of process.
17. The Claim is replete with baseless allegations that are incomprehensible, conspiratorial, salacious, extreme and scandalous.
18. The Respondent relies upon the following legislation:
 - a. *Aeronautics Act*, RSC, 1985, c A-2
 - b. *Federal Courts Act*, RSC, 1985, c F-7
 - c. *Federal Courts Rules*, SOR/98-106
 - d. *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2
 - e. *Financial Administration Act*, RSC, 1985, c F-11

**THE FOLLOWING DOCUMENTARY EVIDENCE IS RELIED UPON IN SUPPORT OF
THIS MOTION:**

- i. the Statement of Claim and proceedings taken in the within action;
- ii. the Affidavit of Gabriella Plati Trotto, affirmed October 31, 2022; and,
- iii. such further and other material as counsel may advise and this Honourable Court may allow.

DATED at the City of Toronto, in the Province of Ontario this 4th day of November 2022.



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Lawyers for the Plaintiffs

**AND TO: The Administrator
Federal Court, Toronto Registry**
180 Queen Street West
Toronto, ON M5V 1Z4

TAB B

Court File No.: T-1089-22

FEDERAL COURT

BETWEEN:

KAREN ADELBERG, MATTHEW ANDERSON, WYATT GEORGE BAITON, PAUL BARZU, NEIL BIRD, CURTIS BIRD, BEAU BJARNASON, LACEY BLAIR, MARK BRADLEY, JOHN DOE #1 , DANIEL BULFORD, JOHN DOE #2, SHAWN CARMEN , JOHN DOE #3, JONATHAN COREY CHALONER, CATHLEEN COLLINS, JANE DOE #1 , JOHN DOE #4, KIRK COX, CHAD COX, NEVILLE DAWOOD, RICHARD DE VOS, STEPHANE DROUIN, MIKE DESSON, PHILIP DOBERNIGG, JANE DOE #2, STEPHANE DROUIN, SYLVIE FILTEAU, KIRK FISLER, THOR FORSETH, GLEN GABRUCH, BRETT GARNEAU, TRACY LYNN GATES, KEVIN GIEN, JANE DOE #3, WARREN GREEN, JONATHAN GRIFFIOEN, ROHIT HANNSRAJ, KAITLYN HARDY, SAM HILLIARD, RICHARD HUGGINS, LYNNE HUNKA, JOSEPH ISLIEFSON, LEPOSAVA JANKOVIC, JOHN DOE #5, PAMELA JOHNSTON, ERIC JONES-GATINEAU, ANNIE JOYAL, JOHN DOE #6, MARTY (MARTHA) KLASSEN, JOHN DOE #7, JOHN DOE #8, JOHN DOE #9 , RYAN KOSKELA, JANE DOE #4, JULIANS LAZOVIKS, JASON LEFEBVRE, KIRSTEN LINK, MORGAN LITTLEJOHN, JOHN DOE #10, DIANE MARTIN, JOHN DOE #11, RICHARD MEHNER, CELINE MOREAU, ROBIN MORRISON, MORTON NG, GLORIA NORMAN, STEVEN O'DOHERTY, DAVID OBIREK, JOHN ROBERT QUEEN, NICOLE QUICK, GINETTE ROCHON, LOUIS-MARIE ROY, EMAD SADR, MATT SILVER, JINJER SNIDER, MAUREEN STEIN, JOHN DOE #12, JOHN DOE #13, ROBERT TUMBAS, KYLE VAN DE SYPE, CHANTELE VIENT, JOSHUA (JOSH) VOID, CARLA WALKER, ANDREW WEDLOCK, JENNIFER WELLS, JOHN WELLS, MELANIE WILLIAMS, DAVID GEORGE JOHN WISEMAN, DANIEL YOUNG, GRATCHEN GRISON, (OFFICERS WITH THE ROYAL CANADIAN MOUNTAIN POLICE)

and

NICOLE AUCLAIR, MICHAEL BALDOCK, SABRINA BARON, WILLIAM DEAN BOOTH, CHARLES BORG, MARIE-EVÉ CARON, THOMAS DALLING, JOSEPH ISRAEL MARC ERIC DE LAFONTAINE, RICARDO GREEN, JORDAN HARTWIG, RODNEY HOWES, CHRISTOPHER MARK JACOBSON, JANE DOE #5, PASCAL LEGENDRE, KIMBERLY LEPAGE, KIM MACDONALD, CINDY MACKAY, KIM MARTIN MCKAY, DAVID MASON, ALEXANDRA KATRINA MOIR, JOSEPH DANIEL ERIC MONTGRAIN, RADOSLAW NIEDZIELSKI, LEANNA JUNE NORDMAN, DONALD POOLE, EDWARD DOMINIC POWER, NORMAN L. REED, JANE DOE #6, BRENDEN SANGSTER, TIMOTHY JOSEPH SEIBERT, ANN-MARIE LEE TRAYNOR, CARL BARRY WOOD, EDDIE EDMOND ANDRUKAITIS, RUBY DAVIS, JENNIFER SCHROEDER, JOSEPH SHEA EMPLOYED BY THE (DEPARTMENT OF NATIONAL DEFENCE)

and

**STEFANIE ALLARD, JAKE DANIEL BOUGHNER, BRENT CARTER, BRIAN COBB,
LAURA CONSTANTINESCU, SONIA DINU, ALDONA FEDOR, JANE DOE #7,
MALORIE KELLY, MATTHEW STEPHEN MACDONALD, MITCHELL MACINTYRE,
HERTHA MCLENDON, MARCEL MIHAILESCU, MICHAEL MUNRO , SEBASTIAN
NOWAK, DIANA RODRIGUES, NATALIE HOLDEN , ADAM DAWSON
WINCHESTER, (CANADA BORDER SERVICES AGENCY)**

and

**CHRISTINE CLOUTHIER, DEBBIE GRAY, JENNIFER PENNER, DALE WAGNER,
JOSEPH AYOUB, (AGRICULTURE AND AGRI-FOOD CANADA)**

and

JANE DOE #8, (ATLANTIC CANADA OPPORTUNITIES AGENCY)

and

MELANIE DUFOUR, (BANK OF CANADA)

and

**JENNIFER AUCIELLO, SHARON ANN JOSEPH, ERIC MUNRO, (CANADA
MORTGAGE AND HOUSING CORPORATION)**

and

JANE DOE #9, (CANADA PENSION PLAN)

and

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

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and

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JANE DOE #13, (CANADIAN INSTITUTES OF HEALTH RESEARCH)

and

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COMMISSION)**

and

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and

NICOLE BRISSON, (SERVICE CANADA)

and

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NATALIA KWIATEK, DANY LEVESQUE, DAVID MCCARTHY, PASCAL MICHAUD,
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HUSZAR, (STATISTICS CANADA)**

and

STEVE YOUNG, (TELESTAT CANADA)

and

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MCCOLGAN, DEBBIE MENARD, CLARENCE RUTTLE, DOROTHY BARRON,
ROBERT MCLACHLAN, (TRANSPORT CANADA)**

and

**SCOTT ERROLL HENDERSON, DENIS THERIAULT, (TREASURY BOARD OF
CANADA)**

and

**JOSIANE BROUILLARD, ALEXANDRA MCGRATH, NATHALIE STE-CROIX, JANE
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and

**OLUBUSAYO (BUSAYO) AYENI, JOHN DOE #17, CYNTHIA BAUMAN, JANE DOE
#32, LAURA CRYSTAL BROWN, KE(JERRY) CAI, NICOLINO CAMPANELLI,
DONALD KEITH CAMPBELL, COLLEEN CARDER, KATHY CARRIERE, MELISSA**

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and

NICOLAS BELL, JOHN DOE #18, JOHN DOE #19, JANE DOE #36, JOHN DOE #20, PAOLA DI MADDALENA, NATHAN DODDS, JOHN DOE #21, JANE DOE #37, NUNZIO GIOLTI, MARIO GIRARD, JANE DOE #38, JANE DOE #39, YOU-HUI KIM, JANE DOE #40, SEBASTIAN KORAK, ADA LAI, MIRIUM LO, MELANIE MAILLOUX, CAROLYN MUIR, PATRIZIA PABA, RADU RAUTESCU, ALDO REANO, JACQUELINE ELISABETH ROBINSON, JOHN DOE #22, FREDERICK ROY, JOHN DOE #23, TAEKO SHIMAMURA, JASON SISK, BEATA SOSIN, JOEL SZOSTAK, MARIO TCHEON, REBECCA SUE THIessen, JANE DOE #41, MAUREEN YEARWOOD, (AIR CANADA)

and

JOHN DOE #24, JOSÉE DEMEULE, JACQUELINE GAMBLE, DOMENIC GIANCOLA, SADNA KASSAN, MARCUS STEINER, CHRISTINA TRUDEAU, (AIR CANADA JAZZ)

and

JOHN DOE #25, EMILIE DESPRES, (AIR INUIT)

and

REJEAN NANTEL, (BANK OF MONTREAL)

and

LANCE VICTOR SCHIIKA, (BC COAST PILOTS LTD)

and

ELIZABETH GODLER, (BC FERRIES)

and

JOHN DOE #26, JANE DOE #42, TAMARA DAVIDSON, JANE DOE #43, KARTER CUTHBERT FELDHOFF DE LA NUEZ, JEFFREY MICHAEL JOSEPH GOUDREAU, BRAD HOMEWOOD, CHAD HOMEWOOD, CHARLES MICHAEL JEFFERSON, JOHN DOE #27, JANICE LARAINÉ KRISTMANSON, JANE DOE #44, DARREN LOUIS LAGIMODIERE, JOHN DOE #28, JOHN DOE #29, MIRKO MARAS, JOHN DOE #30, JOHN DOE #31, JOHN DOE #32, JOHN DOE #33, JOHN DOE #34, JANE DOE #45, JOHN DOE #35, KENDAL STACE-SMITH, JOHN DOE #36, STEVE HEATLEY, (BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION)

and

PAUL VEERMAN, (BROOKFIELD GLOBAL INTEGRATED SOLUTIONS)

and

MARK BARRON, TREVOR BAZILEWICH, JOHN DOE #37, BRIAN DEKKER, JOHN GAETZ, ERNEST GEORGESON, KYLE KORTKO, RICHARD LETAIN, JOHN DOE #38, DALE ROBERT ROSS, (CANADIAN NATIONAL RAILWAY)

and

TIM CASHMORE, ROB GEBERT, MICHAEL ROGER MAILHIOT, (CANADIAN PACIFIC RAILWAY)

and

KARIN LUTZ, (DP WORLD)

and

CRYSTAL SMEENK, (FARM CREDIT CANADA)

and

SYLVIE M.F. GELINAS, SUSIE MATIAS, STEW WILLIAMS, (G4S AIRPORT SCREENING)

and

SHAWN CORMAN, (GEOTECH AVIATION)

and

**JUERGEN BRUSCHKEWITZ, ANDRE DEVEAUX, BRYAN FIGUEIRA, DAVID
SPRATT, GUY HOCKING, SEAN GRANT, (GREATER TORONTO AIRPORTS
AUTHORITY)**

and

DUSTIN BLAIR, (KELOWNA AIRPORT FIRE FIGHTER)

and

HANS-PETER LIECHTI, (NATIONAL ART CENTRE)

and

**BRADLEY CURRUTHERS, LANA DOUGLAS, ERIC DUPUIS, SHERRI ELLIOT,
ROBEN IVENS, JANE DOE #46, LUKE VAN HOEKELLEN, KURT WATSON,
(ONTARIO POWER GENERATION)**

and

**THERESA STENE, MICHAEL DESSUREAULT, ADAM PIDWERBESKI, (PARKS
CANADA)**

and

JOHN DOE #39, (PACIFIC PILOTAGE AUTHORITY)

and

ANGELA GROSS, (PUROLATOR INC.)

and

GERHARD GEERTSEMA, (QUESTRAL HELICOPTERS)

and

AMANDA RANDALL, JANE DOE #47, FRANK VERI, (RBC ROYAL BANK)

and

JAMES (JED) FORSMAN, (RISE AIR)

and

JANE DOE #48, (ROGERS COMMUNICATIONS INC)

and

JERRILYNN REBEYKA, (SASKTEL)

and

EILEEN FAHLMAN, MARY TREICHEL, (SCOTIABANK)

and

JUDAH GAELAN CUMMINS, (SEASPAN VICTORIA DOCKS)

and

DARIN WATSON, (SHAW)

and

RICHARD MICHAEL ALAN TABAK, (SKYNORTH AIR LTD)

and

DEBORAH BOARDMAN, MICHAEL BRIGHAM, (VIA RAIL CANADA)

and

KEVIN SCOTT ROUTLY, (WASAYA AIRWAYS)

and

BRYCE SAILOR, (WATERFRONT EMPLOYERS OF BRITISH COLUMBIA)

and

**JOSEPH BAYDA, JAMIE ELLIOTT, JOHN DOE #40, RANDALL MENGERING,
SAMANTHA NICASTRO, VERONICA STEPHENS, JANE DOE #49, (WESTJET)**

and

MELVIN GEREIN, (WESTSHORE TERMINALS)

Plaintiffs

and

HIS MAJESTY THE KING, PRIME MINISTER JUSTIN TRUDEAU, DEPUTY PRIME MINISTER AND MINISTER OF FINANCE CHRYSIA FREELAND, CHIEF MEDICAL OFFICER TERESA TAM, MINISTER OF TRANSPORT OMAR ALGHABRA, DEPUTY MINISTER OF PUBLIC SAFETY MARCO MENDICINO, JOHNS AND JAMES DOE

Defendants

AFFIDAVIT OF GABRIELLA PLATI TROTTO
Affirmed October 31, 2022

I, Gabriella Plati Trotto, of the City of Mississauga, in the Regional Municipality of Peel, in the Province of Ontario, AFFIRM AND SAY:

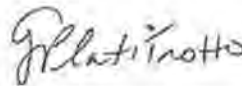
1. I am employed by the Department of Justice, as a Legal Assistant at the Ontario Regional Office in Toronto. I have been in this position since 1999. As such, I have knowledge of the matters deposed in this affidavit. To the extent that I have relied on information provided to me by others in affirming this affidavit, I believe that information to be true and reliable. In swearing this affidavit, I do not intend to waive any applicable legal or litigation privilege.
2. This affidavit relates to the Attorney General of Canada's motion to strike the Statement of Claim in this action.
3. Attached hereto, and marked as **Exhibit "A"** to this, my affidavit is a copy of the Treasury Board of Canada *Policy on COVID-19 Vaccination for the Core Public Administration including the RCMP*, effective October 6, 2021.
4. Attached hereto, and marked as **Exhibit "B"** to this, my affidavit is a copy of the Government of Canada News release titled "Suspension of the vaccine mandates for domestic travellers, transportation workers and federal employees", dated June 14, 2022.

5. Attached hereto, and marked as **Exhibit “C”** to this, my affidavit is a copy of the Transport Canada *Interim Order Respecting Certain Requirements for Civil Aviation due to COVID-19, No. 61*.
6. Attached hereto, and marked as **Exhibit “D”** to this, my affidavit is a copy of the Transport Canada *Interim Order Respecting Certain Requirements for Civil Aviation due to COVID-19, No. 62*.
7. Attached hereto, and marked as **Exhibit “E”** to this, my affidavit is a copy of the Transport Canada *Order Repealing the Interim Order Respecting Certain Requirements for Civil Aviation due to COVID-19, No. 73*.
8. Attached hereto, and marked as **Exhibit “F”** to this, my affidavit is a copy of the list of Interim Orders issued by Transport Canada.
9. Attached hereto, and marked as **Exhibit “G”** to this, my affidavit is a copy of the Transport Canada *Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19, No. 3*.

10. I affirm this affidavit in support of the Attorney General of Canada's motion to strike the Statement of Claim in this action and for no other or improper purpose.

Affirmed before me by video conference:

Affirmed remotely by Gabriella Plati Trotto at the City of Mississauga, Regional Municipality of Peel, in the Province of Ontario, before me, in the City of Toronto, in the Province of Ontario on October 31, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Gabriella Plati Trotto

Adam Gilani (LSO#74291P)

This is **EXHIBIT "A"**
referred to in the Affidavit of
GABRIELLA PLATI TROTTO

Affirmed remotely by Gabriella Plati Trotto at the City
of Mississauga, Regional Municipality of Peel, in the
Province of Ontario, before me, in the City of Toronto,
in the Province of Ontario on October 31, 2022 in
accordance with O. Reg. 431/20, Administering Oath
or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Adam Gilani (LSO#74291P)



Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police

i Note to reader

Effective June 20, 2022, the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* is suspended, except for:

- Delegations of authorities under section 2.3.4
- Review of the need for the Policy at least every 6 months under section 4.5.2
- Audit and verification requirements under sections 4.1.7 and 4.2.2
- Treatment of key COVID-19 vaccination-related labour relations issues with organizations of the core public administration under section 5.1.2
- Maintenance and update of GC-VATS under section 5.1.5

* It is expected that Separate agencies and Crown Corporations will soon mirror the Federal Public Service's decision on the suspension of the Policy on Vaccination.

1. Effective Date of this Policy

- 1.1 This policy takes effect on October 6, 2021.

2. Authorities

- 2.1 This policy is issued pursuant to sections 7 and 11.1 of the *Financial Administration Act*.
- 2.2 The Treasury Board has delegated to the President of the Treasury Board the authority to:
- 2.2.1 Issue, amend or repeal directives associated with this policy on the recommendation of the Secretary of the Treasury Board and the Chief Human Resources Officer, provided they are consistent with the overall intent of the Policy and there are no financial implications.
- 2.3 The Treasury Board has delegated authority to the Chief Human Resources Officer to:
- 2.3.1 Make technical amendments to this policy and related instruments.
- 2.3.2 Determine the effective dates of the instruments specified in paragraph 2.2.1, where the dates have not been specified by the Treasury Board or the President of the Treasury Board.
- 2.3.3 Issue, amend or repeal standards associated with this policy provided they are consistent with its overall intent and do not have financial implications.
- 2.3.4 Direct deputy heads with respect to:
- 2.3.4.1 Their responsibilities related to this policy.
- 2.3.4.2 Any oversight, systems, information requirements, or compliance and reporting in respect of those responsibilities.
- 2.3.4.3 Any appropriate action to address non-compliance issues.
- 2.3.4.4 Other measures to assess whether requirements of this policy or its supporting instruments have been met.

3. Objectives and Expected Results

- 3.1 The objectives of this policy are as follows:
- 3.1.1 To take every precaution reasonable, in the circumstances, for the protection of the health and safety of employees. Vaccination is a key element in the protection of employees against COVID-19.
- 3.1.2 To improve the vaccination rate across Canada of employees in the core public administration through COVID-19 vaccination.

- 3.1.3 Given that operational requirements may include ad hoc onsite presence, all employees, including those working remotely and teleworking must be fully vaccinated to protect themselves, colleagues, and clients from COVID-19.
- 3.2 The expected results of this policy are as follows:
 - 3.2.1 All employees of the core public administration are fully vaccinated unless accommodated based on a certified medical contraindication, religion, or another prohibited ground for discrimination as defined under the *Canadian Human Rights Act*.
 - 3.2.2 All organizations within the core public administration monitor implementation of this policy and report on its implementation to the Office of the Chief Human Resources Officer.
 - 3.2.3 Personal information is only created, collected, retained, used, disclosed, and disposed of in a manner that respects the provisions of the *Privacy Act* and other applicable legislation.

4. Requirements

Deputy Heads

- 4.1 Deputy heads are responsible for the following:

Implementation

- 4.1.1 Implementing this policy within their organization.
- 4.1.2 Complying with direction received from the President of the Treasury Board, the Secretary of the Treasury Board, or the Chief Human Resources Officer regarding how to implement this policy.
- 4.1.3 Ensuring that their organization complies with any oversight, systems, information requirements, or reporting established by the Chief Human Resources Officer regarding the implementation of this policy, including:
 - 4.1.3.1 Collecting and storing data and information regarding vaccine attestations, testing, and testing results in any system prescribed by the Chief Human Resources Officer.
- 4.1.4 Obtaining a waiver from the Chief Human Resources Officer if their organization is unable to comply with any oversight, systems, information requirements, or reporting established by the Chief Human Resources Officer regarding the implementation of this policy.
- 4.1.5 Providing training related to the requirements set out for employees pursuant to this policy and tracking records of attendance when applicable.
- 4.1.6 Collecting and storing attestation and consent forms once signed for those unable to use the Government of Canada Vaccine Attestation Tracking System (GC-VATS).
- 4.1.7 Conducting audits on attestations and consent forms.

Duty to Accommodate

- 4.1.8 Implementing this policy and the *Directive on the Duty to Accommodate* for persons unable to be fully vaccinated by:
 - 4.1.8.1 Ensuring that employees are informed of:
 - Their right to accommodation;
 - Procedures to be followed when seeking accommodation;
 - The employee's responsibilities when seeking accommodation;
 - Any mandatory testing that needs to be undertaken as accommodation measures, where applicable; and
 - The organization's approach to accommodation and privacy obligations to reassure employees that the workplace will be safe.
 - 4.1.8.2 Ensuring that managers are informed of their responsibilities and obligations regarding:

- Addressing requests for accommodation on a case-by case basis, in a timely manner, and up to the point of undue hardship for employees who are unable to be fully vaccinated based on a certified medical contraindication, religion, or another prohibited ground of discrimination as defined under the *Canadian Human Rights Act*, which could also include employees who are partially vaccinated;
- The fulfilment of mandatory testing requirements as accommodation measures, where applicable; and
- The relevant confidentiality and privacy considerations.

- 4.1.8.3 Implementing measures for employees unwilling to disclose their vaccination status, or who choose not to be fully vaccinated, without an approved accommodation.

Respectful workplace

- 4.1.9 Ensuring a respectful, productive, inclusive, and equitable environment, including:

- 4.1.9.1 Ensuring that employees are aware that harassment or other prohibited conduct directed toward an individual for any reason, including based on their vaccination status, will not be tolerated.

Privacy

- 4.1.10 Ensuring that personal information is collected and managed in accordance with the *Privacy Act* and its related instruments and other applicable legislation, including the institution's enabling legislation:

- 4.1.10.1 Ensuring that their privacy breach plans and procedures are up to date;

- 4.1.10.2 Ensuring that privacy breach plans and procedures are readily available to employees and managers; and

- 4.1.10.3 Ensuring that privacy breach plans include:
- Immediate containment measures in the event of a privacy breach; and
 - Contact information for the relevant officials.

Managers

- 4.2 Managers are responsible for:

- 4.2.1 Ensuring that employees who report to them know how to enter their vaccine attestations and any associated data or information in any system prescribed by the Chief Human Resources Officer (i.e., the GC-VATS);

- 4.2.2 Reviewing vaccine attestations and any associated data or information entered by employees who report to them, for the purpose of validating that the information complies with the requirements;

- 4.2.3 Responding to employees' requests for accommodation under the Duty to Accommodate, as outlined above, including:
- Informing the employee of their obligations;
 - Gathering the relevant information;
 - Making decisions as to whether the duty to accommodate applies;
 - Implementing the decision by identifying the appropriate accommodation measures, which may include mandatory testing; and,
 - Documenting the process.

- 4.2.4 Supporting the deputy head's responsibilities related to the protection of privacy under the *Privacy Act* and its related instruments and other applicable legislation, including:

- 4.2.4.1 Complying with responsibilities assigned to executives and senior officials who manage programs or activities involving the creation, collection, or handling of personal information under the *Directive on Privacy Practices*; and,

- 4.2.4.2 Ensuring that they are aware of and adhere to the requirements of the *Privacy Act* as well as the *Policy on Privacy Protection* and its related instruments and other applicable legislation.

- 4.2.5 Maintaining a respectful, productive, inclusive, and equitable environment.

Employees

4.3 Employees are responsible for:

- 4.3.1 Providing truthful information for the implementation of all aspects of this policy and any procedures, standards, or directives associated with this policy. Failure to do so could constitute a breach of the *Values and Ethics Code for the Public Sector* and may result in disciplinary action.
- 4.3.2 Disclosing their vaccination and testing status accurately as required by this policy.
- 4.3.3 Informing their manager of their need for accommodation based on a certified medical contraindication, religion, or another prohibited ground of discrimination as defined under the *Canadian Human Rights Act* at the earliest opportunity or by the attestation deadline, if possible.
- 4.3.4 Providing their manager with complete and accurate information necessary to identify appropriate accommodation, including information on relevant limitations, restrictions, and if they are partially vaccinated.
- 4.3.5 Cooperating and collaborating in good faith with their organization's representative(s) to identify one or more means to accommodate such needs, which may include mandatory testing, and the reporting of the results, per Health Canada's testing protocol.
- 4.3.6 Notifying their manager if their accommodation needs change.
- 4.3.7 Informing themselves of and adhering to the requirements of the *Privacy Act*, as well as the *Policy on Privacy Protection* and related instruments and other applicable legislation.
- 4.3.8 Attending training as required.
- 4.3.9 Refraining from directing harassment or any other prohibited conduct toward an individual for any reason, including their vaccination status or accommodation measures.

Secretary of the Treasury Board

4.4 The Secretary of the Treasury Board is responsible for:

- 4.4.1 Using authorities under the Policy on People Management to effect any mandatory training requirements related to this policy.

Chief Human Resources Officer

4.5 The Chief Human Resources Officer is responsible for:

- 4.5.1 Prescribing any oversight, systems, information requirements, or reporting for the purpose of implementing this policy; and
- 4.5.2 Reviewing the need for this policy and the policy contents, at a minimum every 6 months, and reporting the results to the President of the Treasury Board.

5. Roles and Responsibilities of Other Government Departments

5.1 The Treasury Board of Canada Secretariat is responsible for:

- 5.1.1 Assisting organizations within the core public administration by providing direction, guidance, and tools to support the vaccination of public service employees by:
 - 5.1.1.1 Communicating timely information to deputy heads on vaccination considerations, as appropriate; and
 - 5.1.1.2 Liaising with bargaining agents at a national level.
- 5.1.2 Addressing key COVID-19 vaccination-related labour relations issues with organizations of the core public administration, such as the employer's obligations relating to occupational health and safety, work refusals, compensation, guidance on

the use of leave, duty to accommodate, the collection, use and disclosure of personal information, general Information Management, and values and ethics:

- 5.1.3 Communicating guidance to organizations regarding the duty to accommodate, compliance with the *Canada Labour Code*, Part II and the *National Joint Council Occupational Health and Safety Directive*, specifically as it relates to COVID-19.
- 5.1.4 Providing support, advice, and guidance for the consistent implementation of this policy, including administrative measures related to unwilling employees.
- 5.1.5 Developing and managing the GC-VATS.
- 5.2 Health Canada's Public Service Occupational Health Program is responsible for:
 - 5.2.1 Providing occupational health advice and guidance to the core public administration related to COVID-19; and
 - 5.2.2 Supporting the Treasury Board of Canada Secretariat in the implementation of this policy by providing occupational health advice.
- 5.3 Health Canada's Testing Secretariat is responsible for:
 - 5.3.1 Supporting the provision of testing (procurement and distribution);
 - 5.3.2 Sharing information on testing supplies, guidance materials, and other relevant information as it relates to testing;
 - 5.3.3 Establishing the testing protocol; and
 - 5.3.4 Connecting organizations to share procedures, best practices, and lessons learned as it relates to testing.
- 5.4 Canada School of Public Service is responsible for:
 - 5.4.1 Providing a learning platform for delivering COVID-19 information tools and or pre-recorded training sessions; and
 - 5.4.2 Enabling course registration and completion tracking, including in each learner's account in [GCCampus](#), if they have one.

6. Application

- 6.1 This policy applies to all employees as defined in Appendix A. The principles of this policy apply equally to Interchange Canada Participants and volunteers.
 - 6.1.1 Employees must comply with this policy regardless of whether they work onsite, remotely, or telework.
- 6.2 This policy does not apply to:
 - 6.2.1 Members of the public receiving services (e.g., Service Canada, Veterans Affairs Canada, Canada Revenue Agency).
 - 6.2.2 Locally engaged staff at missions abroad.
 - 6.2.3 Members of the Canadian Armed Forces.

7. Consequences of Non-Compliance

- 7.1 For employees unwilling to be fully vaccinated or to disclose their vaccination status, as per Appendix A, the employer will implement the following measures:
 - 7.1.1 Within 2 weeks of the attestation deadline, require employees to attend an online training session on COVID-19 vaccination;
 - 7.1.2 At 2 weeks after the attestation deadline:
 - 7.1.2.1 Restrict employees' access to the workplace, off-site visits, business travel and conferences;
 - 7.1.2.2 Place employees on administrative Leave Without Pay advising them not to report to work, or to stop working remotely, and taking the required administrative action to put them on Leave Without Pay;
- 7.2 For employees who are partially vaccinated as per Appendix A:

- 7.2.1 Partially vaccinated employees will be placed on Leave Without Pay if they have not received their second dose by 10 weeks after their first dose;
- 7.2.2 Employees who have been placed on Leave Without Pay and who become partially vaccinated will resume work and have their pay reinstated;
- 7.2.3 Partially vaccinated employees may be subject to temporary measures for the period of time for which they remain partially vaccinated.
- 7.3 "Other Leave With Pay (699)", is not available for employees unwilling to be fully vaccinated or unwilling to disclose their vaccination status.
- 7.4 The Chief Human Resources Officer may direct deputy heads to take appropriate action to address non-compliance issues or may impose any other measures deemed appropriate to assess whether requirements of this policy or its supporting instruments and mandatory procedures have been met.
- 7.5 The costs of measures that may arise because of errors or inappropriate application of this policy, associated instruments, and mandatory procedures, will be paid by the organization, in accordance with existing reference levels.
- 7.6 These measures may include recommendations by the Chief Human Resources Officer to the Treasury Board to add conditions to, modify, or revoke the authority of deputy heads, including any measures allowed by the *Financial Administration Act* that the Treasury Board may determine appropriate.

8. References

Legislation

- [Canadian Human Rights Act](#)
- [Canada Labour Code](#)
- [Canada Occupational Health and Safety Regulations](#)
- [Financial Administration Act](#)
- [Government Employees Compensation Act](#)
- [Privacy Act](#)
- [Privacy Regulations](#)
- [Work Place Harassment and Violence Prevention Regulations](#)

Related policy instruments

- [Directive on Interchange Canada](#)
- [Directive on Leave and Special Working Arrangements](#)
- [Directive on Privacy Practices](#)
- [Directive on Telework](#)
- [Directive on the Duty to Accommodate](#)
- [Policy on People Management](#)
- [Policy on Privacy Protection](#)
- [Policy on the Management of Executives](#)
- [National Joint Council Occupational Health and Safety Directive](#)
- [Values and Ethics Code for the Public Sector](#)

Additional information

- [COVID-19 Vaccines: Authorized vaccines - Canada.ca](#)
- [Framework for implementation of the Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police](#)
- [Framework on mandatory COVID-19 testing for implementation of the Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police](#)
- [Information for Government of Canada employees: Coronavirus disease \(COVID-19\)](#)
- [National Advisory Committee on Immunizations Statement: Recommendations on the use of COVID-19 vaccines](#)
- [Public Service Occupational Health Program COVID-19 Guidance](#)
- [Provincial and Territorial Operating Condition \(GCconnex\)](#)

9. Enquiries

- 9.1 Employees should direct enquiries to their manager.

- 9.2 Human resources advisors should direct enquiries about this policy to the office of their head of human resources, or their designate, who will contact the Office of the Chief Human Resources Officer, as required.

Appendix A: Definitions

Attestation deadline (date limite de présentation de l'attestation)

The date by which an employee's attestations must be entered in the GC-VATS, or provided to managers if the employee does not have access to the GC-VATS:

- October 29, 2021, including for employees on "Other Leave With Pay (699)" for reasons related to the pandemic; or
- 2 weeks after return from leave if the return from leave is after October 15, 2021; or
- 2 weeks after the date on which an employee has been informed of their manager's decision that the duty to accommodate does not apply; or
- For employees who, for reasons related to their current position, are unable to attest to their vaccination status, or do not have access to vaccines for the period extending from October 15th to October 29th, the attestation deadline is 2 weeks from the date they have access to each, as determined by their manager, and notwithstanding their leave status.

Clinical Trial Participants – Not fully vaccinated (as of October 6, 2021) (participants aux essais cliniques – pas entièrement vaccinés (à partir du 6 octobre 2021))

Employees who are participating, or have participated, in a Health Canada authorized COVID-19 vaccination study should be considered to be not fully vaccinated. Employees should use the accommodation process until such time that either:

- The study is completed, Health Canada authorizes the COVID-19 vaccine, and the employee can disclose that they are fully vaccinated as per this policy.
- The employee withdraws from the study or is informed they received a placebo, or Health Canada declines authorization of the study vaccine. At that time, the employee is expected to be vaccinated against COVID-19 with Health Canada authorized vaccine as per the Public Health Agency of Canada or the National Advisory Committee on Immunization (NACI) recommendations. The employee will be given 4 weeks from any of the preceding events occurring to begin their COVID-19 vaccine series unless they are eligible for a different accommodation. When they complete their primary vaccination, they should disclose this information as per this policy and will then be considered fully vaccinated and will no longer require accommodation.
- There may be additional exceptions that would need to be addressed on an individual basis (e.g., participants in clinical trials outside of Canada, employees who received non-Health Canada approved vaccines outside of work-related postings).

Definition will be adjusted if and as required when the National Advisory Committee on Immunization (NACI) makes any future recommendations.

Employees (employés)

For the purpose of this policy, "employees" is used throughout to simplify the text.

It means employees of the core public administration (i.e., departments listed under schedules I and IV of the *Financial Administration Act*) as defined in sections 7 and 11 of the *Financial Administration Act* and includes the following regardless of whether they work on-site or telework (full time or part-time):

- Indeterminate employees;
- Determinate employees;
- Members and reservists of the Royal Canadian Mounted Police; and
- Internationally based public service employees.

For the purpose of this policy, it also includes:

- Casual workers;
- Students;
- Visiting scientists working in Government of Canada laboratories;
- Cadets, enrolled in the Royal Canadian Mounted Police Cadet Training Program, and other cadets/trainees (ab initio) enrolled in any federal public service training college or academy; and
- The principles of this policy are applicable to Interchange Canada participants and volunteers.

These individuals are not entitled to certain benefits explained in this policy (e.g., leave provisions). Such benefits, and any other non-applicable terms, are not applicable to these individuals.

Unvaccinated employees are grouped in 3 categories

Partially vaccinated employees (employés partiellement vaccinés)

For the purpose of this policy "partially vaccinated employees" means employees who have received 1 dose of a Health Canada authorized vaccine, but who have not received a full vaccination series, and do not meet the definition of fully vaccinated below.

Employees unable to be fully vaccinated (employés qui ne peuvent pas être entièrement vaccinés)

For the purpose of this policy "employees unable to be fully vaccinated" means employees that cannot be fully vaccinated due to a certified medical contraindication, religion, or any other prohibited ground of discrimination as defined in the *Canadian Human Rights Act*.

Employees unwilling to be fully vaccinated (employés qui refusent d'être entièrement vaccinés)

For the purpose of this policy "employees unwilling to be fully vaccinated" means employees refusing to disclose their vaccination status (whether they are fully vaccinated or not), employees for whom accommodations for a certified medical contraindication, religion, or another prohibited ground of discrimination is not granted and where the employees are still unwilling to be vaccinated, and employees who have attested that they are unvaccinated.

Employer (employeur)

Under this policy, "employer" means a department or an agency of the core public administration including the Royal Canadian Mounted Police.

Full Implementation Date (date de mise en œuvre complète)

The date by which the testing regime will be in place for employees unable to be vaccinated, and at which consequences will begin to apply to those employees unwilling to be fully vaccinated.

Fully Vaccinated - COVID-19 (employees vaccinated in Canada as of October 6, 2021) (entièrement vacciné - COVID-19 (employés vaccinés au Canada à partir du 6 octobre 2021))

People are considered fully vaccinated 14 days after they have either:

- Received both doses of a Health Canada authorized vaccine that requires 2 doses to complete the vaccination series (as of September 16, 2021): Pfizer-BioNTech Cominaty COVID-19 vaccine, Moderna Spikevax COVID-19 vaccine, or AstraZeneca Vaxzevria COVID-19 vaccine.
- Received mixed dose vaccination series are accepted as long as it aligns with NACI Recommendations on the use of COVID-19 vaccines.
- Received 1 dose of a Health Canada authorized vaccine that only requires 1 dose to complete the vaccination series (as of September 16, 2021): Janssen (Johnson & Johnson) COVID-19 vaccine.
- For current residents of Quebec only, have had a laboratory-confirmed COVID-19 infection followed by at least 1 dose of a Health Canada authorized COVID-19 vaccine.

Definition will be adjusted if and as required when the National Advisory Committee on Immunization (NACI) makes any future recommendations.

Fully Vaccinated - COVID-19 (employees vaccinated outside of Canada as of October 6, 2021) (entièrement vacciné - COVID-19 (employés vaccinés à l'extérieur Canada à partir du 6 octobre 2021))

People are considered fully vaccinated 14 days after they have either:

- Received 1 additional dose of an mRNA vaccine at least 28 days after a complete or incomplete course/series of a non-Health Canada authorized vaccine (e.g., may be applicable for public servants who were posted abroad who received a non-Health Canada authorized vaccination and have now returned to Canada).
- Met the definition for fully vaccinated in the jurisdiction in which they currently reside (i.e., for public servants posted abroad who have not yet returned to Canada).
- Received 3 doses of any COVID-19 vaccine regardless if they are Health Canada authorized vaccines or non-Health Canada authorized vaccines.

Definition will be adjusted if and as required when the National Advisory Committee on Immunization (NACI) makes any future recommendations.

Government of Canada Vaccine Attestation Tracking System (GC-VATS) (système de suivi des attestations de vaccination du Gouvernement du Canada – SSVV-GC)

GC-VATS is a user-friendly web platform within the Treasury Board of Canada Secretariat Application Portal (TAP). The GC-VATS will allow employees to attest to the status of their COVID-19 vaccinations and store the attestations.

GC-VATS will centrally store the attestations and provide access to aggregated data to the Treasury Board of Canada Secretariat, in compliance with the *Privacy Act* and the security requirements.

Similarly, deputy heads and departmental Heads of Human Resources will have access to departmental-level aggregated data.

Vaccination (vaccination)

Vaccination is the term used for receiving a vaccine, usually through an injection.

Vaccine (vaccin)

A vaccine is a substance used to stimulate the immune system and provide immunity against one or several diseases, prepared from the causative agent of a disease, its products, or a synthetic substitute, treated to act as an antigen without inducing the disease.

Workplace (lieu de travail)

Means any place where an employee is engaged in work for the employee's employer, as per the *Canada Labour Code*, Part II. For the purpose of this policy, this includes employees working on site, remotely, and teleworking (full time or part time).

Date modified: 2022-06-20

This is **EXHIBIT "B"**
referred to in the Affidavit of
GABRIELLA PLATI TROTTO

Affirmed remotely by Gabriella Plati Trotto at the City of Mississauga, Regional Municipality of Peel, in the Province of Ontario, before me, in the City of Toronto, in the Province of Ontario on October 31, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Adam Gilani (LSO#74291P)



Canada.ca > [Treasury Board of Canada Secretariat](#) > 06

Suspension of the vaccine mandates for domestic travellers, transportation workers and federal employees

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

News release

June 14, 2022 – Ottawa, Ontario – Treasury Board of Canada Secretariat and Transport Canada

Following a successful vaccination campaign, 32 million (or nearly 90%) of eligible Canadians have been vaccinated against COVID-19 and case counts have decreased. Canadians have stepped up to protect themselves and the people around them, and rates of hospitalization and deaths are also decreasing across the country, and Canada has one of the highest rates of vaccination in the world.

Vaccination continues to be one of the most effective tools to protect Canadians, including younger Canadians, our health care system and our economy. Everyone in Canada needs to keep up to date with recommended COVID-19 vaccines, including booster doses to get ready for the fall. The Government of Canada will continue to work with provinces and territories to help even more Canadians get the shots for which they are eligible.

Throughout the pandemic, the Government of Canada's response has been informed by expert advice and sound science and research. As the COVID-19 pandemic has evolved, so too have public health measures and advice, which includes vaccination requirements that were always meant to be a temporary measure.

As such, the government announced today that, as of June 20, it will suspend vaccination requirements for domestic and outbound travel, federally regulated transportation sectors and federal government employees.

While the suspension of vaccine mandates reflects an improved public health situation in Canada, the COVID-19 virus continues to evolve and circulate in Canada and globally. Given this context, and because vaccination rates and virus control in other countries varies significantly, current vaccination requirements at the border will remain in effect. This will reduce the potential impact of international travel on our health care system and serve as added protection against any future variant. Other public health measures, such as wearing a mask, continue to apply and will be enforced throughout a traveller's journey on a plane or train.

Travellers and transportation workers

- As of 00:01 EDT on June 20, 2022, the vaccination requirement to board a plane or a train in Canada will be suspended.

- In addition, federally regulated transport sector employers will no longer be required to have mandatory vaccination policies in place for employees.
- Due to the unique nature of cruise ship travel, vaccination requirements for passengers and crew of cruise ships will continue to remain in effect.
- Masking and other public health protection measures will continue to be in place and enforced on planes, trains, and ships.
- Current border measures, including the existing vaccination requirement for most foreign nationals to enter Canada, and quarantine and testing requirements for Canadians who have not received their primary vaccine series, remain in effect.

Federal public service

- Also on June 20, the *Policy on COVID-19 Vaccination for the Core Public Administration (CPA) Including the Royal Canadian Mounted Police* will be suspended.
- Employees of the CPA will be strongly encouraged to remain up to date with their vaccinations; however, they will no longer be required to be vaccinated as a condition of employment.
- As such, employees who are on administrative leave without pay for noncompliance with the Policy in force until now will be contacted by their managers to arrange their return to regular work duties.

Crown corporations and separate agencies will also be asked to suspend vaccine requirements, and the vaccination requirement for supplier personnel accessing federal government workplaces will also be suspended. With the suspension of vaccination requirements, employees placed on unpaid leave may return to work. The government and other employers will ensure that these employees can resume their duties as seamlessly as possible.

Furthermore, the Government of Canada is no longer moving forward with proposed regulations under Part II (Occupational Health and Safety) of the *Canada Labour Code* to make vaccination mandatory in all federally regulated workplaces.

The Government of Canada will not hesitate to make adjustments based on the latest public health advice and science to keep Canadians safe. This could include an up-to-date vaccination mandate at the border, the reimposition of public service and transport vaccination mandates, and the introduction of vaccination mandates in federally regulated workplaces in the fall, if needed.

Quotes

"Throughout this pandemic, our government's approach has been rooted in close collaboration with our provincial and territorial partners. We all have a role to play in keeping Canadians safe. Our government will continue to make decisions based on the best public health advice and adjust its measures accordingly."

- The Honourable Dominic LeBlanc, Minister of Intergovernmental Affairs, Infrastructure and Communities

"The mandatory vaccination requirement successfully mitigated the full impact of COVID-19 for travellers and workers in the transportation sector and provided broader protection to our communities. Suspending this requirement is possible thanks to the tens of millions of Canadians who did the right thing: they stepped up, rolled up their sleeves, and got vaccinated. This action will support Canada's transportation system as we recover from the pandemic."

- The Honourable Omar Alghabra, Minister of Transport of Canada

"As the country's largest employer, the Government has led by example to help protect the health and safety of the federal workforce, as well as those in the federally regulated travel sector. We are now in a much better place across Canada, and vaccination mandates helped us to get there. As we move forward, we will continue to take action to keep public servants safe, and all employees are strongly encouraged to keep their vaccinations current so they get all recommended doses."

- The Honourable Mona Fortier, President of the Treasury Board

"While the suspension of vaccine mandates reflects an improved public health situation in Canada, the COVID-19 virus continues to evolve and circulate in Canada and globally. The science is also perfectly clear on one thing: vaccination remains the single most effective way to protect ourselves, our families, our communities, and our economy against COVID-19. We don't know what we may or may not face come autumn, but we know that we must remain prudent, which is why our government continues to strongly encourage everyone in Canada to stay up to date with their COVID-19 vaccines, which includes recommended booster doses."

- The Honourable Jean-Yves Duclos, Minister of Health

Related products

- [Backgrounder: Government of Canada suspends mandatory vaccination for the federal workforce](#)
- [Backgrounder: Suspension of the mandatory vaccination requirement for domestic travellers and federally regulated transportation workers](#)
- [Backgrounder: Preventing or limiting the spread of COVID-19 on cruise ships](#)

Associated links

- [COVID-19 vaccination for federal public servants](#)

- [COVID-19: Boarding flights, trains, and cruise ships in Canada](#)
- [COVID-19: Cruise ship travel](#)
- [COVID-19: Travel, testing, and borders](#)
- [COVID-19: Provincial and territorial resources](#)

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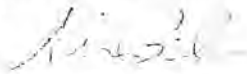
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Date modified:

2022-06-14

This is **EXHIBIT "C"** referred to in the Affidavit of
GABRIELLA PLATI TROTTO

Affirmed remotely by Gabriella Plati Trotto at the City
of Mississauga, Regional Municipality of Peel, in the
Province of Ontario, before me, in the City of Toronto,
in the Province of Ontario on October 31, 2022 in
accordance with O. Reg. 431/20, Administering Oath
or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Adam Gilani (LSO#74291P)

Repealed - Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61

From: Transport Canada

Whereas the annexed *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61* is required to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public;

Whereas the provisions of the annexed Order may be contained in a regulation made pursuant to sections 4.71^a and 4.9^b, paragraphs 7.6(1)(a)^c and (b)^d and section 7.7^e of the *Aeronautics Act*^f;

- ^aS.C. 2004, c. 15, s. 5
- ^bS.C. 2014, c. 39, s. 144
- ^cS.C. 2015, c. 20, s. 12
- ^dS.C. 2004, c. 15, s. 18
- ^eS.C. 2001, c. 29, s. 39
- ^fR.S., c. A-2

And whereas, pursuant to subsection 6.41(1.2)^g of that Act, the Minister of Transport has consulted with the persons and organizations that that Minister considers appropriate in the circumstances before making the annexed Order;

- ^gS.C. 2004, c. 15, s. 11(1)

Therefore, the Minister of Transport makes the annexed *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61* under subsection 6.41(1)^g of the *Aeronautics Act*^f.

Ottawa, April 24, 2022

Le ministre des Transports,

Omar Alghabra
Minister of Transport

Interpretation

Definitions

- **1 (1)** The following definitions apply in this Interim Order.

accredited person

accredited person means a foreign national who holds a passport that contains a valid diplomatic, consular, official or special representative acceptance issued by the Chief of Protocol for the Department of Foreign Affairs, Trade and Development. (*personne accréditée*)

aerodrome property

aerodrome property means, in respect of an aerodrome listed in Schedule 1, any air terminal buildings or restricted areas or any facilities used for activities related to aircraft operations or aerodrome operations that are located at the aerodrome. (*terrains de l'aérodrome*)

aerodrome security personnel

aerodrome security personnel has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*personnel de sûreté de l'aérodrome*)

air carrier

air carrier means any person who operates a commercial air service under Subpart 1, 3, 4 or 5 of Part VII of the Regulations. (*transporteur aérien*)

Canadian Forces

Canadian Forces means the armed forces of Her Majesty raised by Canada. (*Forces canadiennes*)

Chief Public Health Officer

Chief Public Health Officer means the Chief Public Health Officer appointed under subsection 6(1) of the *Public Health Agency of Canada Act*. (*administrateur en chef*)

COVID-19

COVID-19 means the coronavirus disease 2019. (*COVID-19*)

COVID-19 antigen test

COVID-19 antigen test means a COVID-19 screening or diagnostic immunoassay that

- (a) detects the presence of a viral antigen indicating the presence of COVID-19;
- (b) is authorized for sale or distribution in Canada or in the jurisdiction in which it was obtained;
- (c) if the test is self-administered, is observed and whose result is verified
 - (i) in person by an accredited laboratory or testing provider; or
 - (ii) in real time by remote audiovisual means by the accredited laboratory or testing provider that provided the test; and
- (d) if the test is not self-administered, is performed by an accredited laboratory or testing provider. (*essai antigénique relatif à la COVID-19*)

COVID-19 molecular test

COVID-19 molecular test means a COVID-19 screening or diagnostic test, including a test performed using the method of polymerase chain reaction (PCR) or reverse transcription loop-mediated isothermal amplification (RT-LAMP), that

- (a) if the test is self-administered, is observed and whose result is verified
 - (i) in person by an accredited laboratory or testing provider; or
 - (ii) in real time by remote audiovisual means by the accredited laboratory or testing provider that provided the test; or
- (b) if the test is not self-administered, is performed by an accredited laboratory or testing provider. (*essai moléculaire relatif à la COVID-19*)

customs officer

customs officer has the same meaning as officer in subsection 2(1) of the *Customs Act*. (*agent des douanes*)

document of entitlement

document of entitlement has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*document d'autorisation*)

foreign national

foreign national has the same meaning as in subsection 2(1) of the *Immigration and Refugee Protection Act*. (*étranger*)

non-passenger screening checkpoint

non-passenger screening checkpoint has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*point de contrôle des non-passagers*)

operator of an aerodrome

operator of an aerodrome means the person in charge of an aerodrome where activities related to civil aviation are conducted and includes an employee, agent or mandatary or other authorized representative of that person. (*exploitant*)

passenger screening checkpoint

passenger screening checkpoint has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*point de contrôle des passagers*)

peace officer

peace officer has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*agent de la paix*)

quarantine officer

quarantine officer means a person designated as a quarantine officer under subsection 5(2) of the *Quarantine Act*. (*agent de quarantaine*)

Regulations

Regulations means the *Canadian Aviation Regulations*. (*Règlement*)

restricted area

restricted area has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*zone réglementée*)

screening authority

screening authority means a person responsible for the screening of persons and goods at an aerodrome set out in the schedule to the *CATSA Aerodrome Designation Regulations* or at any other place designated by the Minister under subsection 6(1.1) of the *Canadian Air Transport Security Authority Act*. (*administration de contrôle*)

screening officer

screening officer, except in section 2, has the same meaning as in section 2 of the *Canadian Air Transport Security Authority Act*. (*agent de contrôle*)

testing provider

testing provider means

- (a) a person who may provide COVID-19 screening or diagnostic testing services under the laws of the jurisdiction where the service is provided; or

- (b) an organization, such as a telehealth service provider or pharmacy, that may provide COVID-19 screening or diagnostic testing services under the laws of the jurisdiction where the service is provided and that employs or contracts with a person referred to in paragraph (a).
(fournisseur de services d'essais)

variant of concern

variant of concern means a variant of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) that is designated as a variant of concern by the World Health Organization. (*variant préoccupant*)

- Interpretation

(2) Unless the context requires otherwise, all other words and expressions used in this Interim Order have the same meaning as in the Regulations.

- Conflict

(3) In the event of a conflict between this Interim Order and the Regulations or the *Canadian Aviation Security Regulations, 2012*, the Interim Order prevails.

- Definition of mask

(4) For the purposes of this Interim Order, a mask means any mask, including a non-medical mask, that meets all of the following requirements:

- (a) it is made of multiple layers of tightly woven materials such as cotton or linen;
- (b) it completely covers a person's nose, mouth and chin without gaping;
- (c) it can be secured to a person's head with ties or ear loops.

- Masks — lip reading

(5) Despite paragraph (4)(a), the portion of a mask in front of a wearer's lips may be made of transparent material that permits lip reading if

- (a) the rest of the mask is made of multiple layers of tightly woven materials such as cotton or linen; and
- (b) there is a tight seal between the transparent material and the rest of the mask.

- Definition of fully vaccinated person

(6) For the purposes of this Interim Order, a fully vaccinated person means a person who completed, at least 14 days before the day on which they access aerodrome property or a location where NAV CANADA provides civil air navigation services, a COVID-19 vaccine dosage regimen if

- (a) in the case of a vaccine dosage regimen that uses a COVID-19 vaccine that is authorized for sale in Canada,
 - (i) the vaccine has been administered to the person in accordance with its labelling, or

- (ii) the Minister of Health determines, on the recommendation of the Chief Public Health Officer, that the regimen is suitable, having regard to the scientific evidence related to the efficacy of that regimen in preventing the introduction or spread of COVID-19 or any other factor relevant to preventing the introduction or spread of COVID-19; or
- (b) in all other cases,
 - (i) the vaccines of the regimen are authorized for sale in Canada or in another jurisdiction, and
 - (ii) the Minister of Health determines, on the recommendation of the Chief Public Health Officer, that the vaccines and the regimen are suitable, having regard to the scientific evidence related to the efficacy of that regimen and the vaccines in preventing the introduction or spread of COVID-19 or any other factor relevant to preventing the introduction or spread of COVID-19.
- Interpretation — fully vaccinated person

(7) For greater certainty, for the purposes of the definition *fully vaccinated person* in subsection (6), a COVID-19 vaccine that is authorized for sale in Canada does not include a similar vaccine sold by the same manufacturer that has been authorized for sale in another jurisdiction.

Notification

Federal, provincial and territorial measures

- 2 (1) A private operator or air carrier operating a flight between two points in Canada or a flight to Canada departing from any other country must notify every person boarding the aircraft for the flight that they may be subject to measures to prevent the spread of COVID-19 taken by the provincial or territorial government with jurisdiction where the destination aerodrome for that flight is located or by the federal government.
- Suitable quarantine plan

(2) A private operator or air carrier operating a flight to Canada departing from any other country must notify every person before the person boards the aircraft for the flight that they may be required, under an order made under section 58 of the *Quarantine Act*, to provide, before boarding the aircraft, to the Minister of Health, a screening officer or a quarantine officer, by the electronic means specified by that Minister, a suitable quarantine plan or, if the person is not required under that order to provide the plan and the evidence, their contact information. The private operator or air carrier must also notify every person that they may be liable to a fine if this requirement applies to them and they fail to comply with it.
- Vaccination

(3) A private operator or air carrier operating a flight to Canada departing from any other country must notify every person before the person boards the aircraft for the flight that they may be required, under an order made under section 58 of the *Quarantine Act*, to provide, before boarding the aircraft or before entering Canada, to the Minister of Health, a screening officer or a quarantine officer, by the electronic means specified by that Minister, information related to their COVID-19 vaccination and evidence of COVID-19 vaccination. The private operator or air carrier must also notify every person that they may be denied permission to board the aircraft and may be liable to a fine if this requirement applies to them and they fail to comply with it.

- False confirmation

(4) A private operator or air carrier operating a flight between two points in Canada or a flight to Canada departing from any other country must notify every person boarding the aircraft for the flight that they may be liable to a monetary penalty if they provide a confirmation referred to in subsection 3(1) that they know to be false or misleading.

- Definition

(5) For the purposes of this section, screening officer has the same meaning as in section 2 of the *Quarantine Act*.

Confirmation

Federal, provincial and territorial measures

- **3** (1) Before boarding an aircraft for a flight between two points in Canada or a flight to Canada departing from any other country, every person must confirm to the private operator or air carrier operating the flight that they understand that they may be subject to a measure to prevent the spread of COVID-19 taken by the provincial or territorial government with jurisdiction where the destination aerodrome for that flight is located or by the federal government.

- False confirmation

(2) A person must not provide a confirmation referred to in subsection (1) that they know to be false or misleading.

- Exception

(3) A competent adult may provide a confirmation referred to in subsection (1) on behalf of a person who is not a competent adult.

Prohibition

4 A private operator or air carrier operating a flight between two points in Canada or a flight to Canada departing from any other country must not permit a person to board the aircraft for the flight if the person is a competent adult and does not provide a confirmation that they are required to provide under subsection 3(1).

Foreign Nationals

Prohibition

5 A private operator or air carrier must not permit a foreign national to board an aircraft for a flight that the private operator or air carrier operates to Canada departing from any other country.

Exception

6 Section 5 does not apply to a foreign national who is permitted to enter Canada under an order made under section 58 of the *Quarantine Act*.

Confirmation of Health Status

Non-application

7 Sections 8 and 9 do not apply to the following persons:

- (a) a crew member;
- (b) a person boarding an aircraft only to become a crew member on board another aircraft operated by an air carrier;
- (c) a person boarding an aircraft after having been a crew member on board an aircraft operated by an air carrier; or
- (d) a person boarding an aircraft to participate in mandatory training required by an air carrier in relation to the operation of an aircraft, if the person will be required to return to work as a crew member.

Notification

- **8 (1)** A private operator or air carrier must notify every person boarding an aircraft for a flight that the private operator or air carrier operates that the person may be denied permission to board the aircraft if
 - (a) the person exhibits a fever and a cough or a fever and breathing difficulties;
 - (b) the person has COVID-19 or has had it within the previous 10 days, or has reasonable grounds to suspect that they have COVID-19 or have developed signs and symptoms of COVID-19 within the previous 10 days; or
 - (c) in the case of a flight departing in Canada, the person is the subject of a mandatory quarantine order as a result of recent travel or as a result of a local or provincial public health order.
- **Confirmation**

(2) Every person boarding an aircraft for a flight that a private operator or air carrier operates must confirm to the private operator or air carrier that none of the following situations apply to them:

 - (a) the person exhibits a fever and a cough or a fever and breathing difficulties;

- (b) the person has COVID-19 or has had it within the previous 10 days, or has reasonable grounds to suspect that they have COVID-19 or have developed signs and symptoms of COVID-19 within the previous 10 days; or
- (c) in the case of a flight departing in Canada, the person is the subject of a mandatory quarantine order as a result of recent travel or as a result of a local or provincial public health order.
- False confirmation — notice to person

(3) The private operator or air carrier must advise every person that they may be liable to a monetary penalty if they provide answers or a confirmation that they know to be false or misleading.
- False confirmation — obligations of person

(4) A person who is required to provide a confirmation under subsection (2) must

 - (a) answer all questions; and
 - (b) not provide answers or a confirmation that they know to be false or misleading.
- Exception

(5) A competent adult may answer all questions and provide a confirmation on behalf of a person who is not a competent adult and who is required to give a confirmation under subsection (2).
- Observations — private operator or air carrier

(6) During the boarding process for a flight that the private operator or air carrier operates, the private operator or air carrier must observe whether any person boarding the aircraft is exhibiting any of the symptoms referred to in paragraph (1)(a).

Prohibition

- **9 (1)** A private operator or air carrier must not permit a person to board an aircraft for a flight that the private operator or air carrier operates if
 - (a) the private operator or air carrier observes that, as the person is boarding, they exhibit
 - (i) a fever and cough, or
 - (ii) a fever and breathing difficulties;
 - (b) the person's confirmation under subsection 8(2) indicates that one of the situations described in paragraph 8(2)(a) or (b) applies to that person;
 - (c) the person is a competent adult and refuses to give the confirmation under subsection 8(2); or
 - (d) the person's confirmation under subsection 8(2) indicates that the situation described in paragraph 8(2)(c) applies to that person.
- Exception

- (2) Paragraphs (1)(a) and (b) do not apply to a person who can provide a medical certificate certifying that any symptoms referred to in paragraph 8(2)(a) that they are exhibiting are not related to COVID-19 or who has a result for one of the COVID-19 tests described in subsection 13(1).

[10 reserved]

COVID-19 Tests — Flights to Canada

Application

- **11** (1) Sections 12 to 17 apply to a private operator or air carrier operating a flight to Canada departing from any other country and to every person boarding an aircraft for such a flight.
- Non-application
 - (2) Sections 12 to 17 do not apply to persons who are not required under an order made under section 58 of the *Quarantine Act* to provide evidence that they received a result for a COVID-19 molecular test or a COVID-19 antigen test.

Notification

12 A private operator or air carrier must notify every person who intends to board an aircraft for a flight that the private operator or air carrier operates that the person may be denied permission to board the aircraft if they are unable to provide evidence that they received a result for a COVID-19 molecular test or a COVID-19 antigen test.

Evidence — result of test

- **13** (1) Before boarding an aircraft for a flight, every person must provide to the private operator or air carrier operating the flight evidence that they received either
 - (a) a negative result for a COVID-19 molecular test that was performed on a specimen collected no more than 72 hours before the flight's initial scheduled departure time;
 - (b) a negative result for a COVID-19 antigen test that was performed on a specimen collected no more than one day before the flight's initial scheduled departure time; or
 - (c) a positive result for a COVID-19 molecular test that was performed on a specimen collected at least 10 days and no more than 180 days before the flight's initial scheduled departure time.

- Location of test — outside Canada

(1.1) The COVID-19 tests referred to in paragraphs (1)(a) and (b) must be performed outside Canada.

- Evidence — location of test

(2) For the purposes of paragraphs (1)(a) and (b) and subsection (1.1), the COVID-19 molecular test or COVID-19 antigen test must not have been performed in a country where, as determined by the Minister of Health,

there is an outbreak of a variant of concern or there are reasonable grounds to believe that there is an outbreak of such a variant.

Evidence — alternative testing protocol

13.1 Despite subsections 13(1) and (1.1), a person referred to in section 2.22 of the Order entitled *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Quarantine, Isolation and Other Obligations)* must, before boarding an aircraft for a flight, provide to the private operator or air carrier operating the flight evidence of a COVID-19 molecular test or a COVID-19 antigen test that was carried out in accordance with an alternative testing protocol referred to in that section.

Evidence — molecular test

- **14** (1) Evidence of a result for a COVID-19 molecular test must include
 - (a) the name and date of birth of the person from whom the specimen was collected for the test;
 - (b) the name and civic address of the accredited laboratory or the testing provider that performed or observed the test and verified the result;
 - (c) the date the specimen was collected and the test method used; and
 - (d) the test result.

• Evidence — antigen test

(2) Evidence of a result for a COVID-19 antigen test must include

- (a) the name and date of birth of the person from whom the specimen was collected for the test;
- (b) the name and civic address of the accredited laboratory or the testing provider that performed or observed the test and verified the result;
- (c) the date the specimen was collected and the test method used; and
- (d) the test result.

False or misleading evidence

15 A person must not provide evidence of a result for a COVID-19 molecular test or a COVID-19 antigen test that they know to be false or misleading.

Notice to Minister

16 A private operator or air carrier that has reason to believe that a person has provided evidence of a result for a COVID-19 molecular test or a COVID-19 antigen test that is likely to be false or misleading must notify the Minister as soon as feasible of the person's name and contact information and the date and number of the person's flight.

Prohibition

17 A private operator or air carrier must not permit a person to board an aircraft for a flight that the private operator or air carrier operates if the person does not provide evidence that they received a result for a COVID-19 molecular test or a COVID-19 antigen test in accordance with the requirements set out in section 13 or 13.1.

Vaccination — Flights Departing from an Aerodrome in Canada

Application

- **17.1** (1) Sections 17.2 to 17.17 apply to all of the following persons:
 - (a) a person boarding an aircraft for a flight that an air carrier operates departing from an aerodrome listed in Schedule 1;
 - (b) a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight that an air carrier operates;
 - (c) an air carrier operating a flight departing from an aerodrome listed in Schedule 1.
- Non-application
 - (2) Sections 17.2 to 17.17 do not apply to any of the following persons:
 - (a) a child who is less than 12 years and four months of age;
 - (b) a crew member;
 - (c) a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight operated by an air carrier
 - (i) only to become a crew member on board another aircraft operated by an air carrier;
 - (ii) after having been a crew member on board an aircraft operated by an air carrier, or
 - (iii) to participate in mandatory training required by an air carrier in relation to the operation of an aircraft, if the person will be required to return to work as a crew member;
 - (d) a person who arrives at an aerodrome from any other country on board an aircraft in order to transit to another country and remains in a *sterile transit area*, as defined in section 2 of the *Immigration and Refugee Protection Regulations*, of the aerodrome until they leave Canada;
 - (e) a person who arrives at an aerodrome on board an aircraft following the diversion of their flight for a safety-related reason, such as adverse weather or an equipment malfunction, and who boards an aircraft for a flight not more than 24 hours after the arrival time of the diverted flight.

Notification

17.2 An air carrier must notify every person who intends to board an aircraft for a flight that the air carrier operates that

- (a) they must be a fully vaccinated person or a person referred to in any of paragraphs 17.3(2)(a) to (c) or any of subparagraphs 17.3(2)(d)(i) to (iv) or (e)(i) to (vii);
- (b) they must provide to the air carrier evidence of COVID-19 vaccination demonstrating that they are a fully vaccinated person or evidence that they are a person referred to in any of paragraphs 17.3(2)(a) to (c) or any of subparagraphs 17.3(2)(d)(i) to (iv) or (e)(i) to (vii); and
- (c) if they submit a request referred to in section 17.4, they must do so within the period set out in subsection 17.4(3).

Prohibition — person

- **17.3 (1)** A person is prohibited from boarding an aircraft for a flight or entering a restricted area unless they are a fully vaccinated person.
- Exception
 - (2) Subsection (1) does not apply to
 - (a) a foreign national, other than a person registered as an Indian under the *Indian Act*, who is boarding the aircraft for a flight to an aerodrome in Canada if the initial scheduled departure time of that flight is not more than 24 hours after the departure time of a flight taken by the person to Canada from any other country;
 - (b) a permanent resident who is boarding the aircraft for a flight to an aerodrome in Canada if the initial scheduled departure time of that flight is not more than 24 hours after the departure time of a flight taken by the person to Canada from any other country for the purpose of entering Canada to become a permanent resident;
 - (c) a foreign national who is boarding an aircraft for a flight to a country other than Canada or to an aerodrome in Canada for the purpose of boarding an aircraft for a flight to a country other than Canada and who has received either
 - (i) a negative result for a COVID-19 molecular test that was performed on a specimen collected no more than 72 hours before the flight's initial scheduled departure time,
 - (ii) a negative result for a COVID-19 antigen test that was performed on a specimen collected no more than one day before the flight's initial scheduled departure time, or
 - (iii) a positive result for a COVID-19 molecular test that was performed on a specimen collected at least 10 days and no more than 180 days before the flight's initial scheduled departure time;
 - (d) a person who has received a result for a COVID-19 molecular test or a COVID-19 antigen test described in subparagraph (c)(i), (ii) or (iii) and who is

- (i) a person who has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication and who is entitled to be accommodated on that basis under applicable legislation by being permitted to enter the restricted area or to board an aircraft without being a fully vaccinated person,
 - (ii) a person who has not completed a COVID-19 vaccine dosage regimen due to a sincerely held religious belief and who is entitled to be accommodated on that basis under applicable legislation by being permitted to enter the restricted area or to board an aircraft without being a fully vaccinated person,
 - (iii) a person who is boarding an aircraft for a flight for the purpose of attending an appointment for an essential medical service or treatment, or
 - (iv) a competent person who is at least 18 years old and who is boarding an aircraft for a flight for the purpose of accompanying a person referred to in subparagraph (iii) if the person needs to be accompanied because they
 - (A) are under the age of 18 years,
 - (B) have a disability, or
 - (C) need assistance to communicate; or
- (e) a person who has received a result for a COVID-19 molecular test or a COVID-19 antigen test described in subparagraph (c)(i), (ii) or (iii) and who is boarding an aircraft for a flight for a purpose other than an optional or discretionary purpose, such as tourism, recreation or leisure, and who is
- (i) a person who entered Canada at the invitation of the Minister of Health for the purpose of assisting in the COVID-19 response,
 - (ii) a person who is permitted to work in Canada as a provider of emergency services under paragraph 186(t) of the *Immigration and Refugee Protection Regulations* and who entered Canada for the purpose of providing those services,
 - (iii) a person who entered Canada not more than 90 days before the day on which this Interim Order came into effect and who, at the time they sought to enter Canada,
 - (A) held a permanent resident visa issued under subsection 139(1) of the *Immigration and Refugee Protection Regulations*, and
 - (B) was recognized as a Convention refugee or a person in similar circumstances to those of a Convention refugee within the meaning of subsection 146(1) of the *Immigration and Refugee Protection Regulations*,
 - (iv) a person who has been issued a temporary resident permit within the meaning of subsection 24(1) of the *Immigration and Refugee Protection Act* and who entered Canada not more than 90

days before the day on which this Interim Order came into effect as a protected temporary resident under subsection 151.1(2) of the *Immigration and Refugee Protection Regulations*,

- (v) an accredited person,
- (vi) a person holding a D-1, O-1 or C-1 visa who entered Canada to take up a post and become an accredited person, or
- (vii) a diplomatic or consular courier.

Persons — subparagraphs 17.3(2)(d)(i) to (iv)

- **17.4 (1)** An air carrier must issue a document to a person referred to in any of subparagraphs 17.3(2)(d)(i) to (iv) who intends to board an aircraft for a flight that the air carrier operates or that is operated on the air carrier's behalf under a commercial agreement if
 - (a) in the case of a person referred to in any of subparagraphs 17.3(2)(d)(i) to (iii), the person submits a request to the air carrier in respect of that flight in accordance with subsections (2) and (3) or such a request is submitted on their behalf;
 - (b) in the case of a person referred to in subparagraph 17.3(2)(d)(i) or (ii), the air carrier is obligated to accommodate the person on the basis of a medical contraindication or a sincerely held religious belief under applicable legislation by issuing the document; and
 - (c) in the case of a person referred to in subparagraph 17.3(2)(d)(iv), the person who needs accompaniment submits a request to the air carrier in respect of that flight in accordance with subsections (2) and (3) or such a request is submitted on their behalf.

- Request — contents

(2) The request must be signed by the requester and include the following:

- (a) the person's name and home address and, if the request is made by someone else on the person's behalf, that person's name and home address;
- (b) the date and number of the flight as well as the aerodrome of departure and the aerodrome of arrival;
- (c) in the case of a person described in subparagraph 17.3(2)(d)(i),
 - (i) a document issued by the government of a province confirming that the person cannot complete a COVID-19 vaccination regimen due to a medical condition, or
 - (ii) a medical certificate signed by a medical doctor or nurse practitioner who is licensed to practise in Canada certifying that the person cannot complete a COVID-19 vaccination regimen due to a medical condition and the licence number issued by a professional medical licensing body to the medical doctor or nurse practitioner;

- (d) in the case of a person described in subparagraph 17.3(2)(d)(ii), a statement sworn or affirmed by the person before a person appointed as a commissioner of oaths in Canada attesting that the person has not completed a COVID-19 vaccination regimen due to a sincerely held religious belief, including a description of how the belief renders them unable to complete such a regimen; and
- (e) in the case of a person described in subparagraph 17.3(2)(d)(iii), a document that includes
 - (i) the signature of a medical doctor or nurse practitioner who is licensed to practise in Canada,
 - (ii) the licence number issued by a professional medical licensing body to the medical doctor or nurse practitioner,
 - (iii) the date of the appointment for the essential medical service or treatment and the location of the appointment,
 - (iv) the date on which the document was signed, and
 - (v) if the person needs to be accompanied by a person referred to in subparagraph 17.3(2)(d)(iv), the name and contact information of that person and the reason that the accompaniment is needed.
- Timing of request

(3) The request must be submitted to the air carrier

- (a) in the case of a person referred to in subparagraph 17.3(2)(d)(i) or (ii), 21 days before the day on which the flight is initially scheduled to depart; and
- (b) in the case of a person referred to in subparagraph 17.3(2)(d)(iii) or (iv), 14 days before the day on which the flight is initially scheduled to depart.
- Special circumstances

(4) In special circumstances, an air carrier may issue the document referred to in subsection (1) in response to a request submitted after the period referred to in subsection (3).

- Content of document

(5) The document referred to in subsection (1) must include

- (a) a confirmation that the air carrier has verified that the person is a person referred to in any of subparagraphs 17.3(2)(d)(i) to (iv); and
- (b) the date and number of the flight as well as the aerodrome of departure and the aerodrome of arrival.

Record keeping

- **17.5 (1)** An air carrier must keep a record of the following information:
 - (a) the number of requests that the air carrier has received in respect of each exception referred to in subparagraphs 17.3(2)(d)(i) to (iv);
 - (b) the number of documents issued under subsection 17.4(1); and

- (c) the number of requests that the air carrier denied.

- Retention

(2) An air carrier must retain the record for a period of at least 12 months after the day on which the record was created.

- Ministerial request

(3) The air carrier must make the record available to the Minister on request.

Copies of requests

- **17.6** (1) An air carrier must keep a copy of a request for a period of at least 90 days after the day on which the air carrier issued a document under subsection 17.4(1) or refused to issue the document.

- Ministerial request

(2) The air carrier must make the copy available to the Minister on request.

Request for evidence — air carrier

17.7 Before permitting a person to board an aircraft for a flight that the air carrier operates, the air carrier must request that the person provide

- (a) evidence of COVID-19 vaccination demonstrating that they are a fully vaccinated person;
- (b) evidence that they are a person referred to in paragraph 17.3(2)(a) or (b); or
- (c) evidence that they are a person referred to in paragraph 17.3(2)(c) or any of subparagraphs 17.3(2)(d)(i) to (iv) or (e)(i) to (vii) and that they have received a result for a COVID-19 molecular test or a COVID-19 antigen test.

[17.8 reserved]

Provision of evidence

17.9 A person must, at the request of an air carrier, provide to the air carrier the evidence referred to in paragraph 17.7(a), (b) or (c).

Evidence of vaccination — elements

- **17.10** (1) Evidence of COVID-19 vaccination must be evidence issued by a non-governmental entity that is authorized to issue the evidence of COVID-19 vaccination in the jurisdiction in which the vaccine was administered, by a government or by an entity authorized by a government, and must contain the following information:
 - (a) the name of the person who received the vaccine;
 - (b) the name of the government or of the entity;
 - (c) the brand name or any other information that identifies the vaccine that was administered; and

- (d) the dates on which the vaccine was administered or, if the evidence is one document issued for both doses and the document specifies only the date on which the most recent dose was administered, that date.
- Evidence of vaccination — translation
 - (2) The evidence of COVID-19 vaccination must be in English or French and any translation into English or French must be a certified translation.

Result of COVID-19 test

- **17.11** (1) A result for a COVID-19 molecular test or a COVID-19 antigen test is a result described in subparagraph 17.3(2)(c)(i), (ii) or (iii).
- Evidence — molecular test
 - (2) Evidence of a result for a COVID-19 molecular test must include the elements set out in paragraphs 14(1)(a) to (d).
- Evidence — antigen test
 - (3) Evidence of a result for a COVID-19 antigen test must include the elements set out in paragraphs 14(2)(a) to (d).

Person — paragraph 17.3(2)(a)

- **17.12** (1) Evidence that the person is a person referred to in paragraph 17.3(2)(a) must be
 - (a) a travel itinerary or boarding pass that shows that the initial scheduled departure time of the flight to an aerodrome in Canada is not more than 24 hours after the departure time of a flight taken by the person to Canada from any other country; and
 - (b) their passport or other travel document issued by their country of citizenship or nationality.

Person — paragraph 17.3(2)(b)

- (2) Evidence that the person is a person referred to in paragraph 17.3(2)(b) must be
 - (a) a travel itinerary or boarding pass that shows that the initial scheduled departure time of the flight to an aerodrome in Canada is not more than 24 hours after the departure time of the flight taken by the person to Canada from any other country; and
 - (b) a document entitled "Confirmation of Permanent Residence" issued by the Department of Citizenship and Immigration that confirms that the person became a permanent resident on entry to Canada after the flight taken by the person to Canada from any other country.

Person — paragraph 17.3(2)(c)

- (3) Evidence that the person is a person referred to in paragraph 17.3(2)(c) must be

- (a) a travel itinerary or boarding pass that shows that the person is boarding an aircraft for a flight to a country other than Canada or to an aerodrome in Canada for the purpose of boarding an aircraft for a flight to a country other than Canada; and
- (b) their passport or other travel document issued by their country of citizenship or nationality.
- Person — subparagraphs 17.3(2)(d)(i) to (iv)

(4) Evidence that the person is a person referred to in any of subparagraphs 17.3(2)(d)(i) to (iv) must be a document issued by an air carrier under subsection 17.4(1) in respect of the flight for which the person is boarding the aircraft or entering the restricted area.
- Person — subparagraph 17.3(2)(e)(i)

(5) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(i) must be a document issued by the Minister of Health that indicates that the person was asked to enter Canada for the purpose of assisting in the COVID-19 response.
- Person — subparagraph 17.3(2)(e)(ii)

(6) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(ii) must be a document from a government or non-governmental entity that indicates that the person was asked to enter Canada for the purpose of providing emergency services under paragraph 186(t) of the *Immigration and Refugee Protection Regulations*.
- Person — subparagraph 17.3(2)(e)(iii)

(7) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(iii) must be a document issued by the Department of Citizenship and Immigration that confirms that the person has been recognized as a Convention refugee or a person in similar circumstances to those of a Convention refugee within the meaning of subsection 146(1) of the *Immigration and Refugee Protection Regulations*.
- Person — subparagraph 17.3(2)(e)(iv)

(8) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(iv) must be a document issued by the Department of Citizenship and Immigration that confirms that the person entered Canada as a protected temporary resident under subsection 151.1(2) of the *Immigration and Refugee Protection Regulations*.
- Person — subparagraph 17.3(2)(e)(v)

(9) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(v) must be their passport containing a valid diplomatic, consular, official or special representative acceptance issued by the Chief of Protocol for the Department of Foreign Affairs, Trade and Development.
- Person — subparagraph 17.3(2)(e)(vi)

(10) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(vi) must be the person's D-1, O-1 or C-1 visa.

- Person — subparagraph 17.3(2)(e)(vii)

(11) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(vii) must be

- (a) in the case of a diplomatic courier, the official document confirming their status referred to in Article 27 of the Vienna Convention on Diplomatic Relations, as set out in Schedule I to the *Foreign Missions and International Organizations Act*; and
- (b) in the case of a consular courier, the official document confirming their status referred to in Article 35 of the Vienna Convention on Consular Relations, as set out in Schedule II to that Act.

False or misleading information

- **17.13** (1) A person must not submit a request referred to in section 17.4 that contains information that they know to be false or misleading.

- False or misleading evidence

(2) A person must not provide evidence that they know to be false or misleading.

Notice to Minister — information

- **17.14** (1) An air carrier that has reason to believe that a person has submitted a request referred to in section 17.4 that contains information that is likely to be false or misleading must notify the Minister of the following not more than 72 hours after receiving the request:

- (a) the person's name and contact information;
- (b) the date and number of the person's flight; and
- (c) the reason the air carrier believes that the information is likely to be false or misleading.

- Notice to Minister — evidence

(2) An air carrier that has reason to believe that a person has provided evidence that is likely to be false or misleading must notify the Minister of the following not more than 72 hours after the provision of the evidence:

- (a) the person's name and contact information;
- (b) the date and number of the person's flight; and
- (c) the reason the air carrier believes that the evidence is likely to be false or misleading.

Prohibition — air carrier

17.15 An air carrier must not permit a person to board an aircraft for a flight that the air carrier operates if the person does not provide the evidence they are required to provide under section 17.9.

[**17.16** reserved]

Record keeping — air carrier

- **17.17** (1) An air carrier must keep a record of the following information in respect of a person each time the person is denied permission to board an aircraft for a flight under section 17.15:
 - (a) the person's name and contact information, including the person's home address, telephone number and email address;
 - (b) the date and flight number;
 - (c) the reason why the person was denied permission to board the aircraft; and
 - (d) whether the person had been issued a document under subsection 17.4(1) in respect of the flight.
- Retention
 - (2) The air carrier must retain the record for a period of at least 12 months after the date of the flight.
- Ministerial request
 - (3) The air carrier must make the record available to the Minister on request.

[17.18 and 17.19 reserved]

Policy Respecting Mandatory Vaccination

Application

17.20 Sections 17.21 to 17.25 apply to

- (a) the operator of an aerodrome listed in Schedule 1;
- (b) an air carrier operating a flight departing from an aerodrome listed in Schedule 1, other than an air carrier who operates a commercial air service under Subpart 1 of Part VII of the Regulations; and
- (c) NAV CANADA.

Definition of relevant person

- **17.21** (1) For the purposes of sections 17.22 to 17.25, relevant person, in respect of an entity referred to in section 17.20, means a person whose duties involve an activity described in subsection (2) and who is
 - (a) an employee of the entity;
 - (b) an employee of the entity's contractor or agent or mandatary;
 - (c) a person hired by the entity to provide a service;
 - (d) the entity's lessee or an employee of the entity's lessee, if the property that is subject to the lease is part of aerodrome property; or
 - (e) a person permitted by the entity to access aerodrome property or, in the case of NAV CANADA, a location where NAV CANADA provides civil air navigation services.
- Activities

(2) For the purposes of subsection (1), the activities are

- (a) conducting or directly supporting activities that are related to aerodrome operations or commercial flight operations — such as aircraft refuelling services, aircraft maintenance and repair services, baggage handling services, supply services for the operator of an aerodrome, an air carrier or NAV CANADA, fire prevention services, runway and taxiway maintenance services or de-icing services — and that take place on aerodrome property or at a location where NAV CANADA provides civil air navigation services;
- (b) interacting in-person on aerodrome property with a person who intends to board an aircraft for a flight;
- (c) engaging in tasks, on aerodrome property or at a location where NAV CANADA provides civil air navigation services, that are intended to reduce the risk of transmission of the virus that causes COVID-19; and
- (d) accessing a restricted area at an aerodrome listed in Schedule 1.

Comprehensive policy — operators of aerodromes

- **17.22** (1) The operator of an aerodrome must establish and implement a comprehensive policy respecting mandatory COVID-19 vaccination in accordance with subsection (2).

- Policy — content

(2) The policy must

- (a) require that a person who is 12 years and four months of age or older be a fully vaccinated person before accessing aerodrome property, unless they are a person
 - (i) who intends to board an aircraft for a flight that an air carrier operates,
 - (ii) who does not intend to board an aircraft for a flight and who is accessing aerodrome property for leisure purposes or to accompany a person who intends to board an aircraft for a flight,
 - (iii) who is the holder of an employee identification document issued by a department or departmental corporation listed in Schedule 2 or a member identification document issued by the Canadian Forces, or
 - (iv) who is delivering equipment or providing services within a restricted area that are urgently needed and critical to aerodrome operations and who has obtained an authorization from the operator of the aerodrome before doing so;
- (b) despite paragraph (a), allow a person who is subject to the policy and who is not a fully vaccinated person to access aerodrome property if the person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;

- (c) provide for a procedure for verifying evidence provided by a person referred to in paragraph (b) that demonstrates that the person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;
 - (d) provide for a procedure for issuing to a person whose evidence has been verified under the procedure referred to in paragraph (c) a document confirming that they are a person referred to in paragraph (b);
 - (e) provide for a procedure that ensures that a person subject to the policy provides, on request, the following evidence before accessing aerodrome property:
 - (i) in the case of a fully vaccinated person, the evidence of COVID-19 vaccination referred to in section 17.10, and
 - (ii) in the case of a person referred to in paragraph (d), the document issued to the person under the procedure referred to in that paragraph;
 - (f) provide for a procedure that allows a person to whom sections 17.31 to 17.40 apply — other than a person referred to in subsection 17.34(2) — who is a fully vaccinated person or a person referred to in paragraph (b) and who is unable to provide the evidence referred to in paragraph (e) to temporarily access aerodrome property if they provide a declaration confirming that they are a fully vaccinated person or that they have been issued a document under the procedure referred to in paragraph (d);
 - (g) provide for a procedure that ensures that a person referred to in paragraph (d) is tested for COVID-19 at least twice every week;
 - (h) provide for a procedure that ensures that a person who receives a positive result for a COVID-19 test taken under the procedure referred to in paragraph (g) is prohibited from accessing aerodrome property until the end of the period for which the public health authority of the province or territory in which the aerodrome is located requires them to isolate after receiving a positive result; and
 - (i) provide for a procedure that ensures that a person referred to in paragraph (h) who undergoes a COVID-19 molecular test is exempt from the procedure referred to in paragraph (g) for a period of 180 days after the person received a positive result from that test.
- Medical contraindication

(3) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of a medical contraindication only if they provide a medical certificate from a medical doctor or nurse practitioner who is licensed to practise in Canada certifying that the person cannot complete a COVID-19 vaccination regimen due to a medical condition and specifying whether the condition is permanent or temporary.

- Religious belief

(4) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if they submit a statement sworn or affirmed by them attesting that they have not completed a COVID-19 vaccination regimen due to their sincerely held religious belief.

- *Canadian Human Rights Act*

(5) For the purposes of paragraphs (2)(c) and (d), in the case of an employee of the operator of an aerodrome or a person hired by the operator of an aerodrome to provide a service, the policy must provide that a document is to be issued to the employee or person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if the operator of the aerodrome is obligated to accommodate them on that basis under the *Canadian Human Rights Act* by issuing such a document.

- Applicable legislation

(6) For the purposes of paragraphs (2)(c) and (d), in the following cases, the policy must provide that a document is to be issued to the employee confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if they would be entitled to such an accommodation on that basis under applicable legislation:

- (a) in the case of an employee of the operator of an aerodrome's contractor or agent or mandatary; and
- (b) in the case of an employee of the operator of an aerodrome's lessee, if the property that is subject to the lease is part of aerodrome property.

Comprehensive policy — air carriers and NAV CANADA

17.23 Section 17.24 does not apply to an air carrier or NAV CANADA if that entity

- (a) establishes and implements a comprehensive policy respecting mandatory COVID-19 vaccination in accordance with paragraphs 17.24(2)(a) to (h) and subsections 17.24(3) to (6); and
- (b) has procedures in place to ensure that while a relevant person is carrying out their duties related to commercial flight operations, no in-person interactions occur between the relevant person and an unvaccinated person who has not been issued a document under the procedure referred to in paragraph 17.24(2)(d) and who is
 - (i) an employee of the entity,
 - (ii) an employee of the entity's contractor or agent or mandatary,
 - (iii) a person hired by the entity to provide a service, or

- (iv) the entity's lessee or an employee of the entity's lessee, if the property that is subject to the lease is part of aerodrome property.

Targeted policy — air carriers and NAV CANADA

- **17.24** (1) An air carrier or NAV CANADA must establish and implement a targeted policy respecting mandatory COVID-19 vaccination in accordance with subsection (2).
- Policy — content
 - (2) The policy must
 - (a) require that a relevant person, other than the holder of an employee identification document issued by a department or departmental corporation listed in Schedule 2 or a member identification document issued by the Canadian Forces, be a fully vaccinated person before accessing aerodrome property or, in the case of NAV CANADA, a location where NAV CANADA provides civil air navigation services;
 - (b) despite paragraph (a), allow a relevant person who is subject to the policy and who is not a fully vaccinated person to access aerodrome property or, in the case of NAV CANADA, a location where NAV CANADA provides civil air navigation services, if the relevant person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;
 - (c) provide for a procedure for verifying evidence provided by a relevant person referred to in paragraph (b) that demonstrates that the relevant person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;
 - (d) provide for a procedure for issuing to a relevant person whose evidence has been verified under the procedure referred to in paragraph (c) a document confirming that they are a relevant person referred to in paragraph (b);
 - (e) provide for a procedure that ensures that a relevant person subject to the policy provides, on request, the following evidence before accessing aerodrome property:
 - (i) in the case of a fully vaccinated person, the evidence of COVID-19 vaccination referred to in section 17.10, and
 - (ii) in the case of a relevant person referred to in paragraph (d), the document issued to the relevant person under the procedure referred to in that paragraph;
 - (f) provide for a procedure that ensures that a relevant person referred to in paragraph (d) is tested for COVID-19 at least twice every week;
 - (g) provide for a procedure that ensures that a relevant person who receives a positive result for a COVID-19 test under the procedure referred to in paragraph (f) is prohibited from accessing aerodrome

- property until the end of the period for which the public health authority of the province or territory in which the aerodrome is located requires them to isolate after receiving a positive test result;
- (h) provide for a procedure that ensures that a relevant person referred to in paragraph (g) who undergoes a COVID-19 molecular test is exempt from the procedure referred to in paragraph (f) for a period of 180 days after the relevant person received a positive result from that test;
- (i) set out procedures for reducing the risk that a relevant person will be exposed to the virus that causes COVID-19 due to an in-person interaction, occurring on aerodrome property or at a location where NAV CANADA provides civil air navigation services, with an unvaccinated person who has not been issued a document under the procedure referred to in paragraph (d) and who is a person referred to in any of subparagraphs 17.23(b)(i) to (iv), which procedures may include protocols related to
 - (i) the vaccination of persons, other than relevant persons, who access aerodrome property or a location where NAV CANADA provides civil air navigation services,
 - (ii) physical distancing and the wearing of masks, and
 - (iii) reducing the frequency and duration of in-person interactions;
- (j) establish a procedure for collecting the following information with respect to an in-person interaction related to commercial flight operations between a relevant person and a person referred to in any of subparagraphs 17.23(b)(i) to (iv) who is unvaccinated and has not been issued a document under the procedure referred to in paragraph (d) or whose vaccination status is unknown:
 - (i) the time, date and location of the interaction, and
 - (ii) contact information for the relevant person and the other person;
- (k) establish a procedure for recording the following information and submitting it to the Minister on request:
 - (i) the number of relevant persons who are subject to the entity's policy,
 - (ii) the number of relevant persons who require access to a restricted area,
 - (iii) the number of relevant persons who are fully vaccinated persons and those who are not,
 - (iv) the number of hours during which relevant persons were unable to fulfill their duties related to commercial flight operations due to COVID-19,

- (v) the number of relevant persons who have been issued a document under the procedure referred to in paragraph (d), the reason for issuing the document and a confirmation that the relevant persons have submitted evidence of COVID-19 tests taken in accordance with the procedure referred to in paragraph (f),
- (vi) the number of relevant persons who refuse to comply with a requirement referred to in paragraph (a), (f) or (g),
- (vii) the number of relevant persons who were denied entry to a restricted area because of a refusal to comply with a requirement referred to in paragraph (a), (f) or (g),
- (viii) the number of persons referred to in subparagraphs 17.23(b) (i) to (iv) who are unvaccinated and who have not been issued a document under the procedure referred to in paragraph (d), or whose vaccination status is unknown, who have an in-person interaction related to commercial flight operations with a relevant person and a description of any procedures implemented to reduce the risk that a relevant person will be exposed to the virus that causes COVID-19 due to such an interaction, and
- (ix) the number of instances in which the air carrier or NAV CANADA, as applicable, is made aware that a person with respect to whom information was collected under paragraph (j) received a positive result for a COVID-19 test, the number of relevant persons tested for COVID-19 as a result of this information, the results of those tests and a description of any impacts on commercial flight operations; and
- (l) require the air carrier or NAV CANADA, as applicable, to keep the information referred to in paragraph (k) for a period of at least 12 months after the date that the information was recorded.
- Medical contraindication

(3) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a relevant person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of a medical contraindication only if they provide a medical certificate from a medical doctor or nurse practitioner who is licensed to practise in Canada certifying that the relevant person cannot complete a COVID-19 vaccination regimen due to a medical condition and specifying whether the condition is permanent or temporary.
- Religious belief

(4) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a relevant person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if they submit a statement sworn or affirmed by them attesting that they have not completed a COVID-19 vaccination regimen due to their sincerely held religious belief.
- *Canadian Human Rights Act*

(5) For the purposes of paragraphs (2)(c) and (d), in the case of an employee of an entity or a relevant person hired by an entity to provide a service, the policy must provide that a document is to be issued to the employee or the relevant person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if the entity is obligated to accommodate the relevant person on that basis under the *Canadian Human Rights Act* by issuing such a document.

- Applicable legislation

(6) For the purposes of paragraphs (2)(c) and (d), in the following cases, the policy must provide that a document is to be issued to the employee confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if they would be entitled to such an accommodation on that basis under applicable legislation:

- (a) in the case of an employee of an entity's contractor or agent or mandatary; and
- (b) in the case of an employee of an entity's lessee, if the property that is subject to the lease is part of aerodrome property.

Ministerial request — policy

- **17.25** (1) The operator of an aerodrome, an air carrier or NAV CANADA must make a copy of the policy referred to in section 17.22, 17.23 or 17.24, as applicable, available to the Minister on request.

- Ministerial request — implementation

(2) The operator of an aerodrome, an air carrier or NAV CANADA must make information related to the implementation of the policy referred to in section 17.22, 17.23 or 17.24, as applicable, available to the Minister on request.

[17.26 to 17.29 reserved]

Vaccination — Aerodromes in Canada

Application

- **17.30** (1) Sections 17.31 to 17.40 apply to all of the following persons:
 - (a) subject to paragraph (c), a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area for a reason other than to board an aircraft for a flight operated by an air carrier;
 - (b) a crew member entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight operated by an air carrier under Subpart 1, 3, 4 or 5 of Part VII of the Regulations;
 - (c) a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight

- (i) only to become a crew member on board another aircraft operated by an air carrier under Subpart 1, 3, 4 or 5 of Part VII of the Regulations,
- (ii) after having been a crew member on board an aircraft operated by an air carrier under Subpart 1, 3, 4 or 5 of Part VII of the Regulations, or
- (iii) to participate in mandatory training required by an air carrier in relation to the operation of an aircraft operated under Subpart 1, 3, 4 or 5 of Part VII of the Regulations, if the person will be required to return to work as a crew member;
- (d) a screening authority at an aerodrome where persons other than passengers are screened or can be screened;
- (e) the operator of an aerodrome listed in Schedule 1.
- Non-application
- (2) Sections 17.31 to 17.40 do not apply to any of the following persons:
 - (a) a child who is less than 12 years and four months of age;
 - (b) a person who arrives at an aerodrome on board an aircraft following the diversion of their flight for a safety-related reason, such as adverse weather or an equipment malfunction, and who enters a restricted area to board an aircraft for a flight not more than 24 hours after the arrival time of the diverted flight;
 - (c) a member of emergency response provider personnel who is responding to an emergency;
 - (d) a peace officer who is responding to an emergency;
 - (e) the holder of an employee identification document issued by a department or departmental corporation listed in Schedule 2 or a member identification document issued by the Canadian Forces; or
 - (f) a person who is delivering equipment or providing services within a restricted area that are urgently needed and critical to aerodrome operations and who has obtained an authorization from the operator of the aerodrome before doing so.

Prohibition

- **17.31** (1) A person must not enter a restricted area unless they are a fully vaccinated person.
- Exception
- (2) Subsection (1) does not apply to a person who has been issued a document under the procedure referred to in paragraph 17.22(2)(d) or 17.24(2)(d).

Provision of evidence

17.32 A person must provide to a screening authority or the operator of an aerodrome, on their request,

- (a) in the case of a fully vaccinated person, the evidence of COVID-19 vaccination referred to in section 17.10; and
- (b) in the case of a person who has been issued a document under the procedure referred to in paragraph 17.22(2)(d) or 17.24(2)(d), the document issued to the person.

Request for evidence

17.33 Before permitting a certain number of persons, as specified by the Minister and selected on a random basis, to enter a restricted area, the screening authority must request that each of those persons, when they present themselves for screening at a non-passenger screening checkpoint or a passenger screening checkpoint, provide the evidence referred to in paragraph 17.32(a) or (b).

Declaration

- **17.34** (1) If a person who is a fully vaccinated person or who has been issued a document under the procedure referred to in paragraph 17.22(2)(d) is unable, following a request to provide evidence under section 17.33, to provide the evidence, the person may
 - (a) sign a declaration confirming that they are a fully vaccinated person or that they have been issued a document under the procedure referred to in paragraph 17.22(2)(d); or
 - (b) if the person has signed a declaration under paragraph (a) no more than seven days before the day on which the request to provide evidence is made, provide that declaration.
- Exception

(2) Subsection (1) does not apply to the holder of a document of entitlement that expires within seven days after the day on which the request to provide evidence under section 17.33 is made.
- Notification to aerodrome operator

(3) If a person signs a declaration referred to in paragraph (1)(a), the screening authority must notify the operator of the aerodrome as soon as feasible of the person's name, the date on which the declaration was signed and, if applicable, the number or identifier of the person's document of entitlement.
- Provision of evidence

(4) A person who signed a declaration under paragraph (1)(a) must provide the evidence referred to in paragraph 17.32(a) or (b) to the operator of the aerodrome within seven days after the day on which the declaration is signed.
- Suspension of restricted area access

(5) An operator of an aerodrome must ensure that the restricted area access of a person who does not provide the evidence within seven days as required under subsection (4) is suspended until the person provides the evidence.

Record keeping — suspension

- **17.35** (1) The operator of the aerodrome must keep a record of the following information in respect of a person each time the restricted area access of the person is suspended under subsection 17.34(5):
 - (a) the person's name;
 - (b) the number or identifier of the person's document of entitlement, if applicable;
 - (c) the date of the suspension; and
 - (d) the reason for the suspension.
- Retention

(2) The operator must retain the record for a period of at least 12 months after the day on which the record was created.
- Ministerial request

(3) The operator of the aerodrome must make the record available to the Minister on request.

Prohibition

- **17.36** (1) A screening authority must deny a person entry to a restricted area if, following a request to provide evidence under section 17.33, the person does not provide the evidence or, if applicable, does not sign or provide a declaration under subsection 17.34(1).
- Notification to aerodrome operator

(2) If a screening authority denies a person entry to a restricted area, it must notify the operator of the aerodrome as soon as feasible of the person's name, the date on which the person was denied entry and, if applicable, the number or identifier of the person's document of entitlement.
- Suspension of restricted area access

(3) An operator of an aerodrome must ensure that the restricted area access of a person who was denied entry under subsection (1) is suspended until the person provides the requested evidence or the signed declaration.

False or misleading evidence

17.37 A person must not provide evidence that they know to be false or misleading.

Notice to Minister

17.38 A screening authority or the operator of an aerodrome that has reason to believe that a person has provided evidence that is likely to be false or misleading must notify the Minister of the following not more than 72 hours after the provision of the evidence:

- (a) the person's name;

- (b) the number or identifier of the person's document of entitlement, if applicable; and
- (c) the reason the screening authority or the operator of an aerodrome believes that the evidence is likely to be false or misleading.

Record keeping — denial of entry

- **17.39** (1) A screening authority must keep a record of the following information in respect of a person each time the person is denied entry to a restricted area under subsection 17.36(1):
 - (a) the person's name;
 - (b) the number or identifier of the person's document of entitlement, if applicable;
 - (c) the date on which the person was denied entry and the location; and
 - (d) the reason why the person was denied entry to the restricted area.
- Retention
 - (2) The screening authority must retain the record for a period of at least 12 months after the day on which the record was created.
- Ministerial request
 - (3) The screening authority must make the record available to the Minister on request.

Requirement to establish and implement

17.40 The operator of an aerodrome must ensure that a document of entitlement is only issued to a fully vaccinated person or a person who has been issued a document under the procedure referred to in paragraph 17.22(2)(d).

Masks

Non-application

- **18** (1) Sections 19 to 24 do not apply to any of the following persons:
 - (a) a child who is less than two years of age;
 - (b) a child who is at least two years of age but less than six years of age who is unable to tolerate wearing a mask;
 - (c) a person who provides a medical certificate certifying that they are unable to wear a mask for a medical reason;
 - (d) a person who is unconscious;
 - (e) a person who is unable to remove their mask without assistance;
 - (f) a crew member;
 - (g) a gate agent.
- Mask readily available

(2) An adult responsible for a child who is at least two years of age but less than six years of age must ensure that a mask is readily available to the child before boarding an aircraft for a flight.

- Wearing of mask

(3) An adult responsible for a child must ensure that the child wears a mask when wearing one is required under section 21 and complies with any instructions given by a gate agent under section 22 if the child

- (a) is at least two years of age but less than six years of age and is able to tolerate wearing a mask; or
- (b) is at least six years of age.

Notification

19 A private operator or air carrier must notify every person who intends to board an aircraft for a flight that the private operator or air carrier operates that the person must

- (a) be in possession of a mask before boarding;
- (b) wear the mask at all times during the boarding process, during the flight and from the moment the doors of the aircraft are opened until the person enters the air terminal building; and
- (c) comply with any instructions given by a gate agent or a crew member with respect to wearing a mask.

Obligation to possess mask

20 Every person who is at least six years of age must be in possession of a mask before boarding an aircraft for a flight.

Wearing of mask — persons

- **21** (1) Subject to subsections (2) and (3), a private operator or air carrier must require a person to wear a mask at all times during the boarding process and during a flight that the private operator or air carrier operates.

- Exceptions — person

(2) Subsection (1) does not apply

- (a) when the safety of the person could be endangered by wearing a mask;
- (b) when the person is drinking or eating, unless a crew member instructs the person to wear a mask;
- (c) when the person is taking oral medications;
- (d) when a gate agent or a crew member authorizes the removal of the mask to address unforeseen circumstances or the person's special needs; or
- (e) when a gate agent, a member of the aerodrome security personnel or a crew member authorizes the removal of the mask to verify the person's identity.

- Exceptions — flight deck

(3) Subsection (1) does not apply to any of the following persons when they are on the flight deck:

- (a) a Department of Transport air carrier inspector;
- (b) an inspector of the civil aviation authority of the state where the aircraft is registered;
- (c) an employee of the private operator or air carrier who is not a crew member and who is performing their duties;
- (d) a pilot, flight engineer or flight attendant employed by a wholly owned subsidiary or a code share partner of the air carrier;
- (e) a person who has expertise related to the aircraft, its equipment or its crew members and who is required to be on the flight deck to provide a service to the private operator or air carrier.

Compliance

22 A person must comply with any instructions given by a gate agent, a member of the aerodrome security personnel, a crew member, a customs officer or a quarantine officer with respect to wearing a mask.

Prohibition — private operator or air carrier

23 A private operator or air carrier must not permit a person to board an aircraft for a flight that the private operator or air carrier operates if

- (a) the person is not in possession of a mask; or
- (b) the person refuses to comply with an instruction given by a gate agent or a crew member with respect to wearing a mask.

Refusal to comply

- **24** (1) If, during a flight that a private operator or air carrier operates, a person refuses to comply with an instruction given by a crew member with respect to wearing a mask, the private operator or air carrier must
 - (a) keep a record of
 - (i) the date and flight number,
 - (ii) the person's name, date of birth and contact information, including the person's home address, telephone number and email address,
 - (iii) the person's seat number, and
 - (iv) the circumstances related to the refusal to comply; and
 - (b) inform the Minister as soon as feasible of any record created under paragraph (a),

- Retention period

(2) The private operator or air carrier must retain the record for a period of at least 12 months after the date of the flight.

- Ministerial request

- (3) The private operator or air carrier must make the record available to the Minister on request.

Wearing of mask — crew member

- **25** (1) Subject to subsections (2) and (3), a private operator or air carrier must require a crew member to wear a mask at all times during the boarding process and during a flight that the private operator or air carrier operates.
- Exceptions — crew member
 - (2) Subsection (1) does not apply
 - (a) when the safety of the crew member could be endangered by wearing a mask;
 - (b) when the wearing of a mask by the crew member could interfere with operational requirements or the safety of the flight; or
 - (c) when the crew member is drinking, eating or taking oral medications.
 - Exception — flight deck
 - (3) Subsection (1) does not apply to a crew member who is a flight crew member when they are on the flight deck.

Wearing of mask — gate agent

- **26** (1) Subject to subsections (2) and (3), a private operator or air carrier must require a gate agent to wear a mask during the boarding process for a flight that the private operator or air carrier operates.
- Exceptions
 - (2) Subsection (1) does not apply
 - (a) when the safety of the gate agent could be endangered by wearing a mask; or
 - (b) when the gate agent is drinking, eating or taking oral medications.
 - Exception — physical barrier
 - (3) During the boarding process, subsection (1) does not apply to a gate agent if the gate agent is separated from any other person by a physical barrier that allows the gate agent and the other person to interact and reduces the risk of exposure to COVID-19.

Deplaning

Non-application

- **27** (1) Section 28 does not apply to any of the following persons:
 - (a) a child who is less than two years of age;
 - (b) a child who is at least two years of age but less than six years of age who is unable to tolerate wearing a mask;

- (c) a person who provides a medical certificate certifying that they are unable to wear a mask for a medical reason;
- (d) a person who is unconscious;
- (e) a person who is unable to remove their mask without assistance;
- (f) a person who is on a flight that originates in Canada and is destined to another country.
- Wearing of mask
 - (2) An adult responsible for a child must ensure that the child wears a mask when wearing one is required under section 28 if the child
 - (a) is at least two years of age but less than six years of age and is able to tolerate wearing a mask; or
 - (b) is at least six years of age.

Wearing of mask — person

28 A person who is on board an aircraft must wear a mask at all times from the moment the doors of the aircraft are opened until the person enters the air terminal building, including by a passenger loading bridge.

Screening Authority

Non-application

- **29** (1) Sections 30 to 33 do not apply to any of the following persons:
 - (a) a child who is less than two years of age;
 - (b) a child who is at least two years of age but less than six years of age who is unable to tolerate wearing a mask;
 - (c) a person who provides a medical certificate certifying that they are unable to wear a mask for a medical reason;
 - (d) a person who is unconscious;
 - (e) a person who is unable to remove their mask without assistance;
 - (f) a member of emergency response provider personnel who is responding to an emergency;
 - (g) a peace officer who is responding to an emergency.
- Wearing of mask
 - (2) An adult responsible for a child must ensure that the child wears a mask when wearing one is required under subsection 30(2) and removes it when required by a screening officer to do so under subsection 30(3) if the child
 - (a) is at least two years of age but less than six years of age and is able to tolerate wearing a mask; or
 - (b) is at least six years of age.

Requirement — passenger screening checkpoint

- **30** (1) A screening authority must notify a person who is subject to screening at a passenger screening checkpoint that they must wear a mask at all times during screening.
- Wearing of mask — person
 - (2) Subject to subsection (3), a person who is the subject of screening referred to in subsection (1) must wear a mask at all times during screening.
- Requirement to remove mask
 - (3) A person who is required by a screening officer to remove their mask during screening must do so.
- Wearing of mask — screening officer
 - (4) A screening officer must wear a mask at a passenger screening checkpoint when conducting the screening of a person if, during the screening, the screening officer is two metres or less from the person being screened.

Requirement — non-passenger screening checkpoint

- **31** (1) A person who presents themselves at a non-passenger screening checkpoint to enter into a restricted area must wear a mask at all times.
- Wearing of mask — screening officer
 - (2) Subject to subsection (3), a screening officer must wear a mask at all times at a non-passenger screening checkpoint.
- Exceptions
 - (3) Subsection (2) does not apply
 - (a) when the safety of the screening officer could be endangered by wearing a mask; or
 - (b) when the screening officer is drinking, eating or taking oral medications.

Exception — physical barrier

32 Sections 30 and 31 do not apply to a person, including a screening officer, if the person is two metres or less from another person and both persons are separated by a physical barrier that allows them to interact and reduces the risk of exposure to COVID-19.

Prohibition — passenger screening checkpoint

- **33** (1) A screening authority must not permit a person who has been notified to wear a mask and refuses to do so to pass beyond a passenger screening checkpoint into a restricted area.
- Prohibition — non-passenger screening checkpoint
 - (2) A screening authority must not permit a person who refuses to wear a mask to pass beyond a non-passenger screening checkpoint into a restricted area.

Designated Provisions

Designation

- **34 (1)** The provisions of this Interim Order set out in column 1 of Schedule 3 are designated as provisions the contravention of which may be dealt with under and in accordance with the procedure set out in sections 7.7 to 8.2 of the Act.
- **Maximum amounts**

(2) The amounts set out in column 2 of Schedule 3 are the maximum amounts of the penalty payable in respect of a contravention of the designated provisions set out in column 1.
- **Notice**

(3) A notice referred to in subsection 7.7(1) of the Act must be in writing and must specify

 - (a) the particulars of the alleged contravention;
 - (b) that the person on whom the notice is served or to whom it is sent has the option of paying the amount specified in the notice or filing with the Tribunal a request for a review of the alleged contravention or the amount of the penalty;
 - (c) that payment of the amount specified in the notice will be accepted by the Minister in satisfaction of the amount of the penalty for the alleged contravention and that no further proceedings under Part I of the Act will be taken against the person on whom the notice in respect of that contravention is served or to whom it is sent;
 - (d) that the person on whom the notice is served or to whom it is sent will be provided with an opportunity consistent with procedural fairness and natural justice to present evidence before the Tribunal and make representations in relation to the alleged contravention if the person files a request for a review with the Tribunal; and
 - (e) that the person on whom the notice is served or to whom it is sent will be considered to have committed the contravention set out in the notice if they fail to pay the amount specified in the notice and fail to file a request for a review with the Tribunal within the prescribed period.

Repeal

35 The *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 60*, made on April 19, 2022, is repealed.

SCHEDULE 1 (Subsections 1(1) and 17.1(1) and paragraphs 17.1(2)(c), 17.20(a) and (b), 17.21(2)(d) and 17.30(1)(a) to (c) and (e))

Aerodromes

Name	ICAO Location Indicator
Abbotsford International	CYXX
Alma	CYTF
Bagotville	CYBG
Baie-Comeau	CYBC
Bathurst	CZBF
Brandon Municipal	CYBR
Calgary International	CYYC
Campbell River	CYBL
Castlegar (West Kootenay Regional)	CYCG
Charlo	CYCL
Charlottetown	CYYG
Chibougamau/Chapais	CYMT
Churchill Falls	CZUM
Comox	CYQQ
Cranbrook (Canadian Rockies International)	CYXC
Dawson Creek	CYDQ
Deer Lake	CYDF
Edmonton International	CYEG
Fort McMurray	CYMM
Fort St. John	CYXJ
Fredericton International	CYFC
Gander International	CYQX
Gaspé	CYGP
Goose Bay	CYJR
Grande Prairie	CYQU
Greater Moncton International	CYQM
Halifax (Robert L. Stanfield International)	CYHZ
Hamilton (John C. Munro International)	CYHM
Îles-de-la-Madeleine	CYGR
Iqaluit	CYFB
Kamloops	CYKA
Kelowna	CYLW
Kingston	CYK

Name	ICAO Location Indicator
Kitchener/Waterloo Regional	CYKF
La Grande Rivière	CYGL
Lethbridge	CYQL
Lloydminster	CYLL
London	CYXU
Lourdes-de-Blanc-Sablón	CYBX
Medicine Hat	CYXH
Mont-Joli	CYYY
Montréal International (Mirabel)	CYMX
Montréal (Montréal — Pierre Elliott Trudeau International)	CYUL
Montréal (St. Hubert)	CYHU
Nanaimo	CYCD
North Bay	CYYB
Ottawa (Macdonald-Cartier International)	CYOW
Penticton	CYF
Prince Albert (Glass Field)	CYPA
Prince George	CYXS
Prince Rupert	CYPR
Québec (Jean Lesage International)	CYQB
Quesnel	CYQZ
Red Deer Regional	CYQF
Regina International	CYQR
Rivière-Rouge/Mont-Tremblant International	CYFJ
Rouyn-Noranda	CYUY
Saint John	CYSJ
Sarnia (Chris Hadfield)	CYZR
Saskatoon (John G. Diefenbaker International)	CYXE
Sault Ste. Marie	CYAM
Sept-Îles	CYZV
Smithers	CYYD
St. Anthony	CYAY
St. John's International	CYYT

Name	ICAO Location Indicator
Stephenville	CYJT
Sudbury	CYSB
Sydney (J.A. Douglas McCurdy)	CYQY
Terrace	CYXT
Thompson	CYTH
Thunder Bay	CYQT
Timmins (Victor M. Power)	CYTS
Toronto (Billy Bishop Toronto City)	CYTZ
Toronto (Lester B. Pearson International)	CYYZ
Toronto/Buttonville Municipal	CYKZ
Val-d'Or	CYVO
Vancouver (Coal Harbour)	CYHC
Vancouver International	CYVR
Victoria International	CYYJ
Wabush	CYWK
Whitehorse (Erik Nielsen International)	CYXY
Williams Lake	CYWL
Windsor	CYQG
Winnipeg (James Armstrong Richardson International)	CYWG
Yellowknife	CYZF

SCHEDULE 2(Subparagraph 17.22(2)(a)(iii) and paragraphs 17.24(2)(a) and 17.30(2)(e))

Departments and Departmental Corporations

Name
Canada Border Services Agency
Canadian Security Intelligence Service
Correctional Service of Canada
Department of Agriculture and Agri-Food
Department of Employment and Social Development
Department of Fisheries and Oceans
Department of Health

Name

Department of National Defence
 Department of the Environment
 Department of Public Safety and Emergency Preparedness
 Department of Transport
 Public Health Agency of Canada
 Royal Canadian Mounted Police

SCHEDULE 3(Subsections 34(1) and (2))Designated Provisions

Column 1 Designated Provision	Column 2 Maximum Amount of Penalty (\$)	
	Individual	Corporation
Subsection 2(1)	5,000	25,000
Subsection 2(2)	5,000	25,000
Subsection 2(3)	5,000	25,000
Subsection 2(4)	5,000	25,000
Subsection 3(1)	5,000	
Subsection 3(2)	5,000	
Section 4	5,000	25,000
Section 5	5,000	25,000
Subsection 8(1)	5,000	25,000
Subsection 8(2)	5,000	
Subsection 8(3)	5,000	25,000
Subsection 8(4)	5,000	
Subsection 8(6)	5,000	25,000
Subsection 9(1)	5,000	25,000
Section 12	5,000	25,000
Subsection 13(1)	5,000	
Section 13.1	5,000	
Section 15	5,000	
Section 16	5,000	25,000
Section 17	5,000	25,000
Section 17.2		25,000

Column 1	Column 2	
	Maximum Amount of Penalty (\$)	
Designated Provision	Individual	Corporation
Subsection 17.3(1)	5,000	
Subsection 17.4(1)		25,000
Subsection 17.5(1)		25,000
Subsection 17.5(2)		25,000
Subsection 17.5(3)		25,000
Subsection 17.6(1)		25,000
Subsection 17.6(2)		25,000
Section 17.7		25,000
Section 17.9	5,000	
Subsection 17.13(1)	5,000	
Subsection 17.13(2)	5,000	
Subsection 17.14(1)		25,000
Subsection 17.14(2)		25,000
Section 17.15		25,000
Subsection 17.17(1)		25,000
Subsection 17.17(2)		25,000
Subsection 17.17(3)		25,000
Subsection 17.22(1)		25,000
Subsection 17.24(1)		25,000
Subsection 17.25(1)		25,000
Subsection 17.25(2)		25,000
Subsection 17.31(1)	5,000	
Section 17.32	5,000	
Section 17.33		25,000
Subsection 17.34(3)		25,000
Subsection 17.34(4)	5,000	
Subsection 17.34(5)		25,000
Subsection 17.35(1)		25,000
Subsection 17.35(2)		25,000
Subsection 17.35(3)		25,000
Subsection 17.36(1)		25,000

Column 1	Column 2	
	Maximum Amount of Penalty (\$)	
Designated Provision	Individual	Corporation
Subsection 17.36(2)		25,000
Subsection 17.36(3)		25,000
Section 17.37	5,000	
Section 17.38		25,000
Subsection 17.39(1)		25,000
Subsection 17.39(2)		25,000
Subsection 17.39(3)		25,000
Section 17.40		25,000
Subsection 18(2)	5,000	
Subsection 18(3)	5,000	
Section 19	5,000	25,000
Section 20	5,000	
Subsection 21(1)	5,000	25,000
Section 22	5,000	
Section 23	5,000	25,000
Subsection 24(1)	5,000	25,000
Subsection 24(2)	5,000	25,000
Subsection 24(3)	5,000	25,000
Subsection 25(1)	5,000	25,000
Subsection 26(1)	5,000	25,000
Subsection 27(2)	5,000	
Section 28	5,000	
Subsection 29(2)	5,000	
Subsection 30(1)		25,000
Subsection 30(2)	5,000	
Subsection 30(3)	5,000	
Subsection 30(4)	5,000	
Subsection 31(1)	5,000	
Subsection 31(2)	5,000	
Subsection 33(1)		25,000
Subsection 33(2)		25,000

i Transport Canada is closely monitoring the COVID-19 situation. In response, we have issued some **transportation-related measures and guidance**. Please check if any of these measures apply to you.

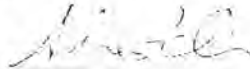
You may experience longer than usual wait times or partial service interruptions. If you cannot get through, please **contact us by email**.

For information on COVID-19 updates, please visit **Canada.ca/coronavirus**.

Date modified:
2022-04-24

This is **EXHIBIT "D"** referred to in the Affidavit of
GABRIELLA PLATI TROTTO

Affirmed remotely by Gabriella Plati Trotto at the City
of Mississauga, Regional Municipality of Peel, in the
Province of Ontario, before me, in the City of Toronto,
in the Province of Ontario on October 31, 2022 in
accordance with O. Reg. 431/20, Administering Oath
or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Adam Gilani (LSO#74291P)

Repealed - Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 62

From: Transport Canada

Whereas the annexed *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 62* is required to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public;

Whereas the provisions of the annexed Order may be contained in a regulation made pursuant to sections 4.71^a and 4.9^b, paragraphs 7.6(1)(a)^c and (b)^d and section 7.7^e of the *Aeronautics Act*^f;

- ^aS.C. 2004, c. 15, s. 5
- ^bS.C. 2014, c. 39, s. 144
- ^cS.C. 2015, c. 20, s. 12
- ^dS.C. 2004, c. 15, s. 18
- ^eS.C. 2001, c. 29, s. 39
- ^fR.S., c. A-2

And whereas, pursuant to subsection 6.41(1.2)^g of that Act, the Minister of Transport has consulted with the persons and organizations that that Minister considers appropriate in the circumstances before making the annexed Order;

- ^gS.C. 2004, c. 15, s. 11(1)

Therefore, the Minister of Transport makes the annexed *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 62* under subsection 6.41(1)^g of the *Aeronautics Act*^f.

Ottawa, May 6, 2022

Le ministre des Transports,

Omar Alghabra
Minister of Transport

Interpretation

Definitions

- **1 (1)** The following definitions apply in this Interim Order.

accredited person

accredited person means a foreign national who holds a passport that contains a valid diplomatic, consular, official or special representative acceptance issued by the Chief of Protocol for the Department of Foreign Affairs, Trade and Development. (*personne accréditée*)

aerodrome property

aerodrome property means, in respect of an aerodrome listed in Schedule 1, any air terminal buildings or restricted areas or any facilities used for activities related to aircraft operations or aerodrome operations that are located at the aerodrome. (*terrains de l'aérodrome*)

aerodrome security personnel

aerodrome security personnel has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*personnel de sûreté de l'aérodrome*)

air carrier

air carrier means any person who operates a commercial air service under Subpart 1, 3, 4 or 5 of Part VII of the Regulations. (*transporteur aérien*)

Canadian Forces

Canadian Forces means the armed forces of Her Majesty raised by Canada. (*Forces canadiennes*)

Chief Public Health Officer

Chief Public Health Officer means the Chief Public Health Officer appointed under subsection 6(1) of the *Public Health Agency of Canada Act*. (*administrateur en chef*)

COVID-19

COVID-19 means the coronavirus disease 2019. (*COVID-19*)

COVID-19 antigen test

COVID-19 antigen test means a COVID-19 screening or diagnostic immunoassay that

- (a) detects the presence of a viral antigen indicating the presence of COVID-19;
- (b) is authorized for sale or distribution in Canada or in the jurisdiction in which it was obtained;
- (c) if the test is self-administered, is observed and whose result is verified
 - (i) in person by an accredited laboratory or testing provider, or
 - (ii) in real time by remote audiovisual means by the accredited laboratory or testing provider that provided the test; and
- (d) if the test is not self-administered, is performed by an accredited laboratory or testing provider. (*essai antigénique relatif à la COVID-19*)

COVID-19 molecular test

COVID-19 molecular test means a COVID-19 screening or diagnostic test, including a test performed using the method of polymerase chain reaction (PCR) or reverse transcription loop-mediated isothermal amplification (RT-LAMP), that

- (a) if the test is self-administered, is observed and whose result is verified
 - (i) in person by an accredited laboratory or testing provider, or
 - (ii) in real time by remote audiovisual means by the accredited laboratory or testing provider that provided the test; or
- (b) if the test is not self-administered, is performed by an accredited laboratory or testing provider. (*essai moléculaire relatif à la COVID-19*)

customs officer

customs officer has the same meaning as officer in subsection 2(1) of the *Customs Act*. (*agent des douanes*)

document of entitlement

document of entitlement has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*document d'autorisation*)

foreign national

foreign national has the same meaning as in subsection 2(1) of the *Immigration and Refugee Protection Act*. (*étranger*)

non-passenger screening checkpoint

non-passenger screening checkpoint has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*point de contrôle des non-passagers*)

operator of an aerodrome

operator of an aerodrome means the person in charge of an aerodrome where activities related to civil aviation are conducted and includes an employee, agent or mandatary or other authorized representative of that person. (*exploitant*)

passenger screening checkpoint

passenger screening checkpoint has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*point de contrôle des passagers*)

peace officer

peace officer has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*agent de la paix*)

quarantine officer

quarantine officer means a person designated as a quarantine officer under subsection 5(2) of the *Quarantine Act*. (*agent de quarantaine*)

Regulations

Regulations means the *Canadian Aviation Regulations*. (*Règlement*)

restricted area

restricted area has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*zone réglementée*)

screening authority

screening authority means a person responsible for the screening of persons and goods at an aerodrome set out in the schedule to the *CATSA Aerodrome Designation Regulations* or at any other place designated by the Minister under subsection 6(1.1) of the *Canadian Air Transport Security Authority Act*. (*administration de contrôle*)

screening officer

screening officer, except in section 2, has the same meaning as in section 2 of the *Canadian Air Transport Security Authority Act*. (*agent de contrôle*)

testing provider

testing provider means

- (a) a person who may provide COVID-19 screening or diagnostic testing services under the laws of the jurisdiction where the service is provided; or

- (b) an organization, such as a telehealth service provider or pharmacy, that may provide COVID-19 screening or diagnostic testing services under the laws of the jurisdiction where the service is provided and that employs or contracts with a person referred to in paragraph (a). (*fournisseur de services d'essais*)

variant of concern

variant of concern means a variant of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) that is designated as a variant of concern by the World Health Organization. (*variant préoccupant*)

- Interpretation

(2) Unless the context requires otherwise, all other words and expressions used in this Interim Order have the same meaning as in the Regulations.

- Conflict

(3) In the event of a conflict between this Interim Order and the Regulations or the *Canadian Aviation Security Regulations, 2012*, the Interim Order prevails.

- Definition of mask

(4) For the purposes of this Interim Order, a mask means any mask, including a non-medical mask, that meets all of the following requirements:

- (a) it is made of multiple layers of tightly woven materials such as cotton or linen;
- (b) it completely covers a person's nose, mouth and chin without gaping;
- (c) it can be secured to a person's head with ties or ear loops.

- Masks — lip reading

(5) Despite paragraph (4)(a), the portion of a mask in front of a wearer's lips may be made of transparent material that permits lip reading if

- (a) the rest of the mask is made of multiple layers of tightly woven materials such as cotton or linen; and
- (b) there is a tight seal between the transparent material and the rest of the mask.

- Definition of fully vaccinated person

(6) For the purposes of this Interim Order, a fully vaccinated person means a person who completed, at least 14 days before the day on which they access aerodrome property or a location where NAV CANADA provides civil air navigation services, a COVID-19 vaccine dosage regimen if

- (a) in the case of a vaccine dosage regimen that uses a COVID-19 vaccine that is authorized for sale in Canada,
 - (i) the vaccine has been administered to the person in accordance with its labelling, or

- (ii) the Minister of Health determines, on the recommendation of the Chief Public Health Officer, that the regimen is suitable, having regard to the scientific evidence related to the efficacy of that regimen in preventing the introduction or spread of COVID-19 or any other factor relevant to preventing the introduction or spread of COVID-19; or
- (b) in all other cases,
 - (i) the vaccines of the regimen are authorized for sale in Canada or in another jurisdiction, and
 - (ii) the Minister of Health determines, on the recommendation of the Chief Public Health Officer, that the vaccines and the regimen are suitable, having regard to the scientific evidence related to the efficacy of that regimen and the vaccines in preventing the introduction or spread of COVID-19 or any other factor relevant to preventing the introduction or spread of COVID-19.
- Interpretation — fully vaccinated person

(7) For greater certainty, for the purposes of the definition *fully vaccinated person* in subsection (6), a COVID-19 vaccine that is authorized for sale in Canada does not include a similar vaccine sold by the same manufacturer that has been authorized for sale in another jurisdiction.

Notification

Federal, provincial and territorial measures

- 2 (1) A private operator or air carrier operating a flight between two points in Canada or a flight to Canada departing from any other country must notify every person boarding the aircraft for the flight that they may be subject to measures to prevent the spread of COVID-19 taken by the provincial or territorial government with jurisdiction where the destination aerodrome for that flight is located or by the federal government.
- Suitable quarantine plan

(2) A private operator or air carrier operating a flight to Canada departing from any other country must notify every person before the person boards the aircraft for the flight that they may be required, under an order made under section 58 of the *Quarantine Act*, to provide, before boarding the aircraft, to the Minister of Health, a screening officer or a quarantine officer, by the electronic means specified by that Minister, a suitable quarantine plan or, if the person is not required under that order to provide the plan and the evidence, their contact information. The private operator or air carrier must also notify every person that they may be liable to a fine if this requirement applies to them and they fail to comply with it.
- Vaccination

(3) A private operator or air carrier operating a flight to Canada departing from any other country must notify every person before the person boards the aircraft for the flight that they may be required, under an order made under section 58 of the *Quarantine Act*, to provide, before boarding the aircraft or before entering Canada, to the Minister of Health, a screening officer or a quarantine officer, by the electronic means specified by that Minister, information related to their COVID-19 vaccination and evidence of COVID-19 vaccination. The private operator or air carrier must also notify every person that they may be denied permission to board the aircraft and may be liable to a fine if this requirement applies to them and they fail to comply with it.

- False confirmation

(4) A private operator or air carrier operating a flight between two points in Canada or a flight to Canada departing from any other country must notify every person boarding the aircraft for the flight that they may be liable to a monetary penalty if they provide a confirmation referred to in subsection 3(1) that they know to be false or misleading.

- Definition

(5) For the purposes of this section, screening officer has the same meaning as in section 2 of the *Quarantine Act*.

Confirmation

Federal, provincial and territorial measures

- **3** (1) Before boarding an aircraft for a flight between two points in Canada or a flight to Canada departing from any other country, every person must confirm to the private operator or air carrier operating the flight that they understand that they may be subject to a measure to prevent the spread of COVID-19 taken by the provincial or territorial government with jurisdiction where the destination aerodrome for that flight is located or by the federal government.

- False confirmation

(2) A person must not provide a confirmation referred to in subsection (1) that they know to be false or misleading.

- Exception

(3) A competent adult may provide a confirmation referred to in subsection (1) on behalf of a person who is not a competent adult.

Prohibition

4 A private operator or air carrier operating a flight between two points in Canada or a flight to Canada departing from any other country must not permit a person to board the aircraft for the flight if the person is a competent adult and does not provide a confirmation that they are required to provide under subsection 3(1).

Foreign Nationals

Prohibition

5 A private operator or air carrier must not permit a foreign national to board an aircraft for a flight that the private operator or air carrier operates to Canada departing from any other country.

Exception

6 Section 5 does not apply to a foreign national who is permitted to enter Canada under an order made under section 58 of the *Quarantine Act*.

Confirmation of Health Status

Non-application

7 Sections 8 and 9 do not apply to the following persons:

- (a) a crew member;
- (b) a person boarding an aircraft only to become a crew member on board another aircraft operated by an air carrier;
- (c) a person boarding an aircraft after having been a crew member on board an aircraft operated by an air carrier; or
- (d) a person boarding an aircraft to participate in mandatory training required by an air carrier in relation to the operation of an aircraft, if the person will be required to return to work as a crew member.

Notification

- **8 (1)** A private operator or air carrier must notify every person boarding an aircraft for a flight that the private operator or air carrier operates that the person may be denied permission to board the aircraft if
 - (a) the person exhibits a fever and a cough or a fever and breathing difficulties;
 - (b) the person has COVID-19 or has had it within the previous 10 days, or has reasonable grounds to suspect that they have COVID-19 or have developed signs and symptoms of COVID-19 within the previous 10 days; or
 - (c) in the case of a flight departing in Canada, the person is the subject of a mandatory quarantine order as a result of recent travel or as a result of a local or provincial public health order.
- **Confirmation**

(2) Every person boarding an aircraft for a flight that a private operator or air carrier operates must confirm to the private operator or air carrier that none of the following situations apply to them:

 - (a) the person exhibits a fever and a cough or a fever and breathing difficulties;

- (b) the person has COVID-19 or has had it within the previous 10 days, or has reasonable grounds to suspect that they have COVID-19 or have developed signs and symptoms of COVID-19 within the previous 10 days; or
- (c) in the case of a flight departing in Canada, the person is the subject of a mandatory quarantine order as a result of recent travel or as a result of a local or provincial public health order.
- False confirmation — notice to person

(3) The private operator or air carrier must advise every person that they may be liable to a monetary penalty if they provide answers or a confirmation that they know to be false or misleading.
- False confirmation — obligations of person

(4) A person who is required to provide a confirmation under subsection (2) must

 - (a) answer all questions; and
 - (b) not provide answers or a confirmation that they know to be false or misleading.
- Exception

(5) A competent adult may answer all questions and provide a confirmation on behalf of a person who is not a competent adult and who is required to give a confirmation under subsection (2).
- Observations — private operator or air carrier

(6) During the boarding process for a flight that the private operator or air carrier operates, the private operator or air carrier must observe whether any person boarding the aircraft is exhibiting any of the symptoms referred to in paragraph (1)(a).

Prohibition

- **9(1)** A private operator or air carrier must not permit a person to board an aircraft for a flight that the private operator or air carrier operates if
 - (a) the private operator or air carrier observes that, as the person is boarding, they exhibit
 - (i) a fever and cough, or
 - (ii) a fever and breathing difficulties;
 - (b) the person's confirmation under subsection 8(2) indicates that one of the situations described in paragraph 8(2)(a) or (b) applies to that person;
 - (c) the person is a competent adult and refuses to give the confirmation under subsection 8(2); or
 - (d) the person's confirmation under subsection 8(2) indicates that the situation described in paragraph 8(2)(c) applies to that person.
- Exception

(2) Paragraphs (1)(a) and (b) do not apply to a person who can provide a medical certificate certifying that any symptoms referred to in paragraph 8(2)(a) that they are exhibiting are not related to COVID-19 or who has a result for one of the COVID-19 tests described in subsection 13(1).

[10 reserved]

COVID-19 Tests — Flights to Canada

Application

- **11** (1) Sections 12 to 17 apply to a private operator or air carrier operating a flight to Canada departing from any other country and to every person boarding an aircraft for such a flight.
- Non-application

(2) Sections 12 to 17 do not apply to persons who are not required under an order made under section 58 of the *Quarantine Act* to provide evidence that they received a result for a COVID-19 molecular test or a COVID-19 antigen test.

Notification

12 A private operator or air carrier must notify every person who intends to board an aircraft for a flight that the private operator or air carrier operates that the person may be denied permission to board the aircraft if they are unable to provide evidence that they received a result for a COVID-19 molecular test or a COVID-19 antigen test.

Evidence — result of test

- **13** (1) Before boarding an aircraft for a flight, every person must provide to the private operator or air carrier operating the flight evidence that they received either
 - (a) a negative result for a COVID-19 molecular test that was performed on a specimen collected no more than 72 hours before the flight's initial scheduled departure time;
 - (b) a negative result for a COVID-19 antigen test that was performed on a specimen collected no more than one day before the flight's initial scheduled departure time; or
 - (c) a positive result for a COVID-19 molecular test that was performed on a specimen collected at least 10 days and no more than 180 days before the flight's initial scheduled departure time.

- Location of test — outside Canada

(1.1) The COVID-19 tests referred to in paragraphs (1)(a) and (b) must be performed outside Canada.

- Evidence — location of test

(2) For the purposes of paragraphs (1)(a) and (b) and subsection (1.1), the COVID-19 molecular test or COVID-19 antigen test must not have been performed in a country where, as determined by the Minister of Health,

there is an outbreak of a variant of concern or there are reasonable grounds to believe that there is an outbreak of such a variant.

Evidence — alternative testing protocol

13.1 Despite subsections 13(1) and (1.1), a person referred to in section 2.22 of the Order entitled *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Quarantine, Isolation and Other Obligations)* must, before boarding an aircraft for a flight, provide to the private operator or air carrier operating the flight evidence of a COVID-19 molecular test or a COVID-19 antigen test that was carried out in accordance with an alternative testing protocol referred to in that section.

Evidence — molecular test

- **14 (1)** Evidence of a result for a COVID-19 molecular test must include
 - (a) the name and date of birth of the person from whom the specimen was collected for the test;
 - (b) the name and civic address of the accredited laboratory or the testing provider that performed or observed the test and verified the result;
 - (c) the date the specimen was collected and the test method used; and
 - (d) the test result.

• Evidence — antigen test

- (2) Evidence of a result for a COVID-19 antigen test must include
 - (a) the name and date of birth of the person from whom the specimen was collected for the test;
 - (b) the name and civic address of the accredited laboratory or the testing provider that performed or observed the test and verified the result;
 - (c) the date the specimen was collected and the test method used; and
 - (d) the test result.

False or misleading evidence

15 A person must not provide evidence of a result for a COVID-19 molecular test or a COVID-19 antigen test that they know to be false or misleading.

Notice to Minister

16 A private operator or air carrier that has reason to believe that a person has provided evidence of a result for a COVID-19 molecular test or a COVID-19 antigen test that is likely to be false or misleading must notify the Minister as soon as feasible of the person's name and contact information and the date and number of the person's flight.

Prohibition

17 A private operator or air carrier must not permit a person to board an aircraft for a flight that the private operator or air carrier operates if the person does not provide evidence that they received a result for a COVID-19 molecular test or a COVID-19 antigen test in accordance with the requirements set out in section 13 or 13.1.

Vaccination – Flights Departing from an Aerodrome in Canada

Application

- **17.1 (1)** Sections 17.2 to 17.17 apply to all of the following persons:
 - (a) a person boarding an aircraft for a flight that an air carrier operates departing from an aerodrome listed in Schedule 1;
 - (b) a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight that an air carrier operates;
 - (c) an air carrier operating a flight departing from an aerodrome listed in Schedule 1.
- **Non-application**

(2) Sections 17.2 to 17.17 do not apply to any of the following persons:

 - (a) a child who is less than 12 years and four months of age;
 - (b) a crew member;
 - (c) a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight operated by an air carrier
 - (i) only to become a crew member on board another aircraft operated by an air carrier;
 - (ii) after having been a crew member on board an aircraft operated by an air carrier; or
 - (iii) to participate in mandatory training required by an air carrier in relation to the operation of an aircraft, if the person will be required to return to work as a crew member;
 - (d) a person who arrives at an aerodrome from any other country on board an aircraft in order to transit to another country and remains in a *sterile transit area*, as defined in section 2 of the *Immigration and Refugee Protection Regulations*, of the aerodrome until they leave Canada;
 - (e) a person who arrives at an aerodrome on board an aircraft following the diversion of their flight for a safety-related reason, such as adverse weather or an equipment malfunction, and who boards an aircraft for a flight not more than 24 hours after the arrival time of the diverted flight.

Notification

17.2 An air carrier must notify every person who intends to board an aircraft for a flight that the air carrier operates that

- (a) they must be a fully vaccinated person or a person referred to in any of paragraphs 17.3(2)(a) to (c) or any of subparagraphs 17.3(2)(d)(i) to (iv) or (e)(i) to (vii);
- (b) they must provide to the air carrier evidence of COVID-19 vaccination demonstrating that they are a fully vaccinated person or evidence that they are a person referred to in any of paragraphs 17.3(2)(a) to (c) or any of subparagraphs 17.3(2)(d)(i) to (iv) or (e)(i) to (vii); and
- (c) if they submit a request referred to in section 17.4, they must do so within the period set out in subsection 17.4(3).

Prohibition — person

- **17.3** (1) A person is prohibited from boarding an aircraft for a flight or entering a restricted area unless they are a fully vaccinated person.
- Exception
 - (2) Subsection (1) does not apply to
 - (a) a foreign national, other than a person registered as an Indian under the *Indian Act*, who is boarding the aircraft for a flight to an aerodrome in Canada if the initial scheduled departure time of that flight is not more than 24 hours after the departure time of a flight taken by the person to Canada from any other country;
 - (b) a permanent resident who is boarding the aircraft for a flight to an aerodrome in Canada if the initial scheduled departure time of that flight is not more than 24 hours after the departure time of a flight taken by the person to Canada from any other country for the purpose of entering Canada to become a permanent resident;
 - (c) a foreign national who is boarding an aircraft for a flight to a country other than Canada or to an aerodrome in Canada for the purpose of boarding an aircraft for a flight to a country other than Canada and who has received either
 - (i) a negative result for a COVID-19 molecular test that was performed on a specimen collected no more than 72 hours before the flight's initial scheduled departure time,
 - (ii) a negative result for a COVID-19 antigen test that was performed on a specimen collected no more than one day before the flight's initial scheduled departure time, or
 - (iii) a positive result for a COVID-19 molecular test that was performed on a specimen collected at least 10 days and no more than 180 days before the flight's initial scheduled departure time;
 - (d) a person who has received a result for a COVID-19 molecular test or a COVID-19 antigen test described in subparagraph (c)(i), (ii) or (iii) and who is

- (i) a person who has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication and who is entitled to be accommodated on that basis under applicable legislation by being permitted to enter the restricted area or to board an aircraft without being a fully vaccinated person,
- (ii) a person who has not completed a COVID-19 vaccine dosage regimen due to a sincerely held religious belief and who is entitled to be accommodated on that basis under applicable legislation by being permitted to enter the restricted area or to board an aircraft without being a fully vaccinated person,
- (iii) a person who is boarding an aircraft for a flight for the purpose of attending an appointment for an essential medical service or treatment, or
- (iv) a competent person who is at least 18 years old and who is boarding an aircraft for a flight for the purpose of accompanying a person referred to in subparagraph (iii) if the person needs to be accompanied because they
 - (A) are under the age of 18 years,
 - (B) have a disability, or
 - (C) need assistance to communicate; or
- (e) a person who has received a result for a COVID-19 molecular test or a COVID-19 antigen test described in subparagraph (c)(i), (ii) or (iii) and who is boarding an aircraft for a flight for a purpose other than an optional or discretionary purpose, such as tourism, recreation or leisure, and who is
 - (i) a person who entered Canada at the invitation of the Minister of Health for the purpose of assisting in the COVID-19 response,
 - (ii) a person who is permitted to work in Canada as a provider of emergency services under paragraph 186(t) of the *Immigration and Refugee Protection Regulations* and who entered Canada for the purpose of providing those services,
 - (iii) a person who entered Canada not more than 90 days before the day on which this Interim Order came into effect and who, at the time they sought to enter Canada,
 - (A) held a permanent resident visa issued under subsection 139(1) of the *Immigration and Refugee Protection Regulations*, and
 - (B) was recognized as a Convention refugee or a person in similar circumstances to those of a Convention refugee within the meaning of subsection 146(1) of the *Immigration and Refugee Protection Regulations*,
 - (iv) a person who has been issued a temporary resident permit within the meaning of subsection 24(1) of the *Immigration and Refugee Protection Act* and who entered Canada not more than 90

days before the day on which this Interim Order came into effect as a protected temporary resident under subsection 151.1(2) of the *Immigration and Refugee Protection Regulations*,

- (v) an accredited person,
- (vi) a person holding a D-1, O-1 or C-1 visa who entered Canada to take up a post and become an accredited person, or
- (vii) a diplomatic or consular courier.

Persons — subparagraphs 17.3(2)(d)(i) to (iv)

- **17.4 (1)** An air carrier must issue a document to a person referred to in any of subparagraphs 17.3(2)(d)(i) to (iv) who intends to board an aircraft for a flight that the air carrier operates or that is operated on the air carrier's behalf under a commercial agreement if
 - (a) in the case of a person referred to in any of subparagraphs 17.3(2)(d)(i) to (iii), the person submits a request to the air carrier in respect of that flight in accordance with subsections (2) and (3) or such a request is submitted on their behalf;
 - (b) in the case of a person referred to in subparagraph 17.3(2)(d)(i) or (ii), the air carrier is obligated to accommodate the person on the basis of a medical contraindication or a sincerely held religious belief under applicable legislation by issuing the document; and
 - (c) in the case of a person referred to in subparagraph 17.3(2)(d)(iv), the person who needs accompaniment submits a request to the air carrier in respect of that flight in accordance with subsections (2) and (3) or such a request is submitted on their behalf.
- Request — contents

(2) The request must be signed by the requester and include the following:

 - (a) the person's name and home address and, if the request is made by someone else on the person's behalf, that person's name and home address;
 - (b) the date and number of the flight as well as the aerodrome of departure and the aerodrome of arrival;
 - (c) in the case of a person described in subparagraph 17.3(2)(d)(i),
 - (i) a document issued by the government of a province confirming that the person cannot complete a COVID-19 vaccination regimen due to a medical condition, or
 - (ii) a medical certificate signed by a medical doctor or nurse practitioner who is licensed to practise in Canada certifying that the person cannot complete a COVID-19 vaccination regimen due to a medical condition and the licence number issued by a professional medical licensing body to the medical doctor or nurse practitioner;

- (d) in the case of a person described in subparagraph 17.3(2)(d)(ii), a statement sworn or affirmed by the person before a person appointed as a commissioner of oaths in Canada attesting that the person has not completed a COVID-19 vaccination regimen due to a sincerely held religious belief, including a description of how the belief renders them unable to complete such a regimen; and
- (e) in the case of a person described in subparagraph 17.3(2)(d)(iii), a document that includes
 - (i) the signature of a medical doctor or nurse practitioner who is licensed to practise in Canada,
 - (ii) the licence number issued by a professional medical licensing body to the medical doctor or nurse practitioner,
 - (iii) the date of the appointment for the essential medical service or treatment and the location of the appointment,
 - (iv) the date on which the document was signed, and
 - (v) if the person needs to be accompanied by a person referred to in subparagraph 17.3(2)(d)(iv), the name and contact information of that person and the reason that the accompaniment is needed.
- Timing of request
 - (3) The request must be submitted to the air carrier
 - (a) in the case of a person referred to in subparagraph 17.3(2)(d)(i) or (ii), at least 21 days before the day on which the flight is initially scheduled to depart; and
 - (b) in the case of a person referred to in subparagraph 17.3(2)(d)(iii) or (iv), at least 14 days before the day on which the flight is initially scheduled to depart.
- Special circumstances
 - (4) In special circumstances, an air carrier may issue the document referred to in subsection (1) in response to a request that is not submitted within the time limit referred to in subsection (3).
- Content of document
 - (5) The document referred to in subsection (1) must include
 - (a) a confirmation that the air carrier has verified that the person is a person referred to in any of subparagraphs 17.3(2)(d)(i) to (iv); and
 - (b) the date and number of the flight as well as the aerodrome of departure and the aerodrome of arrival.

Record keeping

- **17.5 (1)** An air carrier must keep a record of the following information:
 - (a) the number of requests that the air carrier has received in respect of each exception referred to in subparagraphs 17.3(2)(d)(i) to (iv);
 - (b) the number of documents issued under subsection 17.4(1); and

- (c) the number of requests that the air carrier denied.
- Retention
 - (2) An air carrier must retain the record for a period of at least 12 months after the day on which the record was created.
- Ministerial request
 - (3) The air carrier must make the record available to the Minister on request.

Copies of requests

- **17.6** (1) An air carrier must keep a copy of a request for a period of at least 90 days after the day on which the air carrier issued a document under subsection 17.4(1) or refused to issue the document.
- Ministerial request
 - (2) The air carrier must make the copy available to the Minister on request.

Request for evidence — air carrier

17.7 Before permitting a person to board an aircraft for a flight that the air carrier operates, the air carrier must request that the person provide

- (a) evidence of COVID-19 vaccination demonstrating that they are a fully vaccinated person;
- (b) evidence that they are a person referred to in paragraph 17.3(2)(a) or (b); or
- (c) evidence that they are a person referred to in paragraph 17.3(2)(c) or any of subparagraphs 17.3(2)(d)(i) to (iv) or (e)(i) to (vii) and that they have received a result for a COVID-19 molecular test or a COVID-19 antigen test.

[17.8 reserved]

Provision of evidence

17.9 A person must, at the request of an air carrier, provide to the air carrier the evidence referred to in paragraph 17.7(a), (b) or (c).

Evidence of vaccination — elements

- **17.10** (1) Evidence of COVID-19 vaccination must be evidence issued by a non-governmental entity that is authorized to issue the evidence of COVID-19 vaccination in the jurisdiction in which the vaccine was administered, by a government or by an entity authorized by a government, and must contain the following information:
 - (a) the name of the person who received the vaccine;
 - (b) the name of the government or of the entity;
 - (c) the brand name or any other information that identifies the vaccine that was administered; and

- (d) the dates on which the vaccine was administered or, if the evidence is one document issued for both doses and the document specifies only the date on which the most recent dose was administered, that date.
- Evidence of vaccination — translation
 - (2) The evidence of COVID-19 vaccination must be in English or French and any translation into English or French must be a certified translation.

Result of COVID-19 test

- **17.11** (1) A result for a COVID-19 molecular test or a COVID-19 antigen test is a result described in subparagraph 17.3(2)(c)(i), (ii) or (iii).
- Evidence — molecular test
 - (2) Evidence of a result for a COVID-19 molecular test must include the elements set out in paragraphs 14(1)(a) to (d).
- Evidence — antigen test
 - (3) Evidence of a result for a COVID-19 antigen test must include the elements set out in paragraphs 14(2)(a) to (d).

Person — paragraph 17.3(2)(a)

- **17.12** (1) Evidence that the person is a person referred to in paragraph 17.3(2)(a) must be
 - (a) a travel itinerary or boarding pass that shows that the initial scheduled departure time of the flight to an aerodrome in Canada is not more than 24 hours after the departure time of a flight taken by the person to Canada from any other country; and
 - (b) their passport or other travel document issued by their country of citizenship or nationality.
- Person — paragraph 17.3(2)(b)
 - (2) Evidence that the person is a person referred to in paragraph 17.3(2)(b) must be
 - (a) a travel itinerary or boarding pass that shows that the initial scheduled departure time of the flight to an aerodrome in Canada is not more than 24 hours after the departure time of the flight taken by the person to Canada from any other country; and
 - (b) a document entitled “Confirmation of Permanent Residence” issued by the Department of Citizenship and Immigration that confirms that the person became a permanent resident on entry to Canada after the flight taken by the person to Canada from any other country.
- Person — paragraph 17.3(2)(c)
 - (3) Evidence that the person is a person referred to in paragraph 17.3(2)(c) must be

- (a) a travel itinerary or boarding pass that shows that the person is boarding an aircraft for a flight to a country other than Canada or to an aerodrome in Canada for the purpose of boarding an aircraft for a flight to a country other than Canada; and
- (b) their passport or other travel document issued by their country of citizenship or nationality.
- Person — subparagraphs 17.3(2)(d)(i) to (iv)

(4) Evidence that the person is a person referred to in any of subparagraphs 17.3(2)(d)(i) to (iv) must be a document issued by an air carrier under subsection 17.4(1) in respect of the flight for which the person is boarding the aircraft or entering the restricted area.
- Person — subparagraph 17.3(2)(e)(i)

(5) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(i) must be a document issued by the Minister of Health that indicates that the person was asked to enter Canada for the purpose of assisting in the COVID-19 response.
- Person — subparagraph 17.3(2)(e)(ii)

(6) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(ii) must be a document from a government or non-governmental entity that indicates that the person was asked to enter Canada for the purpose of providing emergency services under paragraph 186(t) of the *Immigration and Refugee Protection Regulations*.
- Person — subparagraph 17.3(2)(e)(iii)

(7) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(iii) must be a document issued by the Department of Citizenship and Immigration that confirms that the person has been recognized as a Convention refugee or a person in similar circumstances to those of a Convention refugee within the meaning of subsection 146(1) of the *Immigration and Refugee Protection Regulations*.
- Person — subparagraph 17.3(2)(e)(iv)

(8) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(iv) must be a document issued by the Department of Citizenship and Immigration that confirms that the person entered Canada as a protected temporary resident under subsection 151.1(2) of the *Immigration and Refugee Protection Regulations*.
- Person — subparagraph 17.3(2)(e)(v)

(9) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(v) must be their passport containing a valid diplomatic, consular, official or special representative acceptance issued by the Chief of Protocol for the Department of Foreign Affairs, Trade and Development.
- Person — subparagraph 17.3(2)(e)(vi)

(10) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(vi) must be the person's D-1, O-1 or C-1 visa.

- Person — subparagraph 17.3(2)(e)(vii)

(11) Evidence that the person is a person referred to in subparagraph 17.3(2)(e)(vii) must be

- (a) in the case of a diplomatic courier, the official document confirming their status referred to in Article 27 of the Vienna Convention on Diplomatic Relations, as set out in Schedule I to the *Foreign Missions and International Organizations Act*; and
- (b) in the case of a consular courier, the official document confirming their status referred to in Article 35 of the Vienna Convention on Consular Relations, as set out in Schedule II to that Act.

False or misleading information

- **17.13** (1) A person must not submit a request referred to in section 17.4 that contains information that they know to be false or misleading.

- False or misleading evidence

(2) A person must not provide evidence that they know to be false or misleading.

Notice to Minister — information

- **17.14** (1) An air carrier that has reason to believe that a person has submitted a request referred to in section 17.4 that contains information that is likely to be false or misleading must notify the Minister of the following not more than 72 hours after receiving the request:

- (a) the person's name and contact information;
- (b) the date and number of the person's flight; and
- (c) the reason the air carrier believes that the information is likely to be false or misleading.

- Notice to Minister — evidence

(2) An air carrier that has reason to believe that a person has provided evidence that is likely to be false or misleading must notify the Minister of the following not more than 72 hours after the provision of the evidence:

- (a) the person's name and contact information;
- (b) the date and number of the person's flight; and
- (c) the reason the air carrier believes that the evidence is likely to be false or misleading.

Prohibition — air carrier

17.15 An air carrier must not permit a person to board an aircraft for a flight that the air carrier operates if the person does not provide the evidence they are required to provide under section 17.9.

[**17.16** reserved]

Record keeping — air carrier

- **17.17** (1) An air carrier must keep a record of the following information in respect of a person each time the person is denied permission to board an aircraft for a flight under section 17.15:
 - (a) the person's name and contact information, including the person's home address, telephone number and email address;
 - (b) the date and flight number;
 - (c) the reason why the person was denied permission to board the aircraft; and
 - (d) whether the person had been issued a document under subsection 17.4(1) in respect of the flight.
- Retention

(2) The air carrier must retain the record for a period of at least 12 months after the date of the flight.
- Ministerial request

(3) The air carrier must make the record available to the Minister on request.

[17.18 and 17.19 reserved]

Policy Respecting Mandatory Vaccination

Application

17.20 Sections 17.21 to 17.25 apply to

- (a) the operator of an aerodrome listed in Schedule 1;
- (b) an air carrier operating a flight departing from an aerodrome listed in Schedule 1, other than an air carrier who operates a commercial air service under Subpart 1 of Part VII of the Regulations; and
- (c) NAV CANADA.

Definition of relevant person

- **17.21** (1) For the purposes of sections 17.22 to 17.25, relevant person, in respect of an entity referred to in section 17.20, means a person whose duties involve an activity described in subsection (2) and who is
 - (a) an employee of the entity;
 - (b) an employee of the entity's contractor or agent or mandatary;
 - (c) a person hired by the entity to provide a service;
 - (d) the entity's lessee or an employee of the entity's lessee, if the property that is subject to the lease is part of aerodrome property; or
 - (e) a person permitted by the entity to access aerodrome property or, in the case of NAV CANADA, a location where NAV CANADA provides civil air navigation services.
- Activities

(2) For the purposes of subsection (1), the activities are

- (a) conducting or directly supporting activities that are related to aerodrome operations or commercial flight operations — such as aircraft refuelling services, aircraft maintenance and repair services, baggage handling services, supply services for the operator of an aerodrome, an air carrier or NAV CANADA, fire prevention services, runway and taxiway maintenance services or de-icing services — and that take place on aerodrome property or at a location where NAV CANADA provides civil air navigation services;
- (b) interacting in-person on aerodrome property with a person who intends to board an aircraft for a flight;
- (c) engaging in tasks, on aerodrome property or at a location where NAV CANADA provides civil air navigation services, that are intended to reduce the risk of transmission of the virus that causes COVID-19; and
- (d) accessing a restricted area at an aerodrome listed in Schedule 1.

Comprehensive policy — operators of aerodromes

- **17.22 (1)** The operator of an aerodrome must establish and implement a comprehensive policy respecting mandatory COVID-19 vaccination in accordance with subsection (2).
- Policy — content

(2) The policy must

- (a) require that a person who is 12 years and four months of age or older be a fully vaccinated person before accessing aerodrome property, unless they are a person
 - (i) who intends to board an aircraft for a flight that an air carrier operates,
 - (ii) who does not intend to board an aircraft for a flight and who is accessing aerodrome property for leisure purposes or to accompany a person who intends to board an aircraft for a flight,
 - (iii) who is the holder of an employee identification document issued by a department or departmental corporation listed in Schedule 2 or a member identification document issued by the Canadian Forces, or
 - (iv) who is delivering equipment or providing services within a restricted area that are urgently needed and critical to aerodrome operations and who has obtained an authorization from the operator of the aerodrome before doing so;
- (b) despite paragraph (a), allow a person who is subject to the policy and who is not a fully vaccinated person to access aerodrome property if the person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;

- (c) provide for a procedure for verifying evidence provided by a person referred to in paragraph (b) that demonstrates that the person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;
 - (d) provide for a procedure for issuing to a person whose evidence has been verified under the procedure referred to in paragraph (c) a document confirming that they are a person referred to in paragraph (b);
 - (e) provide for a procedure that ensures that a person subject to the policy provides, on request, the following evidence before accessing aerodrome property:
 - (i) in the case of a fully vaccinated person, the evidence of COVID-19 vaccination referred to in section 17.10, and
 - (ii) in the case of a person referred to in paragraph (d), the document issued to the person under the procedure referred to in that paragraph;
 - (f) provide for a procedure that allows a person to whom sections 17.31 to 17.40 apply — other than a person referred to in subsection 17.34(2) — who is a fully vaccinated person or a person referred to in paragraph (b) and who is unable to provide the evidence referred to in paragraph (e) to temporarily access aerodrome property if they provide a declaration confirming that they are a fully vaccinated person or that they have been issued a document under the procedure referred to in paragraph (d);
 - (g) provide for a procedure that ensures that a person referred to in paragraph (d) is tested for COVID-19 at least twice every week;
 - (h) provide for a procedure that ensures that a person who receives a positive result for a COVID-19 test taken under the procedure referred to in paragraph (g) is prohibited from accessing aerodrome property until the end of the period for which the public health authority of the province or territory in which the aerodrome is located requires them to isolate after receiving a positive result; and
 - (i) provide for a procedure that ensures that a person referred to in paragraph (h) who undergoes a COVID-19 molecular test is exempt from the procedure referred to in paragraph (g) for a period of 180 days after the person received a positive result from that test.
- Medical contraindication

(3) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of a medical contraindication only if they provide a medical certificate from a medical doctor or nurse practitioner who is licensed to practise in Canada certifying that the person cannot complete a COVID-19 vaccination regimen due to a medical condition and specifying whether the condition is permanent or temporary.

- Religious belief

(4) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if they submit a statement sworn or affirmed by them attesting that they have not completed a COVID-19 vaccination regimen due to their sincerely held religious belief.

- *Canadian Human Rights Act*

(5) For the purposes of paragraphs (2)(c) and (d), in the case of an employee of the operator of an aerodrome or a person hired by the operator of an aerodrome to provide a service, the policy must provide that a document is to be issued to the employee or person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if the operator of the aerodrome is obligated to accommodate them on that basis under the *Canadian Human Rights Act* by issuing such a document.

- Applicable legislation

(6) For the purposes of paragraphs (2)(c) and (d), in the following cases, the policy must provide that a document is to be issued to the employee confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if they would be entitled to such an accommodation on that basis under applicable legislation:

- (a) in the case of an employee of the operator of an aerodrome's contractor or agent or mandatory; and
- (b) in the case of an employee of the operator of an aerodrome's lessee, if the property that is subject to the lease is part of aerodrome property.

Comprehensive policy — air carriers and NAV CANADA

17.23 Section 17.24 does not apply to an air carrier or NAV CANADA if that entity

- (a) establishes and implements a comprehensive policy respecting mandatory COVID-19 vaccination in accordance with paragraphs 17.24(2)(a) to (h) and subsections 17.24(3) to (6); and
- (b) has procedures in place to ensure that while a relevant person is carrying out their duties related to commercial flight operations, no in-person interactions occur between the relevant person and an unvaccinated person who has not been issued a document under the procedure referred to in paragraph 17.24(2)(d) and who is
 - (i) an employee of the entity,
 - (ii) an employee of the entity's contractor or agent or mandatory,
 - (iii) a person hired by the entity to provide a service, or

- (iv) the entity's lessee or an employee of the entity's lessee, if the property that is subject to the lease is part of aerodrome property.

Targeted policy — air carriers and NAV CANADA

- **17.24** (1) An air carrier or NAV CANADA must establish and implement a targeted policy respecting mandatory COVID-19 vaccination in accordance with subsection (2).

- Policy — content

(2) The policy must

- (a) require that a relevant person, other than the holder of an employee identification document issued by a department or departmental corporation listed in Schedule 2 or a member identification document issued by the Canadian Forces, be a fully vaccinated person before accessing aerodrome property or, in the case of NAV CANADA, a location where NAV CANADA provides civil air navigation services;
- (b) despite paragraph (a), allow a relevant person who is subject to the policy and who is not a fully vaccinated person to access aerodrome property or, in the case of NAV CANADA, a location where NAV CANADA provides civil air navigation services, if the relevant person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;
- (c) provide for a procedure for verifying evidence provided by a relevant person referred to in paragraph (b) that demonstrates that the relevant person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;
- (d) provide for a procedure for issuing to a relevant person whose evidence has been verified under the procedure referred to in paragraph (c) a document confirming that they are a relevant person referred to in paragraph (b);
- (e) provide for a procedure that ensures that a relevant person subject to the policy provides, on request, the following evidence before accessing aerodrome property:
 - (i) in the case of a fully vaccinated person, the evidence of COVID-19 vaccination referred to in section 17.10, and
 - (ii) in the case of a relevant person referred to in paragraph (d), the document issued to the relevant person under the procedure referred to in that paragraph;
- (f) provide for a procedure that ensures that a relevant person referred to in paragraph (d) is tested for COVID-19 at least twice every week;
- (g) provide for a procedure that ensures that a relevant person who receives a positive result for a COVID-19 test under the procedure referred to in paragraph (f) is prohibited from accessing aerodrome

property until the end of the period for which the public health authority of the province or territory in which the aerodrome is located requires them to isolate after receiving a positive test result;

- (h) provide for a procedure that ensures that a relevant person referred to in paragraph (g) who undergoes a COVID-19 molecular test is exempt from the procedure referred to in paragraph (f) for a period of 180 days after the relevant person received a positive result from that test;
- (i) set out procedures for reducing the risk that a relevant person will be exposed to the virus that causes COVID-19 due to an in-person interaction, occurring on aerodrome property or at a location where NAV CANADA provides civil air navigation services, with an unvaccinated person who has not been issued a document under the procedure referred to in paragraph (d) and who is a person referred to in any of subparagraphs 17.23(b)(i) to (iv), which procedures may include protocols related to
 - (i) the vaccination of persons, other than relevant persons, who access aerodrome property or a location where NAV CANADA provides civil air navigation services,
 - (ii) physical distancing and the wearing of masks, and
 - (iii) reducing the frequency and duration of in-person interactions;
- (j) establish a procedure for collecting the following information with respect to an in-person interaction related to commercial flight operations between a relevant person and a person referred to in any of subparagraphs 17.23(b)(i) to (iv) who is unvaccinated and has not been issued a document under the procedure referred to in paragraph (d) or whose vaccination status is unknown:
 - (i) the time, date and location of the interaction, and
 - (ii) contact information for the relevant person and the other person;
- (k) establish a procedure for recording the following information and submitting it to the Minister on request:
 - (i) the number of relevant persons who are subject to the entity's policy,
 - (ii) the number of relevant persons who require access to a restricted area,
 - (iii) the number of relevant persons who are fully vaccinated persons and those who are not,
 - (iv) the number of hours during which relevant persons were unable to fulfill their duties related to commercial flight operations due to COVID-19,

- (v) the number of relevant persons who have been issued a document under the procedure referred to in paragraph (d), the reason for issuing the document and a confirmation that the relevant persons have submitted evidence of COVID-19 tests taken in accordance with the procedure referred to in paragraph (f),
- (vi) the number of relevant persons who refuse to comply with a requirement referred to in paragraph (a), (f) or (g),
- (vii) the number of relevant persons who were denied entry to a restricted area because of a refusal to comply with a requirement referred to in paragraph (a), (f) or (g),
- (viii) the number of persons referred to in subparagraphs 17.23(b) (i) to (iv) who are unvaccinated and who have not been issued a document under the procedure referred to in paragraph (d), or whose vaccination status is unknown, who have an in-person interaction related to commercial flight operations with a relevant person and a description of any procedures implemented to reduce the risk that a relevant person will be exposed to the virus that causes COVID-19 due to such an interaction, and
- (ix) the number of instances in which the air carrier or NAV CANADA, as applicable, is made aware that a person with respect to whom information was collected under paragraph (j) received a positive result for a COVID-19 test, the number of relevant persons tested for COVID-19 as a result of this information, the results of those tests and a description of any impacts on commercial flight operations; and
- (l) require the air carrier or NAV CANADA, as applicable, to keep the information referred to in paragraph (k) for a period of at least 12 months after the date that the information was recorded.
- Medical contraindication

(3) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a relevant person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of a medical contraindication only if they provide a medical certificate from a medical doctor or nurse practitioner who is licensed to practise in Canada certifying that the relevant person cannot complete a COVID-19 vaccination regimen due to a medical condition and specifying whether the condition is permanent or temporary.
- Religious belief

(4) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a relevant person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if they submit a statement sworn or affirmed by them attesting that they have not completed a COVID-19 vaccination regimen due to their sincerely held religious belief.
- *Canadian Human Rights Act*

(5) For the purposes of paragraphs (2)(c) and (d), in the case of an employee of an entity or a relevant person hired by an entity to provide a service, the policy must provide that a document is to be issued to the employee or the relevant person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if the entity is obligated to accommodate the relevant person on that basis under the *Canadian Human Rights Act* by issuing such a document.

- Applicable legislation

(6) For the purposes of paragraphs (2)(c) and (d), in the following cases, the policy must provide that a document is to be issued to the employee confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if they would be entitled to such an accommodation on that basis under applicable legislation:

- (a) in the case of an employee of an entity's contractor or agent or mandatary; and
- (b) in the case of an employee of an entity's lessee, if the property that is subject to the lease is part of aerodrome property.

Ministerial request — policy

- **17.25** (1) The operator of an aerodrome, an air carrier or NAV CANADA must make a copy of the policy referred to in section 17.22, 17.23 or 17.24, as applicable, available to the Minister on request.

- Ministerial request — implementation

(2) The operator of an aerodrome, an air carrier or NAV CANADA must make information related to the implementation of the policy referred to in section 17.22, 17.23 or 17.24, as applicable, available to the Minister on request.

[17.26 to 17.29 reserved]

Vaccination — Aerodromes in Canada

Application

- **17.30** (1) Sections 17.31 to 17.40 apply to all of the following persons:
 - (a) subject to paragraph (c), a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area for a reason other than to board an aircraft for a flight operated by an air carrier;
 - (b) a crew member entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight operated by an air carrier under Subpart 1, 3, 4 or 5 of Part VII of the Regulations;
 - (c) a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight

- (i) only to become a crew member on board another aircraft operated by an air carrier under Subpart 1, 3, 4 or 5 of Part VII of the Regulations,
- (ii) after having been a crew member on board an aircraft operated by an air carrier under Subpart 1, 3, 4 or 5 of Part VII of the Regulations, or
- (iii) to participate in mandatory training required by an air carrier in relation to the operation of an aircraft operated under Subpart 1, 3, 4 or 5 of Part VII of the Regulations, if the person will be required to return to work as a crew member;
- (d) a screening authority at an aerodrome where persons other than passengers are screened or can be screened;
- (e) the operator of an aerodrome listed in Schedule 1.
- Non-application
- (2) Sections 17.31 to 17.40 do not apply to any of the following persons:
 - (a) a child who is less than 12 years and four months of age;
 - (b) a person who arrives at an aerodrome on board an aircraft following the diversion of their flight for a safety-related reason, such as adverse weather or an equipment malfunction, and who enters a restricted area to board an aircraft for a flight not more than 24 hours after the arrival time of the diverted flight;
 - (c) a member of emergency response provider personnel who is responding to an emergency;
 - (d) a peace officer who is responding to an emergency;
 - (e) the holder of an employee identification document issued by a department or departmental corporation listed in Schedule 2 or a member identification document issued by the Canadian Forces; or
 - (f) a person who is delivering equipment or providing services within a restricted area that are urgently needed and critical to aerodrome operations and who has obtained an authorization from the operator of the aerodrome before doing so.

Prohibition

- **17.31** (1) A person must not enter a restricted area unless they are a fully vaccinated person.
- Exception
- (2) Subsection (1) does not apply to a person who has been issued a document under the procedure referred to in paragraph 17.22(2)(d) or 17.24(2)(d).

Provision of evidence

- **17.32** A person must provide to a screening authority or the operator of an aerodrome, on their request,

- (a) in the case of a fully vaccinated person, the evidence of COVID-19 vaccination referred to in section 17.10; and
- (b) in the case of a person who has been issued a document under the procedure referred to in paragraph 17.22(2)(d) or 17.24(2)(d), the document issued to the person.

Request for evidence

17.33 Before permitting a certain number of persons, as specified by the Minister and selected on a random basis, to enter a restricted area, the screening authority must request that each of those persons, when they present themselves for screening at a non-passenger screening checkpoint or a passenger screening checkpoint, provide the evidence referred to in paragraph 17.32(a) or (b).

Declaration

- **17.34** (1) If a person who is a fully vaccinated person or who has been issued a document under the procedure referred to in paragraph 17.22(2)(d) is unable, following a request to provide evidence under section 17.33, to provide the evidence, the person may
 - (a) sign a declaration confirming that they are a fully vaccinated person or that they have been issued a document under the procedure referred to in paragraph 17.22(2)(d); or
 - (b) if the person has signed a declaration under paragraph (a) no more than seven days before the day on which the request to provide evidence is made, provide that declaration.
- Exception

(2) Subsection (1) does not apply to the holder of a document of entitlement that expires within seven days after the day on which the request to provide evidence under section 17.33 is made.
- Notification to aerodrome operator

(3) If a person signs a declaration referred to in paragraph (1)(a), the screening authority must notify the operator of the aerodrome as soon as feasible of the person's name, the date on which the declaration was signed and, if applicable, the number or identifier of the person's document of entitlement.
- Provision of evidence

(4) A person who signed a declaration under paragraph (1)(a) must provide the evidence referred to in paragraph 17.32(a) or (b) to the operator of the aerodrome within seven days after the day on which the declaration is signed.
- Suspension of restricted area access

(5) An operator of an aerodrome must ensure that the restricted area access of a person who does not provide the evidence within seven days as required under subsection (4) is suspended until the person provides the evidence.

Record keeping — suspension

- **17.35** (1) The operator of the aerodrome must keep a record of the following information in respect of a person each time the restricted area access of the person is suspended under subsection 17.34(5):
 - (a) the person's name;
 - (b) the number or identifier of the person's document of entitlement, if applicable;
 - (c) the date of the suspension; and
 - (d) the reason for the suspension.
- **Retention**

(2) The operator must retain the record for a period of at least 12 months after the day on which the record was created.
- **Ministerial request**

(3) The operator of the aerodrome must make the record available to the Minister on request.

Prohibition

- **17.36** (1) A screening authority must deny a person entry to a restricted area if, following a request to provide evidence under section 17.33, the person does not provide the evidence or, if applicable, does not sign or provide a declaration under subsection 17.34(1).
- **Notification to aerodrome operator**

(2) If a screening authority denies a person entry to a restricted area, it must notify the operator of the aerodrome as soon as feasible of the person's name, the date on which the person was denied entry and, if applicable, the number or identifier of the person's document of entitlement.
- **Suspension of restricted area access**

(3) An operator of an aerodrome must ensure that the restricted area access of a person who was denied entry under subsection (1) is suspended until the person provides the requested evidence or the signed declaration.

False or misleading evidence

17.37 A person must not provide evidence that they know to be false or misleading.

Notice to Minister

17.38 A screening authority or the operator of an aerodrome that has reason to believe that a person has provided evidence that is likely to be false or misleading must notify the Minister of the following not more than 72 hours after the provision of the evidence:

- (a) the person's name;

- (b) the number or identifier of the person's document of entitlement, if applicable; and
- (c) the reason the screening authority or the operator of an aerodrome believes that the evidence is likely to be false or misleading.

Record keeping — denial of entry

- **17.39** (1) A screening authority must keep a record of the following information in respect of a person each time the person is denied entry to a restricted area under subsection 17.36(1):
 - (a) the person's name;
 - (b) the number or identifier of the person's document of entitlement, if applicable;
 - (c) the date on which the person was denied entry and the location; and
 - (d) the reason why the person was denied entry to the restricted area.
- Retention
 - (2) The screening authority must retain the record for a period of at least 12 months after the day on which the record was created.
- Ministerial request
 - (3) The screening authority must make the record available to the Minister on request.

Requirement to establish and implement

17.40 The operator of an aerodrome must ensure that a document of entitlement is only issued to a fully vaccinated person or a person who has been issued a document under the procedure referred to in paragraph 17.22(2)(d).

Masks

Non-application

- **18** (1) Sections 19 to 24 do not apply to any of the following persons:
 - (a) a child who is less than two years of age;
 - (b) a child who is at least two years of age but less than six years of age who is unable to tolerate wearing a mask;
 - (c) a person who provides a medical certificate certifying that they are unable to wear a mask for a medical reason;
 - (d) a person who is unconscious;
 - (e) a person who is unable to remove their mask without assistance;
 - (f) a crew member;
 - (g) a gate agent.
- Mask readily available

(2) An adult responsible for a child who is at least two years of age but less than six years of age must ensure that a mask is readily available to the child before boarding an aircraft for a flight.

- Wearing of mask

(3) An adult responsible for a child must ensure that the child wears a mask when wearing one is required under section 21 and complies with any instructions given by a gate agent under section 22 if the child

- (a) is at least two years of age but less than six years of age and is able to tolerate wearing a mask; or
- (b) is at least six years of age.

Notification

19 A private operator or air carrier must notify every person who intends to board an aircraft for a flight that the private operator or air carrier operates that the person must

- (a) be in possession of a mask before boarding;
- (b) wear the mask at all times during the boarding process, during the flight and from the moment the doors of the aircraft are opened until the person enters the air terminal building; and
- (c) comply with any instructions given by a gate agent or a crew member with respect to wearing a mask.

Obligation to possess mask

20 Every person who is at least six years of age must be in possession of a mask before boarding an aircraft for a flight.

Wearing of mask — persons

- **21** (1) Subject to subsections (2) and (3), a private operator or air carrier must require a person to wear a mask at all times during the boarding process and during a flight that the private operator or air carrier operates.
- Exceptions — person

(2) Subsection (1) does not apply

- (a) when the safety of the person could be endangered by wearing a mask;
- (b) when the person is drinking or eating, unless a crew member instructs the person to wear a mask;
- (c) when the person is taking oral medications;
- (d) when a gate agent or a crew member authorizes the removal of the mask to address unforeseen circumstances or the person's special needs; or
- (e) when a gate agent, a member of the aerodrome security personnel or a crew member authorizes the removal of the mask to verify the person's identity.

- Exceptions — flight deck

(3) Subsection (1) does not apply to any of the following persons when they are on the flight deck:

- (a) a Department of Transport air carrier inspector;
- (b) an inspector of the civil aviation authority of the state where the aircraft is registered;
- (c) an employee of the private operator or air carrier who is not a crew member and who is performing their duties;
- (d) a pilot, flight engineer or flight attendant employed by a wholly owned subsidiary or a code share partner of the air carrier;
- (e) a person who has expertise related to the aircraft, its equipment or its crew members and who is required to be on the flight deck to provide a service to the private operator or air carrier.

Compliance

22 A person must comply with any instructions given by a gate agent, a member of the aerodrome security personnel, a crew member, a customs officer or a quarantine officer with respect to wearing a mask.

Prohibition — private operator or air carrier

23 A private operator or air carrier must not permit a person to board an aircraft for a flight that the private operator or air carrier operates if

- (a) the person is not in possession of a mask; or
- (b) the person refuses to comply with an instruction given by a gate agent or a crew member with respect to wearing a mask.

Refusal to comply

- **24** (1) If, during a flight that a private operator or air carrier operates, a person refuses to comply with an instruction given by a crew member with respect to wearing a mask, the private operator or air carrier must
 - (a) keep a record of
 - (i) the date and flight number,
 - (ii) the person's name, date of birth and contact information, including the person's home address, telephone number and email address,
 - (iii) the person's seat number, and
 - (iv) the circumstances related to the refusal to comply; and
 - (b) inform the Minister as soon as feasible of any record created under paragraph (a).
- Retention period

(2) The private operator or air carrier must retain the record for a period of at least 12 months after the date of the flight.
- Ministerial request

- (3) The private operator or air carrier must make the record available to the Minister on request.

Wearing of mask — crew member

- **25** (1) Subject to subsections (2) and (3), a private operator or air carrier must require a crew member to wear a mask at all times during the boarding process and during a flight that the private operator or air carrier operates.
- Exceptions — crew member
 - (2) Subsection (1) does not apply
 - (a) when the safety of the crew member could be endangered by wearing a mask;
 - (b) when the wearing of a mask by the crew member could interfere with operational requirements or the safety of the flight; or
 - (c) when the crew member is drinking, eating or taking oral medications.
 - Exception — flight deck
 - (3) Subsection (1) does not apply to a crew member who is a flight crew member when they are on the flight deck.

Wearing of mask — gate agent

- **26** (1) Subject to subsections (2) and (3), a private operator or air carrier must require a gate agent to wear a mask during the boarding process for a flight that the private operator or air carrier operates.
- Exceptions
 - (2) Subsection (1) does not apply
 - (a) when the safety of the gate agent could be endangered by wearing a mask; or
 - (b) when the gate agent is drinking, eating or taking oral medications.
 - Exception — physical barrier
 - (3) During the boarding process, subsection (1) does not apply to a gate agent if the gate agent is separated from any other person by a physical barrier that allows the gate agent and the other person to interact and reduces the risk of exposure to COVID-19.

Deplaning

Non-application

- **27** (1) Sections 28 and 28.1 do not apply to any of the following persons:
 - (a) a child who is less than two years of age;
 - (b) a child who is at least two years of age but less than six years of age who is unable to tolerate wearing a mask;

- (c) a person who provides a medical certificate certifying that they are unable to wear a mask for a medical reason;
- (d) a person who is unconscious;
- (e) a person who is unable to remove their mask without assistance;
- (f) a person who is on a flight that originates in Canada and is destined to another country.

- Wearing of mask

(2) An adult responsible for a child must ensure that the child wears a mask when wearing one is required under section 28 or 28.1 if the child

- (a) is at least two years of age but less than six years of age and is able to tolerate wearing a mask; or
- (b) is at least six years of age.

Wearing of mask — persons on board

28 A person who is on board an aircraft must wear a mask at all times from the moment the doors of the aircraft are opened until the person enters the air terminal building, including by a passenger loading bridge.

Wearing of mask — customs and border processing area

28.1 A person must wear a mask at all times when they are in the customs and border processing area.

Screening Authority

Non-application

- **29** (1) Sections 30 to 33 do not apply to any of the following persons:
 - (a) a child who is less than two years of age;
 - (b) a child who is at least two years of age but less than six years of age who is unable to tolerate wearing a mask;
 - (c) a person who provides a medical certificate certifying that they are unable to wear a mask for a medical reason;
 - (d) a person who is unconscious;
 - (e) a person who is unable to remove their mask without assistance;
 - (f) a member of emergency response provider personnel who is responding to an emergency;
 - (g) a peace officer who is responding to an emergency.

- Wearing of mask

(2) An adult responsible for a child must ensure that the child wears a mask when wearing one is required under subsection 30(2) and removes it when required by a screening officer to do so under subsection 30(3) if the child

- (a) is at least two years of age but less than six years of age and is able to tolerate wearing a mask; or

- (b) is at least six years of age.

Requirement — passenger screening checkpoint

- **30** (1) A screening authority must notify a person who is subject to screening at a passenger screening checkpoint that they must wear a mask at all times during screening.
- **Wearing of mask — person**
(2) Subject to subsection (3), a person who is the subject of screening referred to in subsection (1) must wear a mask at all times during screening.
- **Requirement to remove mask**
(3) A person who is required by a screening officer to remove their mask during screening must do so.
- **Wearing of mask — screening officer**
(4) A screening officer must wear a mask at a passenger screening checkpoint when conducting the screening of a person if, during the screening, the screening officer is two metres or less from the person being screened.

Requirement — non-passenger screening checkpoint

- **31** (1) A person who presents themselves at a non-passenger screening checkpoint to enter into a restricted area must wear a mask at all times.
- **Wearing of mask — screening officer**
(2) Subject to subsection (3), a screening officer must wear a mask at all times at a non-passenger screening checkpoint.
- **Exceptions**
(3) Subsection (2) does not apply
 - (a) when the safety of the screening officer could be endangered by wearing a mask; or
 - (b) when the screening officer is drinking, eating or taking oral medications.

Exception — physical barrier

32 Sections 30 and 31 do not apply to a person, including a screening officer, if the person is two metres or less from another person and both persons are separated by a physical barrier that allows them to interact and reduces the risk of exposure to COVID-19.

Prohibition — passenger screening checkpoint

- **33** (1) A screening authority must not permit a person who has been notified to wear a mask and refuses to do so to pass beyond a passenger screening checkpoint into a restricted area.
- **Prohibition — non-passenger screening checkpoint**

(2) A screening authority must not permit a person who refuses to wear a mask to pass beyond a non-passenger screening checkpoint into a restricted area.

Designated Provisions

Designation

- **34** (1) The provisions of this Interim Order set out in column 1 of Schedule 3 are designated as provisions the contravention of which may be dealt with under and in accordance with the procedure set out in sections 7.7 to 8.2 of the Act.

- Maximum amounts

(2) The amounts set out in column 2 of Schedule 3 are the maximum amounts of the penalty payable in respect of a contravention of the designated provisions set out in column 1.

- Notice

(3) A notice referred to in subsection 7.7(1) of the Act must be in writing and must specify

- (a) the particulars of the alleged contravention;
- (b) that the person on whom the notice is served or to whom it is sent has the option of paying the amount specified in the notice or filing with the Tribunal a request for a review of the alleged contravention or the amount of the penalty;
- (c) that payment of the amount specified in the notice will be accepted by the Minister in satisfaction of the amount of the penalty for the alleged contravention and that no further proceedings under Part I of the Act will be taken against the person on whom the notice in respect of that contravention is served or to whom it is sent;
- (d) that the person on whom the notice is served or to whom it is sent will be provided with an opportunity consistent with procedural fairness and natural justice to present evidence before the Tribunal and make representations in relation to the alleged contravention if the person files a request for a review with the Tribunal; and
- (e) that the person on whom the notice is served or to whom it is sent will be considered to have committed the contravention set out in the notice if they fail to pay the amount specified in the notice and fail to file a request for a review with the Tribunal within the prescribed period.

Repeal

35 The *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61*, made on April 24, 2022, is repealed.

SCHEDULE 1(Subsections 1(1) and 17.1(1) and paragraphs 17.1(2)(c), 17.20(a) and (b), 17.21(2)(d) and 17.30(1)(a) to (c) and (e))

Aerodromes

Name	ICAO Location Indicator
Abbotsford International	CYXX
Alma	CYTF
Bagotville	CYBG
Baie-Comeau	CYBC
Bathurst	CZBF
Brandon Municipal	CYBR
Calgary International	CYYC
Campbell River	CYBL
Castlegar (West Kootenay Regional)	CYCG
Charlo	CYCL
Charlottetown	CYYG
Chibougamau/Chapais	CYMT
Churchill Falls	CZUM
Comox	CYQQ
Cranbrook (Canadian Rockies International)	CYXC
Dawson Creek	CYDQ
Deer Lake	CYDF
Edmonton International	CYEG
Fort McMurray	CYMM
Fort St. John	CYXJ
Fredericton International	CYFC
Gander International	CYQX
Gaspé	CYGP
Goose Bay	CYYR
Grande Prairie	CYQU
Greater Moncton International	CYQM
Halifax (Robert L. Stanfield International)	CYHZ
Hamilton (John C. Munro International)	CYHM
Îles-de-la-Madeleine	CYGR

Name	ICAO Location Indicator
Iqaluit	CYFB
Kamloops	CYKA
Kelowna	CYLW
Kingston	CYBK
Kitchener/Waterloo Regional	CYKF
La Grande Rivière	CYGL
Lethbridge	CYQL
Lloydminster	CYLL
London	CYXU
Lourdes-de-Blanc-Sablon	CYBX
Medicine Hat	CYXH
Mont-Joli	CYYY
Montréal International (Mirabel)	CYMX
Montréal (Montréal — Pierre Elliott Trudeau International)	CYUL
Montréal (St. Hubert)	CYHU
Nanaimo	CYCD
North Bay	CYYB
Ottawa (Macdonald-Cartier International)	CYOW
Penticton	CYWF
Prince Albert (Glass Field)	CYPA
Prince George	CYXS
Prince Rupert	CYPR
Québec (Jean Lesage International)	CYQB
Quesnel	CYQZ
Red Deer Regional	CYQF
Regina International	CYQR
Rivière-Rouge/Mont-Tremblant International	CYFJ
Rouyn-Noranda	CYUY
Saint John	CYSJ
Sarnia (Chris Hadfield)	CYZR
Saskatoon (John G. Diefenbaker International)	CYXE
Sault Ste. Marie	CYAM

Name	ICAO Location Indicator
Sept-Îles	CYZV
Smithers	CYYD
St. Anthony	CYAY
St. John's International	CYYT
Stephenville	CYJT
Sudbury	CYSB
Sydney (J.A. Douglas McCurdy)	CYQY
Terrace	CYXT
Thompson	CYTH
Thunder Bay	CYQT
Timmins (Victor M. Power)	CYTS
Toronto (Billy Bishop Toronto City)	CYTZ
Toronto (Lester B. Pearson International)	CYYZ
Toronto/Buttonville Municipal	CYKZ
Val-d'Or	CYVO
Vancouver (Coal Harbour)	CYHC
Vancouver International	CYVR
Victoria International	CYYJ
Wabush	CYWK
Whitehorse (Erik Nielsen International)	CYXY
Williams Lake	CYWL
Windsor	CYQG
Winnipeg (James Armstrong Richardson International)	CYWG
Yellowknife	CYZF

SCHEDULE 2(Subparagraph 17.22(2)(a)(iii) and paragraphs 17.24(2)(a) and 17.30(2)(e))

Departments and Departmental Corporations

Name
Canada Border Services Agency
Canadian Security Intelligence Service
Correctional Service of Canada

Name

Department of Agriculture and Agri-Food
 Department of Employment and Social Development
 Department of Fisheries and Oceans
 Department of Health
 Department of National Defence
 Department of the Environment
 Department of Public Safety and Emergency Preparedness
 Department of Transport
 Public Health Agency of Canada
 Royal Canadian Mounted Police


SCHEDULE 3(Subsections 34(1) and (2))Designated Provisions

Column 1	Column 2	
	Maximum Amount of Penalty (\$)	
Designated Provision	Individual	Corporation
Subsection 2(1)	5,000	25,000
Subsection 2(2)	5,000	25,000
Subsection 2(3)	5,000	25,000
Subsection 2(4)	5,000	25,000
Subsection 3(1)	5,000	
Subsection 3(2)	5,000	
Section 4	5,000	25,000
Section 5	5,000	25,000
Subsection 8(1)	5,000	25,000
Subsection 8(2)	5,000	
Subsection 8(3)	5,000	25,000
Subsection 8(4)	5,000	
Subsection 8(6)	5,000	25,000
Subsection 9(1)	5,000	25,000
Section 12	5,000	25,000
Subsection 13(1)	5,000	
Section 13.1	5,000	

Column 1	Column 2	
	Maximum Amount of Penalty (\$)	
Designated Provision	Individual	Corporation
Section 15	5,000	
Section 16	5,000	25,000
Section 17	5,000	25,000
Section 17.2		25,000
Subsection 17.3(1)	5,000	
Subsection 17.4(1)		25,000
Subsection 17.5(1)		25,000
Subsection 17.5(2)		25,000
Subsection 17.5(3)		25,000
Subsection 17.6(1)		25,000
Subsection 17.6(2)		25,000
Section 17.7		25,000
Section 17.9	5,000	
Subsection 17.13(1)	5,000	
Subsection 17.13(2)	5,000	
Subsection 17.14(1)		25,000
Subsection 17.14(2)		25,000
Section 17.15		25,000
Subsection 17.17(1)		25,000
Subsection 17.17(2)		25,000
Subsection 17.17(3)		25,000
Subsection 17.22(1)		25,000
Subsection 17.24(1)		25,000
Subsection 17.25(1)		25,000
Subsection 17.25(2)		25,000
Subsection 17.31(1)	5,000	
Section 17.32	5,000	
Section 17.33		25,000
Subsection 17.34(3)		25,000
Subsection 17.34(4)	5,000	
Subsection 17.34(5)		25,000

Column 1	Column 2	
	Maximum Amount of Penalty (\$)	
Designated Provision	Individual	Corporation
Subsection 17.35(1)		25,000
Subsection 17.35(2)		25,000
Subsection 17.35(3)		25,000
Subsection 17.36(1)		25,000
Subsection 17.36(2)		25,000
Subsection 17.36(3)		25,000
Section 17.37	5,000	
Section 17.38		25,000
Subsection 17.39(1)		25,000
Subsection 17.39(2)		25,000
Subsection 17.39(3)		25,000
Section 17.40		25,000
Subsection 18(2)	5,000	
Subsection 18(3)	5,000	
Section 19	5,000	25,000
Section 20	5,000	
Subsection 21(1)	5,000	25,000
Section 22	5,000	
Section 23	5,000	25,000
Subsection 24(1)	5,000	25,000
Subsection 24(2)	5,000	25,000
Subsection 24(3)	5,000	25,000
Subsection 25(1)	5,000	25,000
Subsection 26(1)	5,000	25,000
Subsection 27(2)	5,000	
Section 28	5,000	
Section 28.1	5,000	
Subsection 29(2)	5,000	
Subsection 30(1)		25,000
Subsection 30(2)	5,000	
Subsection 30(3)	5,000	

Column 1	Column 2	
	Maximum Amount of Penalty (\$)	
Designated Provision	Individual	Corporation
Subsection 30(4)	5,000	
Subsection 31(1)	5,000	
Subsection 31(2)	5,000	
Subsection 33(1)		25,000
Subsection 33(2)		25,000

 Transport Canada is closely monitoring the COVID-19 situation. In response, we have issued some [transportation-related measures and guidance](#). Please check if any of these measures apply to you.

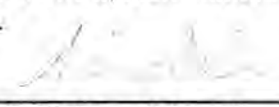
You may experience longer than usual wait times or partial service interruptions. If you cannot get through, please [contact us by email](#).

For information on COVID-19 updates, please visit [Canada.ca/coronavirus](#).

Date modified:
2022-05-06

This is **EXHIBIT "E"** referred to in the Affidavit of
GABRIELLA PLATI TROTTO

Affirmed remotely by Gabriella Plati Trotto at the City
of Mississauga, Regional Municipality of Peel, in the
Province of Ontario, before me, in the City of Toronto,
in the Province of Ontario on October 31, 2022 in
accordance with O. Reg. 431/20, Administering Oath
or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Adam Gilani (LSO#74291P)

Order Repealing the Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 73

From: Transport Canada

Order Repealing the Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 73

Whereas the Deputy Minister of Transport made the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 73* on September 22, 2022 under subsection 6.41(1.1) ^a of the *Aeronautics Act* ^b;

And whereas the Minister of Transport believes that that Interim Order is no longer required to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public;

Therefore, the Minister of Transport makes the annexed *Order Repealing the Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 73* under subsection 6.41(1) ^a of the *Aeronautics Act* ^b.

Ottawa, September 30, 2022

Minister of Transport,
Omar Alghabra

Repeal

¹ The *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 73*, made on September 22, 2022, is repealed.


Coming into Force

² This Order comes into force at 23:59:59 Eastern Daylight Time on September 30, 2022.

Footnotes

^a S.C. 2004, c. 15, s. 11(1)

^b R.S., c. A-2

 Transport Canada is closely monitoring the COVID-19 situation. In response, we have issued some [transportation-related measures and guidance](#). Please check if any of these measures apply to you.

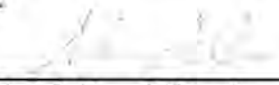
You may experience longer than usual wait times or partial service interruptions. If you cannot get through, please [contact us by email](#).

For information on COVID-19 updates, please visit Canada.ca/coronavirus.

Date modified:
2022-09-30

This is **EXHIBIT "F"** referred to in the Affidavit of
GABRIELLA PLATI TROTTO

Affirmed remotely by Gabriella Plati Trotto at the City
of Mississauga, Regional Municipality of Peel, in the
Province of Ontario, before me, in the City of Toronto,
in the Province of Ontario on October 31, 2022 in
accordance with O. Reg. 431/20, Administering Oath
or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)

Adam Gilani (LSO#74291P)

Ministerial Orders, Interim Orders, Directives / Directions and Response Letters

From: [Transport Canada](#)

On this page

- [Interim Orders](#)
 - [Aviation Security - monthly compliance report to the Interim Order](#)
- [Ministerial Orders](#)
- [Directives / Directions](#)
- [Response Letters](#)

Interim Orders

▼ Aviation

- [Order Repealing the Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 73](#)

▼ Repealed

- [Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 73](#)
- [Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 72](#)
- [Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 71](#)
- [Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 70](#)
- [Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 69](#)
- [Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 68](#)
- [Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 67](#)
- [Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 66](#)
- [Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 65](#)
- [Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 64](#)

- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 63
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 62
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 60
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 59
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- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 36
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 35
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 34
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- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 32
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- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 22

- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 21
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 20
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- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 11
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 10
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- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 6
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 5
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 4
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 3
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 2
- Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19

- [Interim Order to Prevent Certain Persons from Boarding Flights in Canada due to COVID-19, No. 7](#)
- [Interim Order to Prevent Certain Persons from Boarding Flights to Canada due to COVID-19, No. 10](#)
- [Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19, No. 3](#)
- [Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19, No. 2](#)
- [Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19](#)

▼ Marine

Active Interim Orders

- [Order Repealing the Interim Order Respecting Cruise Ship Restrictions and Vaccination Requirements Due to the Coronavirus Disease 2019 \(COVID-19\)](#)
- [Interim Order Respecting the Placentia Bay Compulsory Pilotage Area \(Argentina\)](#)
- [Interim Order Respecting the Belledune Compulsory Pilotage Area](#)
- [Interim Order Respecting the Sheet Harbour Compulsory Pilotage Area](#)
- [Interim Order for the Protection of North Atlantic Right Whales \(*Eubalaena glacialis*\) in the Gulf of St. Lawrence, 2022](#)
- [Interim Order for the Protection of the Killer Whale \(*Orcinus orca*\) in the Waters of Southern British Columbia, 2022](#)

► Repealed Interim Orders

Ministerial Orders

Aviation

- [Order Prohibiting the Development of an Aerodrome in the Municipality of Saint-Roch-de-l'Achigan, No. 2](#)
- Repealed
- [Order Prohibiting the Development of an Aerodrome in the Cities of Mascouche and Terrebonne](#)

Rail

- [Order Repealing the Order Under Section 32.01 of the Railway Safety Act Due to COVID-19, No. 23](#)
- 2022-09-30

- [Order under Section 32.01 of the Railway Safety Act due to COVID-19, No. 23](#)
2022-09-09
- [Order pursuant to Section 19 of the Railway Safety Act \(MO 22-04\)](#)
2022-07-25
- [Order under Section 32.01 of the Railway Safety Act due to COVID-19, No. 22](#)
2022-06-24
- [Order pursuant to Section 32.01 of the Railway Safety Act \(MO 22-02\)](#)
[Order Ending Vaccination Mandates for Passengers and Employees](#)
2022-06-17
- [Order under Section 32.01 of the Railway Safety Act due to COVID-19, No. 21](#)
2022-06-01
- [Order under Section 32.01 of the Railway Safety Act due to COVID-19, No. 20](#)
2022-04-29

1 2 3 4 5 6 7 8 9 › »

Directives / Directions

Road

- [Emergency Direction – Safety – International Bridges and Tunnels](#)
► Repealed

Response Letters

- [Our response to British Columbia's Policy Intentions Paper for Engagement: Activities related to spill management](#)
- [Grain shipments](#)
- [2014 TSB Recommendations & TC Responses](#)



Transport Canada is closely monitoring the COVID-19 situation. In response, we have issued some **transportation-related measures and guidance**. Please check if any of these measures apply to you.

You may experience longer than usual wait times or partial service interruptions. If you cannot get through, please **contact us by email**.

For information on COVID-19 updates, please visit Canada.ca/coronavirus.

Date modified:

2022-09-23

This is **EXHIBIT "G"** referred to in the Affidavit of
GABRIELLA PLATI TROTTO

Affirmed remotely by Gabriella Plati Trotto at the City
of Mississauga, Regional Municipality of Peel, in the
Province of Ontario, before me, in the City of Toronto,
in the Province of Ontario on October 31, 2022 in
accordance with O. Reg. 431/20, Administering Oath
or Declaration Remotely.

Commissioner for Taking Affidavits
(or as may be)

Adam Gilani (LSO#74291P)

Repealed - Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19, No. 3

From: Transport Canada

Whereas the annexed *Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19, No. 3* is required to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public;

Whereas the provisions of the annexed Order may be contained in a regulation made pursuant to sections 4.71^a and 4.9^b, paragraphs 7.6(1)(a)^c and (b)^d and section 7.7^e of the *Aeronautics Act*^f;

- ^aS.C. 2004, c. 15, s. 5
- ^bS.C. 2014, c. 39, s. 144
- ^cS.C. 2015, c. 20, s. 12
- ^dS.C. 2004, c. 15, s. 18
- ^eS.C. 2001, c. 29, s. 39
- ^fR.S., c. A-2

Whereas, pursuant to subsection 6.41(1.1)^g of the *Aeronautics Act*^f, the Minister of Transport authorized the Deputy Minister of Transport to make an interim order that contains any provision that may be contained in a regulation made under Part I of that Act to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public;

- ^gS.C. 2004, c. 15, s. 11(1)

And whereas, pursuant to subsection 6.41(1.2)^g of that Act, the Deputy Minister of Transport has consulted with the persons and organizations that that Deputy Minister considers appropriate in the circumstances before making the annexed Order;

Therefore, the Deputy Minister of Transport makes the annexed *Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19, No. 3* under subsection 6.41(1.1)^g of the *Aeronautics Act*^f.

Ottawa, June 14, 2022

Le sous-ministre des Transports,

Michael Keenan
Deputy Minister of Transport

Interpretation

Definitions

- 1 (1) The following definitions apply in this Interim Order:
accredited person

accredited person means a foreign national who holds a passport that contains a valid diplomatic, consular, official or special representative acceptance issued by the Chief of Protocol for the Department of Foreign Affairs, Trade and Development. (*personne accréditée*)

aerodrome property

aerodrome property means, in respect of an aerodrome listed in Schedule 1, any air terminal buildings or restricted areas or any facilities used for activities related to aircraft operations or aerodrome operations that are located at the aerodrome. (*terrains de l'aérodrome*)

air carrier

air carrier means any person who operates a commercial air service under Subpart 1, 3, 4 or 5 of Part VII of the Regulations. (*transporteur aérien*)

Canadian Forces

Canadian Forces means the armed forces of Her Majesty raised by Canada. (*Forces canadiennes*)

Chief Public Health Officer

Chief Public Health Officer means the Chief Public Health Officer appointed under subsection 6(1) of the *Public Health Agency of Canada Act*. (*administrateur en chef*)

COVID-19

COVID-19 means the coronavirus disease 2019. (*COVID-19*)

COVID-19 antigen test

COVID-19 antigen test means a COVID-19 screening or diagnostic immunoassay that

- (a) detects the presence of a viral antigen indicating the presence of COVID-19;
- (b) is authorized for sale or distribution in Canada or in the jurisdiction in which it was obtained;
- (c) if the test is self-administered, is observed and whose result is verified
 - (i) in person by an accredited laboratory or testing provider, or
 - (ii) in real time by remote audiovisual means by the accredited laboratory or testing provider that provided the test; and
- (d) if the test is not self-administered, is performed by an accredited laboratory or testing provider. (*essai antigénique relatif à la COVID-19*)

COVID-19 molecular test

COVID-19 molecular test means a COVID-19 screening or diagnostic test, including a test performed using the method of polymerase chain reaction (PCR) or reverse transcription loop-mediated isothermal amplification (RT-LAMP), that

- (a) if the test is self-administered, is observed and whose result is verified
 - (i) in person by an accredited laboratory or testing provider, or
 - (ii) in real time by remote audiovisual means by the accredited laboratory or testing provider that provided the test; or

- (b) if the test is not self-administered, is performed by an accredited laboratory or testing provider. (*essai moléculaire relatif à la COVID-19*)

document of entitlement

document of entitlement has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*document d'autorisation*)

foreign national

foreign national has the same meaning as in subsection 2(1) of the *Immigration and Refugee Protection Act*. (*étranger*)

non-passenger screening checkpoint

non-passenger screening checkpoint has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*point de contrôle des non-passagers*)

operator of an aerodrome

operator of an aerodrome means the person in charge of an aerodrome where activities related to civil aviation are conducted and includes an employee, agent or mandatary or other authorized representative of that person. (*exploitant d'un aéroport*)

passenger screening checkpoint

passenger screening checkpoint has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*point de contrôle des passagers*)

peace officer

peace officer has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*agent de la paix*)

Regulations

Regulations means the *Canadian Aviation Regulations*. (*Règlement*)

restricted area

restricted area has the same meaning as in section 3 of the *Canadian Aviation Security Regulations, 2012*. (*zone réglementée*)

screening authority

screening authority means a person responsible for the screening of persons and goods at an aerodrome set out in the schedule to the *CATSA Aerodrome Designation Regulations* or at any other place designated by the Minister under subsection 6(1.1) of the *Canadian Air Transport Security Authority Act*. (*administration de contrôle*)

testing provider

testing provider means

- (a) a person who may provide COVID-19 screening or diagnostic testing services under the laws of the jurisdiction where the service is provided; or
- (b) an organization, such as a telehealth service provider or pharmacy, that may provide COVID-19 screening or diagnostic testing services under the laws of the jurisdiction where the service is provided and that employs or contracts with a person referred to in paragraph (a). (*fournisseur de services d'essais*)

- Interpretation

(2) Unless the context requires otherwise, all other words and expressions used in this Interim Order have the same meaning as in the Regulations.

- Conflict

(3) In the event of a conflict between this Interim Order and the Regulations or the *Canadian Aviation Security Regulations, 2012*, the Interim Order prevails.

- Definition of fully vaccinated person

(4) For the purposes of this Interim Order, a fully vaccinated person means a person who completed, at least 14 days before the day on which they access aerodrome property or a location where NAV CANADA provides civil air navigation services, a COVID-19 vaccine dosage regimen if

- (a) in the case of a vaccine dosage regimen that uses a COVID-19 vaccine that is authorized for sale in Canada,
 - (i) the vaccine has been administered to the person in accordance with its labelling, or
 - (ii) the Minister of Health determines, on the recommendation of the Chief Public Health Officer, that the regimen is suitable, having regard to the scientific evidence related to the efficacy of that regimen in preventing the introduction or spread of COVID-19 or any other factor relevant to preventing the introduction or spread of COVID-19; or
- (b) in all other cases,
 - (i) the vaccines of the regimen are authorized for sale in Canada or in another jurisdiction, and
 - (ii) the Minister of Health determines, on the recommendation of the Chief Public Health Officer, that the vaccines and the regimen are suitable, having regard to the scientific evidence related to the efficacy of that regimen and the vaccines in preventing the introduction or spread of COVID-19 or any other factor relevant to preventing the introduction or spread of COVID-19.

- Interpretation — fully vaccinated person

(5) For greater certainty, for the purposes of the definition *fully vaccinated person* in subsection (4), a COVID-19 vaccine that is authorized for sale in Canada does not include a similar vaccine sold by the same manufacturer that has been authorized for sale in another jurisdiction.

Vaccination — Flights Departing from an Aerodrome in Canada

Application

- 2 (1) Sections 3 to 16 apply to all of the following persons:

- (a) a person boarding an aircraft for a flight that an air carrier operates departing from an aerodrome listed in Schedule 1;
 - (b) a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight that an air carrier operates;
 - (c) an air carrier operating a flight departing from an aerodrome listed in Schedule 1.
- Non-application
 - (2) Sections 3 to 16 do not apply to any of the following persons:
 - (a) a child who is less than 12 years and four months of age;
 - (b) a crew member;
 - (c) a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight operated by an air carrier
 - (i) only to become a crew member on board another aircraft operated by an air carrier;
 - (ii) after having been a crew member on board an aircraft operated by an air carrier, or
 - (iii) to participate in mandatory training required by an air carrier in relation to the operation of an aircraft, if the person will be required to return to work as a crew member;
 - (d) a person who arrives at an aerodrome from any other country on board an aircraft in order to transit to another country and remains in a *sterile transit area*, as defined in section 2 of the *Immigration and Refugee Protection Regulations*, of the aerodrome until they leave Canada;
 - (e) a person who arrives at an aerodrome on board an aircraft following the diversion of their flight for a safety-related reason, such as adverse weather or an equipment malfunction, and who boards an aircraft for a flight not more than 24 hours after the arrival time of the diverted flight.

Notification

3 An air carrier must notify every person who intends to board an aircraft for a flight that the air carrier operates that

- (a) they must be a fully vaccinated person or a person referred to in any of paragraphs 4(2)(a) to (c) or any of subparagraphs 4(2)(d)(i) to (iv) or (e)(i) to (vii);
- (b) they must provide to the air carrier evidence of COVID-19 vaccination demonstrating that they are a fully vaccinated person or evidence that they are a person referred to in any of paragraphs 4(2)(a) to (c) or any of subparagraphs 4(2)(d)(i) to (iv) or (e)(i) to (vii); and

- (c) if they submit a request referred to in section 5, they must do so within the period set out in subsection 5(3).

Prohibition — person

- **4 (1)** A person must not board an aircraft for a flight or enter a restricted area unless they are a fully vaccinated person.

- Exception

(2) Subsection (1) does not apply to

- (a) a foreign national, other than a person registered as an Indian under the *Indian Act*, who is boarding the aircraft for a flight to an aerodrome in Canada if the initial scheduled departure time of that flight is not more than 24 hours after the departure time of a flight taken by the person to Canada from any other country;
- (b) a permanent resident who is boarding the aircraft for a flight to an aerodrome in Canada if the initial scheduled departure time of that flight is not more than 24 hours after the departure time of a flight taken by the person to Canada from any other country for the purpose of entering Canada to become a permanent resident;
- (c) a foreign national who is boarding an aircraft for a flight to a country other than Canada or to an aerodrome in Canada for the purpose of boarding an aircraft for a flight to a country other than Canada and who has received either
 - (i) a negative result for a COVID-19 molecular test that was performed on a specimen collected no more than 72 hours before the flight's initial scheduled departure time,
 - (ii) a negative result for a COVID-19 antigen test that was performed on a specimen collected no more than one day before the flight's initial scheduled departure time, or
 - (iii) a positive result for a COVID-19 molecular test that was performed on a specimen collected at least 10 days and no more than 180 days before the flight's initial scheduled departure time;
- (d) a person who has received a result for a COVID-19 molecular test or a COVID-19 antigen test described in subparagraph (c)(i), (ii) or (iii) and who is
 - (i) a person who has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication and who is entitled to be accommodated on that basis under applicable legislation by being permitted to enter the restricted area or to board an aircraft without being a fully vaccinated person,
 - (ii) a person who has not completed a COVID-19 vaccine dosage regimen due to a sincerely held religious belief and who is entitled to be accommodated on that basis under applicable legislation by being permitted to enter the restricted area or to board an aircraft without being a fully vaccinated person,

- (iii) a person who is boarding an aircraft for a flight for the purpose of attending an appointment for an essential medical service or treatment, or
- (iv) a competent person who is at least 18 years old and who is boarding an aircraft for a flight for the purpose of accompanying a person referred to in subparagraph (iii) if the person needs to be accompanied because they
 - (A) are under the age of 18 years,
 - (B) have a disability, or
 - (C) need assistance to communicate; or
- (e) a person who has received a result for a COVID-19 molecular test or a COVID-19 antigen test described in subparagraph (c)(i), (ii) or (iii) and who is boarding an aircraft for a flight for a purpose other than an optional or discretionary purpose, such as tourism, recreation or leisure, and who is
 - (i) a person who entered Canada at the invitation of the Minister of Health for the purpose of assisting in the COVID-19 response,
 - (ii) a person who is permitted to work in Canada as a provider of emergency services under paragraph 186(t) of the *Immigration and Refugee Protection Regulations* and who entered Canada for the purpose of providing those services,
 - (iii) a person who entered Canada not more than 90 days before the day on which this Interim Order came into effect and who, at the time they sought to enter Canada,
 - (A) held a permanent resident visa issued under subsection 139(1) of the *Immigration and Refugee Protection Regulations*, and
 - (B) was recognized as a Convention refugee or a person in similar circumstances to those of a Convention refugee within the meaning of subsection 146(1) of the *Immigration and Refugee Protection Regulations*,
 - (iv) a person who has been issued a temporary resident permit within the meaning of subsection 24(1) of the *Immigration and Refugee Protection Act* and who entered Canada not more than 90 days before the day on which this Interim Order came into effect as a protected temporary resident under subsection 151.1(2) of the *Immigration and Refugee Protection Regulations*,
 - (v) an accredited person,
 - (vi) a person holding a D-1, O-1 or C-1 visa who entered Canada to take up a post and become an accredited person, or
 - (vii) a diplomatic or consular courier.

Persons — subparagraphs 4(2)(d)(i) to (iv)

- **5** (1) An air carrier must issue a document to a person referred to in any of subparagraphs 4(2)(d)(i) to (iv) who intends to board an aircraft for a flight that the air carrier operates or that is operated on the air carrier's behalf under a commercial agreement if
 - (a) in the case of a person referred to in any of subparagraphs 4(2)(d)(i) to (iii), the person submits a request to the air carrier in respect of that flight in accordance with subsections (2) and (3) or such a request is submitted on their behalf;
 - (b) in the case of a person referred to in subparagraph 4(2)(d)(i) or (ii), the air carrier is obligated to accommodate the person on the basis of a medical contraindication or a sincerely held religious belief under applicable legislation by issuing the document; and
 - (c) in the case of a person referred to in subparagraph 4(2)(d)(iv), the person who needs accompaniment submits a request to the air carrier in respect of that flight in accordance with subsections (2) and (3) or such a request is submitted on their behalf.
- Request — contents
 - (2) The request must be signed by the requester and include the following:
 - (a) the person's name and home address and, if the request is made by someone else on the person's behalf, that person's name and home address;
 - (b) the date and number of the flight as well as the aerodrome of departure and the aerodrome of arrival;
 - (c) in the case of a person described in subparagraph 4(2)(d)(i),
 - (i) a document issued by the government of a province confirming that the person cannot complete a COVID-19 vaccination regimen due to a medical condition, or
 - (ii) a medical certificate signed by a medical doctor or nurse practitioner who is licensed to practise in Canada certifying that the person cannot complete a COVID-19 vaccination regimen due to a medical condition and the licence number issued by a professional medical licensing body to the medical doctor or nurse practitioner;
 - (d) in the case of a person described in subparagraph 4(2)(d)(ii), a statement sworn or affirmed by the person before a person appointed as a commissioner of oaths in Canada attesting that the person has not completed a COVID-19 vaccination regimen due to a sincerely held religious belief, including a description of how the belief renders them unable to complete such a regimen; and
 - (e) in the case of a person described in subparagraph 4(2)(d)(iii), a document that includes
 - (i) the signature of a medical doctor or nurse practitioner who is licensed to practise in Canada,

- (ii) the licence number issued by a professional medical licensing body to the medical doctor or nurse practitioner,
 - (iii) the date of the appointment for the essential medical service or treatment and the location of the appointment,
 - (iv) the date on which the document was signed, and
 - (v) if the person needs to be accompanied by a person referred to in subparagraph 4(2)(d)(iv), the name and contact information of that person and the reason that the accompaniment is needed.
- Timing of request

(3) The request must be submitted to the air carrier

- (a) in the case of a person referred to in subparagraph 4(2)(d)(i) or (ii), at least 21 days before the day on which the flight is initially scheduled to depart; and
- (b) in the case of a person referred to in subparagraph 4(2)(d)(iii) or (iv), at least 14 days before the day on which the flight is initially scheduled to depart.

- Special circumstances

(4) In special circumstances, an air carrier may issue the document referred to in subsection (1) in response to a request that is not submitted within the time limit referred to in subsection (3).

- Content of document

(5) The document referred to in subsection (1) must include

- (a) a confirmation that the air carrier has verified that the person is a person referred to in any of subparagraphs 4(2)(d)(i) to (iv); and
- (b) the date and number of the flight as well as the aerodrome of departure and the aerodrome of arrival.

Record keeping

- 6(1) An air carrier must keep a record of the following information:
 - (a) the number of requests that the air carrier has received in respect of each exception referred to in subparagraphs 4(2)(d)(i) to (iv);
 - (b) the number of documents issued under subsection 5(1); and
 - (c) the number of requests that the air carrier denied.

- Retention

(2) An air carrier must retain the record for a period of at least 12 months after the day on which the record was created.

- Ministerial request

(3) The air carrier must make the record available to the Minister on request.

Copies of requests

- **7 (1)** An air carrier must keep a copy of a request for a period of at least 90 days after the day on which the air carrier issued a document under subsection 5(1) or refused to issue the document.
- Ministerial request
 - (2) The air carrier must make the copy available to the Minister on request.

Request for evidence — air carrier

8 Before permitting a person to board an aircraft for a flight that the air carrier operates, the air carrier must request that the person provide

- (a) evidence of COVID-19 vaccination demonstrating that they are a fully vaccinated person;
- (b) evidence that they are a person referred to in paragraph 4(2)(a) or (b); or
- (c) evidence that they are a person referred to in paragraph 4(2)(c) or any of subparagraphs 4(2)(d)(i) to (iv) or (e)(i) to (vii) and that they have received a result for a COVID-19 molecular test or a COVID-19 antigen test.

Provision of evidence

9 A person must, at the request of an air carrier, provide to the air carrier the evidence referred to in paragraph 8(a), (b) or (c).

Evidence of vaccination — elements

- **10 (1)** Evidence of COVID-19 vaccination must be evidence issued by a non-governmental entity that is authorized to issue the evidence of COVID-19 vaccination in the jurisdiction in which the vaccine was administered, by a government or by an entity authorized by a government, and must contain the following information:
 - (a) the name of the person who received the vaccine;
 - (b) the name of the government or of the entity;
 - (c) the brand name or any other information that identifies the vaccine that was administered; and
 - (d) the dates on which the vaccine was administered or, if the evidence is one document issued for both doses and the document specifies only the date on which the most recent dose was administered, that date.
- Evidence of vaccination — translation
 - (2) The evidence of COVID-19 vaccination must be in English or French and any translation into English or French must be a certified translation.

Result of COVID-19 test

- **11 (1)** A result for a COVID-19 molecular test or a COVID-19 antigen test is a result described in subparagraph 4(2)(c)(i), (ii) or (iii).
- Evidence — molecular test

(2) Evidence of a result for a COVID-19 molecular test must include the following:

- (a) the name and date of birth of the person from whom the specimen was collected for the test;
 - (b) the name and civic address of the accredited laboratory or the testing provider that performed or observed the test and verified the result;
 - (c) the date the specimen was collected and the test method used; and
 - (d) the test result.
- Evidence — antigen test

(3) Evidence of a result for a COVID-19 antigen test must include the following:

- (a) the name and date of birth of the person from whom the specimen was collected for the test;
- (b) the name and civic address of the accredited laboratory or the testing provider that performed or observed the test and verified the result;
- (c) the date the specimen was collected and the test method used; and
- (d) the test result.

Person — paragraph 4(2)(a)

- **12** (1) Evidence that the person is a person referred to in paragraph 4(2)(a) must be
 - (a) a travel itinerary or boarding pass that shows that the initial scheduled departure time of the flight to an aerodrome in Canada is not more than 24 hours after the departure time of a flight taken by the person to Canada from any other country; and
 - (b) their passport or other travel document issued by their country of citizenship or nationality.

• Person — paragraph 4(2)(b)

(2) Evidence that the person is a person referred to in paragraph 4(2)(b) must be

- (a) a travel itinerary or boarding pass that shows that the initial scheduled departure time of the flight to an aerodrome in Canada is not more than 24 hours after the departure time of the flight taken by the person to Canada from any other country; and
- (b) a document entitled “Confirmation of Permanent Residence” issued by the Department of Citizenship and Immigration that confirms that the person became a permanent resident on entry to Canada after the flight taken by the person to Canada from any other country.

- Person — paragraph 4(2)(c)
 - (3) Evidence that the person is a person referred to in paragraph 4(2)(c) must be
 - (a) a travel itinerary or boarding pass that shows that the person is boarding an aircraft for a flight to a country other than Canada or to an aerodrome in Canada for the purpose of boarding an aircraft for a flight to a country other than Canada; and
 - (b) their passport or other travel document issued by their country of citizenship or nationality.
- Person — subparagraphs 4(2)(d)(i) to (iv)
 - (4) Evidence that the person is a person referred to in any of subparagraphs 4(2)(d)(i) to (iv) must be a document issued by an air carrier under subsection 5(1) in respect of the flight for which the person is boarding the aircraft or entering the restricted area.
- Person — subparagraph 4(2)(e)(i)
 - (5) Evidence that the person is a person referred to in subparagraph 4(2)(e)(i) must be a document issued by the Minister of Health that indicates that the person was asked to enter Canada for the purpose of assisting in the COVID-19 response.
- Person — subparagraph 4(2)(e)(ii)
 - (6) Evidence that the person is a person referred to in subparagraph 4(2)(e)(ii) must be a document from a government or non-governmental entity that indicates that the person was asked to enter Canada for the purpose of providing emergency services under paragraph 186(t) of the *Immigration and Refugee Protection Regulations*.
- Person — subparagraph 4(2)(e)(iii)
 - (7) Evidence that the person is a person referred to in subparagraph 4(2)(e)(iii) must be a document issued by the Department of Citizenship and Immigration that confirms that the person has been recognized as a Convention refugee or a person in similar circumstances to those of a Convention refugee within the meaning of subsection 146(1) of the *Immigration and Refugee Protection Regulations*.
- Person — subparagraph 4(2)(e)(iv)
 - (8) Evidence that the person is a person referred to in subparagraph 4(2)(e)(iv) must be a document issued by the Department of Citizenship and Immigration that confirms that the person entered Canada as a protected temporary resident under subsection 151.1(2) of the *Immigration and Refugee Protection Regulations*.
- Person — subparagraph 4(2)(e)(v)
 - (9) Evidence that the person is a person referred to in subparagraph 4(2)(e)(v) must be their passport containing a valid diplomatic, consular, official or special representative acceptance issued by the Chief of Protocol for the Department of Foreign Affairs, Trade and Development.

- Person — subparagraph 4(2)(e)(vi)
 - (10) Evidence that the person is a person referred to in subparagraph 4(2)(e)(vi) must be the person's D-1, O-1 or C-1 visa.
- Person — subparagraph 4(2)(e)(vii)
 - (11) Evidence that the person is a person referred to in subparagraph 4(2)(e)(vii) must be
 - (a) in the case of a diplomatic courier, the official document confirming their status referred to in Article 27 of the Vienna Convention on Diplomatic Relations, as set out in Schedule I to the *Foreign Missions and International Organizations Act*; and
 - (b) in the case of a consular courier, the official document confirming their status referred to in Article 35 of the Vienna Convention on Consular Relations, as set out in Schedule II to the *Foreign Missions and International Organizations Act*.

False or misleading information

- **13** (1) A person must not submit a request referred to in section 5 that contains information that they know to be false or misleading.
- False or misleading evidence
 - (2) A person must not provide evidence that they know to be false or misleading.

Notice to Minister — information

- **14** (1) An air carrier that has reason to believe that a person has submitted a request referred to in section 5 that contains information that is likely to be false or misleading must notify the Minister of the following not more than 72 hours after receiving the request:
 - (a) the person's name and contact information;
 - (b) the date and number of the person's flight; and
 - (c) the reason why the air carrier believes that the information is likely to be false or misleading.

• Notice to Minister — evidence

- (2) An air carrier that has reason to believe that a person has provided evidence that is likely to be false or misleading must notify the Minister of the following not more than 72 hours after the provision of the evidence:
 - (a) the person's name and contact information;
 - (b) the date and number of the person's flight; and
 - (c) the reason why the air carrier believes that the evidence is likely to be false or misleading.

Prohibition — air carrier

15 An air carrier must not permit a person to board an aircraft for a flight that the air carrier operates if the person does not provide the evidence they are required to provide under section 9.

Record keeping — air carrier

- **16** (1) An air carrier must keep a record of the following information in respect of a person each time the person is denied permission to board an aircraft for a flight under section 15:
 - (a) the person's name and contact information, including the person's home address, telephone number and email address;
 - (b) the date and flight number;
 - (c) the reason why the person was denied permission to board the aircraft; and
 - (d) whether the person had been issued a document under subsection 5(1) in respect of the flight.
- Retention
 - (2) The air carrier must retain the record for a period of at least 12 months after the date of the flight.
- Ministerial request
 - (3) The air carrier must make the record available to the Minister on request.

Policy Respecting Mandatory Vaccination

Application

17 Sections 18 to 22 apply to

- (a) the operator of an aerodrome listed in Schedule 1;
- (b) an air carrier operating a flight departing from an aerodrome listed in Schedule 1, other than an air carrier who operates a commercial air service under Subpart 1 of Part VII of the Regulations; and
- (c) NAV CANADA.

Definition of relevant person

- **18** (1) For the purposes of sections 19 to 22, relevant person, in respect of an entity referred to in section 17, means a person whose duties involve an activity described in subsection (2) and who is
 - (a) an employee of the entity;
 - (b) an employee of the entity's contractor or agent or mandatary;
 - (c) a person hired by the entity to provide a service;
 - (d) the entity's lessee or an employee of the entity's lessee, if the property that is subject to the lease is part of aerodrome property; or

- (e) a person permitted by the entity to access aerodrome property or, in the case of NAV CANADA, a location where NAV CANADA provides civil air navigation services.
- Activities
 - (2) For the purposes of subsection (1), the activities are
 - (a) conducting or directly supporting activities that are related to aerodrome operations or commercial flight operations — such as aircraft refuelling services, aircraft maintenance and repair services, baggage handling services, supply services for the operator of an aerodrome, an air carrier or NAV CANADA, fire prevention services, runway and taxiway maintenance services or de-icing services — and that take place on aerodrome property or at a location where NAV CANADA provides civil air navigation services;
 - (b) interacting in-person on aerodrome property with a person who intends to board an aircraft for a flight;
 - (c) engaging in tasks, on aerodrome property or at a location where NAV CANADA provides civil air navigation services, that are intended to reduce the risk of transmission of the virus that causes COVID-19; and
 - (d) accessing a restricted area at an aerodrome listed in Schedule 1.

Comprehensive policy — operators of aerodromes

- **19** (1) The operator of an aerodrome must establish and implement a comprehensive policy respecting mandatory COVID-19 vaccination in accordance with subsection (2).
- Policy — content
 - (2) The policy must
 - (a) require that a person who is 12 years and four months of age or older be a fully vaccinated person before accessing aerodrome property, unless they are a person
 - (i) who intends to board an aircraft for a flight that an air carrier operates,
 - (ii) who does not intend to board an aircraft for a flight and who is accessing aerodrome property for leisure purposes or to accompany a person who intends to board an aircraft for a flight,
 - (iii) who is the holder of an employee identification document issued by a department or departmental corporation listed in Schedule 2 or a member identification document issued by the Canadian Forces, or
 - (iv) who is delivering equipment or providing services within a restricted area that are urgently needed and critical to aerodrome operations and who has obtained an authorization from the operator of the aerodrome before doing so;

- (b) despite paragraph (a), allow a person who is subject to the policy and who is not a fully vaccinated person to access aerodrome property if the person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;
 - (c) provide for a procedure for verifying evidence provided by a person referred to in paragraph (b) that demonstrates that the person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;
 - (d) provide for a procedure for issuing to a person whose evidence has been verified under the procedure referred to in paragraph (c) a document confirming that they are a person referred to in paragraph (b);
 - (e) provide for a procedure that ensures that a person subject to the policy provides, on request, the following evidence before accessing aerodrome property:
 - (i) in the case of a fully vaccinated person, the evidence of COVID-19 vaccination referred to in section 10, and
 - (ii) in the case of a person referred to in paragraph (d), the document issued to the person under the procedure referred to in that paragraph;
 - (f) provide for a procedure that allows a person to whom sections 24 to 33 apply — other than a person referred to in subsection 27(2) — who is a fully vaccinated person or a person referred to in paragraph (b) and who is unable to provide the evidence referred to in paragraph (e) to temporarily access aerodrome property if they provide a declaration confirming that they are a fully vaccinated person or that they have been issued a document under the procedure referred to in paragraph (d);
 - (g) provide for a procedure that ensures that a person referred to in paragraph (d) is tested for COVID-19 at least twice every week;
 - (h) provide for a procedure that ensures that a person who receives a positive result for a COVID-19 test taken under the procedure referred to in paragraph (g) is prohibited from accessing aerodrome property until the end of the period for which the public health authority of the province or territory in which the aerodrome is located requires them to isolate after receiving a positive result; and
 - (i) provide for a procedure that ensures that a person referred to in paragraph (h) who undergoes a COVID-19 molecular test is exempt from the procedure referred to in paragraph (g) for a period of 180 days after the person received a positive result from that test.
- Medical contraindication

(3) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of a medical contraindication only if they provide a medical certificate from a medical doctor or nurse practitioner who is licensed to practise in Canada certifying that the person cannot complete a COVID-19 vaccination regimen due to a medical condition and specifying whether the condition is permanent or temporary.

- Religious belief

(4) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if they submit a statement sworn or affirmed by them attesting that they have not completed a COVID-19 vaccination regimen due to their sincerely held religious belief.

- *Canadian Human Rights Act*

(5) For the purposes of paragraphs (2)(c) and (d), in the case of an employee of the operator of an aerodrome or a person hired by the operator of an aerodrome to provide a service, the policy must provide that a document is to be issued to the employee or person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if the operator of the aerodrome is obligated to accommodate them on that basis under the *Canadian Human Rights Act* by issuing such a document.

- Applicable legislation

(6) For the purposes of paragraphs (2)(c) and (d), in the following cases, the policy must provide that a document is to be issued to the employee confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if they would be entitled to such an accommodation on that basis under applicable legislation:

- (a) in the case of an employee of the operator of an aerodrome's contractor or agent or mandatary; and
- (b) in the case of an employee of the operator of an aerodrome's lessee, if the property that is subject to the lease is part of aerodrome property.

Comprehensive policy — air carriers and NAV CANADA

20 Section 21 does not apply to an air carrier or NAV CANADA if that entity

- (a) establishes and implements a comprehensive policy respecting mandatory COVID-19 vaccination in accordance with paragraphs 21(2)(a) to (h) and subsections 21(3) to (6); and
- (b) has procedures in place to ensure that while a relevant person is carrying out their duties related to commercial flight operations, no in-person interactions occur between the relevant person and an

unvaccinated person who has not been issued a document under the procedure referred to in paragraph 21(2)(d) and who is

- (i) an employee of the entity,
- (ii) an employee of the entity's contractor or agent or mandatary,
- (iii) a person hired by the entity to provide a service, or
- (iv) the entity's lessee or an employee of the entity's lessee, if the property that is subject to the lease is part of aerodrome property.

Targeted policy — air carriers and NAV CANADA

- **21 (1)** An air carrier or NAV CANADA must establish and implement a targeted policy respecting mandatory COVID-19 vaccination in accordance with subsection (2).

- **Policy — content**

(2) The policy must

- (a) require that a relevant person, other than the holder of an employee identification document issued by a department or departmental corporation listed in Schedule 2 or a member identification document issued by the Canadian Forces, be a fully vaccinated person before accessing aerodrome property or, in the case of NAV CANADA, a location where NAV CANADA provides civil air navigation services;
- (b) despite paragraph (a), allow a relevant person who is subject to the policy and who is not a fully vaccinated person to access aerodrome property or, in the case of NAV CANADA, a location where NAV CANADA provides civil air navigation services, if the relevant person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;
- (c) provide for a procedure for verifying evidence provided by a relevant person referred to in paragraph (b) that demonstrates that the relevant person has not completed a COVID-19 vaccine dosage regimen due to a medical contraindication or their sincerely held religious belief;
- (d) provide for a procedure for issuing to a relevant person whose evidence has been verified under the procedure referred to in paragraph (c) a document confirming that they are a relevant person referred to in paragraph (b);
- (e) provide for a procedure that ensures that a relevant person subject to the policy provides, on request, the following evidence before accessing aerodrome property:
 - (i) in the case of a fully vaccinated person, the evidence of COVID-19 vaccination referred to in section 10, and
 - (ii) in the case of a relevant person referred to in paragraph (d), the document issued to the relevant person under the procedure referred to in that paragraph;

- (f) provide for a procedure that ensures that a relevant person referred to in paragraph (d) is tested for COVID-19 at least twice every week;
- (g) provide for a procedure that ensures that a relevant person who receives a positive result for a COVID-19 test under the procedure referred to in paragraph (f) is prohibited from accessing aerodrome property until the end of the period for which the public health authority of the province or territory in which the aerodrome is located requires them to isolate after receiving a positive test result;
- (h) provide for a procedure that ensures that a relevant person referred to in paragraph (g) who undergoes a COVID-19 molecular test is exempt from the procedure referred to in paragraph (f) for a period of 180 days after the relevant person received a positive result from that test;
- (i) set out procedures for reducing the risk that a relevant person will be exposed to the virus that causes COVID-19 due to an in-person interaction, occurring on aerodrome property or at a location where NAV CANADA provides civil air navigation services, with an unvaccinated person who has not been issued a document under the procedure referred to in paragraph (d) and who is a person referred to in any of subparagraphs 20(b)(i) to (iv), which procedures may include protocols related to
 - (i) the vaccination of persons, other than relevant persons, who access aerodrome property or a location where NAV CANADA provides civil air navigation services,
 - (ii) physical distancing and the wearing of masks, and
 - (iii) reducing the frequency and duration of in-person interactions;
- (j) establish a procedure for collecting the following information with respect to an in-person interaction related to commercial flight operations between a relevant person and a person referred to in any of subparagraphs 20(b)(i) to (iv) who is unvaccinated and has not been issued a document under the procedure referred to in paragraph (d) or whose vaccination status is unknown:
 - (i) the time, date and location of the interaction, and
 - (ii) contact information for the relevant person and the other person;
- (k) establish a procedure for recording the following information and submitting it to the Minister on request:
 - (i) the number of relevant persons who are subject to the entity's policy,
 - (ii) the number of relevant persons who require access to a restricted area,
 - (iii) the number of relevant persons who are fully vaccinated persons and those who are not,

- (iv) the number of hours during which relevant persons were unable to fulfill their duties related to commercial flight operations due to COVID-19,
- (v) the number of relevant persons who have been issued a document under the procedure referred to in paragraph (d), the reason for issuing the document and a confirmation that the relevant persons have submitted evidence of COVID-19 tests taken in accordance with the procedure referred to in paragraph (f),
- (vi) the number of relevant persons who refuse to comply with a requirement referred to in paragraph (a), (f) or (g),
- (vii) the number of relevant persons who were denied entry to a restricted area because of a refusal to comply with a requirement referred to in paragraph (a), (f) or (g),
- (viii) the number of persons referred to in subparagraphs 20(b)(i) to (iv) who are unvaccinated and who have not been issued a document under the procedure referred to in paragraph (d), or whose vaccination status is unknown, who have an in-person interaction related to commercial flight operations with a relevant person and a description of any procedures implemented to reduce the risk that a relevant person will be exposed to the virus that causes COVID-19 due to such an interaction, and
- (ix) the number of instances in which the air carrier or NAV CANADA, as applicable, is made aware that a person with respect to whom information was collected under paragraph (j) received a positive result for a COVID-19 test, the number of relevant persons tested for COVID-19 as a result of this information, the results of those tests and a description of any impacts on commercial flight operations; and
 - (l) require the air carrier or NAV CANADA, as applicable, to keep the information referred to in paragraph (k) for a period of at least 12 months after the date that the information was recorded.
- Medical contraindication

(3) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a relevant person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of a medical contraindication only if they provide a medical certificate from a medical doctor or nurse practitioner who is licensed to practise in Canada certifying that the relevant person cannot complete a COVID-19 vaccination regimen due to a medical condition and specifying whether the condition is permanent or temporary.
- Religious belief

(4) For the purposes of paragraphs (2)(c) and (d), the policy must provide that a document is to be issued to a relevant person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of

their sincerely held religious belief only if they submit a statement sworn or affirmed by them attesting that they have not completed a COVID-19 vaccination regimen due to their sincerely held religious belief.

- *Canadian Human Rights Act*

(5) For the purposes of paragraphs (2)(c) and (d), in the case of an employee of an entity or a relevant person hired by an entity to provide a service, the policy must provide that a document is to be issued to the employee or the relevant person confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if the entity is obligated to accommodate the relevant person on that basis under the *Canadian Human Rights Act* by issuing such a document.

- Applicable legislation

(6) For the purposes of paragraphs (2)(c) and (d), in the following cases, the policy must provide that a document is to be issued to the employee confirming that they did not complete a COVID-19 vaccine dosage regimen on the basis of their sincerely held religious belief only if they would be entitled to such an accommodation on that basis under applicable legislation:

- (a) in the case of an employee of an entity's contractor or agent or mandatary; and
- (b) in the case of an employee of an entity's lessee, if the property that is subject to the lease is part of aerodrome property.

Ministerial request — policy

- **22** (1) The operator of an aerodrome, an air carrier or NAV CANADA must make a copy of the policy referred to in section 19, 20 or 21, as applicable, available to the Minister on request.

- Ministerial request — implementation

(2) The operator of an aerodrome, an air carrier or NAV CANADA must make information related to the implementation of the policy referred to in section 19, 20 or 21, as applicable, available to the Minister on request.

Vaccination — Aerodromes in Canada

Application

- **23** (1) Sections 24 to 33 apply to all of the following persons:
 - (a) subject to paragraph (c), a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area for a reason other than to board an aircraft for a flight operated by an air carrier;
 - (b) a crew member entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight operated by an air carrier under Subpart 1, 3, 4 or 5 of Part VII of the Regulations;

- (c) a person entering a restricted area at an aerodrome listed in Schedule 1 from a non-restricted area to board an aircraft for a flight
 - (i) only to become a crew member on board another aircraft operated by an air carrier under Subpart 1, 3, 4 or 5 of Part VII of the Regulations,
 - (ii) after having been a crew member on board an aircraft operated by an air carrier under Subpart 1, 3, 4 or 5 of Part VII of the Regulations, or
 - (iii) to participate in mandatory training required by an air carrier in relation to the operation of an aircraft operated under Subpart 1, 3, 4 or 5 of Part VII of the Regulations, if the person will be required to return to work as a crew member;
- (d) a screening authority at an aerodrome where persons other than passengers are screened or can be screened;
- (e) the operator of an aerodrome listed in Schedule 1.
- Non-application
 - (2) Sections 24 to 33 do not apply to any of the following persons:
 - (a) a child who is less than 12 years and four months of age;
 - (b) a person who arrives at an aerodrome on board an aircraft following the diversion of their flight for a safety-related reason, such as adverse weather or an equipment malfunction, and who enters a restricted area to board an aircraft for a flight not more than 24 hours after the arrival time of the diverted flight;
 - (c) a member of emergency response provider personnel who is responding to an emergency;
 - (d) a peace officer who is responding to an emergency;
 - (e) the holder of an employee identification document issued by a department or departmental corporation listed in Schedule 2 or a member identification document issued by the Canadian Forces; or
 - (f) a person who is delivering equipment or providing services within a restricted area that are urgently needed and critical to aerodrome operations and who has obtained an authorization from the operator of the aerodrome before doing so.

Prohibition

- **24 (1)** A person must not enter a restricted area unless they are a fully vaccinated person.
- Exception
 - (2) Subsection (1) does not apply to a person who has been issued a document under the procedure referred to in paragraph 19(2)(d) or 21(2)(d).

Provision of evidence

25 A person must provide to a screening authority or the operator of an aerodrome, on their request,

- (a) in the case of a fully vaccinated person, the evidence of COVID-19 vaccination referred to in section 10; and
- (b) in the case of a person who has been issued a document under the procedure referred to in paragraph 19(2)(d) or 21(2)(d), the document issued to the person.

Request for evidence

26 Before permitting a certain number of persons, as specified by the Minister and selected on a random basis, to enter a restricted area, the screening authority must request that each of those persons, when they present themselves for screening at a non-passenger screening checkpoint or a passenger screening checkpoint, provide the evidence referred to in paragraph 25(a) or (b).

Declaration

- **27** (1) If a person who is a fully vaccinated person or who has been issued a document under the procedure referred to in paragraph 19(2)(d) is unable, following a request to provide evidence under section 26, to provide the evidence, the person may
 - (a) sign a declaration confirming that they are a fully vaccinated person or that they have been issued a document under the procedure referred to in paragraph 19(2)(d); or
 - (b) if the person has signed a declaration under paragraph (a) no more than seven days before the day on which the request to provide evidence is made, provide that declaration.
- Exception

(2) Subsection (1) does not apply to the holder of a document of entitlement that expires within seven days after the day on which the request to provide evidence under section 26 is made.
- Notification to aerodrome operator

(3) If a person signs a declaration referred to in paragraph (1)(a), the screening authority must notify the operator of the aerodrome as soon as feasible of the person's name, the date on which the declaration was signed and, if applicable, the number or identifier of the person's document of entitlement.
- Provision of evidence

(4) A person who signed a declaration under paragraph (1)(a) must provide the evidence referred to in paragraph 25(a) or (b) to the operator of the aerodrome within seven days after the day on which the declaration is signed.
- Suspension of restricted area access

(5) An operator of an aerodrome must ensure that the restricted area access of a person who does not provide the evidence within seven days as required under subsection (4) is suspended until the person provides the evidence.

Record keeping — suspension

- **28** (1) The operator of the aerodrome must keep a record of the following information in respect of a person each time the restricted area access of the person is suspended under subsection 27(5):
 - (a) the person's name;
 - (b) the number or identifier of the person's document of entitlement, if applicable;
 - (c) the date of the suspension; and
 - (d) the reason for the suspension.
- Retention

(2) The operator must retain the record for a period of at least 12 months after the day on which the record was created.
- Ministerial request

(3) The operator of the aerodrome must make the record available to the Minister on request.

Prohibition

- **29** (1) A screening authority must deny a person entry to a restricted area if, following a request to provide evidence under section 26, the person does not provide the evidence or, if applicable, does not sign or provide a declaration under subsection 27(1).
- Notification to aerodrome operator

(2) If a screening authority denies a person entry to a restricted area, it must notify the operator of the aerodrome as soon as feasible of the person's name, the date on which the person was denied entry and, if applicable, the number or identifier of the person's document of entitlement.
- Suspension of restricted area access

(3) An operator of an aerodrome must ensure that the restricted area access of a person who was denied entry under subsection (1) is suspended until the person provides the requested evidence or the signed declaration.

False or misleading evidence

30 A person must not provide evidence that they know to be false or misleading.

Notice to Minister

31 A screening authority or the operator of an aerodrome that has reason to believe that a person has provided evidence that is likely to be false or misleading must notify the Minister of the following not more than 72 hours after the provision of the evidence:

- (a) the person's name;
- (b) the number or identifier of the person's document of entitlement, if applicable; and
- (c) the reason the screening authority or the operator of an aerodrome believes that the evidence is likely to be false or misleading.

Record keeping — denial of entry

- **32** (1) A screening authority must keep a record of the following information in respect of a person each time the person is denied entry to a restricted area under subsection 29(1):
 - (a) the person's name;
 - (b) the number or identifier of the person's document of entitlement, if applicable;
 - (c) the date on which the person was denied entry and the location; and
 - (d) the reason why the person was denied entry to the restricted area.
- Retention
 - (2) The screening authority must retain the record for a period of at least 12 months after the day on which the record was created.
- Ministerial request
 - (3) The screening authority must make the record available to the Minister on request.

Requirement to establish and implement

33 The operator of an aerodrome must ensure that a document of entitlement is only issued to a fully vaccinated person or a person who has been issued a document under the procedure referred to in paragraph 19(2) (d).

Designated Provisions

Designation

- **34** (1) The provisions of this Interim Order set out in column 1 of Schedule 3 are designated as provisions the contravention of which may be dealt with under and in accordance with the procedure set out in sections 7.7 to 8.2 of the Act.
- Maximum amounts
 - (2) The amounts set out in column 2 of Schedule 3 are the maximum amounts of the penalty payable in respect of a contravention of the designated provisions set out in column 1.

• Notice

- (3) A notice referred to in subsection 7.7(1) of the Act must be in writing and must specify
- (a) the particulars of the alleged contravention;
 - (b) that the person on whom the notice is served or to whom it is sent has the option of paying the amount specified in the notice or filing with the Tribunal a request for a review of the alleged contravention or the amount of the penalty;
 - (c) that payment of the amount specified in the notice will be accepted by the Minister in satisfaction of the amount of the penalty for the alleged contravention and that no further proceedings under Part I of the Act will be taken against the person on whom the notice in respect of that contravention is served or to whom it is sent;
 - (d) that the person on whom the notice is served or to whom it is sent will be provided with an opportunity consistent with procedural fairness and natural justice to present evidence before the Tribunal and make representations in relation to the alleged contravention if the person files a request for a review with the Tribunal; and
 - (e) that the person on whom the notice is served or to whom it is sent will be considered to have committed the contravention set out in the notice if they fail to pay the amount specified in the notice and fail to file a request for a review with the Tribunal within the prescribed period.

Repeal

35 The *Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19, No. 2*, made on June 1, 2022, is repealed.

Cessation of Effect

36 This Interim Order ceases to have effect at 00:00:01 Eastern daylight time on June 20, 2022.

SCHEDULE 1(Subsections 1(1) and 2(1) and paragraphs 2(2)(c), 17(a) and (b), 18(2)(d) and 23(1)(a) to (c) and (e))

Aerodromes

Name	ICAO Location Indicator
Abbotsford International	CYXX
Alma	CYTF
Bagotville	CYBG

Name	ICAO Location Indicator
Baie-Comeau	CYBC
Bathurst	CZBF
Brandon Municipal	CYBR
Calgary International	CYYC
Campbell River	CYBL
Castlegar (West Kootenay Regional)	CYCG
Charlo	CYCL
Charlottetown	CYYG
Chibougamau/Chapais	CYMT
Churchill Falls	CZUM
Comox	CYQQ
Cranbrook (Canadian Rockies International)	CYXC
Dawson Creek	CYDQ
Deer Lake	CYDF
Edmonton International	CYEG
Fort McMurray	CYMM
Fort St. John	CYXJ
Fredericton International	CYFC
Gander International	CYQX
Gaspé	CYGP
Goose Bay	CYYR
Grande Prairie	CYQU
Greater Moncton International	CYQM
Halifax (Robert L. Stanfield International)	CYHZ
Hamilton (John C. Munro International)	CYHM
Îles-de-la-Madeleine	CYGR
Iqaluit	CYFB
Kamloops	CYKA
Kelowna	CYLW
Kingston	CYGK
Kitchener/Waterloo Regional	CYKF
La Grande Rivière	CYGL
Lethbridge	CYQL

Name	ICAO Location Indicator
Lloydminster	CYLL
London	CYXU
Lourdes-de-Blanc-Sablon	CYBX
Medicine Hat	CYXH
Mont-Joli	CYYY
Montréal International (Mirabel)	CYMX
Montréal (Montréal — Pierre Elliott Trudeau International)	CYUL
Montréal (St. Hubert)	CYHU
Nanaimo	CYCD
North Bay	CYYB
Ottawa (Macdonald-Cartier International)	CYOW
Penticton	CYF
Prince Albert (Glass Field)	CYPA
Prince George	CYXS
Prince Rupert	CYPR
Québec (Jean Lesage International)	CYQB
Quesnel	CYQZ
Red Deer Regional	CYQF
Regina International	CYQR
Rivière-Rouge/Mont-Tremblant International	CYFJ
Rouyn-Noranda	CYUY
Saint John	CYSJ
Sarnia (Chris Hadfield)	CYZR
Saskatoon (John G. Diefenbaker International)	CYXE
Sault Ste. Marie	CYAM
Sept-Îles	CYZV
Smithers	CYYD
St. Anthony	CYAY
St. John's International	CYYT
Stephenville	CYJT
Sudbury	CYSB
Sydney (J.A. Douglas McCurdy)	CYQY

Name	ICAO Location Indicator
Terrace	CYXT
Thompson	CYTH
Thunder Bay	CYQT
Timmins (Victor M. Power)	CYTS
Toronto (Billy Bishop Toronto City)	CYTZ
Toronto (Lester B. Pearson International)	CYYZ
Toronto/Buttonville Municipal	CYKZ
Val-d'Or	CYVO
Vancouver (Coal Harbour)	CYHC
Vancouver International	CYVR
Victoria International	CYYJ
Wabush	CYWK
Whitehorse (Erik Nielsen International)	CYXY
Williams Lake	CYWL
Windsor	CYQG
Winnipeg (James Armstrong Richardson International)	CYWG
Yellowknife	CYZF

SCHEDULE 2(Subparagraph 19(2)(a)(iii) and paragraphs 21(2)(a) and 23(2)(e))

Departments and Departmental Corporations

Name
Canada Border Services Agency
Canadian Security Intelligence Service
Correctional Service of Canada
Department of Agriculture and Agri-Food
Department of Employment and Social Development
Department of Fisheries and Oceans
Department of Health
Department of National Defence
Department of the Environment
Department of Public Safety and Emergency Preparedness

Name

Department of Transport

Public Health Agency of Canada

Royal Canadian Mounted Police

SCHEDULE 3(Subsections 34(1) and (2))Designated Provisions

Column 1

Column 2

Maximum Amount of Penalty (\$)

Designated Provision

Individual

Corporation

Section 3

25,000

Subsection 4(1)

5,000

Subsection 5(1)

25,000

Subsection 6(1)

25,000

Subsection 6(2)

25,000

Subsection 6(3)

25,000

Subsection 7(1)

25,000

Subsection 7(2)

25,000

Section 8

25,000

Section 9

5,000

Subsection 13(1)

5,000

Subsection 13(2)

5,000

Subsection 14(1)

25,000

Subsection 14(2)

25,000

Section 15

25,000

Subsection 16(1)

25,000

Subsection 16(2)

25,000

Subsection 16(3)

25,000

Subsection 19(1)

25,000

Subsection 21(1)

25,000

Subsection 22(1)

25,000

Subsection 22(2)

25,000

Subsection 24(1)

5,000

Section 25

5,000

Column 1	Column 2	
	Maximum Amount of Penalty (\$)	
Designated Provision	Individual	Corporation
Section 26		25,000
Subsection 27(3)		25,000
Subsection 27(4)	5,000	
Subsection 27(5)		25,000
Subsection 28(1)		25,000
Subsection 28(2)		25,000
Subsection 28(3)		25,000
Subsection 29(1)		25,000
Subsection 29(2)		25,000
Subsection 29(3)		25,000
Section 30	5,000	
Section 31		25,000
Subsection 32(1)		25,000
Subsection 32(2)		25,000
Subsection 32(3)		25,000
Section 33		25,000



Transport Canada is closely monitoring the COVID-19 situation. In response, we have issued some [transportation-related measures and guidance](#). Please check if any of these measures apply to you.

You may experience longer than usual wait times or partial service interruptions. If you cannot get through, please [contact us by email](#).

For information on COVID-19 updates, please visit [Canada.ca/coronavirus](#).

Date modified:
2022-06-14

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Court File No.: T-1089-22

FEDERAL COURT

BETWEEN:

KAREN ADELBERG ET AL

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA ET AL

Defendants

WRITTEN REPRESENTATIONS
(Motion to Strike)

November 4, 2022

ATTORNEY GENERAL OF CANADA

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FEDERAL COURT

BETWEEN:

KAREN ADELBERG ET AL

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA ET AL

Defendants

WRITTEN REPRESENTATIONS
(Motion to Strike)

OVERVIEW

1. The Statement of Claim (the "Claim") should be struck in its entirety, without leave to amend because the pleading discloses no reasonable cause of action; is scandalous, frivolous, or vexatious; and, is otherwise an abuse of process.
2. None of the Plaintiffs set out any material facts that may serve as a foundation for any cause of action. The Plaintiffs rely on bare conclusions without a factual basis, and the pleadings are insufficient to support any cause of action.
3. The Claim is replete with baseless allegations that are incomprehensible, conspiratorial, salacious, extreme and scandalous.
4. The numerous and substantial defects in the Claim make it impossible for the Defendants to know the case they have to meet. The Defendants have no coherent or viable legal claim to answer, rather they are asked to participate in

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frivolous and conspiratorial debates regarding the existence of the COVID-19 virus and the global response to tackle the pandemic.

5. The Claim is also partially barred by s. 236 of the *Federal Public Sector Labour Relations Act* (the “*FPSLRA*”), which provides that the grievance rights provided to employees in the federal public administration under the *FPSLRA* are in lieu of any right of action they may have. As a result, the Plaintiffs who are employees of the federal public administration are barred from bringing this Claim and their Claim should be struck.
6. Moreover, in order to set aside the decisions of a federal decision maker, the Plaintiffs must proceed by judicial review. In this case, the Plaintiffs not only seek to recover alleged damages, but also declarations of invalidity regarding government action in general and specifically to set aside the Treasury Board Policy and the Interim Order. The declaratory relief and administrative remedies sought in this Claim are not available to the Plaintiffs and should be struck.
7. Even if the Plaintiffs were permitted to reconstitute portions of the Claim as an application for judicial review, such an application would be moot as the Treasury Board Policy and the Interim Order are no longer in force.
8. For all of these reasons, as elaborated herein, this Court should strike the Claim without leave to amend, and dismiss the Action.

PART I – FACTS

A. THE CLAIM AND THE PLAINTIFFS

9. On May 30, 2022, the Claim was issued in the Federal Court.
10. The Claim is nearly 50 pages long and includes nine pages of remedies and relief being sought. This includes claims for tort damages and disputes relating to terms and conditions of employment.
11. The relief sought also includes a number of claims and remedies that are inappropriate in the context of an Action such as declarations of constitutional invalidity, allegations of criminal conduct, declarations and findings

regarding knowledge within the scientific community, a declaration that PCR testing constitutes a Crime Against Humanity, administrative remedies and forms of injunctive relief.

12. Approximately 600 individual Plaintiffs' in this action challenge the constitutionality of the Treasury Board of Canada ("Treasury Board") *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (the "Treasury Board Policy")¹ and Transport Canada's *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61* (the "Interim Order")².
13. The Plaintiffs state that they are all current or former employees of the Government of Canada, federal Crown corporations, and organizations operating in federally regulated sectors. However, the status and the precise division of Plaintiffs that belong to each of the three classes is not clarified by the Claim, nor can the Defendants identify the John and Jane Doe Plaintiffs.
14. Nevertheless, the Style of Cause does provide a general idea of the places of work of various groupings of the Plaintiffs.
15. Approximately two-thirds of the Plaintiffs appear to be CPA Plaintiffs or employees of federal separate agencies who are subject to and whose claims are barred by s. 236 of the *FPSLRA*. The remaining one-third appear to fall within the other two classes of Plaintiffs, that is to say, employees of federal crown corporations and organization operating in a variety of federally regulated sectors (including what appears to be transportation, telecommunications, logistics, finance, and courier sectors).

¹ *Policy on COVID-19 Vaccination for the Core Public Administration Including the RCMP*, dated October 6, 2021, Affidavit of Gabriella Plati Trotto, Exhibit A, Tab B of the Respondent's Motion Record.

² *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61*, dated April 24, 2022, Affidavit of Gabriella Plati Trotto, Exhibit C, Tab B of the Respondent's Motion Record.

B. BACKGROUND – TREASURY BOARD POLICY

16. On August 13, 2021, the Government of Canada announced its intent to require all federal public servants to be vaccinated against COVID-19 as early as the end of September. Treasury Board is the employer for the departments and agencies identified as forming part of the Core Public Administration, including the RCMP.³ As such, Treasury Board is responsible for, and has the authority to establish the terms and conditions of employment those portions of the federal public administration that form the core public administration.
17. Other portions of the federal public administration, identified as separate agencies, generally have authority independent of the Treasury Board to establish terms and conditions of employment for their own employees.⁴ The Plaintiffs do not challenge any actions or omission of the separate agencies.
18. On October 6, 2021, the Treasury Board Policy, issued pursuant to its authorities under ss. 7 and 11.1 of the *Financial Administration Act* (the “FAA”)⁵ took effect.⁶ The Treasury Board Policy mandated that all employees of the core public administration had to be fully vaccinated against COVID-19 unless they could not be vaccinated due to a certified medical contraindication, religion, or any other prohibited ground of discrimination as defined in the *Canadian Human Rights Act*.
19. One of the primary objectives of the Treasury Board Policy was to “take every precaution reasonable, in the circumstances, for the protection of the health and safety of employees.”⁷ Given that operational requirements may include *ad hoc* onsite presence, the Policy stipulated that “all employees, including those working

³ Employees of the RCMP are, in fact, employees of the Core Public Administration, see *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2, ss. 2(1), 208, 236; *Financial Administration Act*, RSC, 1985, c F-11, s. 11(1) and Schedules I, IV.

⁴ See *Financial Administration Act*, RSC 1985, c F-11, s. 11(1), 11.1(2) 11.2(1), 12.1 and Schedule V; see also, for example, *Canada Revenue Agency Act*, SC 1999, c 17, s 30.

⁵ *Financial Administration Act*, RSC 1985 c F-11.

⁶ *Policy on COVID-19 Vaccination for the Core Public Administration Including the RCMP*, dated October 6, 2021, Affidavit of Gabriella Plati Trotto, Exhibit A, Tab B of the Respondent’s Motion Record.

⁷ *Policy on COVID-19 Vaccination for the Core Public Administration Including the RCMP*, dated October 6, 2021, Affidavit of Gabriella Plati Trotto, Exhibit A, Tab B of the Respondent’s Motion Record.

remotely and teleworking must be fully vaccinated to protect themselves, colleagues, and clients from COVID-19.”⁸

20. On June 14, 2022, the Government of Canada announced the suspension of vaccination mandates effective June 20, 2022, including the vaccination mandate for the core public administration and the RCMP as set out in the Treasury Board Policy.⁹ The Government of Canada also announced in the same news release that, “Crown corporations and separate agencies will also be asked to suspend vaccine requirements”.
21. As a result, effective June 20, 2022, federal employees of the core public administration and the RCMP were no longer required to be vaccinated as a condition of employment.
22. Further, as of June 20, 2022, federal public servants who were subject to administrative leave without pay as a result of the requirement to be vaccinated, were able to resume regular work duties with pay and accommodation measures put in place under the Treasury Board Policy also came to an end.

C. BACKGROUND – INTERIM ORDER

23. The Interim Order was a regulation issued under the *Aeronautics Act*¹⁰ on April 24, 2022, which repealed and replaced a previous version made on April 19, 2022.¹¹ The Interim Order was promulgated because it was “required to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public”.¹²
24. The Interim Order set out conditions for the boarding of flights within or to and from Canada, including the requirement that person boarding flights must not

⁸ *Policy on COVID-19 Vaccination for the Core Public Administration Including the RCMP*, dated October 6, 2021, Affidavit of Gabriella Plati Trotto, Exhibit A, Tab B of the Respondent’s Motion Record.

⁹ Government of Canada News release titled “Suspension of the vaccine mandates for domestic travellers, transportation workers and federal employees”, dated June 14, 2022, Affidavit of Gabriella Plati Trotto, Exhibit B, Tab B of the Respondent’s Motion Record.

¹⁰ *Aeronautics Act*, RSC, 1985, c A-2.

¹¹ *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*, No. 61, dated April 24, 2022, Affidavit of Gabriella Plati Trotto, Exhibit C, Tab B of the Respondent’s Motion Record.

¹² *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*, No. 61, dated April 24, 2022, Affidavit of Gabriella Plati Trotto, Exhibit C, Tab B of the Respondent’s Motion Record.

have COVID-19, or the signs and symptoms of COVID-19, within the previous 10 days.¹³ For incoming flights to Canada departing from any other country, passengers were required to complete and receive a negative COVID-19 test or a positive COVID-19 test at least 10 days and no more than 180 days before the flight's departure for Canada.

25. The Interim Order also prohibited any person from boarding an aircraft for a flight departing from a specified airport in Canada unless they were fully vaccinated or if they fell under one of the many exceptions to the requirement.¹⁴ The exceptions included provisions explicitly to accommodate travellers who were not fully vaccinated due to medical contraindication and sincerely held religious beliefs.¹⁵
26. On May 6, 2022, the Interim Order was repealed and replaced by a subsequent version.¹⁶
27. On June 14, 2022, the Government of Canada announced the suspension of vaccination mandates effective June 20, 2022, including the vaccination mandates for travellers and transportation workers.¹⁷
28. The vaccination requirements ceased to have effect on June 20, 2022.¹⁸

¹³ *Interim Order Respecting Certain Requirements for Civil Aviation due to COVID-19*, No. 61, section 9, dated April 24, 2022, Affidavit of Gabriella Plati Trotto, Exhibit C, Tab B of the Respondent's Motion Record.

¹⁴ *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*, No. 61, section 17.3, dated April 24, 2022, Affidavit of Gabriella Plati Trotto, Exhibit C, Tab B of the Respondent's Motion Record.

¹⁵ *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*, No. 61, section 17.3(2)(d), see generally section 17.3, dated April 24, 2022, Affidavit of Gabriella Plati Trotto, Exhibit C, Tab B of the Respondent's Motion Record.

¹⁶ *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*, No. 62, dated May 6, 2022, Affidavit of Gabriella Plati Trotto, Exhibit D, Tab B of the Respondent's Motion Record.

¹⁷ Government of Canada News release titled "Suspension of the vaccine mandates for domestic travellers, transportation workers and federal employees", dated June 14, 2022, Affidavit of Gabriella Plati Trotto, Exhibit B, Tab B of the Respondent's Motion Record.

¹⁸ *Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19*, No. 3, s. 36, dated June 14, 2022, Affidavit of Gabriella Plati Trotto, Exhibit G, Tab B of the Respondent's Motion Record.

29. On September 30, 2022, a subsequent version to the Interim Order, which was the latest and only remaining regulation, was repealed.¹⁹

PART II – ISSUES

30. The only issue is whether it is plain and obvious that this Court should strike the Claim, without leave to amend.

PART III – SUBMISSIONS

A. THE LAW – RULE 221 OF THE *FEDERAL COURTS RULES*

31. Pursuant to Rule 221 of the *Federal Courts Rules* (the “Rules”), this Court may order that a pleading, or anything contained therein, be struck out on various enumerated grounds, including: that the pleading discloses no reasonable cause of action; is scandalous, frivolous, or vexatious; and, is otherwise an abuse of process. Pleadings may be struck out with or without leave to amend.
32. Generally, no evidence is admissible on a motion to strike under Rule 221. However, evidence is admissible on a motion contesting the jurisdiction of this court under Rule 221(1)(a).²⁰
33. The analysis and test for motions to strike under Rule 221 is settled law. The Supreme Court of Canada’s leading cases are comprehensively summarized by this Court in *Shebib v Canada*:²¹

[10] The Supreme Court of Canada in decisions such as *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at paragraph 17 and, *Hunt v. Carey Canada Inc.*, 1990 CanLII 90 (SCC), [1990] 2 SCR 959, at paragraph 33 has set out the manner in which the Courts should approach a motion to strike under a Rule such as Rule 221 (1). I repeat paragraph 17 of *R v Imperial Tobacco Canada Ltd.* without the intervening citations:

A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no

¹⁹ *Order Repealing the Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*, No. 73, dated September 30, 2022, Affidavit of Gabriella Plati Trotto, Exhibit E, Tab B of the Respondent’s Motion Record.

²⁰ *Oman v Hudson Bay Port Co.*, 2016 FC 1269 at para 10; *Chase v Canada*, 2004 FC 273 at para 6.

²¹ *Shebib v Canada*, 2016 FC 539 at paras 10, 11.

reasonable cause of action. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial.

[11] I temper these remarks with the later decision of the Supreme Court of Canada in *Hryniak v Mauldin*, 2014 SCC 7, as considered by the Federal Court of Appeal in *The Queen in Right of Manitoba v The Queen in Right of Canada et al.*, [2015] FCA 57. Both cases were concerned with summary judgment, thus are different from a motion to strike. However, the Courts are sensitive to the fact that not every case needs to “*proceed to a trial*” where, having regard to justice to all parties and proportionality, the case may fairly be disposed of without the necessity of a trial.

34. The basis of the Court's assessment is the pleading itself.²² The facts pleaded are assumed to be true,²³ unless they are manifestly incapable of being proven, such as the case of bare assumptions, conclusions and speculations, which are not to be taken as true.²⁴
35. The principal purposes of pleadings are to define clearly the issues between the parties and to give the other side fair notice of the case it must meet.²⁵ To ensure that they serve these purposes, the *Rules* impose on plaintiffs the obligation to put forth sufficient material facts that disclose a reasonable cause of action. Under Rule 174, a statement of claim “shall contain a concise statement of the material facts on which the party relies”. What constitutes a material fact is determined in light of the cause of action and the remedy sought.²⁶ Rule 181(1) also requires pleadings to contain particulars of every allegation contained therein.
36. As stated by the Federal Court of Appeal, “plaintiff[s] must plead, in summary form but with sufficient detail, the constituent elements of each cause of action or

²² *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 22.

²³ *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para 22.

²⁴ *Operation Dismantle v The Queen*, 1985 CanLII 74 (SCC), [1985] 1 SCR 441, p 455; *Zbarsky v Canada*, 2022 FC 195 at paras 23-24.

²⁵ *Sivak v Canada*, 2012 FC 272 at para 11; *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 16.

²⁶ *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 19.

legal ground raised”.²⁷ To establish a reasonable cause of action, a statement of claim must “(1) allege facts that are capable of giving rise to a cause of action; (2) indicate the nature of the action which is to be founded on those facts; and (3) indicate the relief sought, which must be of a type which the action could produce and the court has jurisdiction to grant.”²⁸

37. Although a statement of claim is to be read generously to accommodate any drafting deficiencies, this does not exempt plaintiffs from setting out sufficient material facts in support of their claims.²⁹ Litigants, whether self-represented or not, do “not have an unqualified right to rely on defective pleadings”.³⁰
38. Defendants cannot be left to speculate, “as to how the facts might be variously arranged to support various causes of action.”³¹ While a plaintiff need not plead the particular label associated with a cause of action, the allegations of material facts in the claim must, in substance, give rise to a cause of action.³²
39. Under the ambit of Rule 221(1)(a), it is settled law that an action alleging that Parliament has been induced to enact legislation by the tortious acts of Ministers of the Crown is not justiciable.³³
40. Where a cause of action is beyond the court’s jurisdiction, under Rule 221(1)(a), it is also an abuse of process under Rule 221(1)(f).³⁴
41. Rule 221(1)(c) also permits the Court to strike a statement of claim when it is 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 will not lead to any

²⁷ *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 19.

²⁸ *Zbarsky v Canada*, 2022 FC 195 at para 13; *Bérubé v Canada*, 2009 FC 43 at para 24, aff’d 2010 FCA 276.

²⁹ *Zbarsky v Canada*, 2022 FC 195 at para 15.

³⁰ *Brauer v Canada*, 2021 FCA 198 at para 14.

³¹ *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 16.

³² *Paradis Honey Ltd. v Canada (Minister of Agriculture and Agri-Food)*, 2015 FCA 89 at paras 113-114, leave to appeal ref’d (October 29, 2015), Doc 36471 (SCC).

³³ *Turner v Canada*, 1992 CanLII 14782 (FCA), [1992] 3 FC 458 at 462.

³⁴ *Marshall v Canada*, 2006 FC 51 at paras 38, 39.

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practical result, or that does not sufficiently reveal the facts on which a plaintiff bases its cause of action such that the defendant will be unable to answer it and the Court will be unable to regulate the proceedings.³⁵

42. Neither the parties nor the Court is served when a meritless action is allowed to proceed down the path of expensive and futile litigation.

B. THE CLAIM IS BARRED, IN PART, BY S. 236 OF THE *FPSLR*A

43. This action seeks, among other forms of relief, a declaration that the Treasury Board Policy is constitutionally invalid because it is *ultra vires* the powers of Parliament and in violation of their *Charter* rights including ss. 2, 6, 7, and 9.
44. The Treasury Board Policy was enacted pursuant to s. 7 and 11.1 of the *FAA*.³⁶ It was enacted on October 6, 2021³⁷ and was suspended on June 20, 2022³⁸.
45. Treasury Board is the employer for the departments and agencies identified as forming part of the core public administration, including the RCMP. As such, Treasury Board is responsible for, and has the authority to establish the terms and conditions of employment of the federal employees who are part of the core public administration, which is to say, the CPA Plaintiffs.
46. The Federal Court of Appeal has previously stated that s. 7 and 11.1 of the *FAA* confer "wide powers" to Treasury Board including that of placing employees on "off-duty status without pay".³⁹
47. As best as can be determined from the pleadings and the style of cause, almost two-thirds of the Plaintiffs in this action are CPA Plaintiffs or employees of separate agencies.

³⁵ *Simon v Canada*, 2011 FCA 6 at para 9; *Carten v Canada*, 2010 FC 857 at paras 33-34, aff'd 2011 FCA 289; *Zbarsky v Canada*, 2022 FC 195 at paras 36, 40.

³⁶ *Policy on COVID-19 Vaccination for the Core Public Administration Including the RCMP*, s. 2.1, dated October 6, 2021, Affidavit of Gabriella Plati Trotto, Exhibit A, Tab B of the Respondent's Motion Record.

³⁷ *Policy on COVID-19 Vaccination for the Core Public Administration including the RCMP*, s. 1.1, dated October 6, 2021, Affidavit of Gabriella Plati Trotto, Exhibit A, Tab B of the Respondent's Motion Record.

³⁸ Government of Canada News release titled "Suspension of the vaccine mandates for domestic travellers, transportation workers and federal employees", dated June 14, 2022, Affidavit of Gabriella Plati Trotto, Exhibit B, Tab B of the Respondent's Motion Record

³⁹ *Brescia v Canada (Treasury Board)*, 2005 FCA 236 at para 50.

48. Employees in the core public administration, and employees of separate agencies, have broad rights to file grievances over a wide range of matters relating to their employment.
49. The *FPSLRA* sets out an exclusive and comprehensive scheme for resolving employment-related disputes. Both unionized and non-unionized employees have the right to file a grievance under the *FPSLRA* scheme.
50. The term "employee" generally means a person employed in the public service with some exceptions such as casual employees or students and is defined at s. 206(1) of the Act. This definition of employee includes employees in the core public administration subject to the policies established by the Treasury Board and employees of separate agencies subject to the policies established by their respective separate agencies.⁴⁰
51. Section 208 of the *FPSLRA* sets out the broad types of grievances available to the CPA Plaintiffs, and provides in the relevant part:

Right of an employee

208 (1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved

(a) by the interpretation or application, in respect of the employee, of

(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or

Droit du fonctionnaire

208 (1) Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé:

a) par l'interprétation ou l'application à son égard :

(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,

⁴⁰ See definitions of "employee" and "employer", *Federal Public Sector Labour Relations Act*, SC 2003, c. 22, s. 2, s. 2(1).

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(ii) a provision of a collective agreement or an arbitral award; or

b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.

[Emphasis added]

(ii) soit de toute disposition d'une convention collective ou d'une décision arbitrale;

b) par suite de tout fait portant atteinte à ses conditions d'emploi.

[gras ajouté]

52. Section 236 of the *FPSLRA* provides that there is no right of action when the right to grieve exists.

No Right of Action

Disputes relating to employment

236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.

Application

(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.

Absence de droit d'action

Différend lié à l'emploi

236 (1) Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

Application

(2) Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.

53. There is no indication that the Plaintiffs employed in the federal public administration (CPA Plaintiffs, and Plaintiffs employed by separate agencies) could not have filed grievances in relation to the matters in the Claim. As this Court found in *Wojdan*, the essential character of the Treasury Board Policy relates to the terms and conditions of employment and the issues raised by the Plaintiffs regarding the terms and conditions of their employment fall within the

jurisdiction of final level decision makers or an adjudicator under the *FPSLRA*.⁴¹ Indeed, the Plaintiffs employed in the federal public administration can obtain all of the remedies they seek, including in respect of the *Charter* claims, through the exclusive and comprehensive grievance process of the *FPSLRA* scheme.⁴²

54. The jurisprudence with respect to s. 236 is consistent and settled. Appellate decisions from Ontario and Quebec, and several decisions of this Court, make it clear that virtually any dispute relating to employment of a public servant can be the subject of a grievance under the *FPSLRA*, even in cases where malice, bad faith, harassment or discrimination are being alleged.⁴³
55. Section 236 of the *FPSLRA* is a complete ouster of the Court's jurisdiction and a complete bar to any right of action. As the Court of Appeal in *Bron* held, the provision is "clear and unequivocal" and "explicitly ousts the jurisdiction of the court over claims that could be the subject of a grievance under s. 208 of [the *FPSLRA*]." ⁴⁴
56. As is abundantly clear from the wording of s. 236(2), the fact that any of the Plaintiffs may not have filed a grievance is of no relevance. As this Court held in *Green*, "Again, as subsection 236(2) clearly contemplates, the Court shall defer to the grievance process whether or not the employee avails himself or herself of the right to present a grievance in any particular case...." ⁴⁵
57. The claims of the Plaintiffs employed in the federal public administration are prohibited by section 236 of the *FPSLRA* and their claims should be struck and dismissed on that basis.

⁴¹ *Wojdan v Canada (Attorney General)*, 2021 FC 1341 at paras 14, 23–26.

⁴² *Wojdan v Canada (Attorney General)*, 2021 FC 1341 at paras 23–26.

⁴³ *Bron v Canada (Attorney General)*, 2010 ONCA 71 at paras 14–15; *Yeates v Canada (Attorney General)*, 2011 ONCA 83 at para 3; *Goulet c Mondoux*, 2010 QCCA 468 at paras 5–6; *Nosistel v Canada*, 2013 FC 618 at para 66; *Price v Canada*, 2016 FC 649 at paras 26–31; *Green v Canada (Border Services Agency)*, 2018 FC 414 at para 16.

⁴⁴ *Bron v Canada (Attorney General)*, 2010 ONCA 71 at paras 29, 33.

⁴⁵ *Green v Canada (Border Services Agency)*, 2018 FC 414 at para 16.

C. THE CLAIM DISCLOSES NO REASONABLE CAUSE OF ACTION

i. General principles

58. The Claim lacks clarity. Although structured in numbered paragraphs, it does not follow a logical order. It is well established that pleadings should be struck if they are so confusing that it is difficult to understand what is being pled.⁴⁶

59. In *Guillaume v Toronto (City)*, Allen J. explained the importance of proper pleadings as follows:

[54] The importance of clearly drafted and structured pleadings does not require much explanation. Pleadings should be drafted with sufficient clarity and precision so as to give the other party fair notice of the case they are required to meet and of the remedies being sought. The role of pleadings is to assist the court in its quest for the truth. Clearly, confusing, run on and poorly organized pleadings cannot accomplish those goals. Courts have held a pleading may be struck out on the grounds it is unintelligible and lacks clarity [Citations omitted].⁴⁷

60. The lack of clarity in this case prevents the Defendants from knowing how to answer the Claim. It also prevents the Court from being able to manage the proceedings properly. As such, the Claim ought to be struck.

61. Based on what can be deciphered from the Claim, no reasonable cause of action arises. As best as can be gleaned from the pleadings, the Plaintiffs make a number of administrative and civil claims. The Claim appears largely to target what are referred to generally, as “vaccine mandates” and “vaccine passports”. The Plaintiffs specifically reference the Treasury Board Policy and the Interim Order, and it appears that these are what the Plaintiffs mean when they refer to the “mandates” and “passports”.

⁴⁶ See, for example, *kisikawpimootewin v Canada*, 2004 FC 1426 at paras 8-9; *Guillaume v Toronto (City)*, 2010 QNSC 5045 at para 54; *Keremelevski v Ukrainian Orthodox Church St. Mary Metropolitan*, 2012 BCSC 2083 at para 18.

⁴⁷ *Guillaume v Toronto (City)*, 2010 QNSC 5045 at para 54.

ii. Bare allegations of Charter violations disclose no reasonable cause of action

62. The Claim apparently contains constitutional challenges to the enactment of the Treasury Board Policy and the Interim Order alleging that these actions are *ultra vires*, that they breach the *Charter* rights of the Plaintiffs, that they violate “pre-*Charter* constitutional rights”, and that they constitute allegedly criminal actions.⁴⁸
63. The Claim also seeks injunctions against the “vaccine mandates” and “passports”,⁴⁹ presumably seeking interim and final stays against the Treasury Board Policy and Interim Order, both of which are no longer in force.
64. *Charter* claims can be raised in properly pleaded actions. However, this is a case where the pleadings themselves are so deficient that the claim should be struck in its entirety. Moreover, the Plaintiffs failure to plead material facts in support of the allegations in the pleadings are even more notable in the context of the *Charter* claims.
65. The importance of pleading sufficient material facts is heightened in *Charter* cases because sufficiently pleaded facts are necessary for a proper and contextual consideration of the *Charter* issues.⁵⁰ Another action challenging the Government of Canada’s measures to address the COVID-19 pandemic also alleged *Charter* infringements and was struck for disclosing no reasonable cause of action because the plaintiff failed to plead material facts, failed to particularize the *Charter* infringement, and contained bare assertions of breaches.⁵¹
66. As discussed herein, an action is not the appropriate procedure before this Court to challenge the constitutionality of government action or to seek administrative remedies and there is no reasonable cause of action.

⁴⁸ Statement of Claim at para 1.

⁴⁹ Statement of Claim at para 4.

⁵⁰ *Reference re Same-Sex Marriage*, 2004 SCC 79, [2004] 3 SCR 698 at para 51; *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 21, 32; *Mackay v Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 SCR 357 at 361–362.

⁵¹ *Turnel v Canada*, 2021 FC 1095 at para 4, 22–25, aff’d 2022 FCA 166.

iii. Claims relating to Treasury Board Policy and “vaccine mandates” are unclear, inconsistent, and disclose no reasonable cause of action

67. The Claim also includes civil claims for re-instatement of lost employment and payment of back pay and various benefits.⁵² Even if these claims were not ousted by s. 236 of the FPSLRA (in respect of the Plaintiffs employed in the federal public administration); the pleadings are internally contradictory in this regard and are so confusing that it is impossible for the defendants to respond. The Claim discloses no reasonable cause of action.
68. The over 600 individual Plaintiffs seek re-instatement to positions from which they were allegedly placed on leave and subsequently dismissed. However, the pleadings do not provide any material facts with respect to the circumstances of any of the Plaintiffs. In fact, the pleadings state in one paragraph that “All Plaintiffs were placed on leave without pay and fired pursuant to the purported dictate of the *Financial Administration Act* with respect to Covid-19 ‘vaccines’, purportedly mandated by the Treasury Board.”⁵³ But, in the very next paragraph, the pleadings state that “Some Plaintiffs due to the coercive illegal and unconstitutional actions and dictates of the Defendants and their officials took, under that duress, early and involuntary [*sic*] retirement ...”⁵⁴
69. Setting aside the fact that this is mere argument and not a pleading of material facts, both of those allegations cannot be true. It cannot be that each of the nearly 600 Plaintiffs were fired pursuant to the Treasury Board Policy and that some took early retirement.
70. The approximately one-third of the Plaintiffs that were employed by Crown Corporations or other organizations in federally regulated sectors are not subject to the Treasury Board Policy. For those employees outside of the federal public administration, the Treasury Board, and the federal Crown generally, has no

⁵² Statement of Claim at para 3.

⁵³ Statement of Claim at para 7.

⁵⁴ Statement of Claim at para 8.

employment relationship with them and therefore cannot be liable for any of the employment-related claims.

71. The Claim is unclear and establishes no material facts that would impose liability on the Crown for establishing vaccination requirements within the air transportation sector subject to the Interim Order. Those vaccination requirements were suspended in June 2020. In any event, any employment dispute and consequences resulting from the employers' decisions and management of its own private workplace cannot impose liability on the Crown. As more fully addressed elsewhere in these submissions, the Crown's decision to enact regulations is not justiciable.
72. Moreover, mere allegations of unconstitutionality do not constitute a cause of action for any employment or labour relation matter for which the relief sought can be a remedy. The Plaintiffs do not even allege any breach of terms and conditions of employment or any other contractual breaches. These unsubstantiated and bare claims, in a complete factual vacuum, disclose no reasonable cause of action.
73. As elaborated elsewhere in these submissions, any employment or labour relation dispute with respect to the Plaintiffs employed in the federal public administration are barred by operation of s. 236 of the *FPSLRA*.

iv. Claims relating to Interim Order and "vaccine passports" are unclear, inconsistent, and disclose no reasonable cause of action

74. With respect to the allegations relating to the Interim Order and its travel restrictions, the Claim misrepresents the facts of the Interim Order and are so confusing that it is impossible for the defendants to respond. The Claim discloses no reasonable cause of action.
75. The Plaintiffs cannot challenge the Interim Order in a vacuum. Each Plaintiff must plead the facts that form the basis of their claim as well as the relief sought. These

facts form the basis upon which the success of a claim is evaluated. The requirement to plead material facts applies equally to *Charter* claims.⁵⁵

76. In this case, like in the *Turmel* and *Zbarsky* cases,⁵⁶ the Plaintiffs' claims contain bare assertions of *Charter* breaches without even pleading the minimum basis that any Plaintiff had an intention to board a flight, let alone that any plaintiff was denied boarding, or that they were not granted valid exemptions. Moreover, a valid section 6 claim would also have to demonstrate that the Plaintiff was also restricted from other possible means of movement within Canada. Indeed, there are no facts pleaded to suggest that any of the Plaintiffs were prevented from travelling whatsoever.
77. The Claim also fails to plead any material facts that would demonstrate a connection between the *Charter* breaches relating to the Interim Order (or "vaccine passports") that would ground claims for loss of employment for which they seek damages. There is nothing in the pleadings that could establish a duty or obligation owed by the Treasury Board, Transport Canada, or the federal Crown to the Plaintiffs.
78. Furthermore, there is no cause of action because the Plaintiffs plead that the Interim Order and "vaccine passports" require mandatory vaccination. However, the Claim fails to contend with the actual requirements of the Interim Order that provide various exemptions including that accommodations were permitted for medical contraindications, or, contrary to the allegations pleaded, for attending essential medical service or treatment.⁵⁷

⁵⁵ *Reference re Same-Sex Marriage*, 2004 SCC 79, [2004] 3 SCR 698 at para 51; *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at paras 21, 32; *Mackay v Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 SCR 357 at 361–362.

⁵⁶ *Turmel v Canada*, 2022 FC 732; *Zbarsky v Canada*, 2022 FC 195.

⁵⁷ *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*, No. 61, section 17.3(2)(d), see generally section 17.3, dated April 24, 2022, Affidavit of Gabriella Plati Trotto, Exhibit C, Tab B of the Respondent's Motion Record.

D. THE CLAIM IS NOT JUSTICIABLE

79. An action alleging that Parliament has been induced to enact legislation by the tortious acts of Ministers of the Crown is not justiciable.⁵⁸
80. Similarly, the Plaintiffs' claims for negligence in legislating or failing to legislate are not justiciable.⁵⁹ In particular, the Plaintiffs' allegations and pleadings in respect of the Interim Order, which is a regulation pursuant to the *Aeronautics Act*, are not justiciable, and should be struck for that reason.
81. It is a settled principle in Canadian law that a legislative body cannot be liable in private law for the legislation it enacts.⁶⁰ This applies to Parliament,⁶¹ and to other legislative bodies, such as the Governor in Council,⁶² and even to city councils.⁶³ This rule applies to both statutes and regulations.⁶⁴ The Supreme Court of Canada established this axiom in *Welbridge Holdings v Winnipeg* (1971).⁶⁵
82. *Welbridge* was an action for negligence against a municipality. The municipality had enacted a zoning bylaw that was later found to be invalid because of procedural irregularities. The plaintiff had relied upon the bylaw when planning a construction project and suffered losses when the project died. As a result, the plaintiff sued the municipality for improperly legislating. The Supreme Court held that even a wrongly enacted bylaw could not form the basis for a tort action: "In exercising such [legislative] authority, a municipality (no less than a provincial

⁵⁸ *Turner v Canada*, 1992 CanLII 14782 (FCA), [1992] 3 FC 458 at 462.

⁵⁹ *Kwong v The Queen in Right of Alberta*, 1979 CanLII 239 (SCC), [1979] 2 SCR 1010 at para 1; *Sumere v Transport Canada*, 2009 CanLII 55324 (ONSC), [2009] OJ No 4213 at para 9.

⁵⁹ *Bérubé v Canada*, 2009 FC 43 at paras 32 to 36, aff'd 2010 FCA 276.

⁶⁰ *Kwong v The Queen in Right of Alberta*, 1979 CanLII 239 (SCC), [1979] 2 SCR 1010 at para 1; *Bérubé v Canada*, 2009 FC 43 at para 36, aff'd 2010 FCA 276; *Club Pro Adult Entertainment Inc. v Ontario*, 2008 ONCA 158 at paras 6 to 7, upholding 2006 CanLII 42254 (ON SC) at para 90 and 105; *Lucas v Toronto Police Services Board*, 2001 CanLII 27977 (ON SCDC), 54 OR (3d) 715 (Div Ct) at para 8; *AO Farms v Canada*, 2000 CanLII 17045 (FC) at para 5 to 8; *Budgell v British Columbia*, 2007 BCSC 991 at para 13; *Aubichon v Saskatchewan*, 2010 SKQB 49 at para 35.

⁶¹ *Bérubé v Canada*, 2009 FC 43 at paras 32 to 36, aff'd 2010 FCA 276.

⁶² *Kwong Estate v Alberta*, 1978 ALTASCAD 403 (CanLII), [1978] AJ No 594 (Alta SC, Appeal Div.) at paras 20 to 22, aff'd 1979 CanLII 239 (SCC), [1979] 2 SCR 1010 at para 1.

⁶³ *Welbridge Holdings Ltd. v Greater Winnipeg*, 1970 CanLII 1 (SCC), [1971] SCR 957 at 968-969.

⁶⁴ *Edwards v Rebound Resources Inc.*, 2008 CanLII 41168 (ON SC), 168 ACWS (3d) 1111 at paras 42 to 44; and *Sumere v Transport Canada*, 2009 CanLII 55324 (ONSC), [2009] OJ No 4213 at paras 7 to 9.

⁶⁵ *Welbridge Holdings Ltd. v Greater Winnipeg*, 1970 CanLII 1 (SCC), [1971] SCR 957.

Legislature or the Parliament of Canada) may act beyond its powers in the ultimate view of a court, albeit it acted on the advice of counsel. It would be incredible to say in such circumstances that it owed a duty of care giving rise to liability in damages for its breach.”⁶⁶

83. From the time of *Welbridge* until today, Canadian courts have adhered to the principle that the Crown is not liable in negligence when legislating.⁶⁷ As the Ontario Divisional Court held in *Lucas v. Toronto Police Services* (2001), “Government, when it legislates, even wrongly, incompetently, stupidly, or misguidedly is not liable in damages.”⁶⁸ There can be no liability in tort even if the plaintiff shows that the legislation was enacted in bad faith.⁶⁹
84. Holding the government liable for legislating, or indeed failing to legislate, on a certain matter is not justiciable because it is “an interference by the judicial branch in the powers of the legislative branch.”⁷⁰ Legislators like the Governor in Council must be free to enact or refrain from enacting legislation without fear of being sued in civil actions by members of the public who may be affected by their decisions.
85. Absent a constitutional challenge, legislatures are accountable for the content and timing of laws to the voters and not the courts. This Court should dismiss as non-justiciable the claims hinging upon the Governor in Council's decision to enact or refrain from enacting regulations in response to the COVID-19 pandemic whether under the *FAA*, *Aeronautics Act*, or any other legislative power or authority. In particular all claims with respect to the Interim Order should be struck.

⁶⁶ *Welbridge Holdings Ltd. v Greater Winnipeg*, 1970 CanLII 1 (SCC), [1971] SCR 957 at 968-969.

⁶⁷ *Eisenberg v Toronto (City)*, 2019 ONSC 7312 at para 104; and *Reddock v Canada (Attorney General)*, 2019 ONSC 5053 at para 405.

⁶⁸ *Lucas v Toronto Police Services Board*, 2001 CanLII 27977 (ON SCDC), 54 OR (3d) 715 (Div Ct) at para 8, citing with approval Hugessen J. in *AO Farms Inc. v Canada*, 2000 CanLII 17045 (FC), [2000] FCJ No 1771 (TD) at paras 5 to 8.

⁶⁹ *Trociuk v HMTQ*, 2008 BCSC 1597 at para 32; *Club Pro Adult Entertainment Inc. v Ontario*, 2006 CanLII 42254 (ON SC), 27 BLR (4th) 227 at para 90, aff'd (on this point) 2008 ONCA 158.

⁷⁰ *Bérubé v Canada*, 2009 FC 43 at paras 33 to 34, aff'd 2010 FCA 276.

E. THE ACTION IS AN ABUSE OF PROCESS

86. This action should also be struck because it constitutes an abuse of process.
87. Where a cause of action is beyond the court's jurisdiction, under Rule 221(1)(a), it is also an abuse of process under Rule 221(1)(f).⁷¹
88. It is also an abuse of process for a party to bring an action in the hope that sufficient evidence will emerge through the discovery process to support unsubstantiated allegations.⁷²
89. In this case, the Plaintiffs vague, conspiratorial, and salacious claims are unfounded. The Plaintiffs plead bare conclusions and unsubstantiated allegations as fact. In doing so, the Plaintiffs imply highly improper motives to the Defendants and other decision-makers without any evidence or material facts. For example, the Plaintiffs allege that COVID-19 vaccinations are "admittedly 'medical experimentation'", allege and baselessly attribute to the Defendants statements that vaccines are "useless and ineffective". The Defendants can only be left to presume that the Plaintiffs hope that these unsubstantiated and unfounded claims will eventually be supported by something that they wish to turn up through the discovery process.
90. This Court has a plenary power to control its process and prevent abuses. As the Supreme Court of Canada stated in *Toronto (City) v CUPE, Local 79*, and is apt here: "In the context that interests us here, the doctrine of abuse of process engages 'the inherent power of the court to prevent the misuse of its procedure, in a way that would ... bring the administration of justice into disrepute'."⁷³

F. THE ACTION IS SCANDALOUS, FRIVOLOUS, AND VEXATIOUS

91. A claim will be struck for being scandalous, frivolous and vexatious, and an abuse of process if: (a) it's so deficient in relevant material facts that the defendant has

⁷¹ *Marshall v Canada*, 2006 FC 51 at paras 38-39.

⁷² *AstraZeneca Canada Inc. v Novopharm Limited*, 2010 FCA 112 at paras 4-6.

⁷³ *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 37 [citations omitted].

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no case to answer;⁷⁴ (b) includes statements that are irrelevant, incomprehensible and added only for colour;⁷⁵ (c) is full of scandalous and unsubstantiated allegations;⁷⁶ and, (d) is overly long, unwieldy and repetitive.⁷⁷

92. This Claim fits the criteria and description to be struck on these grounds. Repetition of bare unsubstantiated claims are not a substitute for pleading material facts. The almost 50-page Claim is devoid of material facts that could substantiate or ground any of the claims being made. Rather, the pleading is replete with baseless allegations that are incomprehensible, conspiratorial, salacious, extreme and scandalous. These include claims that:

- there is no COVID-19 pandemic, the pandemic was nothing more than the consequences of the influenza virus;⁷⁸
- COVID-19 measures have caused more deaths than “purported COVID-19”;⁷⁹
- no person under the age of 19 has died because of the COVID-19 pandemic;⁸⁰
- that no child that contracted the COVID-19 virus has died;⁸¹
- “The COVID-19 ‘vaccines’ are not ‘vaccines’.”;⁸² and,
- COVID-19 vaccines are medical experimentation without voluntary, informed consent that constitute a “Crime Against Humanity, born out of the Nuremberg Code, following the Nazi experimentation under the Nazi regime”, etc.⁸³

93. The Plaintiffs also make entirely unfounded and baseless allegations attributed to the defendants including statements such as, “The Defendant officials scandalously claim that, during the COVID-19 pandemic there have been **no** annual flus [Emphasis in original],” and “The fact is that, above and beyond all

⁷⁴ *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 17.

⁷⁵ *Reference re Charter of Rights and Freedoms*, s 52(1), 2017 FC 30 at paras 40-41.

⁷⁶ *R v Mennes*, 2004 FC 1731 at para 78.

⁷⁷ *Wang v Canada*, 2016 FC 1052 at para 31.

⁷⁸ Statement of Claim at para 32.

⁷⁹ Statement of Claim at para 34.

⁸⁰ Statement of Claim at para 37.

⁸¹ Statement of Claim at para 38.

⁸² Statement of Claim at para 46.

⁸³ Statement of Claim at paras 46-47.

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the above, the virus, SARS-CoV-2 has **not** yet been identified or isolated anywhere in the world [Emphasis in original].⁸⁴

94. These allegations are especially improper where the Court is being asked to make determinations and findings that are so extreme. Indeed, this Court has taken judicial notice of the existence of the SARS-CoV-2 virus, which causes COVID-19.⁸⁵

95. In *Khodeir*, the applicant brought a judicial review application challenging the same Treasury Board Policy that is attacked by the present Action. As with the Plaintiffs in this action, Mr. Khodeir asserted that the vaccination requirement under the Treasury Board Policy was unreasonable because he believed that the SARS-CoV-2 virus did not exist.⁸⁶ In its comprehensive reasons, this Court found that,

[33] In my view, the existence of the SARS-CoV-2 virus is beyond reasonable dispute and is a matter of judicial notice. I reach this conclusion for three reasons, developed below: the existence of the virus is notorious; other courts have taken judicial notice of it; and Mr. Khodeir's assertions to the contrary do not withstand scrutiny.

[34] I am mindful that taking judicial notice of the existence of the virus is dispositive of Mr. Khodeir's application. In these circumstances, the bar is high for the Court to take judicial notice. Nevertheless, the test is clearly met in this case.

96. The allegations constitute nothing more than unsubstantiated and impossible conspiracy theories that are not capable, or indeed worthy, of response. These allegations are tied to allegations of misfeasance, conspiracy, and alleged criminal conduct.

97. Even the most generous reading of these pleadings exposes the prolixity, repetition and bare conclusions that are not a substitute for the requirement to plead material facts so that the Defendants can understand and defend the allegations.⁸⁷

⁸⁴ Statement of Claim at para 45.

⁸⁵ *Khodeir v Canada*, 2022 FC 44 at para 16.

⁸⁶ *Khodeir v Canada*, 2022 FC 44 at para 1.

⁸⁷ *Wang v Canada*, 2016 FC 1052 at para 31.

98. The pleadings are largely similar to the pleadings before the British Columbia Supreme Court in *Action4Canada*. In that case, the action was struck. The Court found that the pleading:

[45] ... is not a pleading that can properly be answered by a responsive pleading. It describes wide-ranging global conspiracies that may, or may not, have influenced either the federal or the provincial governments. It seeks rulings of the court on issues of science. In addition, it includes improper allegations, including criminal conduct and "crimes against humanity". In my opinion, it is "bad beyond argument".

[...]

[47] As was the case in *Homalco*, attempting to bring the NOCC into compliance with the *Rules* by piecemeal striking and amending would invite more confusion and greater expenditure of the resources of all concerned.⁸⁸

99. Contrary to the rules of pleading, the Claim is "unwieldy and non-compliant," and utterly fails to set out a concise statement of material facts in support of the Plaintiffs' causes of action.⁸⁹ This Claim rises to a level of impropriety such that the pleading should be struck.

G. THE ACTION IS DOOMED TO FAIL

i. The proper proceeding to set aside the impugned federal vaccine requirements is a judicial review

100. This Court should strike the Plaintiffs' Claim for the various declarations sought in the Claim because declaratory relief in respect of the federal "vaccine mandates" and "vaccine passports", i.e. the Treasury Board Policy and Interim Order, can only be obtained through an application for judicial review.
101. The Plaintiffs seek numerous declarations and injunctions relating the Treasury Board Policy and the Interim Order.⁹⁰ The Federal Court has exclusive jurisdiction

⁸⁸ *Action4Canada v. British Columbia (Attorney General)*, 2022 BCSC 1507 at paras 45, 47.

⁸⁹ *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 12.

⁹⁰ Statement of Claim at paras 1, 4.

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to grant declaratory relief against a federal decision maker, but only by way of an application for judicial review.⁹¹

102. The Federal Court of Appeal as well as the Supreme Court of Canada have reiterated multiple times that where a claimant seeks to set aside the decision of a federal decision maker, it must proceed by judicial review.⁹²
103. Recently in *Wojdan v Canada*,⁹³ the Federal Court applied this principle to an action that also challenged the federal policies that required the core public administration employee to be vaccinated. In that case, the plaintiffs had also commenced an action, rather than an application for judicial review, to challenge the constitutionality of the Treasury Board Policy and to seek damages.
104. The Court dismissed the claim in *Wojdan* on a motion for an interim injunction because the policy created by the Treasury Board, was clearly a decision made by a federal decision maker that fell within the scope of the Federal Court's exclusive jurisdiction over federal administrative action.⁹⁴ Accordingly, the Court held that an action was an improper proceeding to challenge the decision at issue.
105. In the Court's decision, it made clear that "a litigant who seeks to impugn a federal agency's decision is not free to choose between judicial review and an action in damages," rather they must proceed by way of judicial review.⁹⁵ If damages are claimed, then a judicial review as well as an action are both required.⁹⁶ The court goes on to say that "it is only where the claimant is content to let the decision stand, and instead seeks compensation for an alleged loss, that the claimant should not be forced to take the extra step of an application for judicial review".⁹⁷

⁹¹ *Federal Courts Act*, RSC 1985, c F-7 at ss 18(1), 18(3).

⁹² *Brake v Canada (Attorney General)*, 2019 FCA 274 at para 26; *Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62 at para 19; *Canada v Tremblay*, 2004 FCA 172 at para 18.

⁹³ *Wojdan v Canada*, 2021 FC 1244.

⁹⁴ *Wojdan v Canada*, 2021 FC 1244 at para 12; see also *Federal Courts Act*, RSC 1985, c F-7, ss. 18 and 18.1.

⁹⁵ *Wojdan v Canada*, 2021 FC 1244 at paras 11, 13.

⁹⁶ *Wojdan v Canada*, 2021 FC 1244 at para 13.

⁹⁷ *Wojdan v Canada*, 2021 FC 1244 at para 15.

106. As was the case in *Wojdan*, the Plaintiffs' Claim in this case should be struck because the Plaintiffs have incorrectly attempted to challenge the Treasury Board Policy and the Interim Order by way of action.

ii. A reconstituted application for judicial review would be moot

107. An application seeking declaratory relief as to the validity of the Treasury Board Policy and the Interim Order would be moot because both policies are currently not in effect. On June 20, 2022, the Treasury Board Policy was suspended, and the vaccination requirement to board a plane in Canada ceased to have effect.⁹⁸ On September 30, 2022, the last Interim Order with the remaining COVID-19 measures (namely masking) was repealed.⁹⁹
108. A matter is moot where there is no longer a live issue between the parties and an Order will have no practical effect.¹⁰⁰
109. If a matter is moot, the Court may choose to exercise its discretion to hear the application, upon considering the following factors: (1) the presence of an adversarial context; (2) the appropriateness of applying scarce judicial resources; and, (3) the Court's sensitivity to its role relative to that of the legislative branch of government. A determination that a case is moot and lacking discretionary grounds for proceeding provides a valid basis for dismissal.
110. The Interim Order subject of this Claim was one of the orders subject of a recent decision in which this Court determined that the applications challenging transportation vaccination requirements were moot, and dismissed the applications.¹⁰¹

⁹⁸ Government of Canada News release titled "Suspension of the vaccine mandates for domestic travellers, transportation workers and federal employees", dated June 14, 2022, Affidavit of Gabriella Plati Trotto, Exhibit B, Tab B of the Respondent's Motion Record.

⁹⁹ *Order Repealing the Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19*, No. 73, dated September 30, 2022, Affidavit of Gabriella Plati Trotto, Exhibit E, Tab B of the Respondent's Motion Record.

¹⁰⁰ *Borowski v Canada (AG)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342 at 353.

¹⁰¹ *Ben Naoum v Canada (Attorney General)*, 2022 FC 1463. (The Federal Court issued an identical decision in the four consolidated applications challenging the Interim Order: T-145-22, T-247-22, T-168-

111. In the *Wojdan* matter referenced earlier, on the appeal of the Federal Court's decision declining to grant an interlocutory injunction, the Federal Court of Appeal held on June 22, 2022 that the appeal was moot as the Treasury Board Policy the appellants sought to suspend was no longer in force. The Court of Appeal held that the exercise of its discretion to hear the appeal was not warranted.¹⁰²
112. Similarly, in *Lavergne-Poitras*, the applicant challenged the supplier vaccination policy that required personnel of third-party suppliers to government to be fully vaccinated against COVID-19. The supplier vaccination policy was implemented in alignment with the Treasury Board Policy and, like the Treasury Board Policy, was suspended on June 20, 2022. This Court held that the application challenging the supplier vaccination policy was moot and dismissed the application.¹⁰³
113. Given the recent decisions dealing with the same policies or similar, and the fact that there is no actual application pending which could be struck as moot, detailed submissions on mootness are beyond the scope of this motion. However, the Attorney General is prepared to make submissions on mootness at the Court's request.

H. THE COURT SHOULD NOT GRANT LEAVE TO AMEND

114. The Court should not grant the Plaintiffs leave to amend because the deficiencies in the pleadings are so fundamental that cannot be cured by an amendment.¹⁰⁴
115. Portions of the pleading that seek administrative remedies with respect to decisions made by the federal Crown, in particular, the Treasury Board Policy and the Interim Order, would not be remedied by amendment because any reconstituted version of the proceeding would likely be struck as moot.

22 and T-1991-21, judgement was issued on October 20, 2022, and the reasons were issued on October 27, 2022.)

¹⁰² *Wojdan v Canada (Attorney General)*, 2022 FCA 120 at paras 3–4.

¹⁰³ *Lavergne-Poitras v Canada (Attorney General)*, 2021 FC 1391 at para 2 (decision re mootness); see also *Lavergne-Poitras v Canada (Attorney General)*, 2021 FC 1232 at para 25 (decision re injunction).

¹⁰⁴ *Collins v Canada*, 2011 FCA 140 at para 26; *Simon v Canada*, 2011 FCA 6 at para 8.

116. Those portions of the pleading that allege elements of a purported civil action and seek damages are also improper because approximately two-thirds of the Plaintiffs have no right of action pursuant s. 236 of the *FPSLRA*, and the remaining one-third have not pleaded material facts establishing any nexus to the impugned vaccination requirements. Furthermore, even if that were not the case, the pleadings disclose no reasonable cause of action or material facts to support the Claim and would have no chance of success.
117. As this Court found in the *Turmel* and *Zbarsky* matters challenging the Interim Order, substantial deficiencies in the pleadings, including failure to plead material facts and the lack of any reasonable cause of action were fatal to the claims and the claims were struck without leave to amend.¹⁰⁵
118. Claims have been by the Federal Court of Appeal for many of the same deficiencies as are found in the present Claim. The Federal Court of Appeal's guidance on the requirements of acceptable pleadings is settled law.¹⁰⁶
119. Most recently, in *Action4Canada v British Columbia (Attorney General)*,¹⁰⁷ a substantially similar action before the court in British Columbia was struck. Portions of the deficient pleadings in British Columbia that were highlighted in that Court's reasons are substantially similar, and in some cases identical, to the allegations in the pleadings before this Court.¹⁰⁸ The claim before the Court in British Columbia was struck in its entirety because the pleadings were scandalous, frivolous, and vexatious.¹⁰⁹
120. If a Court is satisfied that a plaintiff is "unwilling or unable to cure the defects in the statement of claim by way of amendment", that is a sufficient basis to deny granting leave to amend.¹¹⁰

¹⁰⁵ *Turmel v Canada*, [2022 FC 732](#) at paras 30–32; *Zbarsky v Canada*, [2022 FC 195](#) at paras 34–36.

¹⁰⁶ See for example *Mancuso v Canada (National Health and Welfare)*, [2015 FCA 227](#).

¹⁰⁷ *Action4Canada v British Columbia (Attorney General)*, [2022 BCSC 1507](#).

¹⁰⁸ See for example, *Action4Canada v British Columbia (Attorney General)*, [2022 BCSC 1507](#) at paras 41, 52, 55; and, see for example Statement of Claim at paras 41–45, 46, 47, 51.

¹⁰⁹ *Action4Canada v British Columbia (Attorney General)*, [2022 BCSC 1507](#) at paras 45–48.

¹¹⁰ *Turmel v Canada*, [2022 FC 732](#) at para 37.

PART IV – ORDER SOUGHT

121. The respondent requests that the Statement of Claim be struck in its entirety, without leave to amend, and the matter be dismissed.
122. The respondent seeks its costs in the amount of \$5000.00, payable forthwith.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Toronto, in the Province of Ontario this 4th day of November 2022.



Adam Gilani / Renuka Koilpillai

PART V – LIST OF AUTHORITIES**Appendix “A” – Statutes and Regulations**

1. *Aeronautics Act*, RSC, 1985, c A-2
2. *Federal Courts Act*, RSC, 1985, c F-7
3. *Federal Courts Rules*, SOR/98-106
4. *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2
5. *Financial Administration Act*, RSC, 1985, c F-11

Appendix “B” – Book of Authorities

6. *Action4Canada v. British Columbia (Attorney General)*, 2022 BCSC 1507
7. *AO Farms v Canada*, 2000 CanLII 17045 (FC)
8. *AstraZeneca Canada Inc. v Novopharm Limited*, 2010 FCA 112
9. *Aubichon v Saskatchewan*, 2010 SKQB 49
10. *Ben Naoum v Canada (Attorney General)*, 2022 FC 1463
11. *Bérubé v Canada*, 2009 FC 43, aff'd 2010 FCA 276
12. *Borowski v Canada (AG)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342
13. *Brake v Canada (Attorney General)*, 2019 FCA 274
14. *Brauer v Canada*, 2021 FCA 198
15. *Brescia v Canada (Treasury Board)*, 2005 FCA 236
16. *Bron v Canada (Attorney General)*, 2010 ONCA 71
17. *Budgell v British Columbia*, 2007 BCSC 991
18. *Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62
19. *Canada v Tremblay*, 2004 FCA 172
20. *Carten v Canada*, 2010 FC 857, aff'd 2011 FCA 289
21. *Chase v Canada*, 2004 FC 273
22. *Club Pro Adult Entertainment Inc. v Ontario*, 2008 ONCA 158, upholding 2006 CanLII 42254 (ON SC)

23. *Collins v Canada*, 2011 FCA 140
24. *Edwards v Rebound Resources Inc.*, 2008 CanLII 41168 (ON SC), 168 ACWS (3d) 1111
25. *Eisenberg v Toronto (City)*, 2019 ONSC 7312
26. *Goulet c Mondoux*, 2010 QCCA 468
27. *Green v Canada (Border Services Agency)*, 2018 FC 414
28. *Guillaume v Toronto (City)*, 2010 ONSC 5045
29. *Keremelevski v Ukranian Orthodox Church St. Mary Metropolitan*, 2012 BCSC 2083
30. *Khodeir v Canada*, 2022 FC 44
31. *kisikawpimootewin v Canada*, 2004 FC 1426
32. *Kwong v The Queen in Right of Alberta*, 1979 CanLII 239 (SCC), [1979] 2 SCR 1010
33. *Lavergne-Poitras v Canada (Attorney General)*, 2021 FC 1232
34. *Lavergne-Poitras v Canada (Attorney General)*, 2021 FC 1391
35. *Lucas v Toronto Police Services Board*, 2001 CanLII 27977 (ON SCDC), 54 OR (3d) 715 (Div Ct)
36. *Mackay v Manitoba*, 1989 CanLII 26 (SCC), [1989] 2 SCR 357
37. *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227
38. *Marshall v Canada*, 2006 FC 51
39. *Nosistel v Canada*, 2018 FC 618
40. *Oman v Hudson Bay Port Co.*, 2016 FC 1269
41. *Operation Dismantle v The Queen*, 1985 CanLII 74 (SCC), [1985] 1 SCR 441
42. *Paradis Honey Ltd. v Canada (Minister of Agriculture and Agri-Food)*, 2015 FCA 89 *Price v Canada*, 2016 FC 649
43. *R v Imperial Tobacco Canada Ltd.*, 2011 SCC 42
44. *R v Mennes*, 2004 FC 1731

45. *Reddock v Canada (Attorney General)*, 2019 ONSC 5053
46. *Reference re Charter of Rights and Freedoms, s 52(1)*, 2017 FC 30
47. *Reference re Same-Sex Marriage*, 2004 SCC 79, [2004] 3 SCR 698
48. *Shebib v Canada*, 2016 FC 539
49. *Simon v Canada*, 2011 FCA 6
50. *Sivak v Canada*, 2012 FC 272
51. *Sumere v Transport Canada*, 2009 CanLII 55324 (ONSC), [2009] OJ No 4213
52. *Toronto (City) v CUPE, Local 79*, 2003 SCC 63
53. *Trociuk v HMTQ*, 2008 BCSC 1597
54. *Turmel v Canada*, 2021 FC 1095, *aff'd* 2022 FCA 166
55. *Turmel v Canada*, 2022 FC 732
56. *Turner v Canada*, 1992 CanLII 14782 (FCA), [1992] 3 FC 458
57. *Wang v Canada*, 2016 FC 1052
58. *Welbridge Holdings Ltd. v Greater Winnipeg*, 1970 CanLII 1 (SCC), [1971] SCR 957
59. *Wojdan v Canada*, 2021 FC 1244
60. *Wojdan v Canada (Attorney General)*, 2022 FCA 120
61. *Yeates v Canada (Attorney General)*, 2011 ONCA 83
62. *Zbarsky v Canada*, 2022 FC 195

TAB 7

Court File No.:T-1089-22

FEDERAL COURT

BETWEEN:

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants.

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

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FAX: (416) 530-8129

Counsel for the Plaintiffs

TAB 1



Court File No.: T-1089-22

FEDERAL COURT

Karen **Adelberg**, Matthew **Anderson**, Wyatt George **Baiton**, Paul **Barzu**, Neil **Bird**, Curtis **Bird**, Beau **Bjarnason**, Lacey **Blair**, Mark **Bradley**, John **Doe #1**, Daniel **Bulford**, John **Doe #2**, Shawn **Carmen**, John **Doe #3**, Jonathan Corey **Chaloner**, Cathleen **Collins**, Jane **Doe #1**, John **Doe #4**, Kirk **Cox**, Chad **Cox**, Neville **Dawood**, Richard **de Vos**, Stephane **Drouin**, Mike **Desson**, Philip **Dobernigg**, Jane **Doe #2**, Stephane **Drouin**, Sylvie **Filteau**, Kirk **Fisler**, Thor **Forseth**, Glen **Gabruch**, Brett **Garneau**, Tracy Lynn **Gates**, Kevin **Gien**, Jane **Doe #3**, Warren **Green**, Jonathan **Griffioen**, Rohit **Hannraj**, Kaitlyn **Hardy**, Sam **Hilliard**, Richard **Huggins**, Lynne **Hunka**, Joseph **Islietson**, Leposava **Jankovic**, John **Doe #5**, Pamela **Johnston**, Eric Jones-Gatineau, Annie **Joyal**, John **Doe #6**, Marty (Martha) **Klassen**, John **Doe #7**, John **Doe #8**, John **Doe #9**, Ryan **Koskela**, Jane **Doe #4**, Julians **Lazoviks**, Jason **Lefebvre**, Kirsten **Link**, Morgan **Littlejohn**, John **Doe #10**, Diane **Martin**, John **Doe #11**, Richard **Mehner**, Celine **Moreau**, Robin **Morrison**, Morton **Ng**, Gloria **Norman**, Steven **O'Doherty**, David **Obirek**, John Robert **Queen**, Nicole **Quick**, Ginette **Rocho**n, Louis-Marie **Roy**, Emad **Sadr**, Matt **Silver**, Jinjer **Snider**, Maureen **Stein**, John **Doe #12**, John **Doe #13**, Robert **Tumbas**, Kyle Van de **Sype**, Chantelle **Vien**, Joshua (Josh) **Vold**, Carla **Walker**, Andrew **Wedlock**, Jennifer **Wells**, John **Wells**, Melanie **Williams**, David George John **Wiseman**, Daniel **Young**, Gratchen **Grisson**, (officers with the Royal Canadian Mountain Police)

- and -

Nicole **Auclair**, Michael **Baldock**, Sabrina **Baron**, William Dean **Booth**, Charles **Borg**, Marie-Ève **Caron**, Thomas **Dalling**, Joseph Israel Marc Eric De **Lafontaine**, Ricardo **Green**, Jordan **Hartwig**, Rodney **Howes**, Christopher Mark **Jacobson**, Jane **Doe #5**, Pascal **Legendre**, Kimberly **Lepage**, Kim **MacDonald**, Cindy **Mackay**, Kim Martin-**McKay**, David **Mason**, Alexandra Katrina **Moir**, Joseph Daniel Eric **Montgrain**, Radoslaw **Niedzielski**, Leanna June **Nordman**, Donald **Poole**, Edward Dominic **Power**, Norman L. **Reed**, Jane **Doe #6**, Brenden **Sangster**, Timothy Joseph **Seibert**, Ann-Marie Lee **Traynor**, Carl Barry **Wood**, Eddie Edmond **Andrukaitis**, Ruby **Davis**, Jennifer **Schroeder**, Joseph **Shea** employed by the (Department of National Defence)

- and -

Stefanie **Allard**, Jake Daniel **Boughner**, Brent **Carter**, Brian **Cobb**, Laura **Constantinescu**, Sonia **Dinu**, Aldona **Fedor**, Jane **Doe #7**, Malorie **Kelly**, Matthew Stephen **MacDonald**, Mitchell **Macintyre**, Hertha **McLendon**, Marcel **Mihailescu**,

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

- and -

Christine **Clouthier**, Debbie **Gray**, Jennifer **Penner**, Dale **Wagner**, Joseph **Ayoub**.
(Agriculture and Agri-food Canada)

- and -

Jane **Doe #8**, **(Atlantic Canada Opportunities Agency)**

- and -

Melanie **DuFour**, **(Bank of Canada)**

- and -

Jennifer **Auciello**, Sharon **Ann Joseph**, Eric **Munro**, **(Canada Mortgage and Housing Corporation)**

- and -

Jane **Doe #9**, **(Canada Pension Plan)**

- and -

Natalie **Boulard**, Beata **Bozek**, John **Doe #14**, Nerin **Andrea Carr**, Sara Jessica **Castro**,
Debbie (Dubravka) **Cunko**, Josée **Cyr**, Jane **Doe #10**, Carol **Gaboury**, Tania **Gomes**,
Julita **Grochocka**, Monique **Harris**, William **Hooker**, Kirstin **Houghton**, Leila **Kostyk**,
Diane C **Labbé**, Michelle **Lamarre**, Nicolas **LeBlond**, Suana-Lee **Leclair**, Paulette
Morissette, Jennifer **Neave**, Pierre-Alexandre **Racine**, Benjamin **Russell**, Robert
Snowden, Aabid **Thawer**, Heidi **Wiener**, Svjetlana **Zelenbaba**, Nadia **Zinck**, Aaron
James Thomas **Shorrocks**, Deirdre **McIntosh** , **(Canada Revenue Agency)**

- and -

Tamara **Stammis**, **(Canada School of the Public Service)**

- and -

Jasmin **Bourdon**, **(Canada Space Agency)**

- and -

Sharon Cunningham, Allen Lynden, Rory Matheson, (Canadian Coast Guard)

- and -

Tatjana Coklin, John Doe #15, Raquel Delmas, Jane Doe #11, Chelsea Hayden, Helene Joannis, Zaklina Mazur, Jane Doe #12, Jessica Simpson, Katarina Smolkova, (Canadian Food Inspection Agency)

- and -

Alexandre Charland, (Canadian Forestry Service)

- and -

Catherine Provost, Kristina Martin, (Canadian Heritage)

- and -

Jane Doe #13, (Canadian Institutes of Health Research)

- and -

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

- and -

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

- and -

Octavia La Prairie, (Canadian Security Intelligence Service)

- and -

Robert Bestard, (City of Ottawa Garage Fed regulated)

- and -

Kimberly Ann Beckert, (Core Public Service)

- and -

Sarah Andreychuk, Francois Bellehumeur, Pamela Blaikie, Natasha Cairns, Angela Ciglencecki, Veronika Colnar, Randy Doucet, Kara Erickson, Jesse Forcier, Valérie Fortin, Roxane Gucutal, Melva Isherwood, Milo Johnson, Valeria Luedee, Laurie

Lynden, Annette Martin, Craig McKay, Isabelle Methot, Samantha Osypchuk, Jane Doe #14, Wilnive Phanord, Alexandre Richer Levasseur, Kathleen Sawyer, Trevor Scheffel, (Correctional Service of Canada)

- and -

Jordan St-Pierre, (Courts Administration Service)

- and-

Brigitte Surgue, Jane Doe #15, (Department of Canadian Heritage)

- and-

Ghislain Cardinal, Heather Halliday, Paul Marten, Celine Rivier, Ngozi Ukwu, Jeannine Bastarache, Jane Doe #16, Hamid Naghdian-Vishteh, (Department of Fisheries and Ocean)

- and -

Ishmael Gay-Labbe, Jane Doe #17, Leanne James, (Department of Justice)

- and -

Danielle Barabe-Bussieres, (Elections Canada)

- and -

Tanya Daeichert, Jane Doe #18, Francois Arseneau, Chantal Authier, Nathalie Benoit, Aerie Biafore, Rock Briand, Arnaud Brien-Thiffault, Sharon Chiu, Michel Daigle, Brigitte Daniels, Louise Gaudreault, Karrie Gevaert, Mark Gevaert, Peter Iversen, Derrik Lamb, Jane Doe #19, Anna Marinic, Divine Masabarakiza, James Mendham, Michelle Marina Micko, Jean Richard, Stephanie Senecal, Jane Doe #20, Ryan Sewell, Kari Smythe, Olimpia Somesan, Lloyd Swanson, Tyrone White, Elissa Wong, Jenny Zambelas, Li yang Zhu, Patrice Lever, (Employment and Social Development Canada)

-and-

Jane Doe #21, Brian Philip Crenna, Jane Doe #22, Bradley David Hignell, Andrew Kalteck, Dana Kellett, Josée Losier, Kristin Mensch, Elsa Mouana, Jane Doe #23, Jane Doe #24, Valentina Zagorenko, (Environment and Climate Change Canada)

- and -

Pierre Trudel, (Export Development Canada)

- and -

Stephen Alan Colley, (Federal Economic Development Agency for Southern Ontario)

- and -

Vladimir Raskovic, (Garda Security Screeing Inc)

- and -

Mélanie Borgia, Jonathan Kyle Smith, Donna Stainfield, Annila Tharakan, Renee Michiko Umezuki, (Global Affairs Canada)

- and -

Dennis Johnson, (Global Container Terminals Canada)

- and -

Alexandre Guilbeault, Tara (Maria) McDonough, France Vanier, (Government of Canada)

- and -

Alex Braun, Marc Lescelleur-Paquette, (House of Commons)

- and -

Aimee Legault, (Human Resource Branch)

- and -

Dorin Andrei Boboc, Jane Doe #25, Sophie Guimard, Elisa Ho, Kathy Leal, Caroline Legendre, Diana Vida, (Immigration, Refugees and Citizenship Canada)

- and -

Nathalie Joanne Gauthier, (Indigenous and Northern Affairs Canada)

- and -

Christine Bizier, Amber Dawn Kletzel, Verona Lipka, Kerry Spears, (Indigenous Services Canada)

- and -

Sun-Ho **Paul Je**, (**Innovation, Science and Economic Development Canada**)

- and -

Giles Roy, (**National Film Board of Canada**)

- and -

Ray **Silver**, Michelle **Dedyulin**, Letitia **Eakins**, Julie-Anne **Kleinschmit**, Marc-Andre **Octeau**, Hugues **Scholaert**, (**National Research Council Canada**)

- and -

Felix Beauchamp, (**National Security and Intelligence Review Agency**)

- and -

Julia May **Brown**, Caleb **Lam**, Stephane **Leblanc**, Serryna **Whiteside**, (**Natural Resources Canada**)

- and -

Nicole **Hawley**, Steeve **L'italien**, Marc **Lecocq**, Tony **Mallet**, Sandra **McKenzie**, (**NAV Canada**)

- and -

Muhammad Ali, (**Office of the Auditor General of Canada**)

- and -

Ryan Rogers, (**Ontario Northland Transportation Commission**)

- and -

Theresa **Stene**, Michael **Dessureault**, John **Doe #16**, (**Park Canada**)

- and -

Charles-Alexandre **Beauchemin**, Brett **Oliver**, (**Parliamentary Protection Service**)

- and -

Carole Duford, (Polar Knowledge Canada)

- and -

**Joanne Gabrielle de Montigny, Ivana Eric, Jane Doe #26, Salyna Legare, Jane Doe #27,
Angie Richardson, Jane Doe #28, (Public Health Agency of Canada)**

- and -

Fay Anne Barber, (Public Safety Canada)

- and -

Denis Laniel, (Public Sector Pension Investment Board)

- and -

**Kathleen Elizabeth Barrette, Sarah Bedard, Mario Constantineau, Karen Fleury,
Brenda Jain, Megan Martin, Jane Doe #29, Isabelle Paquette, Richard Parent, Roger
Robert Richard, Nicole Sincennes, Christine Vessia, Jane Doe #30, Pamela McIntyre,
(Public Services and Procurement Canada)**

- and -

Isabelle Denis, (Registrar of the Supreme Court of Canada)

- and -

Jane Bartmanovich, (Royal Canadian Mint)

- and -

Nicole Brisson, (Service Canada)

- and -

**Denis Audet, Mathieu Essiambre, Alain Hart, Andrea Houghton, Natalia Kwiatek,
Dany Levesque, David McCarthy, Pascal Michaud, Mervi Pennanen, Tonya Shortill,
Stephanie Tkachuk, Marshall Wright, (Shared Services Canada)**

- and -

**Eve Marie Blouin-Hudon, Marc-Antoine Boucher, Christopher Huszar, (Statistics
Canada)**

- and -

Steve Young, (Telestat Canada)

- and -

Nathan Aligizakis, Stephen Daniel, Alain Douchant, Krystal McColgan, Debbie Menard, Clarence Ruttle, Dorothy Barron, Robert McLachlan, (Transport Canada)

- and -

Scott Erroll Henderson, Denis Theriault, (Treasury Board of Canada)

- and -

Josiane Brouillard, Alexandra McGrath, Nathalie Ste-Croix, Jane Doe #31, (Veterans Affairs Canada)

- and -

Olubusayo (Busayo) Ayeni, John Doe #17, Cynthia Bauman, Jane Doe #32, , Laura Crystal Brown , Ke(Jerry) Cai, Nicolino Campanelli, Donald Keith Campbell, Colleen Carder, Kathy Carriere, Melissa Carson, David Clark, Bradley Clermont, Laurie Coelho, Estee Costa, Antonio Da Silva, Brenda Darvill, Patrick Davidson, Eugene Davis, Leah Dawson, Marc Fontaine, Jacqueline Genaille, Eldon Goossen, Joyce Greenaway, Lori Hand, Darren Hay, Krista Imiola, Catherine Kanuka, Donna Kelly, Benjamin Lehto, Anthony Leon, Akemi Matsumiya, Jane Doe #33, Jane Doe #34, Jane Doe #35, Anne Marie McQuaid-Snider, Lino Mula, Pamela Opersko, Gabriel Paquet, Christine Paquette, Carolin Jacqueline Paris , Jodie Price, Kevin Price, Giuseppe Quadrini, Saarah Quamina, Shawn Rossiter, Anthony Rush, Anthony Shatzko, Charles Silva, Ryan Simko, Norman Sirois, Brandon Smith, Catharine Spiak, Sandra Stroud, Anita Talarian, Daryl Toonk, Ryan Towers, Leanne Verbeem, Eran Vooys, Robert Wagner, Jason Weatherall, Melanie Burch, Steven Cole, Toni Downie , Amber Ricard, Jodi Stammers, (Canada Post)

- and -

Nicolas Bell, John Doe #18, John Doe #19, Jane Doe #36, John Doe #20, Paola Di Maddalena, Nathan Dodds, John Doe #21, Jane Doe #37, Nunzio Giolti, Mario Girard, Jane Doe #38, Jane Doe #39, You-Hui Kim, Jane Doe #40, Sebastian Korak, Ada Lai, Mirium Lo, Melanie Mailloux, Carolyn Muir, Patrizia Paba, Radu Rautescu, Aldo Reano, Jacqueline Elisabeth Robinson, John Doe #22, Frederick Roy, John Doe #23, Taeko Shimamura, Jason Sisk, Beata Sosin, Joel Szostak, Mario Tcheon, Rebecca Sue Thiessen, Jane Doe #41, Maureen Yearwood, (Air Canada)

- and -

John Doe #24, JOSÉE Demeule, Jacqueline Gamble, Domenic Giancola, Sadna Kassan, Marcus Steiner, Christina Trudeau, (Air Canada Jazz)

- and -

John Doe #25, Emilie Despres, (Air Inuit)

- and -

Rejean Nantel, (Bank of Montreal)

- and -

Lance Victor Schilka, (BC Coast Pilots Ltd)

- and -

Elizabeth Godler, (BC Ferries)

- and -

John Doe #26, Jane Doe #42, Tamara Davidson, Jane Doe #43, Karter Cuthbert Feldhoff de la Nuez, Jeffrey Michael Joseph Goudreau, Brad Homewood, Chad Homewood, Charles Michael Jefferson, John Doe #27, Janice Laraine Kristmanson, Jane Doe #44, Darren Louis Lagimodiere, John Doe #28, John Doe #29, Mirko Maras, John Doe #30, John Doe #31, John Doe #32, John Doe #33, John Doe #34, Jane Doe #45, John Doe #35, Kendal Stace-Smith, John Doe #36, Steve Wheatley, (British Columbia Maritime Employers Association)

- and -

Paul Veerman, (Brookfield Global Integrated Solutions)

- and -

Mark Barron, Trevor Bazilewich, John Doe #37, Brian Dekker, John Gaetz, Ernest Georgeson, Kyle Kortko, Richard Letain, John Doe #38, Dale Robert Ross, (Canadian National Railway)

- and -

Tim Cashmore, Rob Gebert, Micheal Roger Mailhiot, (Canadian Pacific Railway)

- and -

Karin Lutz, (DP World)

- and -

Crystal Smeenk, (Farm Credit Canada)

- and -

Sylvie M.F. Gelinass, Susie Matias, Stew Williams, (G4S Airport Screening)

- and -

Shawn Corman, (Geotech Aviation)

- and -

**Juergen Bruschkewitz, Andre Deveau, Bryan Figueira, David Spratt, Guy Hocking,
Sean Grant, (Greater Toronto Airports Authority)**

- and -

Dustin Blair, (Kelowna Airport Fire Fighter)

- and -

Hans-Peter Liechti, (National Art Centre)

- and -

**Bradley Curruthers, Lana Douglas, Eric Dupuis, Sherri Elliot, Roben Ivens, Jane Doe
#46, Luke Van Hoekelen, Kurt Watson, (Ontario Power Generation)**

- and -

Theresa Stene, Michael Dessureault, Adam Pidwerbeski, (Parks Canada)
-and-

John Doe #39, (Pacific Pilotage Authority)

- and -

Angela Gross, (Purolator Inc.)

- and -

Gerhard **Geertsema**, (**Questral Helicopters**)

- and -

Amanda **Randall**, Jane **Doe #47**, Frank **Veri**, (**RBC Royal Bank**)

- and -

James (Jed) **Forsman**, (**Rise Air**)

- and -

Jane **Doe #48**, (**Rogers Communications Inc**)

- and -

Jerrilynn **Rebeyka**, (**SaskTel**)

- and -

Eileen **Fahlman**, Mary **Treichel**, (**Scotiabank**)

- and -

Judah Gaelan **Cummins**, (**Seaspan Victoria Docks**)

- and -

Darin **Watson**, (**Shaw**)

- and -

Richard Michael Alan **Tabak**, (**SkyNorth Air Ltd**)

- and -

Deborah **Boardman**, Michael **Brigham**, (**Via Rail Canada**)

- and -

Kevin Scott **Routly**, (**Wasaya Airways**)

- and -

Bryce Sailor, (Waterfront Employers of British Columbia)

- and -

**Joseph Bayda, Jamie Elliott, John Doe #40, Randall Mengerling, Samantha Nicastro,
Veronica Stephens, Jane Doe #49, (WestJet)**

- and -

Melvin Gerein, (Westshore Terminals)

PLAINTIFFS

AND:

**Her Majesty The Queen, Prime Minister Justin Trudeau, Deputy Prime Minister and
Minister of Finance Chrystia Freeland, Chief Medical Officer Teresa Tam, Minister of
Transport Omar Alghabra, Deputy Minister of Public Safety Marco Mendicino, Johns
and Janes Doe**

DEFENDANTS

STATEMENT OF CLAIM

(Pursuant to s.17 (1) and (5)(b) *Federal Courts Act*,
and s.24(1) and 52 of the *Constitution Act, 1982*)

(Filed this 30th day of May, 2022)

R.G.

TO THE DEFENDANT:

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

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

FORM 171ARule 171
Statement of Claim

(General Heading — Use Form 66)
(Court seal)

Statement of Claim

TO THE DEFENDANT:

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

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

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

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

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

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

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

(Date)

Issued by:

(Registry Officer)
Address of local office:

TO: (Name and address of each defendant)

(Separate page)

h.c.

~~Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.~~

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

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

Date: **MAY 30 2022**

Issued by:

Nicole Hradsky

Address of local office:

**NICOLE HRADSKY
REGISTRY OFFICER
AGENT DU GREFFE**

Federal Court of Canada
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

TO: Department of Justice Canada
Ontario Regional Office
120 Adelaide Street West
Suite #400
Toronto, Ontario
M5H 1T1

CLAIM

1. The Plaintiffs claim:

(a) Declarations that the “Covid-vaccine mandates” announced, promulgated and enforced by Federal Regulations and Executive decree by the Defendants and their officials and administrations are unconstitutional and of no force and effect in that:

- (i) There is no jurisdiction under s.91 of the *Constitution Act, 1867* to decree any medical treatment whatsoever as this lies, subject to constitutional restraint(s), within the exclusive jurisdiction of the Provinces;
- (ii) That any purported or pretended power, under the emergency branch of P.O.G.G (Peace, Order and and Good Government) can only be done by Legislation, with the invocation, subject to constitutional constraints, of the *Emergencies Act (R.S.C., 1985, c. 22 (4th Supp.))*;
- (iii) That the *Regulations* and Executive decrees mandating such “vaccine mandates” are improper delegation, and constitute “dangling” *Regulations*, not tied to any *Act* of Parliament;
- (iv) That, in any event, any purported mandatory, or coerced *de facto* mandatory vaccine mandates violate ss. 2, 6, 7, and 15 of the *Charter*, as enunciated, *inter alia*, by the Ontario Court of Appeal in *Fleming v. Reid* (1991) 4 O.R. (3d) 74 and in the Supreme

Court of Canada in *Morgentaler (1988)*, *Rodriguez (1993)* and *Rasouli (2013)*, and *Carter (2005)*;

- (v) That any purported mandatory, or coerced *de facto* mandatory vaccines violate ss.2 and ss 7 of the *Charter*, as enunciated, *inter alia*, by the Ontario Court of Appeal in *Fleming v. Reid*, and the Supreme Court of Canada in *Morgentaler (1988)*, *Rodriguez (1993)* violate international treaty norms which constitute *minimal* protections to be read into s.7 of the *Charter* as ruled, *inter alia*, by the Supreme Court of Canada in *Hape*, and the Federal Court of Appeal in *De Guzman*;

- (b) A further Declaration that Policy on *COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police*, purportedly issued pursuant to *sections 7 and 11.1 of the Financial Administration Act*, stipulating that Employment Insurance benefits are to be denied to anyone dismissed from their employment for refusing to be “vaccinated” with the COVID-19 inoculations is unconstitutional in that:

- (i) There is no jurisdiction under s.91 of the *Constitution Act, 1867* to decree any medical treatment whatsoever as this lies, subject to constitutional restraint(s), within the exclusive jurisdiction of the Provinces;
- (ii) The Pre-*Charter* constitutional rights to freedom of conscience and religion as pronounced by the Supreme Court of Canada in, *inter alia*,

Switzman v Elbing and A.G. of Quebec, [1957] SCR 285 and *Saumur v City of Quebec, 2 S.C.R. 299*;

- (iii) violates the rights, under s.2 of the *Charter*, as well as s.1 under the *Canadian Bill of Rights (1960)* to freedom of conscience, belief, and religion;
 - (iv) violates s.7 of the *Charter* in violating the right to bodily and psychological integrity, as manifested in the constitutionally protected right to informed, voluntary, consent to any medical treatment and procedure, as well as violating international treaty rights, protecting the same right(s) which protections must be read in as minimal protection under s.7 of the *Charter* in accordance with, *inter alia*, *Hape (SCC)* and *De Guzman (FCA)*;
- (c) a further declaration that the mandatory and/or coerced *de facto* mandatory medical treatment, in the absence of informed, voluntary consent, in this case covid-“vaccines”, and PCR and other mRNA and RNA testing, constitute a Crime Against Humanity under international treaty and customary law, thereby making an offence under the *War Crimes and Crimes Against Humanity Act* in Canada;
- (d) a further declaration that promoting, and executing, PCR testing constitutes a criminal act under sections 3 - 5 and s.7 of the *Genetic Non-Discrimination Act (S.C. 2017, c. 3)*, and counselling and aiding and abetting a criminal act under s. 126 of the *Criminal Code of Canada*, to wit, disobeying a statute;
- (e) a further declaration that the introduction of “vaccine passports”, and their compulsory use to obtain goods and services, as well as travel on trans-provincial

routes by air, train, and water vehicles, is unconstitutional and of no force and effect in violating:

- (i) ss.6 and 7 of the *Charter*;
- (ii) violating s.9 of the *Charter*;
- (iii) violating the pre-*Charter*, recognized rights on “the liberty of the subject” remedied by way of *habeas corpus*.

(f) a further declaration that **Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No.61**, requiring covid “vaccination” and masking on planes, trains and boats is unconstitutional and of no force and effect in that:

- (i) There is no jurisdiction under s.91 of the *Constitution Act, 1867* to decree any medical treatment whatsoever as this lies, subject to constitutional restraint(s), within the exclusive jurisdiction of the Provinces;
- (ii) That any purported or pretended power, under the emergency branch of P.O.G.G (Peace, Order and and Good Government) can only be done by Legislation, with the invocation, subject to constitutional constraints, of the *Emergencies Act (R.S.C., 1985, c. 22 (4th Supp.))*;
- (iii) That the *Regulations* and Executive decrees mandating such “vaccine mandates” are improper delegation, and constitute “dangling” *Regulations*, not tied to any *Act* of Parliament;
- (iv) That, in any event, any purported mandatory, or coerced *de facto* mandatory vaccine mandates violate ss. 2, 6, 7, and 15 of the *Charter*,

as enunciated, *inter alia*, by the Ontario Court of Appeal in *Fleming v. Reid* (1991) 4 O.R. (3d) 74 and in the Supreme Court of Canada in *Morgentaler (1988)*, *Rodriguez (1993)* and *Rasouli (2013)*, and *Carter (2005)*;

- (v) That any purported mandatory, or coerced *de facto* mandatory vaccines violate ss.2 and ss 7 of the *Charter*, as enunciated, *inter alia*, by the Ontario Court of Appeal in *Fleming v. Reid*, and the Supreme Court of Canada in *inter alia*, *Morgentaler (1988)*, *Rodriguez (1993)*, and *Carter (2005)* violate international treaty norms which constitute *minimal* protections to be read into s.7 of the *Charter* as ruled, *inter alia*, by the Supreme Court of Canada in *Hape*, and the Federal Court of Appeal in *De Guzman*;
- (vi) There is no jurisdiction under s.91 of the *Constitution Act, 1867* to decree any medical treatment whatsoever as this lies, subject to constitutional restraint(s), within the exclusive jurisdiction of the Provinces;
- (vii) The Pre-*Charter* constitutional rights to freedom of conscience and religion as pronounced by the Supreme Court of Canada in, *inter alia*, *Switzman v Elbing and A.G. of Quebec, [1957] SCR 285* and *Saumur v City of Quebec, 2 S.C.R. 299*;
- (viii) violates the rights. under s.2 of the *Charter*, as well as s.1 under the *Canadian Bill of Rights (1960)* to freedom of conscience, belief, and religion;

- (ix) violates s.7 of the *Charter* in violating the right to bodily and psychological integrity, as manifested in the constitutionally protected right to informed, voluntary, consent to any medical treatment and procedure, as well as violating international treaty rights, protecting the same right(s) which protections must be read in as minimal protection under s.7 of the *Charter* in accordance with, *inter alia*, *Hape (SCC)* and *De Guzman (FCA)*;
 - (x) violating ss.6 and 7 of the *Charter*;
 - (xi) violating s.9 of the *Charter*;
 - (xii) violating the pre-*Charter*, recognized rights on “the liberty of the subject” remedied by way of *habeas corpus*.
- (b) a further declaration that the use of the PCR test, as a pre-cursor to imposing Quarantine, violates s.14 of the *Quarantine Act (S.C. 2005, c. 20)*;
- (c) a further declaration that Her Majesty the Queen’s servants, officials, and agents, in doing so, engaged in the following:
- (i) A contravention of s.126 of the *Criminal Code of Canada* in (knowingly) “disobeying a statute”;
 - (ii) Counselling and aiding and abetting a criminal offence, contrary to s.126 of the *Criminal Code of Canada*, for violating the criminal provisions under s. 3-5 and 7 of the *Genetic Non-Discrimination Act (S.C. 2017, c. 3)*;
 - (iii) The tort of abuse of process and malicious prosecution in charging those who refused such PCR tests with quasi-criminal offences and fines;

(d) a further declaration that the creation of a “vaccine passport” to travel

domestically as well as to enter and leave Canada, violates the Plaintiffs’;

- (i) Pre-*Charter* right to enter and leave, pursuant to the *Magna Carta* as read in through the Pre-amble to the *Constitution Act, 1867*;
- (ii) The rights contained in ss. 6 and 7 of the *Charter*;
- (iii) By international treaty law, as to be read in as a minimal protection under s. 7 of the *Charter* pursuant to, *inter alia*, *Hape* (SCC) and *De Guzman (FCA)*;

(e) a further declaration that there is no rational connection between being vaccinated or not, in terms of avoiding or preventing transmission of the COVID virus, and thus, in drawing a distinction and consequent punitive and depriving measures against the unvaccinated, violates their rights to equality, both pre-*Charter*, as well as under s. 15 of the *Charter*.^b

2. The Plaintiffs further seek:

- (a) The re-instatement of their (employment) positions, *nunc pro tunc*, to the day prior to their being mandatorily placed on leave without pay and subsequently dismissed from their position(s);
- (b) Back-pay from their last day of paid employment to the date of judgment with:
 - (i) Corresponding benefits and financial contribution commiserate with that back-pay including, but not restricted to, pension earning, sick days and other benefits;
 - (ii) Re-instatement at the advanced level they would likely have attained by the date of judgment;

All in accordance with the Supreme Court of Canada ruling in, *inter alia*, **Proctor v. Sarnia Board of Commissioners of Police** [1980] 2 S.C.R. 72;

3. The Plaintiffs further seek, from the Defendants, monetary damages, as follows:
 - (a) For each Plaintiff in general damages as follows:
 - (i) \$100,000 under the tort of misfeasance in public office by the named and unnamed Johns and Janes Doe public officer holders;
 - (ii) \$50,000 each against the Defendants under the tort of intimidation;
 - (iii) \$100,000 each against the Defendants under the tort of conspiracy to deprive them of their constitutional rights;
 - (iv) \$100,000 each, for the actions of Her Majesty the Queen's officials, servants, and agents, in the tort of constitutional violations in violating the Plaintiffs' pre-**Charter** constitutional rights, to freedom of belief, conscience, and religion, violating of their s.2 **Charter** rights to conscience, religion and religion, as well as violation of their s.7 **Charter** rights to bodily and psychological integrity, in violating consent to medical treatment and procedure with respect to COVID-19 "vaccines" and "PCR" testing as well as breach of the right to pre-**Charter** equality as well as section 15 of the **Charter** based on medical status which damages are required to be paid for by the Crown as ruled and set out by the SCC in **Ward v. City of Vancouver**;
 - (v) \$200,000 each per Plaintiff for the intentional infliction of mental distress and anguish to the Plaintiffs by the Defendants;
 - (b) Punitive damages in the amount of \$100,000 per plaintiff for the Defendants callous violation of the Plaintiffs' constitutional rights whereby the Defendants

knew, or had a reckless and wanton disregard to, the fact that they were violating the Plaintiffs' constitutional and statutory rights under Acts of Parliament.

4. The Plaintiffs further seek:

- (a) An interim stay/injunction of the Federal "vaccine mandates" and "passports" *nunc pro tunc*, effective the day before they were announced and/or implemented;
- (b) A final stay/injunction of the Federal "vaccine mandates" and "passports" *nunc pro tunc*, effective the day before they were announced and/or implemented.

5. The Plaintiffs seek costs of this action and such further and/or other relief as this Court deems just.

THE PARTIES

- **The Plaintiffs**

6. The Plaintiffs are all either:

- (a) Federal (former) Employees of various agencies and Ministries of the Government of Canada and servants, officials, and/or agents of the Crown;
- (b) Employees of Federal Crown Corporations; and
- (c) Employees of federally regulated sectors;

As set out and categorized in the style of cause in the within claim.

7. Most of the Plaintiffs were sent home on "leave without pay" and/or subsequently fired for refusing to take the COVID-19 "vaccines" (inoculations) whether or not they were working from home, and/or further refused to multi-weekly PCR testing in order to continue working. All Plaintiffs were placed on leave without pay and fired

- pursuant to the purported dictate of the *Financial Administration Act* with respect to Covid-19 “vaccines”, purportedly mandated by the Treasury Board.
8. Some Plaintiffs are/were on medical leave but declined to take the covid-vaccine, particularly of which will be furnished subsequent to the issues of the within Statement of Claim. Some Plaintiffs due to the coercive illegal and unconstitutional actions and dictates of the Defendants and their officials took, under that duress, early and involuntary retirement, particulars of which will be furnished subsequent to the issuance of the within Statement of Claim.
 9. All the Plaintiffs possess a conscientious and/or physical /medical reason for refusing to take the COVID-19 “vaccines” (inoculations).
 10. While “exemptions” to these “mandatory vaccine mandates” exist, in theory, all of the Plaintiffs who sought an exemption were arbitrarily denied without reasons. The Plaintiffs further state that there is no obligation to seek any exemption before refusing the vaccines.
 11. All the Plaintiffs are ineligible for Employment Insurance benefits because they were dismissed for refusing the “vaccines” (Inoculations).
 12. All of the Plaintiffs wish to exercise their ss. 6 and 7 of the *Charter* rights to travel within Canada, as well as abroad, which is barred to them by virtue of a non-possession of a “vaccine passport”.

- **The Defendants**

13. The Defendant, Justin Trudeau, is the current Prime Minister of Canada, and as such, a holder of a public office, and a primary propagator of the federal “vaccine mandates”.
14. Deputy P.M Minister of Finance Crystia Freeland, and as such, a holder of public office, and a primary propagator of the federal “vaccine mandates”.
15. The Defendant, Dr. Theresa Tam, is Canada’s Chief Public Health Officer and as such a holder of a public office, centrally responsible for “vaccine mandates”.
16. Marco Mendicino is Canada’s Minister of Public Safety and, as such a holder of public office, and responsible for the enforcement of the “vaccine mandates”.
17. The Defendant Omar Alghabra is the Federal Minister of Transport, as such a holder of public office, and responsible for the enforcement of the “vaccine mandates” with respect to travel within and outside Canada.
18. The Defendants Johns and Janes Doe, are Federal Administrators who implement and enforce the illegal and unconstitutional “vaccine mandates and passports” announced, issued and implemented by the other Defendants.
19. All the Defendants have knowingly, expressly, and through their actions planned, executed, and continue to enforce a coercive and *de facto* mandatory vaccine mandate, under the threat and actual firing the Plaintiffs from their employment, and further barring the Plaintiffs from their employment insurance benefits for refusing the vaccine, and further barring the Plaintiffs from traveling within and outside Canada on planes, trains and boats.

20. The Defendant Her Majesty the Queen in Right of Canada, is statutorily and constitutionally liable for the acts and omissions of her officials, particularly with respect to *Charter* damages as set out by the SCC in, *inter alia*, *Ward v. City of Vancouver*, without the necessity of *mala fides*.
21. The Defendant Attorney General of Canada is, constitutionally, the Chief Legal Officer, responsible for and defending the integrity of all legislation, and Federal executive action and inaction, as well as responding to declaratory relief, including with respect constitutional declaratory relief, and required to be named as a Defendant in any action for declaratory relief.

THE FACTS

22. The facts of this case are as set out below.
23. All the Plaintiffs were sent home on “leave without pay” and/or subsequently fired for refusing to take the COVID-19 “vaccines” (inoculations) whether or not they were working from home, and/or further refused to multi-weekly PCR testing, at their own expense, in order to continue working. This, pursuant to the dictates set out, purportedly, under ss.7 and 11 of the **Financial Administration Act**.
24. All the Plaintiffs possess a conscientious and/or physical /medical reason for refusing to take the COVID-19 “vaccines” (inoculations).
25. While “exemptions” to these “mandatory vaccine mandates” exist, in theory, all of the Plaintiffs who sought an exemption were arbitrarily denied without reasons. The Plaintiffs further state that there is no obligation to seek any exemption before refusing the vaccines.

26. Some Plaintiffs are/were on medical leave but declined to take the covid-vaccine, particularly of which will be furnished subsequent to the issues of the within Statement of Claim. Some Plaintiffs due to the coercive illegal and unconstitutional actions and dictates of the Defendants and their officials took, under that duress, early and involuntary retirement, particulars of which will be furnished subsequent to the issuance of the within Statement of Claim.
27. All the Plaintiffs are ineligible for Employment Insurance benefits because they were dismissed for refusing the “vaccines” (Inoculations).
28. In particular, the following Plaintiffs:
- (a) Shauna Lee Leclair and Anne Cheng resigned early and involuntarily under duress, under threat of being fired if they did not vaccinate;
 - (b) Patrick Roy took the vaccine under duress and involuntarily;
 - (c) Jacqueline Robinson, Monique Harris, and Nathan Aligizakis, along with other Plaintiffs, submitted exemptions and were denied.
29. All the Plaintiff John and Jane Does have initiated this proceeding as John and Jane Does due to their *bona fide* and reasonable fear of negative repercussions, as well as family and societal stigma and vilification from being identified, publicly, as “anti-vaxxers”.
30. All of the Plaintiffs wish to exercise their ss. 6 and 7 of the *Charter* rights to travel within Canada, as well as abroad, which is barred to them by virtue of a non-possession of a “vaccine passport”, notwithstanding that airlines and foreign countries of destination do not require nor do the airlines.

31. All the Defendants have knowingly, expressly, and through their actions planned, executed, and continue to enforce a coercive and *de facto* mandatory vaccine mandate, under the threat and actual firing the Plaintiffs from their employment, and further barring the Plaintiffs from their employment insurance benefits for refusing the vaccine, and further barring the Plaintiffs from traveling within and outside Canada on planes, trains and boats.

• **The “Pandemic” and its Measures**

32. The Plaintiffs state, and the fact is, that there is no, and there has not been, a “COVID-19 pandemic” beyond and/or exceeding the consequences of the fall-out of the pre-covid annual flu or influenza.

33. The Plaintiffs further state that, since early 2020, to the present, being three (3) flu seasons, the purported deaths resulting from complications of the COVID-19 have **not** been any marginally higher than the annual deaths from complications of the annual influenza.

34. The fact, and data is, that the COVID-19 measures have caused, to a factor of a minimum of five (5) to one (1), **more deaths** than the actual purported COVID-19 has caused. Given the admittedly high death/injury rates as a result of the cover 19 vaccines, and the most affected age groups, and given the most recent definition of what is required to be “up to date”, namely:

(a) for people who are moderately or severely immunocompromised– five (5) doses;
and

(b) for adults ages 60 and over and First Nation, Inuit and Métis individuals and their non-Indigenous household members – four (4) doses; and

- (c) for adults up to 59 years of age – four (3) doses; and
 - (d) children, ages 12 to 17 – three (3) doses;
- that this vaccine agenda is turning into a *de facto* eugenics agenda. The number of doses is forecast to increase every three (3) months.
35. The facts are that in Canada, 86% of all purported deaths have occurred in long-term care (LTC) facilities at an average age of 83.4 years, which exceeds the general life expectancy of Canadians, of age 81.
 36. The Defendant officials scandalously claim that, during COVID-19 pandemic there have been **no** annual flus.
 37. In Canada, no person under age 19 has died from COVID-19, as the primary cause of death (without co-morbidities).
 38. The death rate for those who have contracted the COVID-19 virus has been 0.024 % (one quarter of one percent) for adults, and 0.0 % (zero) for children.
 39. The Defendants and their officials falsely claim that Canada's death rate from Covid-19, being no higher than the complications of the annual flu, is because of the measures taken. This is wild speculation and incantation which could only be proven by comparison of jurisdictions (states and countries) which have taken **no or little** COVID measures against countries, such as Canada, who have taken severe measures.
 40. A comparison of jurisdictions (such as some U.S. states) and 14 other countries who took no or little covid-19 measures shows that those jurisdictions and countries taking no or little measures fared just as well, and in fact **better** than countries such as Canada.

- **The Case Counts**

41. The Defendants, as well as provincial authorities, have based all their rationale and measures, with respect to Covid-19, tied to the “case counts” of positive testing for the Covid virus (SARS-CoV-2).
42. Case counts are based on “positive” PCR tests. “PCR” test, which when run **above a “35 threshold cycle”**, have been found, by various court jurisdictions, and the avalanche of scientific data and expertise, to produce a **96.5% “false positive” rate**. This means that for every 100 “positive” cases announced, there are only 3.5 actual positive “cases”.
43. In Canada, PCR testing is conducted at 43 to 47 threshold cycle rates, well above the 35-threshold cycle rate. These cycle rates are not cumulative but exponential with each cycle exponentially distorts and magnifying the false positive rate.
44. The PCR tests, according to its inventor, Kary Mullis, who won the Nobel Prize for inventing the PCR test who, was unequivocally and adamantly loud, before his death in October, 2019, that his PCR machine and test does **not** and **cannot** identify *any* virus, but is merely a screening test which must be followed by a culture test (of attempting to reproduce the virus) and concurrent blood (anti-body test), in order to determine whether that virus identified in the PCR test is dead (non-infectious) or alive (infectious). This is the so-called “gold standard” to verify the existence of any virus. This is **not** done in Canada with respect to the SARS-CoV-2.
45. The fact is that, above and beyond all the above, the virus, SARS-CoV-2 has **not** yet been identified or isolated anywhere in the world.

- **The COVID-“Vaccines” (Inoculations)**

46. The COVID-19 “vaccines” are not “vaccines”. They have not gone through the required protocols nor trials. Their human trials are to end in 2023. They are “emergency use” “medical experimentation” as medically and historically understood.
47. Therefore, at this moment, they are admittedly “medical experimentation”. Medical experimentation without voluntary, informed, consent, is a Crime Against Humanity born out of the Nuremberg Code, following the Nazi experimentation under the Nazi regime. They are also contrary to the Helsinki Declaration (1960).
48. Statistics, from Pfizer post-authorization data, in part, show that:
 - (a) Of a group of 40,000 participants (with a significant number receiving “placebos”), there were 1,223 deaths;
 - (b) That 10% of pregnant women spontaneously aborted, with an extreme number of still-born deaths of vaccinated pregnant women; and
 - (c) a long list of severe, permanent side-effects.
49. The Plaintiffs further state, and fact is, that according to Public Health officials, including the Defendant, Teresa Tam:
 - (a) The COVID-19 “vaccines” do **NOT** prevent transmission of the virus, even as between vaccinated and vaccinated individuals;
 - (b) That the “vaccines” merely suppress symptoms;
 - (c) That, in order to maintain a “vaccinated status”, a “booster” shot of the useless and ineffective “vaccines”, must be taken every three (3) months, projected to

continue, judging by the number of vaccines Justin Trudeau announced that he procured from Pfizer, until the year 2025;

- (d) That the variants require these boosters and public health officials falsely claim that the “unvaccinated” are causing the “variants”.

50. The Plaintiffs state, and the fact is, that internationally renowned experts, including a Nobel Prize winner in virology, Luc Montagnier, adamantly state and warn that it is **the “vaccines”** which are creating the “variants”.

51. The Plaintiffs state, and the fact is, that on the Defendants’ own assessment and claim there is:

- (a) No correlation between transmission as between the vaccinated and unvaccinated;
- (b) COVID “vaccines” do not prevent transmission nor immunize the vaccinated against the virus;
- (c) That the “vaccines” merely suppress the virus symptoms;
- (d) That the “vaccines” effectiveness at even suppressing the symptoms are at best, 90 days (3 months).

The plaintiffs therefore state, and the fact is, that the measures taken are irrational, arbitrary, and violate the Plaintiff’s rights to equal treatment before the law, as well as violate s.15 of the *Charter*.

- **Tortious Conduct (at Common Law) Inflicted Against the Plaintiffs**

- **Misfeasance of Public Office**

52. The Plaintiffs state, and fact is, that the Defendants, Justin Trudeau, Teresa Tam, and the other Co-Defendants have knowingly engaged in misfeasance of their public office, and abuse of authority, through their public office, as contemplated and set out by the Supreme Court of Canada in, *inter alia*, *Roncarelli v. Duplessis*, [1959] S.C.R. 121 *Odhavji Estate v. Woodhouse* [2003] 3 S.C.R. 263, 2003 SCC 69 by knowingly:

- (a) Exercising a coercive power to force unwanted “vaccination” knowing that:
 - (i) It is not a power section 91 of the *Constitution Act, 1867* grants the Federal Government as medical treatment is a matter of exclusive Provincial legislation, absent legislation and declaration of the *Emergencies Act*, subject to constitutional constraints. as set out and noted in the *Emergencies Act* itself;
 - (ii) Such coercive mandates and measures violate ss.2, 6, 7, and 15, of the *Charter*;
 - (iii) Such coercive measures violate the *Genetic Non-Discrimination Act*;
 - (iv) Such coercive measures violate international (treaty) norms and rights, which norms and rights are read into s. 7 of the *Charter*;
 - (v) Such coercive measures in ignoring the statutory prohibitions, further constitute offences under **the Criminal Code of Canada**, including: disobeying a statute (s. 126) and Extortion (s. 346);

- (vi) That such coercive measures were planned, executed, and implemented knowingly and perpetual statements and threats by Justin Trudeau and other Defendants that, “not vaccinating will carry consequences”;
- (vii) By coercive statements such as by Trudeau that: “The bottom line is if anyone who doesn't have a legitimate medical reason for not getting fully vaccinated chooses to not get vaccinated, there will be consequences”;
- (viii) By further inflammatory statements by Trudeau made on or about September 16, 2021 that persons who decline the vaccines: “Don’t believe in science, they’re often misogynists, also often racists,”. “It’s a small group that muscles in, and we have to make a choice in terms of leaders, in terms of the country. Do we tolerate these people?”

53. The Plaintiffs further state, and the fact is, that as a result of this misfeasance of public office, the Plaintiffs have been caused damages, including, but not restricted to:

- (a) Loss of their livelihood;
- (b) Mental anguish and distress;
- (c) Loss of dignity and discrimination based on their medical status;
- (d) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

▪ **Conspiracy**

54. The Plaintiffs further state that the Defendants, through their statements, actions, and co-ordinated actions and offices, are engaging in the tort of conspiracy as set out, *inter alia*, by the Supreme Court of Canada in *Hunt v. Carey Canada Inc [1990] 2 S.C.R. 959* in that:

- (a) the means used by the defendants are lawful or unlawful, the predominant purpose of the defendants' conduct is to cause injury to the plaintiff; or,
- (b) where the conduct of the defendants is unlawful, the conduct is directed towards the plaintiff (alone or together with others), and the defendants should know in the circumstances that injury to the plaintiff is likely to and does result.

The Defendants do so through the implementation of coercive and damaging measures, including the infliction of a violation of their constitutional rights, as set out above in the within statement of claim; and/or which has caused the Plaintiffs damages including, but not restricted to:

- (c) Loss of their livelihood;
- (d) Mental anguish and distress;
- (e) Loss of dignity and discrimination based on their medical status;
- (f) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

55. The Plaintiffs state, and the fact is, that this conspiracy, between the named, and unnamed Johns and Janes Doe administrators, is borne out, by way of:

- (a) Public statements by Trudeau and other Defendants that “not vaccinating will carry consequences”;

- (b) That those who decline vaccines "Don't believe in science, they're often misogynists, also often racists," "It's a small group that muscles in, and we have to make a choice in terms of leaders, in terms of the country. Do we tolerate these people?"
- (c) It is not a power section 91 of the *Constitution Act, 1867* grants the Federal Government, absent legislation and declaration of the *Emergencies Act*, subject to constitutional constraints as set out as redundantly noted in the *Emergencies Act*;
- (d) Such coercive mandates and measures violate ss.2, 6, 7, and 15, of the *Charter*;
- (e) Such coercive measures violate the *Genetic Non-Discrimination Act*;
- (f) Such coercive measures violate international (treaty) norms and rights, which norms and rights are read into s. 7 of the *Charter*;
- (g) Such coercive measures in ignoring the statutory prohibitions, further constitute offences under *the Criminal Code of Canada*, including: disobeying a statute (s. 126) Extortion (s. 346);
- (h) That such coercive measures were planned, executed, and implemented knowingly through the actions of the Defendants and perpetual statements, and threats, by Justin Trudeau and other defendants that, "not vaccinating will carry consequences".

• **Intimidation (through Third Parties)**

56. The Plaintiffs state, and fact is, that the Defendants, Justin Trudeau, Teresa Tam, and other Co-Defendants, in:

- (a) Making their public threats of “consequences” for not “vaccinating”; and
- (b) In implementing vaccine employment requirements of take the “jab or lose your job”; and
- (c) Making such statements that those who decline vaccines: “Don’t believe in science, they’re often misogynists, also often racists,” “it’s a small group that muscles in, and we have to make a choice in terms of leaders, in terms of the country, do we tolerate these people?”
- (d) In then mandatorily drafting third parties such as government agencies, Crown corporations, and federally regulated sectors, into implementing those knowingly coercive, illegal, and unconstitutional measures in, and outside Canada;

Are liable in the tort of intimidation as set out in, *inter alia*, by the Court of Appeal of Ontario in *McIlvenna v. 1887401 Ontario Ltd.*, 2015 ONCA 830, and other Supreme Court of Canada jurisprudence, as follows:

[23]The tort of intimidation consists of the following elements:

- (a) a threat;
- (b) an intent to injure;
- (c) some act taken or forgone by the plaintiff as a result of the threat;
- (d) as a result of which the plaintiff suffered damages;

Score Television Network Ltd. v. Winner International Inc., 2007 ONCA 424, [2007] O.J. No. 2246, at para. 1; see also Central Canada Potash Co. v. Saskatchewan, 1978 CanLII 21 (SCC), [1979] 1 S.C.R. 42. Although the pleading of intimidation is most frequently seen in the context of economic torts, the business context is not an essential element of the tort.

which has caused the Plaintiffs damages including, but not restricted to:

- (e) Loss of their livelihood;
- (f) Mental anguish and distress;
- (g) Loss of dignity and discrimination based on their medical status;
- (h) Violation and forfeiting their constitutional rights under ss.2, 6, 7, and 15 of their *Charter* rights;
- (i) The forfeiting of their chosen vocations.

57. The Plaintiffs state that, in exercising their constitutional right(s) to choose not to take the Covid-19 “vaccines” they have been forced to forfeit those ss. 2, 6, 7, and 15 *Charter* rights and forced to forfeit their livelihood in their federal or federally regulated employment which has led to the suffering of damages as set out above in the within statement of claim.

• **Intentional Infliction of Mental Anguish**

58. The Plaintiffs state, and the fact is, that the Defendants, through their illegal and unconstitutional “vaccine” and other Covid-19 mandates and “passports”, have knowingly inflicted mental anguish on the Plaintiffs, as one of the “consequences” of exercising their constitutionally protected right(s) to decline any medical treatment and/or procedure based on the constitutionally protected right to informed, voluntary, consent.

59. The Plaintiffs further state, and the fact is, that they are knowingly inflicting this mental anguish and distress, which is manifested by:

- (a) The Defendants’ public statements that they know that they cannot “force” mandatory vaccination as it is unconstitutional;

- (b) However, that not “voluntarily” “vaccinating” will “have consequences”, which renders the decision involuntary through coercion and equally unconstitutional conduct, as set out by the Supreme Court of Canada in, *inter alia*, in the *Morgentaler* case;
- (c) By stating that those who decline vaccines: “Don’t believe in science, they’re often misogynists, also often racists.”. “It’s a small group that muscles in, and we have to make a choice in terms of leaders, in terms of the country. Do we tolerate these people?” Thus vilifying and making the Plaintiffs the objects of disdain, disgust and abuse, which furthers the mental anguish and anxiety.
- (d) Exercising a coercive power to force unwanted vaccination knowing that:
- (i) It is not a power section 91 of the *Constitution Act, 1867*, grants the Federal Government, absent legislation and declaration of the *Emergencies Act*, subject to constitutional constraints as set out and noted in the *Emergencies Act*;
 - (ii) It is an issue already judicially determined to violate s. 7 of **Charter** and not saved by s. 1, as already ruled by, *inter alia*, by the Ontario Court of Appeal in *Fleming v. Reid* (1991) 4 O.R. (3d) 74 and in the Supreme Court of Canada in *Morgentaler (1988)*, *Rodriguez (1993)* and *Rasouli (2013)*, and *Carter (2005)* (at paragraph 67);
60. The Plaintiffs state, and the fact is, that such coercive and unconstitutional conduct, and infliction of mental anguish and distress, includes the prohibition of applying for Employment Insurance benefits if dismissed for exercising their right(s) to informed,

voluntary, consent with respect to medical treatment and/or procedure, as well as being vilified as “anti-vaxxers” and prohibited from travel.

- **Violation of Constitutional Rights**

- **Freedom of Conscience, Belief, and Religion (S. 2 of the *Charter*)**

61. The Plaintiffs state, and the fact is, that their pre-*Charter*, recognized constitutional right(s) to freedom of conscience, belief, and/or religion have been violated, as set out by the Supreme Court of Canada in, *inter alia*, *Switzman, v Elbing* and *Saumar v City of Quebec*, recognized as **rights** through the pre-amble of the *Constitution Act, 1867*.

62. The Plaintiffs further state, that these rights are mirrored in s. 2 of the *Charter*, and s.1 of the *Canadian Bill of Rights* (1960) and further violate those rights.

63. The Plaintiffs state, and the fact is, that the sincerely held belief of one (1) single individual, in the absence of a large group sharing that belief, is constitutionally protected under s. 2 of the *Charter*, as set out by the Supreme Court of Canada in, *inter alia*, *Big M Drug Mart*.

64. The Plaintiffs state, as a result of this violation, the Plaintiffs have suffered damages, including, but not limited to:

- (a) Loss of their employment;
- (b) Mental anguish and distress;
- (c) Loss of dignity and discrimination based on their medical status;
- (d) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

For which they seek damages under s. 24(1) of the *Charter* because these violations are not saved by s. 1 of the *Charter*, which damages are payable and must be paid, by the Crown, as set out by the Supreme Court of Canada in, *inter alia*, the *Ward v City of Vancouver* case.

- **Life, Liberty, and Security of the Person (s.7 of the *Charter*)**

65. The Plaintiffs further state, and the fact is, that the Ontario Court of Appeal, and other Appellate Courts, as well as the Supreme Court of Canada, have clearly ruled that:

- (a) s.7 of the *Charter*, protects a person's physical and psychological integrity;
- (b) s.7 of the *Charter*, in that broad context, also protects the right to informed, voluntary, consent, to any medical treatment and/or procedure, and equally s. 7 *Charter* protected rights to refuse any medical treatment or procedure; that the Defendants are fully aware of the above and do not care, callously ignore, and violate the right of the Plaintiffs; and
- (c) The Defendants hide behind a transparent Fig-leaf that while not "mandatory", failure to vaccinate "has (coercive and seismic) consequences" which coercive measures amount to making the vaccine mandates, and vaccines mandatory and unconstitutional as enunciated by the Supreme Court of Canada in, *inter alia*, the *Morgentaler*, *O'Connor* cases as well as the *Carter* decision.

66. The Plaintiffs state, as a result of this violation, the Plaintiffs have suffered damages, including, but not limited to:

- (a) Loss of their employment;
- (b) Mental anguish and distress;
- (c) Loss of dignity and discrimination based on their medical status;

(d) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

For which they seek damages under s. 24(1) of the *Charter* because these violations are not saved by s.1 of the *Charter*, which damages are payable and must be paid, by the Crown, as set out by the Supreme Court of Canada in, *inter alia*, the *Ward v City of Vancouver* case.

• **Ss. 6 and 7 of the *Charter* – Vaccine Passports – Travel Bans**

67. The Plaintiffs further state that “vaccine passports” further violate their explicit right(s) under s.6 and 7 of the *Charter* granting them mobility of travel, domestically and internationally, which violations are arbitrary (contrary to s.7), irrational, and disproportionate, and thus fail any s.1 fundamental justice, or s.1 *Charter* analysis, in that:

- (a) The Defendants admit, in their public statements, and scientific data, and science confirms, that transmission of the virus as between the vaccinated-to-vaccinated and vaccinated-to-unvaccinated, and *vice versa*, is NOT prevented by the COVID-19 “vaccines” (inoculations);
- (b) That there is NO rational connection between being **unvaccinated** and higher risks of transmission;
- (c) That the punitive bar to travel and board planes, trains, and boats is simply an irrational, arbitrary, over-reaching **punitive** dispensation of *Charter* violations and part of the malicious “consequences” of simply NOT “vaccinating”.

68. The Plaintiffs state, and the fact is, that the “vaccine passports” are not in furtherance of a “public health agenda” but simply of an irrational coercive “vaccine political agenda” knowingly geared at the violation of rights to informed, voluntary, consent

and the constitutional right to decline any medical treatment and/or procedure. The Plaintiffs state that it is thus purely political.

69. The Plaintiffs state, and the fact is, that as a result of the “vaccine passports”, and the removal of their mobility rights, the Plaintiffs have suffered, and will continue to suffer damages, which include, but are not restricted to:

- (a) An inability to travel to visit family, which family relationships, particularly between parent and child are constitutionally protected under s.7 of the *Charter* as set out by the Supreme Court of Canada;
- (b) That this restriction under **Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No.61**, from visiting family creates mental anguish and distress when that travel to visit family includes members facing death, medical conditions, funerals, (particularly when attendance is religiously required), weddings, confirmations, bar mitzvahs, etc;
- (c) An inability to vacation which is essential to recouping physical and psychological rest and integrity, which physical and psychological integrity is protected under s. 7 of the *Charter*;
- (d) Travel to attend specialized medical treatment not available locally;
- (e) Restrictions to obtaining domestic medical treatment in hospital for lack of a “vaccine passport”;
- (f) Prohibitions against entering domestic hospitals:
 - (i) When a spouse is giving birth to their child;
 - (ii) When a loved-one is dying, under palliative care;

All of which violate physical and psychological integrity under s. 7 of the *Charter*, by denial of the explicit mobility rights protected by s.7 of the *Charter* (liberty and security of the person) as well as the mobility (travel) rights specifically protected under s. 6 of the *Charter*.

70. The Plaintiffs state, as a result of this violation, the Plaintiffs have suffered damages, including, but not limited to:

- (a) Loss of their employment;
- (b) Mental anguish and distress;
- (c) Loss of dignity and discrimination based on their medical status;
- (d) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

For which they seek damages under s. 24(1) of the *Charter* because these violations are not saved by s.1 of the *Charter*, which damages are payable and must be paid, by the Crown, as set out by the Supreme Court of Canada in, *inter alia*, the *Ward v City of Vancouver* case.

- **“Vaccinated” versus “Unvaccinated” Equality Violations**

71. The Plaintiffs state, and fact is, that the Defendants’ “vaccine mandates and passports” have driven an irrationally, malicious, disproportionate and punitive wedge between the “vaccinated and unvaccinated” notwithstanding the Defendants’ admission that the “vaccines” have little to no effectiveness in preventing transmission between anyone, whether vaccinated or unvaccinated, thereby engaging in a punitive and unequal and discriminatory treatment for those, who have chosen to exercise their constitutionally protected rights, pre-and post- *Charter*, to informed

voluntary, consent, to any medical treatment/procedure, and the conditional right to decline treatment and *procedure*.

- **Pre-Charter rights to Equality of Treatment**

72. The Plaintiffs state, and fact is, that the Supreme Court of Canada, pre-*Charter*, recognized equality of treatment by governments of all its citizens in, *inter alia*, the *Winner (1952)* case. This right to equality, was also recognized, by the U.S Supreme Court, in *inter alia*, *Bolling* absent an equality provision, as a matter of due process and fundamental justice protecting citizens from arbitrary, irrational, action, the hallmark of s.7 of the *Charter*, whereby equality under s.15 and s. 7 of the *Charter* was recognized as a matter of due process, by the Supreme Court of Canada in *Schmidt (1987)*.
73. The Plaintiffs state, and the fact is, that their mistreatment, as “unvaccinated” citizens, violates their right against unequal treatment recognized, pre-*Charter*, as a constitutional **right** emanating from the Rule of Law, an unwritten conditional principle and imperative.
74. The Plaintiffs state, and fact is, that what is being violated is a recognized unwritten constitutional RIGHT which is not to be equated nor confused with an unwritten constitutional PRINCIPLE of Rule of Law, Constitutionalism, Democracy, Federalism, and Respect for Minorities as enunciated by the Supreme Court of Canada in the *Reference re Secession of Quebec, [1998] 2 S.C.R. 217*
75. What is being relied upon here are the specific **rights recognized** through the preamble of the *Constitutional Act, 1867*, and not the general underlying structural imperatives of the unwritten constitutional principles.

76. The Plaintiffs state and the fact is, that where there is a violation of an "unwritten" constitutional **right**, read in through to the pre-amble of the *Constitution Act, 1867*, there is no s.1 *Charter* analysis, nor are the rights subject to s.33 *Charter* override as this source is not the *Charter*.

- **S. 15 of the *Charter* – Discrimination on Enumerated and Analogous Grounds**

77. The Plaintiffs state and the fact is, that the Defendants have violated their right(s) against discrimination based on medical status, as follows:
- (a) By ironically creating, in law, two immutable classes of individuals: the covid-"vaccinated" versus the covid-"unvaccinated";
 - (b) These two classes are immutable in that, once vaccinated, you are forever vaccinated and, so long as citizens choose to decline the "COVID-19 vaccines" (inoculations) there will be that immutable class based on medical status and thus, is akin to religion and belief in that, while a person may change beliefs or religion, the class is immutable, one is either vaccinated or not, in whole or in part, in this case, a person is "unvaccinated" by mere virtue of the absence of the COVID-19 "vaccination", even though the person has had other vaccines, including the annual flu shot;
 - (c) The Plaintiffs are being denied rights and benefits and moreover, other constitutional rights, based on this discriminatory treatment.
78. The Plaintiffs state, as a result of this violation, the Plaintiffs have suffered damages, including, but not limited to:
- (a) Loss of their employment;

- (b) Mental anguish and distress;
- (c) Loss of dignity and discrimination based on their medical status;
- (d) Violation of their ss.2, 6, 7, and 15 of their *Charter* rights.

For which they seek damages under s. 24(1) of the *Charter* because these violations are not saved by s.1 of the *Charter*, which damages are payable and must be paid, by the Crown, as set out by the Supreme Court of Canada in, *inter alia*, the *Ward v City of Vancouver* case.

The Plaintiffs further state, and the fact is, that the rights under the *Charter* do not sit in silo isolation of each other but are inter-twined and inseparable as set out by the SCC in, *inter alia*, *Morgentaler*, which case was unanimously endorsed by the SCC in *inter alia*, *O'Connor*.

- **S.1 of the *Charter***

79. The Plaintiffs state, and the fact is, that **none** of the *Charter* violations pleaded in this statement of claim are saved by s. 1 of the *Charter* in that:

- (a) At this point “vaccine mandates and passports” are no longer part of a valid public health objective, if they ever were, as “COVID-19 vaccines” as they have been admitted to, and proven as, completely ineffective in blocking transmission and thus the objective now is clearly a never ending “vaccine objective” of a “booster” every three (3) months simply to “suppress symptoms” with absolutely no consequence to effective resistance from transmission.
- (b) The vaccine mandates and passports are thus, and further arbitrary and irrational;
- (c) These mandates and passports do NOT minimally impair the *Charter* rights being violated and therefore are overly-broad;

(d) And, lastly, the measures' and passports' deleterious effects far outweigh the beneficial effects in that, *inter alia*:

- (i) The deaths attributable to the COVID measures themselves far exceed the purported deaths from COVID-19 itself to a factor of a minimal of five (5) to one (1);
- (ii) The economic devastation and cost has been seismic;
- (iii) *De facto* over-ride and blanket removal of constitutional right(s) and the Rule of Law is pervasive, at the arbitrary command and benefit of a handful of unelected and democratically and constitutionally unaccountable "public health officers" acting in place of Legislatures, via decree, and in the absence of legislation and judicial scrutiny.

- ***Violation of Pre-Charter Constitutional Rights***

80. The Plaintiffs state, and the fact is, that where the Defendants are in violation of pre-existing recognized constitutional rights that pre-date the *Charter*, no s. 1 analysis ensues.


RELIEF SOUGHT

81. The Plaintiffs therefore seek:

- (a) The relief and damages sought in paragraph 1 through 5 of the within statement of claim;
- (b) Costs of this action on a solicitor -client basis regardless of outcome;
- (c) Such further or other relief as counsel to the Plaintiffs may advise and/or this Honourable Court deems just.

The Plaintiffs propose that this action be tried at Toronto.

Dated at Toronto this 25th day of May, 2022.



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Solicitor for the Plaintiffs

Court File No.:

FEDERAL COURT

B E T W E E N:

Karen Adelberg et al.

Plaintiffs

- and -

HER MAJESTY THE QUEEN,

Defendants

STATEMENT OF CLAIM

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

(Filed this 30th day of May, 2022)

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Solicitor for the Plaintiffs

TAB 2

Court File No.:T-1089-22

FEDERAL COURT

B E T W E E N:

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants.

AFFIDAVIT

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

AND SAY:

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


4. I have read the Written Representation of the Defendants in the within motion to strike and state the following:
 - (a) The factual assertions made in the statement of claim, while disputed by the Defendants and perceived as controversial, are nevertheless, capable of being proven by a preponderance of scientific and medical evidence, based on world renowned and recognized experts, as well as by authoritative sources;
 - (b) the Plaintiffs intend to tender this evidence, which both supports the facts pleaded, and, also contradicts the assertions of the Government of Canada on which the impugned Policy and Interim order(s) are based;
 - (c) Many of the facts pleaded, although characterized by the Defendants as “conspiratorial, scandalous, salacious or extreme” are capable of proof. For example, that the “Covid-19 vaccinations” do not prevent transmission is not only conceded by Federal and Provincial Chief Medical Officers, but the subject of judicial determinations in various jurisdictions throughout the world. Likewise, lawsuits against Federal agencies and governments in an effort to uncover the origins of Covid-19 and the declaration of a global pandemic are also underway. The Plaintiffs intend to adduce this evidence;
 - (d) the Plaintiffs intend to contest the unproven and unsubstantial assertions of the Defendants, with respect to the scientific and medical data, in seeking to challenge measures as unjustifiably infringing constitutional rights.
5. Other Courts, in other jurisdictions, such as the United States, and Indian Supreme Courts, for example, have ruled in favor of the same or similar factual assertions and

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

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

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


Amina Sherazee


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

Court File No.: T-1089-22

FEDERAL COURT

BETWEEN:

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants

AFFIDAVIT

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Areas of
Practice

This is Exhibit "A" referred to in the
affidavit of Aminia Shekhar
sworn before me this 29th
day of November 2022

A COMMISSIONER, ETC.

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Labour & Employment



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

Tuesday, September 07, 2021 10:23:55 PM | By [Cassini Schmitz](#)

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

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



Chief Justice of Canada Richard Wagner

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

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

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

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

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

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



Chief Justice Marc Noël

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

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

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

"To preserve the actual and apparent impartiality of the court on this issue and related issues — as the court must — the court will not disclose whether it has any personal views or institutional policies on this issue, one way or the other," Chief Justice Noël explained. "The court's paramount responsibility, especially on an issue as controversial and unprecedented as this, is to ensure that Canadians are confident in this court's capacity and commitment to decide cases on the facts and the law and nothing else — not even any personal views and institutional policies we may happen to have. Thus, in no way should this response be seen as a desire to conceal the vaccination status of the judges."

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

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

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TAB 3

MEMORANDUM OF FACT AND LAW

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

PART I - THE FACTS

1. The Plaintiffs rely on the facts as set out in the statement of claim, which, for the purposes of this motion, are required to be taken as proven¹.
2. The Plaintiffs further state, as global observations and submissions, that the Defendants:
 - (a) improperly teeter-totter between asserting that certain facts are not "facts" because they are bald conclusions without evidentiary foundation, and at other times, that "facts" are not properly "facts" because they constitute "claims" or "conspiracy theories", without elaboration;
 - (b) while such concerns and objections may, or may not, form the proper basis for a request for particulars, within the context of this motion, all "facts", pleaded as "facts", must be taken as proven "facts", in accordance with the above-noted jurisprudence; and
 - (c) The Defendants, in engaging in this "Alice in Wonderland" dance of mischaracterizing the pleadings into what the Defendants say they mean, fly in the face of the clear holding of the Court of Appeal in *arsenal* wherein the court ruled:

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

¹ *A.G. Canada v. Inuit Tapirscat of Canada* [1980] 2 S.C.R. 735; *Nelles v. Ontario* (1989) 60 D.L.R. (4th) 609 (S.C.C.); *Operation Dismantle Inc. v. The Queen* [1985] 1 S.C.R. 441; *Hunt v. Carey Canada Inc* [1990] 2 S.C.R. 959; *Dumont v. A.G. Canada* [1990] 1 S.C.R. 279; *Trendsetter Ltd. v. Ottawa Financial Corp.* (1989) 32 O.A.C. 327 (C.A.); *Nash v. Ontario* (1995) 27 O.R. (3d) 1 (Ont. C. A.); *Canada v. Arsenault* 2009 FCA 242; *B.C. v. Imperial Tobacco Canada Ltd.*, [2005] 2 S.C.R. 473

they find them, and cannot resort to reading into a claim something which is not there. The Crown cannot, by its construction of the respondents' claim, make it say something which it does not say.

- *Canada v. Arsenault* 2009 FCA 242, @ paragraph 10

3. With respect to the “facts” **filed by the Defendants** through the affidavit of Gabriella Prati Trotto, the Plaintiffs state that this affidavit is inadmissible under rule 21. While the Defendants feign that the affidavit is admissible on a challenge to jurisdictional grounds, the content of the affidavit and exhibits go to the factual (very contested at that) of the substance of the litigation itself. The affidavit is further inadmissible in that it posits “facts” from the face of the Representation of the face of the policy statements and interim order(s), which is highly improper and inadmissible, particularly on a motion to strike. On a motion to strike, the only admissible “facts” are those contained in the statement of claim which, for purposes of the motion, must be taken and accepted as having been proven. The Plaintiffs dispute the “facts” posited by these documents. If the “facts” posited are to be relied upon, let the Defendants incorporate them into their statement of defence.
4. In this Motion the Defendants plead “facts” which are in dispute on the Plaintiffs’ action, from government “policy” as if proven, as to truth of content. The only way this motion to strike can succeed is if the Court also accepts as facts pleaded on this motion, but not proven, also without evidence, and dispense with the requirement of a trial of the facts.
5. For example, the Defendant declares that the vaccine mandate (Treasury Board Policy) and the vaccine passport (Interim Order) were required for health and safety of the Plaintiffs, the Plaintiffs’ colleagues and the Plaintiffs’ clients. **These “facts” are disputed** and are at the heart of the action. The doctrine of the Rule of Law, Judicial

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

6. A full and fair trial and a complete and comprehensive record of evidence is required before the Court can establish whether the Policy or the Order was indeed required or not, necessary or not, constitutional or not. This fact, baldly declared without evidence, on a motion to strike *as* evidence for striking pleadings, without proof, is scandalous, vexatious and invites the administration of justice into disrepute, undermining the Rule of Law, Independence of the Judiciary, and Constitutionalism.
7. The Defendants are inviting the Court to abdicate its role and function as an independent and impartial trier of fact. Examining the purpose and objective of impugned legislation, as well as the evidence on which it is based for compliance is the role of the Courts. This case is of seminal public, national importance and the Court should not shy away from conducting a trial because the issues raised by this case are “controversial” and have been mischaracterized by the Defendants as “conspiratorial”, etc.
8. The Honourable Chief Justice Marc Noel, of the Federal Court of Appeal, recognized that the challenge to government vaccine policies are “fraught with controversy” on September 2021 when he publicly stated:

“The court’s paramount responsibility, especially on an issue as controversial and unprecedented as this, is to ensure that Canadians are confident in this court’s capacity and commitment to decide cases on the facts and the law and nothing else — not even any personal views and institutional policies we may happen to have.”

- Affidavit of Amina Sherazee, “Exhibit A”

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

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

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

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

PART II - THE ISSUES

11. Whether this motion ought to be disposed of in writing or after oral submissions?
12. Whether any portion of the statement of claim should be struck?
13. If any of the statement of claim is struck, whether it should be struck without prejudice, with leave to the Plaintiffs to amend?

PART III - LAW AND ARGUMENT

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

14. It is submitted that this is not a motion that is properly amenable to being disposed of in writing, without violating the Plaintiffs' rights to natural and fundamental justice to be heard because of, *inter alia*;
 - (a) The novelty and complexity of the evidentiary and legal issue(s) pleaded in the statement of claim;
 - (b) The fact that there is no appellate conclusive determination, on all fours, of any of the issue(s) raised by the Plaintiffs with respect to the pleadings;

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

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

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

B/ Motion to Strike – The Jurisprudence – General Principles

16. It is submitted and tritely held, by the Supreme Court of Canada, and the Appellate Courts, that:

- (a) the facts pleaded by the Plaintiffs must be taken as proven and fact;²
- (b) it has been further held, that on a motion to strike, the test is a rather high one, namely that,

“A Court should strike a pleading under Rule 126 only in plain and obvious cases where the pleading is bad beyond argument.

Furthermore, I am of the view that the rules of civil procedure should not act as obstacles to a just and expeditious resolution of a case. Rule 1.04(1) of the Rules of Civil Procedure in Ontario, O. Reg 560/84, confirms this principle in stating that “these rules shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.”

- Nelles, supra, p. 627

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

² *A.G. Canada v. Inuit Tapirsat of Canada* [1980] 2 S.C.R. 735; *Nelles v. Ontario* (1989) 60 DLR (4th) 609 (SCC); *Operation Dismantle Inc. v. The Queen* [1985] 1 S.C.R. 441; *Hunt v. Carey Canada Inc* [1990] 2 S.C.R. 959; *Dumont v. A.G. Canada* [1990] 1 S.C.R. 279; *Trendsetter Ltd. v. Ottawa Financial Corp.* (1989) 32 O.A.C. 327 (C.A.); *Nash v. Ontario* (1995) 27 O.R. (3d) 1 (Ont. C. A.); *Canada v. Arsenault* 2009 FCA 242; *B.C. v. Imperial Tobacco Canada Ltd.*, [2005] 2 S.C.R. 473

"It cannot be said that the outcome of the case is 'plain and obvious' or 'beyond doubt'.

Issues as to the proper interpretation of relevant provisions...and the effect...upon them would appear to be better determined at trial where a proper factual base can be laid."

- Dumont, supra. p. 280

and further, that:

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

- Hunt, supra (SCC)

and further that:

The fact that a pleading reveals "an arguable, difficult or important point of law" cannot justify striking out part of the statement of claim. Indeed, I would go so far as to suggest that where a statement of claim reveals a difficult and important point of law, it may well be critical that the action be allowed to proceed. Only in this way can we be sure that the common law in general, and the law of torts in particular, will continue to evolve to meet the legal challenges that arise in our modern industrial society.

...

This brings me to the second difficulty I have with the defendants' submission. **It seems to me totally inappropriate on a motion to strike out a statement of claim to get into the question whether the Plaintiff's allegations concerning other nominate torts will be successful. This a matter that should be considered at trial where evidence with respect to the other torts can be led and where a fully informed decision about the applicability of the tort of conspiracy can be made in light of that evidence and the submissions of counsel.** If the Plaintiff is successful with respect to the other nominate torts, then the trial judge can consider the defendants' arguments about the unavailability of the tort of conspiracy. If the Plaintiff is unsuccessful with respect to the other nominate torts, then the trial judge can consider whether he might still succeed in conspiracy. Regardless of the outcome, it seems to me inappropriate at this stage in the proceedings to reach a conclusion about the validity of the defendants' claims about merger. I believe that this matter is also properly left for the consideration of the trial judge.

- Hunt, supra p. 14

and further that:

[21] Valuable as it is, the Motion to Strike **is a tool that must be used with care**. The Law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. Before *Donoghue v. Stevenson*, [1932] A.C. 562 (H.L.) introduced a general duty of care to one's neighbour premised on foreseeability, few would have predicted that, absent a contractual relationship, a bottling company could be held liable for physical injury and emotional trauma resulting from a snail in a bottle of ginger beer. Before *Hedly Byrne & Co. v. Heller & Partners, Ltd.*, [1963] 2 All E.R. 575 (H.L.), a tort action for negligent misstatement would have been regarded as incapable of success. The history of our law reveals that often new developments in the law first surface on motions to strike or similar preliminary motions, like that one at issue in *Donoghue v. Stevenson*. therefore, on a Motion to Strike, it is not determinative that the law has not yet recognized the particular claim. **The Court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial.**

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

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

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

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

- *Nash v. Ontario* (1995) 27 O.R. (3d) (C.A.)
- *Hanson v. Bank of Nova Scotia* (1994) 19 O.R. (3d) 142 (C.A.)
- *Adams-Smith v. Christian Horizons* (1997) 14 C.P.C. (4th) 78 (Ont. Gen. Div.)
- *Miller (Litigation Guardian of) v. Wiwchairyk* (1997) 34 O.R. (3d) 640 (Ont. Gen. Div.)

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

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

- (iii) and that to strike, the Defendants must produce a “decided case *directly on point* from the same jurisdiction demonstrating that the very same issue has been *squarely dealt with and rejected*”;

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

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

- *Grant v. Cormier – Grant, et. al* (2001) 56 O.R. (3d) 215 (Ont. C.A.)
- *TD Bank v. Deloitte Hoskins & Sells* (1991) 5 O.R. (3d) 417 (Gen. Div.)

C/ Constitutional Principles Applicable to Claim

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

The constitution of Canada does not belong either to Parliament, or to the Legislatures; it belongs to the country and it is there that the citizens of the country will find the protection of the rights to which they are entitled....

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

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

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

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

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

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

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

D/ Nature of Plaintiff's Claim

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

- (a) monetary damages;

-Statement of claim., Paragraph 3

Based on the following torts:

- (i) Misfeasance of public;
- (ii) Conspiracy;
- (iii) Intimidation;
- (iv) Violations of ss.2,7, and 15 of the *Charter*;
- (v) Intentional infliction of mental anguish;

- (b) Declaratory relief as to jurisdiction, legislation, regulations and executive action and inaction;

-Ibid., paragraph 1

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

- Ibid., Paragraph 2

Contrary to what the Defendants posit, nothing in the claim is based on any contract or labour paradigm. The claim is solely based on common law and constitutional tort, with declaratory relief ancillary to those torts, particularly the constitutional torts (violations).

E/ The Constitutional Right to Judicial Review and Declaratory Relief

21. The Plaintiffs submit that Declaratory relief goes to the crux of the constitutional right to judicial review, which right the Supreme Court of Canada has re-affirmed in *Dunsmuir*:

31 The legislative branch of government cannot remove the judiciary's power to review actions and decisions of administrative bodies for compliance with the constitutional capacities of the government. Even a privative clause, which provides a strong indication of legislative intent, cannot be determinative in this respect (*Executors of the Woodward Estate v. Minister of Finance*, [1973] S.C.R. 120, at p. 127 [page213]). The inherent power of superior courts to review administrative action and ensure that it does not exceed its jurisdiction stems from the judicature provisions in ss. 96 to 101 of the *Constitution Act, 1867: Crevier*. As noted by Beetz J. in *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, at p. 1090, "[t]he role of the superior courts in maintaining the rule of law is so important that it is given constitutional protection". ***In short, judicial review is constitutionally guaranteed in Canada***, particularly with regard to the definition and enforcement of jurisdictional limits...

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

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

- s.18.4(2) *Federal Courts Act*

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

22. This Court, in *Singh v. Canada (Citizenship and Immigration)*, 2010 FC 757, re-affirmed the ample and broad right to seek declaratory relief, in quoting the Supreme Court of Canada in *Solosky*:

Declaratory relief is a remedy **neither constrained by form nor bounded by substantive content**, which avails persons sharing a legal relationship, in respect of which a "real issue" concerning the relative interests of each has been raised and falls to be determined.

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

23. More recently, the Supreme Court of Canada, in the *Manitoba Metis* case reaffirmed the breadth of the right to declaratory relief to rule that it cannot be statute-barred:

[134] This Court has held that although claims for personal remedies flowing from the striking down of an unconstitutional statute are barred by the running of a limitation period, courts retain the power to rule on the constitutionality of the underlying statute: *Kingstreet Investments Ltd. v. New Brunswick (Finance)*, 2007 SCC 1, [2007] 1 S.C.R. 3; *Ravndahl v. Saskatchewan*, 2009 SCC 7, [2009] 1 S.C.R. 181. ***The constitutionality of legislation has always been a justiciable question: Thorson v. Attorney General of Canada***, [1975] 1 S.C.R. 138, at p. 151. ***The “right of the citizenry to constitutional behaviour by Parliament” can be vindicated by a declaration that legislation is invalid, or that a public act is ultra vires: Canadian Bar Assn. v. British Columbia***, 2006 BCSC 1342, 59 B.C.L.R. (4th) 38, at paras. 23 and 91, citing *Thorson*, at p. 163 (emphasis added). ***An “issue [that is] constitutional is always justiciable”***: *Waddell v. Schreyer* (1981), 126 D.L.R. (3d) 431 (B.C.S.C.), at p. 437, aff’d (1982), 142 D.L.R. (3d) 177 (B.C.C.A.), leave to appeal refused [1982] 2 S.C.R. vii (*sub nom. Foothills Pipe Lines (Yukon) Ltd. v. Waddell*).

...
[140] ***The courts are the guardians of the Constitution and, as in Ravndahl and Kingstreet, cannot be barred by mere statutes from issuing a declaration on a fundamental constitutional matter. The principles of legality, constitutionality and the rule of law demand no less: see Reference re Secession of Quebec***, [1998] 2 S.C.R. 217, at para. 72.

...
[143] ***Furthermore, the remedy available under this analysis is of a limited nature. A declaration is a narrow remedy. It is available without a cause of action, and courts make declarations whether or not any consequential relief is available.*** As argued by the intervener Assembly of First Nations, it is not awarded against the defendant in the same sense as coercive relief: *factum*, at para. 29, citing *Cheslatta Carrier Nation v. British Columbia*, 2000 BCCA 539, 193 D.L.R. (4th) 344, at paras. 11-16.

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

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

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

- ***Federal Courts Rules, R. 64***

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

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

which is consistent with the Supreme Court jurisprudence,

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

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

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

- *Manitoba Metis Federation Inc. v. Canada (Attorney General)*, 2013 SCC 14, @ paragraph 134

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

25. It is further submitted that jurisprudence, both in Canada and abroad, to the same claims and issues set out in the within claim, clearly weighs against striking this claim, whether in whole or in part.

26. Thus, the United States Supreme Court, struck, as unconstitutional measures against barring church gatherings on constitutional provisions indistinguishable from s.2 of the Canadian *Charter*.

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

27. Recently, the Indian Supreme Court struck as unconstitutional, the Covid-vaccine, **coercive measures** as unconstitutional for offending a provision of their constitution protecting bodily integrity, indistinguishable from s.7 of the Canadian *Charter*:

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

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

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

Wherein, the Supreme Court of Canada, in *inter alia*, *Carter* ruled:

[67] The law has long protected patient autonomy in medical decision-making. In *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30, [2009] 2 S.C.R. 181, a majority of this Court, per Abella J. (the dissent not disagreeing on this point), endorsed the “tenacious relevance in our legal system of the principle that competent individuals are — and should be — free to make decisions about their bodily integrity” (para. 39). This right to “decide one’s own fate” entitles adults to direct the course of their own medical care (para. 40): it is this principle that underlies the concept of “informed consent” and is protected by s. 7’s guarantee of liberty and security of the person (para. 100; see also *R. v. Parker* (2000), 2000 CanLII 5762 (ON CA), 49 O.R. (3d) 481 (C.A.)). As noted in *Fleming v. Reid* (1991), 1991 CanLII 2728 (ON CA), 4 O.R. (3d) 74 (C.A.), the right of medical self-determination is not vitiated by the fact that serious risks or consequences, **including death, may flow from the patient’s decision. It is this same principle that is at work in the cases dealing with the right to refuse consent to medical treatment, or to demand that treatment be withdrawn or discontinued**: see, e.g., *Ciarlariello v. Schacter*, 1993 CanLII 138 (SCC), [1993] 2 S.C.R. 119; *Malette v. Shulman* (1990), 1990 CanLII 6868 (ON CA), 72 O.R. (2d) 417 (C.A.); and *Nancy B. v. Hôtel-Dieu de Québec* (1992), 1992 CanLII 8511 (QC CS), 86 D.L.R. (4th) 385 (Que. Sup. Ct.).

Moreover, the Indian Supreme Court, ruled, under their equality provision, indistinguishable from s.15 of the *Charter*, that, based on the scientific evidence, drawing a distinction or discriminating as between “vaccinated” and “unvaccinated” individuals is unconstitutional because the vaccinated could equally transmit and receive the Covid-19 virus. In fact, this Indian Supreme Court decision heavily relies on jurisprudence from other common-law jurisdictions including the USA, Australia and New Zealand.

- 592 U. S. ____ (2020)

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

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

30. The Ontario Superior Court has also recently ruled that these issues of Covid-measures are not to be dealt with on a perfunctory basis, assuming and adopting the baldly-stated positions of public health officials, but to be dealt with, like any other case, on the available evidence and material bearing on the issue(s) before the Court.

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

31. It is further submitted that the B.C. Supreme Court recently dismissed a motion to strike B.C.'s Covid-measures, *albeit* on standing, pointing out the complexity of the issues that the Covid-measures present.

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

32. Furthermore, with respect to the Defendants' bald and baseless assertion that the vaccine mandates are not "mandatory" but a "choice", *albeit* coercive in that the choice is "be vaxxed or be fired", the caselaw on this point defies the Defendant's postulation in that:

- (a) the Indian Supreme Court ruled that coercive measures are as unconstitutional as mandating measures: and

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

- (b) the California Court of Appeal Fourth Appellate District recently ruled that a "choice" of vaccination or staying away from school was **not** a choice but a coercive, **de facto**, mandatory measure.

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

G/ The Defendants' Position

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

33. The Defendants, in paragraph 17 state that the plaintiffs “do not challenge any actions or omissions of the separate agencies” [apart from the Treasury Board]. This is not so. The Plaintiffs challenge all actions and omissions violating their constitutional rights pursuant to the Federal regulations, policies, and legislation driving those violations. In addition the hold those Defendants liable in the common-law and constitutional torts pleaded.
34. With respect to paragraphs 43 to 57 of the Defendant's Written Representations, and that:
- (a) the Treasury Board has jurisdiction to impose vaccine mandates:
 - (b) that this Court has no jurisdiction with the jurisdiction under s.236 of the FPSLRA;

The Plaintiffs state that:

- (i) There is no jurisdiction, under s.91 of the *Constitution Act, 1867* for the Federal Parliament nor executive to dictate medical treatment, which is the exclusive domain of the Provincial Legislatures;
- (ii) there is no jurisdiction to impose unconstitutional measures that violate the *Charter*, including ss.2, 7 and 15, and that to do so constitutes a constitutional **tort**;
- (c) that this action is strictly grounded in constitutional declaratory relief and action in **common law and constitutional torts**, and not in any labour or collective bargaining issue(s).

35. The Supreme Court of Canada, as well as other appellate courts, have continually and consistently held that the collective bargaining or employment context does NOT exclude an action for **tort** within that relationship.

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

36. In the same way that an employee could not raise this basis for (sexually) assaulting an employee in the context of employment, the coercive and intimidation measures to violate bodily and psychological integrity contrary to s.7 of the **Charter**, and from common-law, is not a bar to this action.
37. There is no distinction between a sexual or common assault and a violation done to bodily integrity and psychological integrity under s.7 of the **Charter**. At common law, and under the **Charter**, mandating medical treatment is prohibited and coercive measures in furtherance of this is both a constitutional violation to bodily and psychological integrity;

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

as well as constitute the common-law, tort of intimidation, pleaded in the within claim.

The prohibition against mandatory vaccination, or any medical treatment under constitutional jurisprudence, is not disputable.

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

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

38. It is submitted that the Defendant's contention that this action for damages cannot be brought because it has to be brought as judicial review is either:
- (a) embarrassing in its misstatement of the clear jurisprudence; and/or

(b) embarrassing in its ignorance of the jurisprudence;

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

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

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

[73] This distinction, between actions that seek to invalidate the effect of a previous court or tribunal order and legal proceedings which seek damages allegedly suffered as a consequence of such an order, was developed in six companion decisions of the Supreme Court of Canada released in 2010. The most frequently cited case out of this series is *Canada (Attorney General) v TeleZone Inc.*, 2010 SCC 62, [2010] 3 SCR 585 [*TeleZone*].

[74] In *TeleZone*, the party of that name had initiated a claim for breach of contract, negligence, and unjust enrichment arising from the Minister of Industry Canada's decision not to issue the company a licence to provide telecommunications services. Industry Canada had indicated to TeleZone that six licences would be issued to applicants, but then ultimately only issued four, not including TeleZone. The defendants' position was that TeleZone's action was improper because it had not challenged Industry Canada's decision through judicial review. Justice Binnie described the principle underlying the question confronting the Court in the following terms:

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

(Emphasis added)

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

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

(Emphasis added)

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

[76] Where a plaintiff's pleading alleges the elements of a private cause of action, I think the provincial superior court should not in general decline jurisdiction on the basis that the claim looks like a case that should be pursued on judicial review. If the plaintiff has a valid cause of action for damages, he or she is normally entitled to pursue it.

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

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

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

ends on this motion, contrary to the clear ruling of the Federal Court of Appeal in

Arsenault, wherein the Court ruled:

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

- *Canada v. Arsenault* 2009 FCA 242, @ paragraph 10

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

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

- (a) when the facts pleaded are taken as proven, as is required on this motion; and
- (b) when the causes of action, both in common-law and constitutional **torts** are assessed on the facts pleaded;

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

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

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

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

The Courts have also ruled, in the COVID-19 context that **coercive measures** to vaccinate constitute a violation of bodily and psychological integrity of the person, and that to treat the vaccinated an unvaccinated differently, in the face of the scientific and medical data that shows that vaccination does not prevent transmission, discriminates and violates equality of treatment.

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

43. These coercive measures, under common law, not only violates s.2, 7 and 15 of the *Charter*, but further constitute the **tort** of intimidation under common law.

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

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

• ***Claim Not Justiciable***

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

- (a) The statement by the Defendants in paragraph 79 to 85 of its Written Representations is absurd in that the Plaintiffs do not plead this and the Defendants are again constructing straw-men contrary to the ruling in *Canada v. Arsenault*; and
- (b) It is evident, from the clear jurisprudence cited above, that the justiciability of any, and all legislation and or legislative omission, and/or executive action or inaction is justiciable.³

• ***Action is an abuse of Process***

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

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

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

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

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

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

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

- (a) With all due respect to the Defendants' counsel's crystal ball and access to unascertained oracle of truth with reference to scientific and medical fact, the facts alleged in the statement of claim are capable of proof, and must be taken as proven for the purposes of this motion;
- (b) Moreover, the Plaintiffs intend to establish those facts and are in the possession of the scientific and medical evidence, and expert witnesses, to prove these facts pleaded, which evidence and experts the Plaintiffs intend to tender at trial; and

-Affidavit of Amina Sherazee

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

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

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

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

Furthermore the Court stated:

[37] Moreover, if there was any evidence incompatible with the existence of the virus, one would have expected Mr. Khodeir to provide it to the Court. As we will see later, he utterly failed in this regard.

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

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

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

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

- *Affidavit of Amina Sherazee*

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

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

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

[53] This principle was adopted in this Court by Graesser J in *R v Mella*, 2021 ABQB 785 (released in September 2021) at para 40 and Whitling J in *Sembaliuk v Sembaliuk*, 2022 ABQB 62 (released in January 2022) at para 8. In *LMS v JDS*, 2020 ABQB 726 (released in October 2020) at para 18, Hollins J stated the following:

[18] I can take judicial notice of certain things about COVID, namely that it is a global pandemic and that our own public health officials have provided us with commonly-accepted precautions to avoid contracting COVID (wearing a mask, keeping distanced whenever possible, reducing contacts, washing hands). **However, in my view, I cannot take judicial notice of much more than that.**

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

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

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

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

And further:

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

.....

And further:

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

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

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

(*CanLII*):

[37] The issue before the court in taking judicial notice of scientific facts is not assessing whether the science is “fake science”, but whether scientific facts that would normally require expert opinion to be admitted, may be judicially noticed without proof. This issue was recently addressed by Breithaupt Smith J. in *R.S.P. v. H.L.C.* 2021 ONSC 8362 in which she provided what has been described as a timely warning (*J.N. v. C.G.*, 2022 ONSC 1198 at para 65):

[57] Judicial notice of the facts contained in government publications are “capable of immediate and accurate demonstration by resort to readily accessible sources of indisputable accuracy.” Such facts could include, for example, that there are two time zones in the Province of Ontario or that there were two deaths and 39 Intensive Care Unit admissions among Ontario children from January 15, 2020, to June 30, 2021 connected with SARS-CoV-2.

[58] **Judicial notice cannot be taken of expert opinion evidence. Chief Justice McLachlin for the unanimous Court in *R. v. Find* underscored that: “Expert evidence is by definition neither notorious nor capable of immediate and accurate demonstration. This is why it must be proved through an expert whose qualifications are accepted by the court and who is available for cross-examination” (at paragraph 49).**

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

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

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

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

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

• *Action is doomed to fail*

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

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

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

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

- (ii) This action further and centrally **seeks damages**, which cannot be sought by way of application under s.18 -18.1 **unless** it were converted into an action under s.18.4(2) of the *Federal Court Act*;
 - (iii) insofar as the *Charter*, and/or other parts of the *Constitution Act* are invoked in virtually all the declaratory relief, ss.24 and s.52 of the *Constitution Act, 1982* further grounds the relief by way of action in conjunction with the damages in tort, both at common law and under the *Charter*;
 - (iv) this issue was settled by the *Telezone* line of cases by the Supreme Court of Canada⁴.
- (b) It is again submitted that this not a proper “plain and obvious” case, “beyond argument” basis for striking the claim;
- (c) With respect to the Defendants’ submissions, at paragraph 107 to 113, of their Written Representations, that a “reconstituting of the action into a judicial review would make it moot”, the Plaintiffs state:
- (i) The defendants are again reconstituting the claim (action) for something it is NOT, and should not be, contrary to the Federal Court of Appeal ruling in *Canada v. Arsenault 2009 FCA 242* which merits repeating in that:

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

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

cannot, by its construction of the respondents' claim, make it say something which it does not say.

- Canada v. Arsenault 2009 FCA 242 at paragraph 10

- (ii) Their argument is shot down by the *Telezone* line of cases;
- (iii) It is not plain and obvious that vaccine mandate and making mandates are moot, in that the Defendants and their officials, including Prime Minister Trudeau, have made it clear that the same measures can and will be reinstituted if deemed necessary, and in any case, the exception to mootness clearly applies under Canadian jurisprudence

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

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

- 592 U. S. ____ (2020)

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

- (b) Although moot, the Court should entertain this appeal owing to the public interests engaged;

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

- 52. It is thus not “plain and obvious”, “beyond argument”, that this is moot nor that it is not subject to the exception on mootness.
- 53. In any event, the Declaratory Relief, tort and *Charter* damages are not moot.

- **No Leave to Amend**

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

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

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

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

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

G/ Issues and Relief Not Covered in Defendants' Submissions

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

H/ Costs

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

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

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

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

PART IV - ORDER SOUGHT

57. The Plaintiffs respectfully request that:

- (a) the Defendants' motion to strike be dismissed;
- (b) in the alternative, if any portions are struck, that is to be without prejudice, to file an amended statement of claim in accordance with the jurisprudence⁵;
- (c) solicitor-client costs and, in accordance with *Native Women's Assn. of Canada vs. Canada* [1994] 3 SCR 627, such further and other relief as this Honourable Court deems just.

All of which is respectfully submitted

Dated this 29th day of November 2022.



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

PART V - AUTHORITIES

• Statutory Provisions Appendix A

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

• Jurisprudence

1. 592 U. S. (2020)
2. A.G. Canada v. Inuit Tapirascat of Canada [1980] 2 S.C.R. 735
3. Action4Canada v British Columbia (Attorney General), 2022 BCSC 1507 (CanLII)
4. Adams-Smith v. Christian Horizons (1997) 14 C.P.C.(4th) 78 (Ont. Gen. Div.)
5. Air Canada v. British Columbia (Attorney General) [1986] 2 S.C.R. 539
6. B.C. v. Imperial Tobacco Canada Ltd., [2005] 2 S.C.R. 473
7. Borowski v. Canada [1989] 1 S.C.R. 342 (SCC)
8. Canada (Attorney General) v. McArthur, 2010 S.C.C. 63
9. Canada (Attorney General) v. TeleZone Inc., 2010 SCC 62 (CanLII), [2010] 3 SCR 585
10. Canada (MEI) v. Villafranca [1992] F.C.J. No. 1189 (F.C.A.)
11. Canada (Prime Minister) v. Khadr, [2010] 1 S.C.R. 44
12. Canada v. Arsenault 2009 FCA 242
13. Canada v. Solosky, [1980] 1 S.C.R. 821, @ p. 830
14. Canadian Food Inspection Agency v. Professional Institute of the Public Service of Canada, 2010 S.C.C. 66
15. Canadian Society for the Advancement of Science in Public Policy v. Henry, 2022 BCSC 724

16. Carter v. Canada (Attorney General), 2015 SCC 5, [2015] 1 S.C.R. 331
17. Collins v. Canada [2011] D.T.C. 5076
18. **Dalex Co. v. Schawartz Levitsky Feldman** (1994) 19 O.R. (3d) 463 (Gen. Div).
19. Dumont v. A.G. Canada [1990] 1 S.C.R. 279
20. Dunsmuir v. New Brunswick, 2008 SCC 9, at Paragraph 31
21. Edwards v. Canada (2000) 181 F.T.R. 219
22. Fleming v. Reid (1991), 48 O.A.C. 46 (C.A.)
23. Grant v. Cormier – Grant, et. al (2001) 56 O.R. (3d) 215 (Ont. C.A.)
24. Hanson v. Bank of Nova Scotia (1994) 19 O.R. (3d) 142 (C.A.)
25. Hunt v. Carey Canada Inc [1990] 2 S.C.R. 959
26. J.N. v. C.G., 2022 ONSC 1198
27. Jacob Pulivel Vs. Union of India & Ors.
28. Khodeir v. Canada (Attorney General), 2022 FC 44 (CanLII)
29. Larden v. Canada (1998) 145 F.T.R. 140
30. Let Them Choose et al. v. San Diego Unified School District (2022)
31. Liebmann v. Canada [1994] 2 F.C. 3
32. Lominadze v. Canada (MCI) [1998] F.C.J. No. 115
33. M.A. v. De Villa, 2021 ONSC 3828
34. M.M. v. W.A.K., 2022 ONSC 4580 (CanLII);
35. Manitoba Metis Federation Inc. v. Canada (Attorney General), 2013 SCC 14
36. Manuge v. Canada, 2010 S.C.C. 67
37. McIlvenna v. 1887401 Ontario Ltd., 2015 ONCA 830 (CanLII)
38. Miller (Litigation Guardian of) v. Wiwchairyk (1997) 34 O.R. (3d) 640 (Ont.Gen.Div)

39. Nash v. Ontario (1995) 27 O.R. (3d) (C.A.)
40. Native Women's Assn. of Canada vs. Canada [1994] 3 SCR 627.
41. Nelles v. Ontario (1989) 60 DLR (4th) 609 (SCC)
42. Northern Regional Health Authority v. Horrocks, 2021 SCC 42 (CanLII)
43. Nova Scotia (Attorney General) v. Canada (Attorney General) [1951] S.C.R. 31
44. Operation Dismantle Inc. v. The Queen [1985] 1 S.C.R. 441
45. Parrish & Heimbecker Ltd. v. Canada (Agriculture and Agri-Food), 2010 S.C.C. 64
Nu-Pharm Inc. v. Canada (Attorney General), 2010 S.C.C. 65
46. R v Church in the Vine and Fortin, 2022 ABKB 704 (CanLII)
47. R. v. Find, 2001 SCC 32 (CanLII), [2001] 1 SCR 863
48. R. v. Morgan, 2020 ONCA 279 (CanLII)
49. R.D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd. (1991) 5 O.R. (3d)
778 (C.A.)
50. R.S.P. v. H.L.C., 2021 ONSC 8362 (CanLII).
51. Reference re Secession of Quebec, [1988] 2 S.C.R. 217
52. Ruby v. Canada [2002] S.C.J. No. 73 (SCC)
53. **Sgt. Julie Evans et al. v. AG Ontario et al.**
54. Simon v. Canada [2011] D.T.C. 5016
55. Singh v. Canada (Citizenship and Immigration), 2010 FC 757
56. Singh v. MEI [1985] S.C.R. 177 (SCC)
57. Sivak et al. v. MCI, 2011 FC 402
58. Solgi v College of Physicians and Surgeons of Saskatchewan, 2022 SKCA 96 (CanLII)
59. Spatling v. Canada 2003 CarswellNat 1013

60. TD Bank v. Deloitte Hoskins & Sells (1991) 5 O.R. (3d) 417 (Gen. Div.)
61. The Canadian Civil Liberties Association v. Nova Scotia (Attorney General), 2022 NSCA 64 (CanLII)
62. Thorson v. AG of Canada [1975] 1 SCR 138, @ p. 151
63. Trendsetter Ltd. v. Ottawa Financial Corp. (1989) 32 O.A.C. 327 (C.A.)
64. Vic Restaurant Inc. v. City of Montreal, 1958 CanLII 78 (SCC), [1959] SCR 58
65. Vriend v. Canada [1998] 1 SCR 493
66. Weber v. Ontario Hydro, 1995 CanLII 108 (SCC), [1995] 2 SCR 929

Court File No.:T-1089-22

FEDERAL COURT

B E T W E E N:

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants

MEMORANDUM OF FACT AND LAW

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Court File No.:T-1089-22

FEDERAL COURT

B E T W E E N:

KAREN ADELBERG ET AL.

Plaintiffs

- and -

HIS MAJESTY THE KING ET AL.

Defendants

PLAINTIFFS' MOTION RECORD

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

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TAB 8

Court File No.A-67-23

FEDERAL COURT OF APPEAL

B E T W E E N:

Karen Adelberg et al.

Appellants

- and -

His Majesty the King et al.

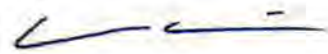
Respondents

PARTIES' AGREEMENT AS TO CONTENT OF APPEAL BOOK

The parties, through their counsel, hereby agree that the content of the appeal book in the within appeal shall be as follows:

1. Notice of Appeal, issued March 3rd, 2023.
2. Direction of Court with respect to Schedule A and B, dated February 8th, 2023.
3. Decision of Federal Court, Fothergill, J., dated February 21st, 2023.
4. Letter dated February 17th, 2023 attaching Schedule A and B as directed by the Court.
5. Schedule A and B,
6. Respondent's Motion (Record) to Strike, and materials in support, excluding jurisprudence.
7. Appellant's Motion (Record) in response, and materials in support, excluding jurisprudence.
8. Parties Agreement as To Contents of Appeal Book.
9. Solicitor's certificate as to completeness and legibility.
10. Any order issued in this appeal herein.

Dated at Toronto, this 28th day of March, 2023.



 Rocco Galati, for the Appellants

Dated at Toronto, this 28th day of March, 2023.



 Adam Gilani, for the Respondent

Registry No.A-67-23

IN THE FEDERAL COURT OF APPEAL

B E T W E E N:

KAREN ADELBERG ET AL.

Appellants

- and -

HIS MAJESTY THE KING ET AL.

Respondents

**PARTIES' AGREEMENT AS TO CONTENT
OF APPEAL BOOK**

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Solicitor for the Appellants

TAB 9

Court File No.A-67-23

FEDERAL COURT OF APPEAL

B E T W E E N:

KAREN ADELBERG ET AL.

Appellants

- and -

HIS MAJESTY THE KING ET AL.

Respondents

CERTIFICATE OF COMPLETENESS OF APPEAL BOOK

I, Rocco Galati, Solicitor for the Appellants, certify that the contents of the appeal book in this appeal are complete and legible.

DATE: April 21, 2023



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Solicitor for the Appellants

Registry No.A-67-23

IN THE FEDERAL COURT OF APPEAL

B E T W E E N:

KAREN ADELBERG ET AL.

Appellants

- and -

HIS MAJESTY THE KING ET AL.

Respondents

APPEAL BOOK

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IN THE FEDERAL COURT OF APPEAL

B E T W E E N:

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APPEAL BOOK

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