

APPENDIX A— PROPOSED AMENDMENTS TO THE CLAIM

Concerning the proper forum or inappropriateness of the grievance procedure, the plaintiffs further plead that:

- The employment relationship between each Class member and their Employer was exhaustively and comprehensively governed by the respective collective agreements.
- In enacting the Order, the Minister induced the Employers to unilaterally impose terms of employment that were not previously contemplated by the parties or reflected in the collective agreements.
- The plaintiffs and Class members dispute the legality of the Minister’s conduct in enacting and enforcing the Order, the adoption of which had unlawful collateral effects on the collective agreements.
- The plaintiffs and Class members do not challenge or dispute the interpretation, application, or administration of the negotiated terms of the collective agreements.

Concerning their claims in bad faith—which are applicable to (1) the plaintiffs’ claims in tort and for *Charter* damages and (2) the defendants’ arguments concerning its ‘core policy immunity’ and s. 1 of the *Charter*—the plaintiffs further plead that:

- In enacting the Order, the Minister was motivated by political pressure and/or political self-interest in that the government needed to appear responsive to COVID-19, regardless of the effectiveness of any such response.
- Even if the Minister’s objective in enacting the Order was to reduce the severity, infection rates, and transmission of COVID-19 in the air transportation sector, the Minister knew or ought to have known that:
 - these goals were not materially furthered by the Order and/or the Order was not necessary to meet these goals;
 - the Order was not supported by scientific evidence; and
 - the Order was not proportionate to the infringement of the plaintiffs’ and Class members’ rights and interests.
- The Minister knew or ought to have known that enacting the Order:

- was unconstitutional as it unilaterally altered terms fundamental to the plaintiffs' and Class members' employment that were previously negotiated through collective bargaining;
 - was not justified by considerations of 'aviation or public safety' and therefore was not lawfully within the scope of authority contemplated by the *Aeronautics Act*; and
 - likely would result in compensable economic and emotional harm to the plaintiffs and Class members.
- The Minister was recklessly indifferent, willfully blind, and/or otherwise unlawfully disregarded the unconstitutionality of the Order and the foreseeable harm to the plaintiffs and the Class members.

Concerning their claim of inducement to breach of contract, the plaintiffs further plead that:

- The Minister knew or ought to have known of the existence of the collective agreements, their terms, and the fact that these agreements exhaustively outlined the rights and obligations governing the plaintiffs, Class members', and Employers' employment relationships.
- The collective agreements were in fact breached when the plaintiffs were disciplined (through suspension, termination, or otherwise) and when the plaintiffs' personal medical information was collected in ways not previously authorized—either expressly or impliedly—under the collective agreements.
- These breaches were caused by the requirements of the Order and the consequences contemplated therein.
- The Minister knew that and intended for the requirements of the Order to cause the Employers to breach the collective agreements.
- As a result of these breaches, the plaintiffs and Class members suffered economic damages including the loss of pay, benefits, and/or employment and suffered emotional damages including the loss of the sense of self-worth, security, and satisfaction associated with the ability to work.
- The Minister enacted the Order with reckless indifference and willful blindness

to the plaintiffs' and Class members' rights and interests.

- The Minister enacted the Order in bad faith and/or for an improper purpose—namely, political gain and self-interest—outside the scope of the powers granted in the enabling statute.
- The Minister had no justification or lawful purpose in inducing the Employers to breach the collective agreements.

Concerning their claim of misfeasance in public office, the plaintiffs further plead that:

- The Minister knew or ought to have known that he could only enact interim orders for aviation or public safety.
- The Minister deliberately enacted the Order mandating vaccination, knowing that vaccination would not materially further the interests of aviation or public safety.
- The Minister in fact deliberately ignored the relevant safety information pertinent to the approved vaccines including their effectiveness and their heightened potential for adverse effects.
- Specifically, the Minister knew or ought to have known that the Product Monographs for the approved vaccines only included information as to the relative effectiveness of COVID-19 vaccination. The Minister knew or ought to have known that information on the absolute effectiveness of a vaccination was more relevant as to whether vaccination would prevent infection, transmission, or the severity of COVID-19 infection.
- The Minister also deliberately failed to hold meaningful consultations with the plaintiffs' and Class members' respective bargaining units prior to enacting the Order.
- At all times, the Minister knew or ought to have known that:
 - exercising his powers under the *Aeronautics Act* for a purpose unrelated to safety was unlawful;
 - enacting the Order would have significant adverse consequences to the plaintiffs and the Class members' employment and sense of well-being, including but not limited to suspension without pay and termination.

Concerning their claim of violation of s. 2(d) of the *Charter*, the plaintiffs further plead that:

- The terms concerning the plaintiffs' and Class members' ability to perform their job duties and concerning the manner and reasons for which they could be disciplined were fundamentally important to the plaintiffs and Class members.
- These terms formed the basis for previous negotiations between the plaintiffs and Class members' respective collective bargaining units and Employers.
- The Order unilaterally imposed terms contrary to the existing protections in the collective agreements, which limited the conditions of employment, the collection of information, and disciplinary measures to certain conditions unrelated to vaccination or vaccination status.
- The Minister failed to meaningfully engage with or consult the plaintiffs' bargaining units prior to enacting the Order.
- Specifically, the Minister did not give the plaintiffs' and Class members' respective bargaining units the opportunity to influence the Order nor did these bargaining units have relatively equal bargaining power to the Minister in any negotiations held concerning the Order.

Concerning their claim of lack of justification under s. 1 of the *Charter*, the plaintiffs further plead that:

- The Minister's main objective in enacting the Order was to assuage concerns that the government was not acting in a sufficiently urgent manner to address the COVID-19 pandemic, which is not a pressing and substantial objective as it is outside the scope under the *Aeronautics Act* by which he could enact an interim order.
- In the alternative, the Minister's main objective was to limit the transmission, infection rates, and severity of COVID-19 in the air transportation sector.
- The timeline for the Order's enactment belies any urgent circumstances requiring that the plaintiffs' s. 2(d) rights be infringed by the lack of meaningful consultations. The Minister did not and has not explained why he did not engage in these consultations or why these measures could not have been enacted through

the collective bargaining process. The process by which the Order was enacted was not minimally impairing.

- Nor did the Order result in benefits that were proportionate to its disadvantages. Scientific and medical evidence demonstrate that the incidence of COVID-19 was not meaningful lower in vaccinated populations as opposed to unvaccinated populations, particularly as it related to new COVID variants. The Minister did not and has not explained why other, less infringing and more effective, measures—such as testing— could not be employed instead of the Order.

Concerning their claim for damages under s. 24(1) of the *Charter*, the plaintiffs further plead that:

- The Minister acted recklessly, in a grossly negligent manner, in bad faith and/or in abuse of his power by enacting and enforcing an Order that he know or ought to have known was unconstitutional and that would unjustifiably infringe the rights of those to whom the Order applied.
- In enacting and enforcing the Order, the Minister acted in political self-interest as opposed to within the valid statutory purpose required by the *Aeronautics Act*.