

FEDERAL COURT
PROPOSED CLASS PROCEEDING

B E T W E E N:

(Court Seal)

GREGORY HILL, BRENT WARREN and TANYA LEWIS
Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF THE GOVERNMENT OF
CANADA and THE MINISTER OF TRANSPORTATION
Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. 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.

April 24, 2023

Issued by:

Address of local office: Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver BC V7Y 1B6

TO: His Majesty The King in Right of the Government of Canada

AND TO: The Minister of Transportation

AND TO: The Attorney General of Canada

CLAIM

RELIEF SOUGHT

1. The Plaintiffs, Gregory Hill, Brent Warren, and Tanya Lewis, claim on their own behalf and on behalf of a proposed class of employees of federally regulated transportation providers, who have been subjected to the Minister of Transport's Interim Order 43 and as a result have had their employment contracts breached further to inducement by the Order. ("Class" or "Class Members", to be further defined in the Plaintiffs' application for certification):
 - a. An order certifying this action as a class proceeding pursuant to Rules 334.16 and 334.17 of the Federal Court Rules, SOR/98-106;
 - b. An order pursuant to Rules 334.12, 334.16 and 334.17 of the Federal Court Rules appointing the Plaintiffs, or, alternatively, one of the Plaintiffs, as the representative Plaintiff(s) for the Class;
 - c. General damages plus damages equal to the cost of administering the plan of distribution;
 - d. Special damages in an amount to be determined, including but not limited to past or future loss of income, medical expenses and out of pocket expenses;
 - e. Exemplary and punitive damages;
 - f. Damages pursuant to the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (U.K.), 1982, c. 11, s. 24(1) (the "*Charter*");
 - g. Punitive damages pursuant to the *Charter of Human Rights and Freedoms*, C.Q.L.R. c.C-12, s. 49 and the *Civil Code of Québec*, C.Q.L.R. c. C-1991, s. 1621 (the "*Québec Charter*");
 - h. Damages for inducing breach of contract, interference with contractual relations, and negligence;

- i. General damages for Misfeasance in Public Office;
- j. Punitive damages for Misfeasance in Public Office
- k. A declaration that the Minister of Transport's conduct in issuing Ministerial Order 43 violates the Plaintiffs' and the Class Members' rights to life, liberty and security of the person and is not in accordance with the principles of fundamental justice, contrary to s.7 of the *Charter* and is not demonstrably justifiable under section 1 of the *Charter*;
- l. A declaration that the Minister of Transport's conduct in issuing Ministerial Order 43 violates the Plaintiffs' and the Class Members' rights to equality, contrary to s.15(1) of the *Charter*, and this violation is not demonstrably justifiable under section 1 of the *Charter*;
- m. A declaration that the Minister of Transport's conduct in issuing Ministerial Order 43 violates the Plaintiffs' and the Class Members' rights to freedom of conscience to s.2(a) of the *Charter*, and this violation is not demonstrably justifiable under section 1 of the *Charter*;
- n. A declaration that the Minister of Transport's conduct in issuing Ministerial Order 43 violates the Plaintiffs' and the Class Members' rights to freedom of association to s.2(d) of the *Charter*, and this violation is not demonstrably justifiable under section 1 of the *Charter*;
- o. Pre-judgment and post-judgment interest;
- n. Costs; and
- o. Such further and other relief as this Honourable Court may deem just.

Nature of this Action

2. On October 29, 2021, the Minister of Transport issued Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 43, pursuant to subsection 6.41(1) of the Aeronautics Act R.S.C. 1985, c. A-2 (“the Order”).
3. The Order required air carriers to establish and implement a comprehensive or a targeted policy respecting mandatory COVID-19 vaccination, in relation to ‘relevant persons’, which included employees, contractors, and all persons hired. According to the Order, the air carrier must “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 granted an exemption”. It also prohibited unvaccinated persons who have not been granted an exemption from accessing aerodrome property (the “Federal Vaccination Mandate”).
4. The Plaintiffs plead that the Order tortiously induced the breach of the Plaintiffs’ and Class Members’ contractual employment agreements absent justification. Such pleading is further particularized below.
5. The Plaintiffs plead that in issuing the Order, the Minister of Transport committed the tortious conduct of Misfeasance in Public Office towards the Plaintiffs’ and Class Members’, such pleading is further particularized below.
6. The Plaintiffs plead that the Order violated the Plaintiffs’ and Class Members’ rights under ss. 2a, 2d, 7, and 15 of the *Charter* and was not saved by s. 1. Such pleading is further particularized below.

The Parties and the Class

7. The Plaintiff Gregory Hill (“Hill”) is an employee of Air Canada and serves as a pilot in the rank of Captain for the airline. Hill has been an employee of Air Canada since 2006 and maintained an exemplary and unblemished record

until his suspension in 2021. Hill was suspended pursuant to Air Canada's mandatory vaccination policy which was induced by the Order. Hill is a member of the Air Canada Pilots Association ("ACPA") and at all material times his employment was governed by the ACPA-Air Canada collective agreement. Hill is a resident of Ontario.

8. The Plaintiff Tanya Lewis ("Lewis") was an employee of WestJet Airlines Inc. ("WestJet") and served as a flight attendant for the airline. Lewis has been an employee of WestJet since 2011 and maintained an exemplary and unblemished record until her suspension in 2021 and her termination in 2022. Lewis was suspended and terminated pursuant to WestJet's mandatory vaccination policy which was induced by the Order. Lewis was a member of the Canadian Union of Public Employees local 4070 ("CUPE") and at all material times her employment was governed by the CUPE-WestJet collective agreement. Lewis is a resident of Alberta.
9. The Plaintiff Brent Warren ("Warren") is an employee of Air Canada and serves as a station attendant at Vancouver International Airport for the airline. Warren has been an employee of Air Canada since 2005 and maintained an exemplary and unblemished record until his suspension in 2021. Warren was suspended pursuant to Air Canada's mandatory vaccination policy which was induced by the Order. Warren is a member of the International Association of Machinists and Aerospace Workers-District 140 ("IAMAW") and at all material times his employment was governed by the IAMAW-Air Canada collective agreement. Warren is a resident of British Columbia.
10. The Class (to be defined by the Court) is intended to include all employees, contractors, and all persons hired within the federally regulated aviation industry during the Class Period who were subjected to discipline, including but not limited to suspension of employment and termination, pursuant to the Order as a result of failing to disclose their vaccination status or failing to become vaccinated ("Class Members"). The Class Period is October 29,

2021, (when the *Order* came into force) to the date this action is certified as a class proceeding.

11. The Defendant, His Majesty the King ("Canada"), is liable for the acts, omissions, negligence and malfeasance of the employees, agents and management of Transport Canada, pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c C-50.
12. The Minister of Transport, issued the Order pursuant to subsection 6.41(1) of the *Aeronautics Act* R.S.C. 1985, c. A-2 and is represented in this action by the Attorney General of Canada pursuant to s. 23(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. 80.

Standing

13. The Plaintiffs and Class Members assert both private and public interest standing to bring this claim.
14. The Plaintiffs and Class Members have private interest standing because they are directly affected by the Minister of Transport's decision to issue the Order and thereby induce the breach of their contractual employment agreements leading to significant financial and ancillary harm.
15. The Plaintiffs and Class Members have private interest standing because they are directly affected by the Misfeasance of the Minister of Transport in issuing the Order and have been subjected to foreseeable ensuing harm as a result of such conduct.
16. The Plaintiffs and Class Members also have public interest standing. They raise a serious justifiable issue of public import respecting the constitutionality of the Minister of Transport's Order which has created, contributed to, and sustained a deprivation of individuals rights guaranteed under the Charter, ss.2a, 2d, 7, and 15.
17. The Plaintiffs and Class Members have a real stake in the Minister of

Transport's conduct and are both directly and genuinely interested in the resolution of this claim.

18. This claim advances a reasonable and effective method of bringing the issues before the Court in all of the relevant circumstances. Many individuals impacted by the conduct of the Minister of Transport and the Order have had their contractual employment agreements breached, were subjected to foreseeable harm caused by Misfeasance in Public Office, and had Charter rights infringed upon and have a lack the resources to bring forward such a claim.

Background

19. On August 13, 2021, the Federal Government announced its intent to require COVID-19 vaccination for employees in the federally regulated air, rail, and marine transportation sectors, and for travelers.
20. On October 6, 2021, Prime Minister Justin Trudeau and Deputy Prime Minister Chrystia Freeland announced that, as of October 30, 2021, the Government of Canada would require employers in the federally regulated air, rail, and marine transportation sectors to establish vaccination policies for their employees.
21. The Federal Government advised that as of October 30, 2021, employers in the federally regulated air and rail, and as of November 1, 2021, marine transportation sectors would be required to establish vaccination policies for their organizations. Specifically, the vaccination requirement of the Federal Vaccination Mandate would apply to:
 - a. airlines and airports, and other organizations who have employees who enter restricted areas of airports, such as concession and hospitality workers;
 - b. federally regulated railways, their rail crew and track employees; and
 - c. marine operators with Canadian vessels that operate with 12 or more

crew.

22. Furthermore, the Federal Government advised that Transport Canada would use its specific regulatory and oversight authorities related to operations of federally regulated air, rail, and marine transportation service providers to ensure that the transportation system and these workplaces were safe through vaccination mandates. Each organization would be required to implement a rigorous policy, which was required to:

- a. Include a provision for employee attestation/declaration of their vaccination status;
- b. Include a description of consequences for employees who do not comply or who falsify information;
- c. Meet standards consistent with the approach taken by the Government of Canada for the Core Public Administration; and
- d. Provide for a procedure for granting an exemption to individuals who have not been fully vaccinated from COVID-19 due to medical contraindication or their sincerely held religious beliefs.

23. The Federal Government advised that after a short phase-in period, each organization would be required to guarantee that employees were fully vaccinated or they would be unable to work.

24. On October 29, 2021, the Minister of Transport issued Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 43, pursuant to subsection 6.41(1) of the Aeronautics Act R.S.C. 1985, c. A-2. The Order required air carriers to establish and implement a comprehensive or a targeted policy respecting mandatory COVID-19 vaccination, in relation to ‘relevant persons’, which includes employees, contractors, and all persons hired. According to the Order, the air carrier must “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 granted an exemption”. It also prohibited unvaccinated persons who have not been granted an exemption

from accessing aerodrome property.

25. As a result of these obligations, pursuant to the Federal Vaccination Mandate, organizations which were federally regulated by Transport Canada introduced mandatory vaccination policies which added a new, hitherto not-existing, fundamental term and condition of employment within contractual employment agreements.
26. Employees who did not agree with or adhere to the policies, in compliance with the Order, were disciplined in the form of suspension from employment, termination of employment or both.

Air Canada Mandatory Vaccination Policy

27. On August 25, 2021, in response to the Federal Government's announcement and in anticipation of the Order, Air Canada announced a mandatory Covid-19 Vaccination Policy ("AC Policy"). The AC Policy stated, *inter alia*:
- a. "On August 13, the federal government announced that COVID-19 vaccinations would be mandatory for federal employees and those working in some federally regulated industries, including our own".
 - b. "With this in mind, we have carefully thought about what comes next, and decided that we will now require all our employees to be fully vaccinated by a government approved vaccine by October 31st without exception, except under our Duty to Accommodate obligations. Note that you are only considered to be fully vaccinated 14 days after your second dose in a 2-dose series, such as the Pfizer, Moderna or AstraZeneca vaccines, or 14 days after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine".
 - c. The government's announced requirements for travelers are expected to go into effect on October 31, and will accordingly apply to employees at that time.
 - d. "As of October 31st, employees who have not reported and

documented that they are fully vaccinated will no longer be able to enter any Air Canada workplace.

- e. ...”failure to be fully vaccinated by October 30, 2021 will have consequences up to and including unpaid leave or termination, except for those who qualify for accommodation.

28. On October 30, 2021, Hill was placed on an unpaid leave of absence, effectively a suspension, from Air Canada. At all material times Hill’s employment was governed by the ACPA-Air Canada collective agreement (“ACPA Agreement”).

29. The ACPA Agreement does not contain a term or condition of employment which allows employees to unilaterally be placed on an unpaid leave of absence.

30. The ACPA Agreement does not contain a term or condition of employment which mandates Covid-19 vaccination.

31. Hill pleads that mandating Covid-19 vaccination and placing him on an unpaid leave of absence constituted a breach of the ACPA Agreement.

32. On October 30, 2021, Warren was placed on an unpaid leave of absence, effectively a suspension, from Air Canada. At all material times Warren’s employment was governed by the IAMAW-Air Canada collective agreement (“IAMAW Agreement”).

33. The IAMAW Agreement does not contain a term or condition of employment which allows employees to unilaterally be placed on an unpaid leave of absence.

34. The IAMAW Agreement does not contain a term or condition of employment which mandates Covid-19 vaccination.

35. Warren pleads that mandating Covid-19 vaccination and placing him on an unpaid leave of absence constituted a breach of the ACPA Agreement.

36. On or about June 16, 2022, Air Canada announced the rescindment of the AC Policy stating inter alia:

- f. “In August of 2021, we informed all employees of our vaccination policy, which required all employees, unless being accommodated for religious or medical reasons, to be fully vaccinated in accordance with our health and safety obligations and later as required by Transport Canada’s Interim Order for air and rail travel and for employees in the transportation industry. You were not compliant with that policy and therefore considered unavailable to fulfill your duties and you were placed on an unpaid leave of absence.”
- g. On June 14, 2022, the Government of Canada announced that effective June 20, they will suspend vaccination requirements for domestic and outbound travel and for employees working in the transportation sector.
- h. In light of the state of the pandemic, effective June 20, Air Canada will suspend and review our COVID-19 Vaccination Policy and employees currently on leave based on their vaccination status will return to work.

37. The Plaintiffs’ Hill and Warren plead that in enacting, implementing, enforcing, and rescinding, the AC Policy, Air Canada was acting pursuant to direction from the Minister of Transport and the Order.

WestJet Mandatory Vaccination Policy

38. On October 16, 2021, WestJet issued its Covid-19 Mandatory Vaccination Policy (“WJ Policy”). The WJ Policy stated inter alia:

- i. The Government of Canada announced it required employees in the federally regulated air, rail, and marine transportation sectors to be Vaccinated by a Covid-19 vaccine series by the end of October 2021.
- j. Absent an approved accommodation personnel who do not comply with this Policy and/who are not vaccinated are subject to discipline

up and including termination of employment for cause.

39. On or about October 14, 2021, WestJet sent a Vaccination Requirement Notice to employees stating, *inter alia*:

- k. On August 13, 2021, the Government of Canada announced its intent to require COVID-19 vaccination for employees in the federally regulated air transportation sector.
- l. On October 6, 2021, the Government of Canada confirmed that, as of October 30, 2021, workers in the federally regulated air transportation sector are required to be fully vaccinated.
- m. In compliance with the federal mandate and with our occupational health and safety obligations, WestJet announced on September 8, 2021, that full vaccination against Covid-19 was mandatory for all employees effective October 30, 2021.

40. On March 11, 2022, Lewis's employment with WestJet was terminated by letter stating, *inter alia*:

- n. This letter confirms that due to your inability to fulfill a condition of employment as outlined below, WestJet is terminating your employment with cause effective March 11, 2022
- o. As of October 30, 2021, WestJet's Covid-19 Vaccination Policy requires that all WestJet employees be fully vaccinated against Covid-19 unless they have an approved accommodation. This requirement complies with WestJet's occupational health and safety obligations and our obligations under the Government of Canada's mandate for employers in the air transportation sector. Transport Canada has begun oversight and enforcement measures to ensure federal employers, like WestJet, are compliant with the federal vaccination mandate.

41. Effective June 20, 2022, the Government of Canada suspended the vaccine

requirements for federally regulated employees. WestJet correspondingly suspended the Vaccination Policy on June 27, 2022.

42. At all material times the Plaintiff, Lewis's, employment was governed by the by the CUPE-WestJet collective agreement. ("CUPE Agreement").

43. The Plaintiff, Lewis, pleads that in enacting, implementing, enforcing, and rescinding, the WJ Policy, WestJet was acting pursuant to direction from the Minister of Transport and the Order.

44. The CUPE Agreement does not contain a term or condition of employment which mandates Covid-19 vaccination.

45. Lewis pleads that mandating Covid-19 vaccination and terminating her employment as a consequence on non-compliance was a breach of the CUPE Agreement.

Covid -19 Vaccinations – Preventing Transmission

46. The Policy mandated Covid-19 vaccinations which were approved by Health Canada.

47. Health Canada regulatory approval decisions, product reviews, product monographs, and clinical study data on the Covid-19 vaccines was at all material times available to Treasury Board to inform the development, implementation, and enforcement of the Policy.

48. At the time the Policy was enacted all Health Canada approved COVID-19 vaccinations had filed product monographs which are available to inform the public of the effects of the vaccination. There were six (6) COVID-19 vaccines available to the public in Canada. Listed below is the manufacturer with the name of vaccine in brackets.

- a. Pfizer/BioNTech ("Comirnaty")
- b. Moderna ("Spikevax")
- c. Janssen and Johnson & Johnson ("Jcovden")

- d. AstraZeneca (“Vaxsevria”)
- e. Medicago (“Covifenz”)
- f. Novavax (“Nuvaxovid”)

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

49. A Product Monograph is a factual, scientific document on a drug product that, devoid of promotional material, describes the properties, claims, indications, and conditions of use for the drug, and that contains any other information that may be required for optimal, safe, and effective use of the drug.
50. The Product Monograph of the Pfizer vaccine, Comirnaty, does not include any information related to the transmission of COVID-19. Prevention of viral transmission is NOT an approved indication for Comirnaty. The word ‘transmission’ or any of its correlates indicating viral conveyance to another person, does not appear in this document and therefore the Plaintiffs plead that the Defendant cannot claim Comirnaty prevents viral transmission of COVID-19 to other people.
51. The Product Monograph of Moderna’s vaccine, Spikevax does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim Spikevax prevents viral transmission of COVID-19 to other people.
52. The Product Monograph of VAXZEVRA™, manufactured by AstraZeneca does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim VAXZEVRA™ prevents viral transmission of COVID-19 to other people.
53. The Product Monograph of JCOVDEN™, manufactured by Janssen, does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim JCOVDEN™ prevents viral transmission of COVID-19 to other people.
54. The Product Monograph of COVIFENZ™, manufactured by Medicago does

not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim COVIFENZ™ prevents viral transmission of COVID-19 to other people.

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

Covid-19 Vaccination – Safety and Risk of Adverse Events

56. On or about March 29, 2021, The National Advisory Committee on Immunization (NACI), recommended immediately suspending the use of the AstraZeneca-Oxford COVID-19 vaccine in Canadians under 55.
57. On June 26, 2021, Health Canada updated the product label for the Vaxzevra vaccine manufactured by AstraZeneca. Health Canada acknowledged that potential side effect of blood clots associated with low levels of platelets following immunization.
58. On November 18, 2020, Pfizer-BioNTech released and published updated results of their Phase 3 clinical trials, for the Pfizer and BioNTech Covid-19 vaccination. (“Study 1”).
59. Study 1 showed that of 18,198 individuals in the Vaccination group, 5770 individuals (26.7%) had an adverse reaction.
60. On April 1, 2021, Pfizer-BioNTech released and published updated results of their Phase 3 clinical trials. (“Study 2”).
61. Study 2 showed that of 21,923 individuals in the Vaccination group 5241 individuals (23.9%) had a “related adverse event” and 127 (0.6%) suffered “any serious adverse event”.
62. On or about May 1, 2021, Health Canada announced it was stopping distribution of 300,000 doses of the Johnson & Johnson, Jcovden, vaccine to provinces and territories because the regulator had learned the active

ingredient was made at a Baltimore facility where an inspection raised concerns.

63. On or about May 3, 2021 NACI recommended the Johnson & Johnson, Jcovden, shot not be given to anyone under 30 because of the risk of extremely rare blood clots combined with low platelets, a syndrome dubbed vaccine-induced immune thrombotic thrombocytopenia (VITT).
64. Moderna submitted results of one phase III randomized trial in support of the emergency use authorization for their vaccines for use in adults. The Moderna trial exhibited a 6% higher risk of serious adverse events in vaccinated individuals compared to the placebo group. 136 per 10,000 versus 129 per 10,000 – risk difference 7.1 per cent per 10,000.
65. In the Moderna trial Serious Adverse Events of Interests (“AESI”) showed 87 AESI (57.3 per 10,000) were reported in the vaccine group and 64 (42.2 per 10,000) in the placebo group, resulting in a 36% higher risk of serious AESI’s.
66. The Medicigo Covifenz COVID-19 vaccine was authorized on February 24, 2022, for use in Canada under the *Food and Drug Regulations*, however this vaccine was cancelled by the sponsor on March 31, 2023

Misfeasance in Public Office

67. The Minister of Transport acting under authority of the Aeronautics Act R.S.C. 1985, c. A-2 issued and mandated implementation of the Order. The Plaintiffs and Class Members plead that Minister of Transport acted with reckless indifference or willful blindness in issuing and enforcing the Order including:
 - a. The Minister of Transport had no basis in fact to justify the Order as a measure to prevent transmission of COVID-19. As such the Plaintiffs’ and Class Members plead that in perpetuating the stated objective of the Order as preventing transmission of Covid-19, The

Minister of Transport either reckless or willfully ignored the reality of the vaccine in exercising his authority under the Aeronautics Act R.S.C. 1985, c. A-2, with foreseeable losses to the Plaintiffs' and Class Members.

- b. Known and unknown potential risk of adverse events associated with the Covid-19 vaccination were either recklessly or willfully ignored and omitted by enactment and enforcement of the Order under the Aeronautics Act R.S.C. 1985, c. A-2 with foreseeable losses to the Plaintiffs' and Class Members.
- c. There was no long-term safety data available to the Minister of Transport when enacting and enforcing the Order on mandatory vaccinations and as such the Order created a foreseeable and unreasonable risk of harm to the Plaintiffs' and Class Members.
- d. The Minister of Transport acted in furtherance of political gain and expediency which supplanted the stated objectives of the Order as those objectives were known or should have been known to be unachievable by virtue of the Order.

68. The Plaintiffs' and Class Members plead that as a result of the Minister of Transport's actions in enacting and enforcing the Order on mandatory vaccinations, they suffered significant economic deprivation and emotional trauma and that such harm was foreseeable by the Minister of Transport.

69. The Plaintiffs' and Class Members plead that the Minister of Transport in exercising his statutory authority under the Aeronautics Act R.S.C. 1985, c. A-2 with reckless indifference or willful blindness committed the tort of Misfeasance in Public Office.

Tortious Inducement to Breach Contractual Relations

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

some were subsequently terminated from employment.

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

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

72. The Plaintiffs and Class Members state that at all material times, their employment contracts were valid and binding upon their Employers. As their Employers have unlawfully purported to suspend or terminate the Plaintiffs’ and Class Members’ contractual agreements and have refused to pay the sums owing to the Plaintiffs and Class Members, the Employers are in breach of their contractual employment agreements.

73. As Minister of Transport, the Defendant was aware of the existence of the contractual employment agreements when it decided to issue the Order.

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

75. The Plaintiffs and Class Members allege that the conduct of the Defendants in inducing the breach of Contract was unjustified and thus unlawful.

76. The Plaintiffs and Class Members allege that as a result of the Defendants’

interference with the Plaintiffs' and Class Members' contractual relationship with the Employers, the Defendants have caused the Plaintiffs and Class Members to suffer damages.

Breach of the *Charter of Rights and Freedoms*

77. The Plaintiffs' and Class Members plead that the Order was issued in bad faith through reckless disregard or willful blindness to the disproportional unsubstantiated impact of the Order, and as a result violated their rights under s.2a, s.2d, s.7, and s.15 of the Charter.

78. The Plaintiffs and Class Members plead that the Order imposes significant and unsubstantiated consequences for exercising their freedom of conscience under s.2a of the Charter, by choosing not to undergo a medical procedure, by prohibiting them from carrying out their duties related to commercial flight operations and prohibiting them from accessing aerodrome property which led to significant economic deprivation and harm.

79. The Plaintiffs' and Class Members plead that the Order constitutes an improper and unjustified imposition by the Minister of Transport of a new term and condition of employment absent collective bargaining, memoranda of agreement, consideration, or consent to their existing and freely negotiated employment agreements and as such violates their protected right under s. 2d of the *Charter*.

80. The Plaintiffs and Class Members plead that the Order was overly board, arbitrary, and grossly disproportionate and the penalty imposed by non-compliance with the Order had a specific coercive and deleterious effect on the Plaintiffs and Class Members by attempting to prevent them from making fundamental personal choices in mandating a medical procedure which, as particularized above, had serious and unknown risks to their health and welfare resulting in a substantive infringement on their rights under s.7 of the Charter.

81. The Plaintiffs and Class Members plead that as a result of the Order their rights under s. 15 of the *Charter* have been infringed upon as they were subject to differential treatment by imposing a burden upon them and punitively withholding the benefits of employment from them in a manner which reflects the stereotypical application of presumed group or personal characteristics, or which otherwise has the effect of perpetuating or promoting the view that the Plaintiffs and Class Members are less capable or worthy of recognition or value as human beings or as members of Canadian society, equally deserving of concern, respect, and consideration.

82. The Plaintiffs' and Class Members plead the Order violates ss. 2a, 2d, 7, and 15 by infringing on these rights in a manner that does not accord with the principles of fundamental justice. These infringements cannot be justified pursuant to the criteria of s. 1 of the Charter. The infringements cannot be demonstrably justified because they were not minimally impairing and there was no proportionality between the deleterious and salutary effects of the Orders.

83. The Plaintiffs' and Class Members plead that *Charter* damages are a just and appropriate remedy in this case to vindicate rights, deter conduct, and achieve the objective of compensation.

Privacy Rights

84. The Plaintiffs and Class Members plead that in requiring them to disclose private medical information to the Employers the Order intentionally or recklessly or willfully, and without claim of right, intruded upon the Plaintiffs' and Class Members' private affairs; a reasonable person would regard this intrusion as highly offensive and causative of distress, humiliation or anguish.

85. The Plaintiffs and Class Members plead that the Order's intrusion in disclosure of private medical information violates common law and statutory privacy rights pursuant to the *Privacy Act*, R.S.B.C. 1996, c. 373; *Privacy*

Act, C.C.S.M. 1987, c. P125; *Privacy Act*, R.S.S. 1978. c. P-24; *Privacy Act*, R.S.N.L.1990. c. P-22.

Aggravated and Punitive Damages

86. The Plaintiffs and Class Members plead that Defendants, by virtue of the conduct included in this Statement of Claim have inflicted mental and emotional distress by engaging in conduct:

- a. that constitutes conduct that is flagrant and outrageous;
- b. that was calculated to produce harm and produce the consequences that flowed from the Order; and
- c. that resulted in injury to the Plaintiffs and Class members.

87. The Plaintiffs and Class Members plead that the conduct of the Defendants as outlined in this Statement of Claim demonstrates a wanton, high-handed and callous disregard for the interests of the Plaintiffs and Class Members. This conduct merits an award of aggravated and punitive damages.

Remedies

88. The Plaintiffs and Class Members repeat the claims for relief sought set out in paragraph 1 above.

89. The Plaintiffs propose that this action be tried at the City of Vancouver, in the Province of British Columbia.

Umar A. Sheikh

October 11, 2023

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SOR/2021-150, s. 12