

Court File No.: T-2142-23

FEDERAL COURT
Proposed Class Proceeding

BETWEEN:

STACEY HELENA PAYNE, JOHN HARVEY AND LUCAS DIAZ MOLARO

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

MOTION RECORD OF THE DEFENDANT/MOVING PARTY
(Motion to Strike)

August 19, 2024

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Ontario Regional Office
National Litigation Sector
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1
Fax: (416) 973-0809

Per: Kathryn Hucal
Adam Gilani
Renuka Koilpillai
Tel: (416) 557-3574
(416) 458-5530
Email: kathryn.hucal@justice.gc.ca
adam.gilani@justice.gc.ca
renuka.koilpillai@justice.gc.ca

Lawyers for the Defendant

TO: SHEIKH LAW
Barristers and Solicitors
Box 24062 Broadmead RPO
Victoria, BC V8X 0B2

Per: Umar Sheikh
Tel: (250) 413-7497
Email: usheikh@sheikhlaw.ca

Lawyers for the plaintiffs

TABLE OF CONTENTS

<u>Tab</u>	<u>Description</u>	<u>Page</u>
A.	Notice of Motion	4
B.	Affidavit of Charles Vézina affirmed August 16, 2024	8
C.	Statement of Claim issued October 6, 2023	55
D.	Written Representations of the Defendant (Moving Party)	71

Court File No.: T-2142-23

FEDERAL COURT
Proposed Class Proceeding

BETWEEN:

STACEY HELENA PAYNE, JOHN HARVEY AND LUCAS DIAZ MOLARO

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

NOTICE OF MOTION
(Motion to Strike)

TAKE NOTICE THAT the Defendant will make a motion to the Federal Court on a date and time to established by the Case Management Judge, or as soon thereafter as the motion can be heard, at the Federal Court in Vancouver, British Columbia.

THE MOTION IS FOR:

- i. The defendant requests that the Statement of Claim be struck in its entirety, without leave to amend, and the matter be dismissed.
- ii. The respondent seeks its costs in the amount of \$1500.00, payable forthwith; and,
- iii. such further and other relief as counsel may request and this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. The allegations set out by the plaintiffs in this claim are statute barred pursuant to s. 208 and s. 236 of the *Federal Public Sector Labour Relations Act (FPSLRA)*. Section 236 is an explicit ouster of this Honourable Court's jurisdiction to adjudicate the matters in this proceeding.
2. 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. Pleadings may be struck out with or without leave to amend.
3. On October 6, 2023, the Statement of Claim in the present matter was issued in Federal Court.
4. The Claim is brought by three plaintiffs who stat that they are all current or former unionized employees of the Government of Canada in the core public administration. The plaintiffs also state that they are or were unionized employees.
5. The essence of the claim relates to the Treasury Board of Canada ("Treasury Board") *Policy on Covid-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (the "Policy").
6. The Policy was a vaccination policy implemented by the Treasury Board on October 6, 2021, and was suspended on June 20, 2022.
7. The plaintiffs seek to recover under various heads of damages, and a declaration that the TB policy unjustifiably violated their *Charter* rights under section 2(d) (freedom of association). The plaintiffs allege that the vaccine requirement constituted a new unilateral term and condition of employment outside of their collective agreement, which they allege is a breach of contract. The plaintiffs also assert a claim for damages in tort for Misfeasance in Public Office.
8. 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.”

9. 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. Section 236 bars the claims of all public servants who can grieve under s. 208 of the *FPSLRA*, without any exception.
10. All the plaintiffs were accorded grievance rights and the claims asserted were all grievable under the *FPSLRA* scheme. Indeed, two of the plaintiffs filed grievances in relation to the Policy. The plaintiffs are able to obtain the ultimate remedies they seek, including in respect of the *Charter* claims, through the exclusive and comprehensive grievance process of the *FPSLRA* scheme.
11. 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.
12. The plaintiffs asserted claim for misfeasance in public office is doomed to fail. The plaintiffs do not set out the material facts necessary to establish the tort of misfeasance in public office. Thus, the claim discloses no reasonable cause of action.
13. Allegations of misfeasance in public office must be pleaded with sufficient particulars. Broad allegations with insufficient specificity are not sufficient pleadings.
14. The Respondent relies upon the following legislation:
 - a. *Federal Courts Act*, RSC, [1985, c F-7](#)
 - b. *Federal Courts Rules*, [SOR/98-106](#)
 - c. *Federal Public Sector Labour Relations Act*, [SC 2003, c 22, s 2](#)
 - d. *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 Charles Vézina affirmed August 16, 2024; and,
- iii. Such further and other material as counsel may advise and this Court may allow.

DATED at the City of Toronto, in the Province of Ontario this 19th day of August 2024.



ATTORNEY GENERAL OF CANADA

Department of Justice Canada
Ontario Regional Office
National Litigation Sector
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1
Fax: (416) 973-0809

Per: Kathryn Hucal
Adam Gilani
Renuka Koilpillai
Tel: (416) 557-3574
(416) 458-5530
Email: kathryn.hucal@justice.gc.ca
adam.gilani@justice.gc.ca
renuka.koilpillai@justice.gc.ca

Lawyers for the Defendant

TO: SHEIKH LAW
Barristers and Solicitors
Box 24062 Broadmead RPO
Victoria, BC V8X 0B2

Per: Umar Sheikh
Tel: (250) 413-7497
Email: usheikh@sheikhlaw.ca

Lawyers for the Plaintiffs

Court file No.: T-2142-23

FEDERAL COURT

BETWEEN:

STACEY HELENA PAYNE, JOHN HARVEY AND LUCAS DIAZ MOLARO

Plaintiffs

- and -

HIS MAJESTY THE KING

Defendant

AFFIDAVIT OF CHARLES VÉZINA

I, **Charles Vézina**, of the Municipality of Cantley, in the Province of Québec, SOLEMNLY AFFIRM THAT:

1. I am presently employed as the Executive Director, Labour Relations Operations, at the Office of the Chief Human Resources Officer of the Treasury Board of Canada Secretariat. I have worked in the federal public service for 24 years in a number of capacities in the field of human resources and labour relations.

2. I have personal knowledge of the facts deposed to in this affidavit except where I indicate otherwise. Where in this affidavit I state that I received information gathered by others, I confirm that I trust the accuracy of that information and believe it to be true based on the professional conduct and ability of those providing that information. Where I otherwise state my knowledge is based on information and belief, I believe the same to be true.

A. BACKGROUND – TREASURY BOARD POLICY

3. 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. The Treasury Board of Canada (“Treasury Board”) is the employer for the departments and agencies identified as forming part of the Core Public Administration.¹ As such, Treasury Board is responsible for, and has the authority to establish the terms and conditions of employment for those portions of the federal public administration that form the core public administration.

4. On October 6, 2021, the Treasury Board’s *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (“Treasury Board Policy”), issued pursuant to its authorities under ss. 7 and 11.1 of the *Financial Administration Act* (the “FAA”)² took effect. Attached hereto, and marked as **Exhibit “A”** to this, my affidavit is a copy of the Treasury Board Policy. The Treasury Board Policy required 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*.³ Employees unwilling to be fully vaccinated or to disclose their vaccination status were placed on administrative leave without pay.

5. 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.” Given that operational requirements may include *ad hoc* onsite presence, the Treasury Board Policy stipulated that “all employees, including those working remotely and teleworking must be fully

¹ *Financial Administration Act*, [RSC, 1985, c F-11](#), s. 11(1) and Schedules I, IV.

² *Financial Administration Act*, [RSC, 1985, c F-11](#)

³ [RSC, 1985, c H-6](#).

vaccinated to protect themselves, colleagues, and clients from COVID-19.”

6. On June 14, 2022, the Government of Canada announced the suspension of vaccination mandates effective June 20, 2022, including the vaccination requirement for the core public administration as set out in the Treasury Board Policy. 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.”

7. As a result, effective June 20, 2022, federal employees of the core public administration were no longer required to be vaccinated as a condition of employment.

8. Further, as of June 20, 2022, federal public servants who were subject to administrative leave without pay because 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.

B. EMPLOYMENT STATUS OF THE PLAINTIFFS

9. The Plaintiffs describe their place of work and the bargaining agents to which they belong in the Statement of Claim.

10. The Statement of Claim indicates that Stacey Helena Payne had been a graphic design technician since 2018 for the Department of National Defence (“DND”). The Plaintiff, John Harvey has been a Corrections Officer since 2008 with the Correctional Service Canada (“CSC”). The Plaintiff, Lucas Diaz Molaro had been a Monitoring and Verification Officer with the Federal Economic Development Agency for Southern Ontario (“FEDA”) since 2019.

11. DND, CSC, and FEDA are all part of the core public administration as defined by the *Financial Administration Act* (“*FAA*”).⁴ DND is listed at Schedule I of the *FAA* and CSC and FEDA are listed at Schedule IV of the *FAA*.

C. RIGHT TO GRIEVE

12. The Treasury Board is the employer for the departments and agencies identified as forming part of the core public administration. As such, the 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 Plaintiffs.

13. As employees in the core public administration, the Plaintiffs have broad rights to file grievances over a wide range of matters relating to their employment. Employees such as the Plaintiffs have the right to present a grievance, in particular if the employee feels aggrieved by the interpretation or application, in respect of the employee, of 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 as a result of any occurrence or matter affecting the employee’s terms and conditions of employment (sections 208(1)(a)(i) and 208(1)(b) of the *Federal Public Sector Labour Relations Act* (“*FPSLRA*”).

14. 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.

15. The right to grieve under section 208(1) of the *FPSLRA* is available to employees as that

⁴ *Financial Administration Act*, [RSC, 1985, c F-11](#), s. 11(1) and Schedules I, IV.

term is defined at section 206(1) of the *FPSLRA*. “Employee” means a person employed in the public service⁵, subject to some exceptions. This definition of employee includes employees in the core public administration subject to the policies established by the Treasury Board.⁶

D. AVAILABLE RECOURSE MECHANISMS AND EXISTING GRIEVANCES

16. I verily believe that all the Plaintiffs are or were employees within the meaning of section 206(1) of the *FPSLRA*. As a result of their status as employees, the Plaintiffs have or could have filed a grievance in accordance with section 208(1) of the *FPSLRA* with respect to the Treasury Board Policy. More specifically:

- a. I am advised by Audrey Brousseau, Acting Director, Labour Relations Operations at the DND and verily believe that Stacey Payne was an indeterminate full-time employee at DND since August 2018 and resigned in January 2023. She filed a grievance under the *FPSLRA* related to the Treasury Board Policy on or about February 22, 2022. I attached as **Exhibit “C”** a copy of the grievance. The grievance is at the third level of the grievance procedure.
- b. I am advised by Kelly Connolley at CSC and verily believe that John Harvey is an indeterminate full-time CX-01 employees and that his start date was May 2008. John Harvey filed a grievance under the *FPSLRA* related to the Treasury Board Policy on or about March 28, 2022. I attach as **Exhibit “D”** a copy of the grievance. The grievance is at the third level of the grievance procedure.

⁵ The public service is defined under section 2(1) of the *FPSLRA* as meaning the departments and agencies listed under Schedules I, IV, and V of the *Financial Administration Act (FAA)*. This includes the Core Public Administration.

⁶ See definition of “employer”, *Federal Public Sector Labour Relations Act*, [SC 2003, c 22, s 2](#), s. 2(1).

This is Exhibit "A" referred to in the **Affidavit of Charles Vézina**
affirmed before me on the 16th day of August, 2024

A handwritten signature in blue ink, appearing to read "Adam Gilani", is written above a horizontal line.

Adam Gilani (LSO#74291P)
Commissioner for Taking Affidavits



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

i Note to reader

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
- 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

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.

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

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*²⁰ 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 ²¹6 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

- 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)²⁷
(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 Comirnaty 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 – SSAV-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: 2023-01-17

This is Exhibit "B" referred to in the **Affidavit of Charles Vézina**
affirmed before me on the 16th day of August, 2024



Adam Gilani (LSO#74291P)
Commissioner for Taking Affidavits

[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](#)

Contacts

Yentl Béliard-Joseph

Press Secretary

Office of the President of the Treasury Board

343-551-1899

yentl.beliard-joseph@tbc-sct.gc.ca

Media Relations

Treasury Board of Canada Secretariat

Telephone: 613-369-9400

Toll-free: 1-855-TBS-9-SCT (1-855-827-9728)

Teletypewriter (TTY): 613-369-9371

media@tbs-sct.gc.ca

Laurel Lennox

Press Secretary

Office of the Honourable Omar Alghabra

Minister of Transport, Ottawa

Laurel.Lennox@tc.gc.ca

Media Relations

Transport Canada, Ottawa

613-993-0055

media@tc.gc.ca

Marie-France Proulx

Press Secretary

Office of the Honourable Jean-Yves Duclos

Minister of Health

613-957-0200

Marie-france.proulx@hc-sc.gc.ca

Media Relations

Health Canada and the Public Health Agency of Canada

613-957-2983

media@hc-sc.gc.ca

Stay connected

Twitter: [@TBS_Canada](#)

Facebook: www.facebook.com/YourGovernmentatWork/

LinkedIn: <https://www.linkedin.com/company/tbs-sct/>

Transport Canada is online at www.tc.gc.ca. Subscribe to [e-news](#) or stay connected through [Twitter](#), [Facebook](#), [YouTube](#) and [Instagram](#) to keep up to date on the latest from Transport Canada

This news release may be made available in alternative formats for persons living with visual disabilities.

Search for related information by keyword: [Travel documents](#) | [Treasury Board of Canada Secretariat](#) | [Canada](#) | [Travel and tourism](#) | [general public](#) | [news releases](#)

Date modified:

2022-06-14

This is Exhibit "C" referred to in the **Affidavit of Charles Vézina**
affirmed before me on the 16th day of August, 2024



Adam Gilani (LSO#74291P)
Commissioner for Taking Affidavits



DEPARTMENT USE ONLY À L'USAGE DU MINISTÈRE
Reference No. N° de référence

INDIVIDUAL GRIEVANCE PRESENTATION (PSLRA s. 208)
PRÉSENTATION D'UN GRIEF INDIVIDUEL (LRTFP a. 208)

Please note:

In accordance with PSLRA s. 207, all departments and agencies within the core public administration have an informal conflict management system (ICMS) in place. Its existence does not affect an employee's right to file a grievance. However, managers, employees and bargaining agent representatives are encouraged to use the ICMS when appropriate, at any stage of the grievance process, in an attempt to informally address workplace differences.

Veillez noter :

Conformément à l'article 207 de la LRTFP, les ministères et organismes de l'administration publique centrale ont établi un système de gestion informelle des conflits (SGIC). L'existence d'un tel système n'affecte pas le droit d'un employé à soumettre un grief. Toutefois, les gestionnaires, les employés et les représentants des agents négociateurs sont encouragés à se servir du SGIC, à n'importe quelle étape du processus de grief, afin de tenter de régler de façon informelle les problèmes en milieu de travail.

SECTION 1

TO BE COMPLETED BY EMPLOYEE À REMPLIR PAR L'EMPLOYÉ

A	Surname Nom de famille		Given names Prénoms		Home and work telephone No. N° de téléphone maison et travail	
	Home address Adresse du domicile				Job classification Classification du poste	
	Department or agency Ministère ou organisme			Branch/division/section Direction/division/section		
	Position title (and number) Titre du poste (et numéro)		Work location Lieu de travail	Shift Quart de travail		E-mail address Adresse électronique
	Collective agreement (if applicable) Convention collective (s'il y a lieu)			Expiry date Date d'expiration		
B	<p>Grievance details: statement of the nature of each act or omission or other matter giving rise to the grievance that establishes the alleged violation or misinterpretation, including a reference to, as the case may be, (i) any provision of a statute or a regulation, or of a direction or other instrument made or issued by the employer, that deals with the terms and conditions of employment and that is relevant, or (ii) any provision of a collective agreement or an arbitral award that is relevant.</p> <p>Énoncé du grief : exposé de la nature de chaque action, omission ou situation ayant donné lieu au grief qui permettra d'établir la prétendue violation ou fausse interprétation, y compris, le cas échéant, le renvoi à : (i) toute disposition pertinente d'une loi ou d'un règlement, ou toute directive ou tout autre document pertinents de l'employeur concernant les conditions d'emploi, (ii) toute disposition pertinente d'une convention collective ou d'une décision arbitrale.</p>					
C	Date on which each act, omission or other matter giving rise to the grievance occurred Date de chaque action, omission ou situation ayant donné lieu au grief					

D	Corrective action requested Mesures correctives demandées
	<p>_____</p> <p>Signature of employee Signature de l'employé</p> <p>_____</p> <p>Date</p>

SECTION 2**TO BE COMPLETED BY BARGAINING AGENT REPRESENTATIVE WHERE APPLICABLE****À REMPLIR PAR LE REPRÉSENTANT DE L'AGENT NÉGOCIATEUR S'IL Y A LIEU**

Approval for presentation of grievance relating to a collective agreement or an arbitral award, and agreement to represent employee are hereby given Par la présente, j'autorise la présentation du grief relatif à une convention collective ou à une décision arbitrale, et j'accepte de représenter l'employé		
<p><u>Dennis Miluck</u></p> <p>Signature of Bargaining Agent Representative Signature du représentant de l'agent négociateur</p>		<p><u>01/23/2022</u></p> <p>Date</p>
Bargaining agent Agent négociateur	Bargaining unit/component Unité de négociation/élément	
PSAC	UNDE	
Name of local bargaining agent representative Nom du représentant local de l'agent négociateur	Telephone No. N° de téléphone	Facsimile No. N° de télécopieur
Dennis Miluck	613 392 5543	
Address for contact Adresse pour fins de communication		E-mail address Adresse électronique
41 Roseland Drive Carrying Place ONT.		

SECTION 3**TO BE COMPLETED BY EMPLOYEE WHERE REPRESENTATIVE IS NOT A REPRESENTATIVE OF A BARGAINING AGENT****À REMPLIR PAR L'EMPLOYÉ, SI LE REPRÉSENTANT N'EST PAS CELUI DE L'AGENT NÉGOCIATEUR**

I agree to act on behalf of the employee J'accepte d'agir au nom de l'employé		
<p>_____</p> <p>Signature of representative Signature du représentant</p>		<p>_____</p> <p>Date</p>
Name of representative Nom du représentant	Telephone No. N° de téléphone	Facsimile No. N° de télécopieur
Address for contact Adresse pour fins de communication		E-mail address Adresse électronique

SECTION 4**TO BE COMPLETED BY IMMEDIATE SUPERVISOR OR LOCAL OFFICER IN CHARGE****À REMPLIR PAR LE SUPÉRIEUR IMMÉDIAT OU LE CHEF DE SERVICE LOCAL**

Name and title of management representative Nom et titre du représentant de la direction	Date received Date de réception
Signature	

APPENDIX A: GRIEVANCE DETAILS

1. On October 6, 2021, Treasury Board (“TBS”) issued its “Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police”¹ (the “Policy”), pursuant to sections 7 and 11.1 of the Financial Administration Act, RSC 1985, c. F-11 and management rights provided for in our collective agreement.
2. The Policy is a set of unilaterally imposed rules by the employer that have changed the terms and conditions of my employment.
3. The Policy is an unreasonable exercise of management rights and is inconsistent with the collective agreement.²
4. This is a grievance is of the consequences of non-compliance taken against me in the Policy, specifically:

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;

A. Mandatory COVID-19 Vaccination is Unreasonable

Right to Voluntary Informed Consent for Medical Treatment

¹ Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police

² Lumber & Sawmill Workers’ Union, Local 2537 and KVP Co. Ltd., (1965), 16 L.A.C. 73, para. 33, 34, 35

5. The principle of informed consent is that individuals have the right to make their own decisions about medical treatment after having been informed of the risks, potential benefits, and reasonably available alternatives. By requiring an individual's authorization for medical treatment, informed consent protects a person's right to bodily integrity and freedom in an individual's medical decisions.³
6. In Canada, the doctrine of informed consent is part of the common law.⁴ Moreover, British-Columbia,⁵ Manitoba,⁶ Ontario,⁷ and Quebec⁸ have enacted statutes that provide for persons' right to decide whether or not they wish to undergo medical procedures.
7. The Supreme Court of Canada has found that the right to "security of the person" under s. 7 of the Canadian Charter of Rights and Freedoms (the "Charter") protects both the physical and psychological integrity of the individual.⁹ Justice Wilson of the Supreme Court of Canada opined that state enforced medical or surgical treatment is an obvious invasion of physical integrity.¹⁰ She further found that the decision to end a pregnancy was a matter of conscience, guaranteed by s. 2(a) of the Charter.¹¹ Similarly, the decision or not to undergo medical treatment such as vaccination is a decision of conscience of the individual protected by s. 2(a) of the Charter.
8. By forcing employees to be vaccinated against COVID-19, the Policy undermines employees' right to choose whether or not to undergo that medical procedure. Compulsory COVID-19 vaccination cannot be demonstrably justified in a free and democratic society as per s. 1 of the Charter. Consequently, the Policy breaches my liberty of conscience and liberty of right to security of the person, protected respectively by s. 2(a) and 7 of the Charter.
9. I completed the following procedures trying to obtain informed consent, none of which apprised me of any data or information that could assist me with my right to obtain informed consent;

³ Carl H. COLEMAN, *The Right to Refuse Treatment for Infectious Disease*, Springer, 2020, p. 171, 172.

⁴ *Reibl v Hughes*, [1980] 2 S.C.R. 880, 114 D.L.R. (3d) 1, 14 C.C.L.T. 1 (SCC); Yola S. VENTRESCA, "Punctuating Social Trends: Re-Examining *Reibl v Hughes* and the Emergence of the Doctrine of Informed Consent in Canadian Law", (2017) 47:1 *Advoc Q*, 50.

⁵ Health Care (Consent) and Care Facility (Admission) Act, [RSBC 1996] c. 181, section 4.

⁶ The Health Care Directives Act, C.C.S.M. c. H27, sections 1 "directive", "maker", "treatment", 2 and 4.

⁷ Health Care Consent Act, 1996, S.O. 1996, [being Schedule A to the Advocacy, Consent and Substitute Decisions Statute Law Amendment Act, S.O. 1996, c. 2] section 11.

⁸ Civil Code of Quebec, CQLR c CCQ-1991, article 11. Act Respecting Health Services and Social Services, CQLR, c. S-4.2, section 9.

⁹ *R v Morgentaler*, [1988] 1 S.C.R. 30, p. 173.

¹⁰ *R v Morgentaler*, [1988] 1 S.C.R. 30, p. 173.

¹¹ *R v Morgentaler*, [1988] 1 S.C.R. 30, p. 175-176.

- a) On August 17th 2021, I asked my Human Resources Representative (“HR Rep”) Dianne questions about my contract¹² & my employers obligations to this contract I signed. I have yet to hear back about these questions, my HR Rep & Labour Relations only referred me back too an email I requested to be sent out to our unit to ensure members understood the implications at that time¹³.
- b) On August 18th 2021, I asked my health and safety committee a number of questions¹⁴, none of which they had answers for. I requested my questions be sent up through the Royal Canadian Air Force (“RCAF”) chain of command. I have yet to hear an answer back from these questions.
- c) On December 1st 2021, I invoked my right¹⁵ to refuse dangerous¹⁶ work. Based on my employer mandating and coercing me into administering an unproven hazardous substance¹⁷ into my body in order to continue the duties I have been performing for the past 19 months without any issues in the workplace, pursuant to section 128 of the Canada Labour Code (R.S.C., 1985, c. L-2), PART II Occupational Health and Safety¹⁸. During this process none of my questions about safety or efficacy were answered, documents were falsified and my employer refused to conduct and in-person assessment of the current business resumption plan (“BRP”) and Personal Protective Equipment (“PPE”), which has been in place loosely since June 2020, with me being at work since April 2020. The labour program also refused to investigate, I will be appealing this in federal court.
- d) On December 14th 2021, pursuant to Public Servants Disclosure Protection Act (S.C. 2005, c. 46)¹⁹, I submitted a disclosure to the Office of the Public Sector Integrity Commissioner of Canada **Reference Number: DWEB2021-12-14-1639506157**. Requesting an over arching department investigate the policy issues as a whole instead of each department addressing 1 issue at a time. The case is still open and

¹² August 17 - December 1 2021, Email chain about HR matters.

¹³ August 24 - December 1 2021, Email chain about the mandatory vaccination policy announcement.

¹⁴ My questions for the Health and Safety Committee & Chain of Command August 18, 2021.

¹⁵ My Right to Refuse Details Version 2.0, Pages 1-6 presented at level 1 & the additional 7-15 at level 2, as none of my concerns were addressed in level 1.

¹⁶ Canada Labour Code R.S.C., 1985, c. L-2, Part II Occupational Health and Safety “danger”.

¹⁷ Canada Labour Code R.S.C., 1985, c. L-2, Part II Occupational Health and Safety “hazardous substance”.

¹⁸ Canada Labour Code R.S.C., 1985, c. L-2, Part II Occupational Health and Safety, Section 128 “Right to Refuse”.

¹⁹ December 14 2021, Email confirmation of Disclosure to Office of the Public Sector Integrity Commission.

awaiting an answer from the office as to whether they will investigate or not. The act states the following; which appears to me that I should be protected from disciplinary action until a decision about the investigation is made by the board;

“Wrongdoings

8 This Act applies in respect of the following wrongdoings in or relating to the public sector:

- (a)** a contravention of any Act of Parliament or of the legislature of a province, or of any regulations made under any such Act, other than a contravention of section 19 of this Act;
- (b)** a misuse of public funds or a public asset;
- (c)** a gross mismanagement in the public sector;
- (d)** an act or omission that creates a substantial and specific danger to the life, health or safety of persons, or to the environment, other than a danger that is inherent in the performance of the duties or functions of a public servant;
- (e)** a serious breach of a code of conduct established under section 5 or 6; and
- (f)** knowingly directing or counselling a person to commit a wrongdoing set out in any of paragraphs (a) to (e).
- (g)** [Repealed, 2006, c. 9, s. 197]...

Period during which no disciplinary action may be taken

(3) For the purposes of subsection (1), the period during which no disciplinary action may be taken is the period that begins on the day on which the Commissioner sends the notice referred to in subsection 19.4(2) and ends on the earliest of

- (a)** the day on which the complaint is withdrawn or dismissed
- (b)** the day on which the Commissioner makes an application to the Tribunal for an order referred to in paragraph 20.4(1)
- (c)** in respect of the complaint, and(c) in the case where the Commissioner makes an application to the Tribunal for the orders referred to in paragraph 20.4(1)(b) in respect of the complaint, the day on which the Tribunal makes a determination that the complainant was not subject to a reprisal taken by the person.”

- e) January 19th 2022, as per the direction of my supervisor, I submitted a privacy complaint to the Office of the Privacy Commissioner, Reference:

PA-062010²⁰. Requesting further details about the privacy policy that accompanies the attestation²¹ for the COVID-19 Policy.

- (a) The first concern is agreeing to genetic testing to continue a contract or agreement to provide services, which is illegal in Canada under the Genetic Non-Discrimination Act (S.C. 2017, c. 3)²². Why am I agreeing to something that is illegal in Canada, hidden into a Privacy policy?
- (b) The second concern is agreeing to let my employer keep my private medical information on file in 2 information banks for what appears to me as the sole purpose of reporting, data collection and if I decide to look for alternative employment in the Federal Public Service. This is not the objective of the policy, which is to keep members safe at work. One of the information banks is still under construction as well, so again how can I agree to something that is still under construction?

Employer's Role is Limited to Reasonable Steps to Ensure Health and Safety

10. One of the Policy's stated objective is to "improve the vaccination rate across Canada of employees in the core public administration through COVID-19 vaccination.²³ However, it is not the employer's role to improve the vaccination rate of its employees.²⁴ Rather, it is the employer's role to "ensure that the health and safety at work of every person employed by the employer," is protected.²⁵
11. To that effect, the employer is required to take all reasonable steps to ensure the health and safety of its employees, the standard being one of due care and diligence, not perfection.²⁶ As such, the employer is not required to ensure that all of its employees are vaccinated in an attempt to eliminate all risk of COVID-19 transmission in the workplace.²⁷ Further, there is no evidence that the vaccination rate needs to be further increased for employees to be protected.²⁸

²⁰ January 19 2022, Email confirmation of Privacy complaint to the Office of the Privacy Commissioner.

²¹ Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police, attestation form.

²² Genetic Non-Discrimination Act (S.C. 2017, c. 3) Page 2, Section 3.

²³ The Policy, section 3.1.3.

²⁴ Sault Area Hospital and Ontario Nurses' Association, 2015 CanLII 55643 (ON LA), paras. 314, 315.

²⁵ Canada Labour Code, R.S.C. 1985, c. L-2, section 124.

²⁶ Canadian National Railway Company v Teamsters Canada Rail Conference, 2016 OHSTC 20, paras. 74 to 78.

²⁷ Sault Area Hospital and Ontario Nurses' Association, 2015 CanLII 55643 (ON LA), para. 340.

²⁸ Sault Area Hospital and Ontario Nurses' Association, 2015 CanLII 55643 (ON LA), para. 314.

Low Likelihood of Potential Harm from Maintaining Voluntary Vaccination

12. The Policy’s underlying assumption being that unvaccinated employees are unprotected and that being vaccinated fully protects themselves, their colleagues and their clients from COVID-19.²⁹ This assumption is unproven; it is not sufficient for an employer to assert that it reasonably relied upon experts with superb *curricula vitae*.³⁰
13. On the contrary, it has been shown that fully vaccinated individuals have peak viral load similar to unvaccinated cases and can transmit infection to fully vaccinated contacts.³¹ It has also been found that increases in COVID-19 were unrelated to levels of vaccination across 68 countries and 2947 counties in the United States.³² At least one study argues that absolute risk reduction measures from COVID-19 vaccination are much lower than the reported relative risk reduction measures.³³ In addition, the Policy does not consider natural immunity, which has been found to be longer lasting and stronger protection against infection.³⁴ In light of this data, the mandatory vaccination Policy does not accomplish its stated goal.
14. Moreover, according to the Public Health Agency of Canada, 84.25% of eligible Canadians and 73.96% of the total population are fully vaccinated.³⁵ It has been announced that 95.3% of the public service is fully vaccinated.³⁶ Increasing the vaccination rate further is unlikely to meaningfully impact the risk of transmission.
15. The Policy’s objective is to “protect the health and safety of employees.”³⁷ It is important to examine the likelihood and magnitude of potential harm from employees who choose to remain unvaccinated. Public servants are eligible to retire between 55 and 65, depending on when they began service and their personal financial decisions. The vast majority of civil servants are under 65 years of age. This age group is not at high risk for COVID-19 deaths.

²⁹ The Policy, section 3.1.3.

³⁰ Sault Area Hospital and Ontario Nurses’ Association, 2015 CanLII 55643 (ON LA), para. 12.

³¹ Anika SINGANAYAGAM et al., “Community transmission and viral load kinetics of the SARS-CoV-2 delta (B.1.617.2) variant in vaccinated and unvaccinated individuals in the UK: a prospective, longitudinal, cohort study”, *The Lancet*, (October 28, 2021).

³² S.V. SUBRAMANIAN and Akhil KUMAR, “Increases in COVID-19 were unrelated to levels of vaccination across 68 countries and 2947 counties in the United States”, *European Journal of Epidemiology*, (17 August 2021).

³³ Ronald B. BROWN, “Outcome Reporting Bias in COVID-10 mRNA Vaccine Clinical Trials”, *Medicina* 2021, 57, 199 (26 February 2021).

³⁴ Sivan GAZIT, “Comparing SARS-CoV-2 natural immunity to vaccine-induced immunity: reinfections versus breakthrough infections”, preprint from medRxiv and bioRxiv, (August 25, 2021).

³⁵ COVID-19 vaccination coverage in Canada (November 5, 2021).

³⁶ Information from unions.

³⁷ The Policy, section 3.1.1.

16. Of the 9500 deaths that occurred between March and July 2020, 90% has at least one other cause, condition or complication reported on the death certificate.³⁸ More than 80% of COVID-19 deaths occurred in long-term care, a setting in which the age profile is older and dementia is common.³⁹ There were fewer than fifty COVID involved deaths among those under the age of 45 during that same period, which represents 0.00015% of Canada's population of 33,000,000.⁴⁰ Currently, there is a low presence of COVID-19 in Canada: as of November 5, 2021, there were 23,425 active COVID-19 cases across Canada, for a total of 0.07% of our population of 33,000,000.⁴¹ At least one study questions the testing PCR testing process for diagnosing a COVID-19 case.⁴² This, combined with the vaccination rates, leads to a low likelihood of potential harm for maintaining vaccination as voluntary among public servants.
17. While it may be argued that in the absence of knowing the actual number of people infected by unvaccinated employees, even a single person potentially infected warrants any and every measure possible. However, this an extreme perspective is equal to a pursuit of "no risk". Pursuing "no risk" of transmission comes at a high cost to all employees, who lose autonomy over their own bodies.

Employees Suffer from Compulsory Vaccination

18. When one is coerced into a decision, and acts against his will, one's dignity and self-respect is diminished. There are many reasons why someone may not want to take one of the available COVID-19 vaccines. With the backdrop of COVID-19's presence in Canada and morbidity statistics, an individual's right to self-determination should prevail, even if the decision may appear mistaken in the eyes of others.⁴³
19. One of the reasons individuals may choose not to get vaccinated against COVID-19 is the risk of adverse effects, the amount of which is likely underreported.⁴⁴ A review of the clinical trials found that COVID-19 vaccines are not free of neurological side effects.⁴⁵ In fact, the following are reported occurring adverse effects of the available COVID-19 vaccines:

³⁸ StatCan COVID-19: Data to Insights for a Better Canada, COVID-19 death comorbidities in Canada (November 16, 2020), p. 4.

³⁹ StatCan COVID-19 and deaths in older Canadians: Excess mortality and the impacts of age and comorbidity, (2021), p. 3.

⁴⁰ StatCan COVID-19: Data to Insights for a Better Canada, COVID-19 death comorbidities in Canada, (November 16, 2020), p. 5.

⁴¹ StatCan COVID-19 daily epidemiology update (November 5, 2021), p. 1.

⁴² Ronald N. KOSTOFF, "Why are we vaccinating children against COVID-19", Elsevier B.V. Toxicology Reports, (14 September 2021).

⁴³ *Malette v Shulman et al* [1990] O.J. No. 450 (ON CA), section III.

⁴⁴ Government of Canada Health Info-Base Reported side effects following COVID-19 vaccination in Canada, report with data up to and including October 8, 2021, p. 10.

⁴⁵ Josef FINSTERER and Fulvio A. SCORZA, "SARS-CoV-2 vaccines are not free of neurological side effects, *Acta Neurologica Scandinavica*", 2021;144:109-110 (21 April 2021).

- Auto-immune diseases: Guillain-Barr syndrome and Thrombocytopenia.
- Cardiovascular issues: cardiac arrest, cardiac failure, myocardial infarction (heart attack), myocarditis / pericarditis (inflammation of the heart muscle and lining around the heart).
- Circulatory system issues: cerebral venous (sinus) thrombosis, cerebral thrombosis, cutaneous vasculitis, deep vein thrombosis, embolism, haemorrhage (bleeding), pulmonary embolism, thrombosis (blood clot), thrombosis with thrombocytopenia syndrome (blood clot with low platelets).
- Hepato-gastrointestinal and renal system issues: acute kidney injury, glomerulonephritis (kidney inflammation) and nephrotic syndrome (kidney disorder), liver injury.
- Nerves and central nervous system issues: Bell's Palsy / facial paralysis, cerebrovascular accident (stroke) Transverse myelitis (inflammation of spinal cord).
- Other system issues: anaphylaxis, COVID-19, multi-system inflammatory syndrome.
- Pregnancy issues: fetal growth restriction, spontaneous abortion.
- Respiratory system issues: acute respiratory distress syndrome.
- Skin and mucous membrane, bone and joints system: chilblains, erythema multiforme (immune skin reaction).⁴⁶

20. These side effects can occur in anyone who takes the vaccine, and contrary to COVID-19, are not more prevalent in certain age groups. They can happen to anyone. Many of these side effects are irreversible. One of the adverse effects is death (cardiac arrest / cardiac failure). One analysis of United States data did not find the risk/benefit analysis in favor of inoculation for most people under 40 years of age.⁴⁷ There is an ethical difference between people becoming ill or dying from a disease occurring in nature, and people becoming injured or dying from a manmade vaccine.

21. By making the COVID-19 vaccination mandatory, the employer risks doing the opposite of providing a healthy and safe work environment. Employees who do not want to undergo vaccination, risk adverse effects if they comply with the policy

⁴⁶ Government of Canada Health Info-Base Reported side effects following COVID-19 vaccination in Canada, report with data up to and including October 8, 2021, p. 8, 9.

⁴⁷ Ronald N. KOSTOFF, "Why are we vaccinating children against COVID-19", Elsevier B.V. Toxicology Reports (September 14, 2021).

against their true will. Each individual should be allowed to do their own risk-benefit analysis without jeopardizing their employment.

There are More Proportionate and Reasonable Alternatives to Balance all Interests

22. There has been no evidence of COVID-19 outbreaks on my work-site since March 2020. I have entered my worksite everyday excluding approximately 4 weeks of occasional teleworking shifts since April 2020. The underlying presumption of the Policy is that unvaccinated employees will infect colleagues and clients on the occasions they enter the worksite. If all employees stay home when they're sick, any type of transmission is unlikely, since asymptomatic transmission rates are much lower than symptomatic transmission rates.⁴⁸
23. There has been no evidence of COVID-19 outbreaks on my work-site since March 2020. There has only been COVID issues at my workplace after the vaccine Mandate was into place fully. The base hospital had to close down due to staffing issues with COVID⁴⁹, asking them to use the local hospital instead, in-turn creating more of a strain on our hospitals rather than less of one, as set out in the policy. I have been entirely operational since April 2020. The underlying presumption of the policy is that unvaccinated employees will infect colleagues and clients at the worksite. If all employees stay home when they're sick, any type of transmission is unlikely, since asymptomatic transmission rates are much lower than symptomatic transmission rates.⁵⁰
24. The Policy is not proportionate and the current less intrusive measures suffice. The employer can provide information on COVID-19 vaccination and its accessibility, without making it a condition of employment.

B. The attestation in GCVATS is unreasonable

25. Since the employee vaccination requirement is unreasonable, it follows that the collection of personal information related to COVID-19 vaccination status is unreasonable.
26. The attestation of vaccination status requirement, the use of the GCVATS system and the disciplinary consequences of non-compliance were not negotiated in the collective bargaining process. Consequently, the employer must bring itself within the scope of the management rights clause of the collective agreement.⁵¹

⁴⁸ Allyson M. POLLOCK, James LANCASTER, "Asymptomatic transmission of covid-19", the BMJ (December 21, 2020); Shaun GRIFFIN, "Covid-19: Asymptomatic cases may not be infectious", Wuhan study indicates, the BMJ (December 1, 2020).

⁴⁹ November 25, 2021, Email from 24 Health Services about hospital staffing issue on base.

⁵⁰ Allyson M. POLLOCK, James LANCASTER, "Asymptomatic transmission of covid-19", the BMJ (December 21, 2020); Shaun GRIFFIN, "Covid-19: Asymptomatic cases may not be infectious", Wuhan study indicates, the BMJ (December 1, 2020).

⁵¹ Communications, Energy and Paperworkers Union of Canada, Local 30 and Irving Pulp & Paper, Limited, [2013] 2 S.C.R. 458, para. 2.

27. The Supreme Court of Canada has said that, “When employers in a unionized workplace unilaterally enact workplace rules and policies, they are not permitted to promulgate unreasonable rules and then punish employees who infringe them.”⁵²
28. In determining whether the exercise of management rights is reasonable, the question to be answered is whether the benefit to the employer from the attestation requirement is proportional to the harm to employee privacy.⁵³ To answer this question, one needs to address the risks that the employer intends to address by this policy.⁵⁴ The employer seeks to “protect the health and safety of employees.”⁵⁵
29. However, the mere fact that COVID-19 exists as a virus is not sufficient to require disclosure of vaccination status against that virus. As previously stated:
- A. As of November 5, 2021, there were 23,425 active COVID-19 cases across Canada, for a total of 0.07% of its population of 33,000,000.⁵⁶
 - B. The vaccination rates in the Canadian population are high.⁵⁷
 - C. Asymptomatic transmission of COVID-19 is low.⁵⁸
 - D. Symptomatic vaccinated individuals can still transmit COVID-19.⁵⁹
 - E. There have been statistically insignificant COVID-19 deaths among the working age range of public servants.⁶⁰
30. There is no evidence that disclosure of vaccination status will further reduce risk infection. There is no evidence that the workplace, which according to the Policy includes one’s remote work environment, has been a vector for fatal COVID-19

⁵² Communications, Energy and Paperworkers Union of Canada, Local 30 and Irving Pulp & Paper, Limited, [2013] 2 S.C.R. 458, para. 22.

⁵³ Communications, Energy and Paperworkers Union of Canada, Local 30 and Irving Pulp & Paper, Limited, [2013] 2 S.C.R. 458, para. 4, 43.

⁵⁴ Communications, Energy and Paperworkers Union of Canada, Local 30 and Irving Pulp & Paper, Limited, [2013] 2 S.C.R. 458, para. 44.

⁵⁵ The Policy, section 3.1.1.

⁵⁶ StatCan COVID-19 daily epidemiology update (November 5, 2021), p. 1.

⁵⁷ COVID-19 vaccination coverage in Canada (November 5, 2021).

⁵⁸ Allyson M. POLLOCK, James LANCASTER, “Asymptomatic transmission of covid-19”, the BMJ (December 21, 2020); Shaun GRIFFIN, “Covid-19: Asymptomatic cases may not be infectious”, Wuhan study indicates, the BMJ (December 1, 2020).

⁵⁹ Anika SINGANAYAGAM et al., “Community transmission and viral load kinetics of the SARS-CoV-2 delta (B.1.617.2) variant in vaccinated and unvaccinated individuals in the UK: a prospective, longitudinal, cohort study”, The Lancet, October 28, 2021.

⁶⁰ StatCan COVID-19: Data to Insights for a Better Canada, COVID-19 death comorbidities in Canada, (November 16, 2020), p. 4. StatCan COVID-19 and deaths in older Canadians: Excess mortality and the impacts of age and comorbidity, p. 3 (2021). StatCan COVID-19: Data to Insights for a Better Canada, COVID-19 death comorbidities in Canada, (November 16, 2020), p. 5.

transmissions. There is no evidence that the employer is required to further reduce risk of infection, as the employer's obligation to provide a healthy and safe work environment is limited to a reasonable steps.⁶¹ Pursuing a no risk environment leads to negative consequences for all employees, in the loss of their bodily autonomy.

31. On the other side of the proportionality analysis, is the employee's right to privacy. The Supreme Court of Canada has stated in respect to section 7 of the Charter that, "security of the person has an element of personal autonomy, protecting the dignity and privacy of individuals with respect to decisions concerning their own body."⁶² As such, the employer needs to justify that the request for disclosure is in accordance with principles of fundamental justice.
32. By implementing a policy that requires disclosure of vaccination status, employees are being discriminated against based on vaccination status. This outcome weighs heavily against the policy and s. 15 of the Charter protects against discrimination. Since a symptomatic vaccinated employees and symptomatic unvaccinated employees can both transmit the virus, the employer should refrain from unjustified discrimination against the unvaccinated.⁶³

C. The Privacy Statement of Attestation Form is unreasonable

33. Since the mandatory vaccination policy is unreasonable, so is the use of the GCVATS system and its associated Privacy Statement. Nonetheless, if mandatory COVID-19 vaccination and use of GCVATS were found to be reasonable, the following aspects of the Privacy Statement are unreasonable.
34. The Privacy Statement states that, "The personal information will be used, in conjunction with additional COVID-19 preventative measures, including testing, to determine if you will be granted on-site access to the workplace and to determine whether you may report to work in person or remotely." The statement is unreasonable because:

Testing

- A. The employer cannot differentiate an employee adversely based on the results of a genetic test in the course of employment.⁶⁴ Genetic characteristics are a prohibited ground for discrimination according to the

⁶¹ Canada Labour Code, R.S.C. 1985, c. L-2, section 124;

Canadian National Railway Company v Teamsters Canada Rail Conference, 2016 OHSTC 20, paras. 74 to 78.

⁶² A.C. et al. v Director of Child and Family Services, [2009] 2 S.C.R. 181, para. 100.

⁶³ Anika SINGANAYAGAM et al., "Community transmission and viral load kinetics of the SARS-CoV-2 delta (B.1.617.2) variant in vaccinated and unvaccinated individuals in the UK: a prospective, longitudinal, cohort study", *The Lancet*, October 28, 2021.

⁶⁴ Canadian Human Rights Act, R.S.C. 1985, c. H-6, subsection 7(b).

Canadian Human Rights Act.⁶⁵ Where an employee refuses to undergo a genetic test or to disclose the results of a genetic test, the discrimination is deemed to be on the grounds of genetic characteristics.⁶⁶ The employer is required to prove that this discriminatory practice is based on a bona fide occupational requirement.⁶⁷ The employer has not done this and testing requirements would likely impose undue hardship on the employee.⁶⁸

- B. Every employee is entitled not to undergo or be required to undergo a genetic test.⁶⁹ The employer is only entitled to use the results of the genetic test if the employee provides written consent.⁷⁰ Most employees are unaware of their rights and cannot be expected to hire a lawyer or afford to hire a lawyer when dealing with their employer. Good faith on the employer's part requires that the Privacy Statement inform employees of their right not to undergo a genetic test and that by attesting, they are consenting to the employer's use of their genetic test results.
- C. A reasonable, less invasive alternative to testing, requiring symptomatic employees to use sick days. Testing should not be a feature of the policy, because asymptomatic transmission of COVID-19 is very low.⁷¹ An employer cannot automatically demand that an employee to submit to a medical examination, even if there were reasonable or probable grounds to believe that the employee presents a risk to health or safety in the workplace.⁷² It must be reiterated that it cannot be assumed that because a person is unvaccinated, they present at risk to health and safety in the workplace – particularly, when a person does not have symptoms.

Remote Work Environment

- D. An employee's remote work environment is most often an employee's home. An employees' vaccination status or genetic test results are particularly irrelevant while they are working in a remote work environment that does not belong to the employer and is usually their home. The collected personal information should not be used to determine whether an employee can report to work remotely.

⁶⁵ Canadian Human Rights Act, R.S.C. 1985, c. H-6, section 3.

⁶⁶ Canadian Human Rights Act, R.S.C. 1985, c. H-6, subsection 3(3).

⁶⁷ Canadian Human Rights Act, R.S.C. 1985, c. H-6, paragraph 15(1)(a).

⁶⁸ Canadian Human Rights Act, R.S.C. 1985, c. H-6, subsection 15(2).

⁶⁹ Canada Labour Code, R.S.C. 1985, subsection 247.98(2).

⁷⁰ Canada Labour Code, R.S.C. 1985, subsection 247.98(6).

⁷¹ Allyson M. POLLOCK, James LANCASTER, "Asymptomatic transmission of covid-19", the BMJ (21 December 2020); Shaun GRIFFIN, "Covid-19: Asymptomatic cases may not be infectious", Wuhan study indicates, the BMJ (1 December 2020).

⁷² Canada (Attorney General) v Grover, 2007 FC 28, paras. 65, 66, conf. by Attorney General of Canada v Grover, 2008 FCA 97.

35. The Privacy Statement states that, “Your personal information will also be used by your organization and TBS to monitor and report on the overall impact of COVID- 19 and compliance with the vaccination program both within the organization and for the Core Public Administration, as described in standard personal information bank PSE 907, Occupational Health and Safety.”
36. The personal information collected should not be shared with TBS. The stated use of the information by TBS being “to monitor and report on the overall impact of COVID-19 and compliance with the vaccination program both within the organization and for the Core Public Administration” is not directly related to the operating program and activities of the institution to which I am employed.⁷³ Moreover, PSE 907, Occupational Health and Safety relates to the institution operating the activities and programs. It does not allow the information to be accessed by any institution other than the one who operates the program and activities related to my employment.
37. The Privacy Statement states that, “Personal information may also be used to facilitate personnel administration in the employing organization and to ensure continuity and accuracy when an employee is transferred to another organization as described in standard personal information bank PSE 901, Employee Personnel Record. The centralized collection, use, and disclosure of your personal information is described in TBS central personal information bank (under development).”
38. This use of the information is not directly related to the operating program and activities of the institution to which I am employed.⁷⁴ This use of the information does not meet any of the grounds for disclosure provided by subsection 8(2) of the Privacy Act.⁷⁵ This stated use is not the primary purpose for collection nor a consistent purpose.
39. The Privacy Statement states that, “Refusal to provide the requested information may result in employees being refused on-site access to the workplace, whether you may report to work in person or remotely and other administrative consequences such as employees being placed on leave without pay, until they are fully compliant.”
40. The statement is unreasonable because it outlines a potential disciplinary action should the employee not comply with the privacy policy, specifically refusal of access to the work, on-site or remote, and a financial penalty. It is inappropriate to provide for disciplinary action in a privacy policy. A privacy policy should relate to the collection, use, and disclosure of personal information. Employees and the

⁷³ Privacy Act, R.S.C. 1985 c. P-21, section 4; Union of Canadian Correctional Officers and Attorney General of Canada, 2019 FCA 212, para. 38.

⁷⁴ Privacy Act, R.S.C. 1985 c. P-21, section 4; Union of Canadian Correctional Officers and Attorney General of Canada, 2019 FCA 212, para. 38.

⁷⁵ Privacy Act, R.S.C. 1985 c. P-21, section 8(2).

population in general do not read privacy policies and automatically accept them. As such, by putting a disciplinary action in a privacy policy, employees will unwittingly agree to contract to terms they otherwise would not have. This practice cannot be qualified as good faith contracting.

D. The Policy Should be Struck Down

41. The Policy is unreasonable and is inconsistent with the collective agreement. The exercise of management rights to implement the Policy is therefore unjustified.
42. Consequently, the terms and conditions of my employment should remain unchanged by the Policy.

E. Leave without pay is an unreasonable consequences of non-compliance

43. The policy states that employee's have 2 weeks to attest and 2 additional weeks to take training and provide their private medical information in order to keep their full pay strength in tact, if not employee's will be placed on Administrative Leave Without Pay⁷⁶. Pursuant to DAOD 5016-0, Standards of Civilian Conduct and Discipline; "... financial and other penalties to be applied for breached of discipline or misconduct"⁷⁷. It appears to me that I am being discipline for misconduct⁷⁸ because my management, employer and every department at the federal government do not have any answers to my many legitimate concerns and it is simply easier to send me home without pay, then take the time to do our due diligence for all public servants. When I returned from my sick leave October 14 - December 1, 2021⁷⁹, I was also only discriminated against and only awarded 2 weeks, not the full 4 weeks that are written into the policy, taking away 2 full weeks of pay away from an employee trying to obtain informed consent in order to make this decision.
44. The requirements of the DAOD 5016-0, Standards of Civilian Conduct and Discipline⁸⁰ state that delegated managers must impose appropriate disciplinary measures based on the nature of misconduct, operational requirements and the principles of corrective and progressive discipline as set out in the Guidelines for Civilian Discipline. First, I don't believe asking questions to obtain informed consent about a new intrusive policy I didn't agree to at the start of my employment contract, prior to complying would be considered misconduct at all. In fact as a health and safety representative I think it is very important to be asking these questions. Secondly, I am a Graphic Design Technician with DND. I hold airworthy

⁷⁶ The Policy, section 7.1.

⁷⁷ DAOD 5016-0, Standards of Civilian Conduct and Discipline, Context: Section 3.3.

⁷⁸ December 3, 2021, Letter from management about the consequences of the policy, mis-representing the facts of my situation.

⁷⁹ October 14 - December 1, 2021, Doctors sick note.

⁸⁰ DAOD 5016-0, Standards of Civilian Conduct and Discipline, Requirements: Section 3.8.

qualifications (MI)⁸¹ Manufacturing Inspector with RCAF. I am currently the only indeterminate employee in the entirety of the federal government certified and fully trained to manufacture Metalphoto labels which are operational requirements for aircraft safety in the RCAF. Missing labels could case aircraft to be grounded. Having our military aircraft operational vs answering legitimate safety and efficacy concerns seems like an easy decision for my employer. Finally I have an outstanding work record, along with commendations for my work manufacturing PPE during the pandemic, I have always gone above and beyond for my employer, I have not one single mark on my record. It appears to me that this consequence is over reaching, not justified and not inline with my collective bargaining agreement.

45. Finally I have the following open and active investigations; a disclosure to the Office of the Public Sector Integrity Commissioner of Canada⁸²- waiting for the initial assessment; Right to refuse dangerous & unsafe work⁸³ - appealing the level 3 decision to not investigate in Federal Court; an accommodation⁸⁴ - waiting on a decision from HR and Labour Relations; a harassment disclosure against my HR Rep, my supervisor & my CO⁸⁵ - Have my initial meeting next week and a privacy complaint⁸⁶ - waiting for the initial assessment. With all of these open investigations some of the above process' have reprisal clauses, none of which my employer as taken into account, all of which I have made my employer aware of.

⁸¹ My Manufacturing Inspector(MI) Qualification for the Department of National Defence.

⁸² December 14 2021, Email confirmation of Disclosure to Office of the Public Sector Integrity Commission.

⁸³ December 30 2021, Letter confirmation from level 3 investigation decision, Labour Program Canada.

⁸⁴ January 10 2022, Accommodation request email.

⁸⁵ January 19 2022, Email confirmation from Harassment Advisors Office for submitting a notice of harassment and discrimination in the workplace.

⁸⁶ January 19 2022, Email confirmation of Privacy complaint to the Office of the Privacy Commissioner.

This is Exhibit "D" referred to in the **Affidavit of Charles Vézina**
affirmed before me on the 16th day of August, 2024

A handwritten signature in blue ink, appearing to read "Adam Gilani", is written over a horizontal line.

Adam Gilani (LSO#74291P)
Commissioner for Taking Affidavits

**GRIEVANCE PRESENTATION
PRÉSENTATION DE GRIEF**



UCCO-SACC-54-03N

PROTECTED WHEN COMPLETED
PROTÉGÉ UNE FOIS REMPLI

REFERENCE NO / N° DE RÉFÉRENCE

67426

**SECTION 1 TO BE COMPLETED BY EMPLOYEE
À REMPLIR PAR L'EMPLOYÉ**

PLEASE PRINT
EN LETTRES MOULÉES

SURNAME / NOM DE FAMILLE HARVEY		GIVEN NAMES / PRÉNOMS JOHN A		TELEPHONE NO. N° TÉLÉPHONE 306-960-4783	
HOME ADDRESS / ADRESSE DU DOMICILE Box 1992 PRINCE ALBERT, SK				JOB CLASSIFICATION CLASSIFICATION DE POSTE CX I	
Department of the Solicitor General of Canada Ministère du Solliciteur Général du Canada			Correctional Service of Canada Service Correctionnel du Canada		
SECTION CSC		WORK LOCATION / LIEU DE TRAVAIL 303K PEN		SHIFT / QUART DE TRAVAIL Nights - 5/2	
<p>A DETAILS OF GRIEVANCE / DESCRIPTION DU GRIEF</p> <p>I grieve the employer's decision to put me on leave without pay indefinitely. This decision, taken on <u>or about</u> 2021-03-11 (DATE), constitutes a disguised disciplinary measure, a suspension, a failure to accommodate <u>and is contrary to the collective agreement.</u></p> <p>B My grievance is filed following the collective agreement, any act, decision, directive, regulation, policy, document, practice, the <i>Constitution Act, 1982, Schedule B</i> to the <i>Canada Act 1982 (UK), 1982, c 11</i>, the <i>Canadian Human Rights Act, RSC 1985, c H-6</i> and any other applicable law.</p> <p>The employer's use of its managerial rights is abusive, contrary to the collective agreement, its legal obligations and constitutes a failure to accommodate my fundamental rights, which amounts to deliberate and repetitive acts of discrimination.</p>					
<p>C CORRECTIVE ACTION REQUIRED / MESURES CORRECTIVES DEMANDÉES</p> <p>I request:</p> <p>Compensation for all loss, notably any lost wages, shift and weekend premiums, lieu hours, allowances, Canada Pension Plan contributions, contributions to benefit plans, general pension, contribution, benefit loss, improper deduction and for all other consequences related to the employer's actions;</p> <p>Interests in accordance with the laws of my province of residence, following the <i>Federal Courts Act</i>;</p> <p>That the employer cease its unreasonable exercise of power;</p> <p>That the employer respect its legal obligations;</p> <p>A declaration that the employer engaged in a discriminatory practice;</p> <p>Damages for the infringement of the collective agreement and the law, notably the <i>Constitution Act of 1982</i> and the <i>Canadian Human Rights Act</i>;</p> <p>Punitive and exemplary damages for the infringement of my rights protected by the collective agreement and the law, notably the <i>Constitution Act of 1982</i> and the <i>Canadian Human Rights Act</i>;</p> <p>Any other remedy to be presented or that the Board may deem fit;</p> <p>To be made whole.</p> <p>And all other rights that I have under the Collective Agreement and any other applicable legislations. As well as all real, moral or exemplary damages, to be applied retroactively with legal interest without prejudice to other acquired rights.</p> <p>et tous les autres droits que me donne la convention collective de travail et toutes autres législations, ainsi que tous dommages réels, moraux ou exemplaires, et ce, rétroactivement avec intérêts au taux légal, sans préjudice aux autres droits dévolus.</p>					
SIGNATURE OF EMPLOYEE / SIGNATURE DE L'EMPLOYÉ				DATE 2022-03-28	

**SECTION 2 TO BE COMPLETED BY UNION REPRESENTATIVE
À REMPLIR PAR LE REPRÉSENTANT SYNDICAL**

SIGNATURE OF UNION REPRESENTATIVE / SIGNATURE DU REPRÉSENTANT SYNDICAL Wade J. Miles		DATE 2022-03-28
--	--	---------------------------

**SECTION 3 TO BE COMPLETED BY THE MANAGEMENT REPRESENTATIVE
À REMPLIR PAR LE REPRÉSENTANT DE LA DIRECTION**

TITLE OF MANAGEMENT REPRESENTATIVE / TITRE DU REPRÉSENTANT DE LA DIRECTION Sherry Fast, LR Advisor		DATE RECEIVED / DATE DE RÉCEPTION 22-04-07
SIGNATURE Fast		COPY / COPIE



BETWEEN:

(Court Seal)

FEDERAL COURT
PROPOSED CLASS PROCEEDING

Court File No.

e-document	T-2142-23-ID 1
F I L E D	<p style="text-align: center;">55</p> <p style="text-align: center;">FEDERAL COURT COUR FÉDÉRALE</p> <p style="text-align: center;">October 06, 2023 06 octobre 2023</p>
Ginette Lischenski	
VAN	1

STACEY HELENA PAYNE, JOHN HARVEY and LUCAS DIAZ MOLARO

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT: HIS MAJESTY THE KING

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.

-2-

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

October 4, 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
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa ON K1A 0H8

CLAIM**RELIEF SOUGHT**

1. The Plaintiffs, Stacey Helena Payne, John Harvey, and Lucas Diaz Molaro, claim on their own behalf and on behalf of a proposed class of unionized employees of the Federal Government, who have been subjected to the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police*, and as a result have had a unilateral term and condition of employment inserted into their employment contracts, leading to a breach of their employment contracts. ("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. General damages for Misfeasance in Public Office;
 - f. Exemplary and punitive damages for Misfeasance in Public Office;

-4-

- g. 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");
- h. A declaration that the Treasury Boards conduct in issuing the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* 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*;
- i. 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

1. On October 6, 2021, pursuant ss. 7 and 11.1 of the *Financial Administration Act*, the Treasury Board of Canada ("Treasury Board") issued the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* ("RCMP") ("the Policy").
2. The Policy required all Deputy Heads of Core Public Administration and the RCMP to implement the Policy on departments listed under *schedules I and*

-5-

IV of the Financial Administration Act on employees as defined under as defined in *sections 7 and 11 of the Financial Administration Act* and included the following regardless of whether they work on-site or telework (full time or part-time):

- a. Indeterminate employees;
- b. Determinate employees;
- c. Members and reservists of the Royal Canadian Mounted Police;
- d. Internationally based public service employees;
- e. Casual workers;
- f. Students;
- g. Visiting scientists working in Government of Canada laboratories;
- h. 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
- i. Interchange Canada participants and volunteers.

(the “Federal Public Service Vaccination Mandate”).

3. The Plaintiffs plead that the Policy violated the Plaintiffs’ and Class Members’ rights under s. 2d of the *Charter* and was not saved by s. 1, such pleading is further particularized below.
4. The Plaintiffs plead that in issuing the Policy, the Treasury Board committed the tortious conduct of Misfeasance in Public Office towards the Plaintiffs’ and Class Members’, such pleading is further particularized below.

The Parties and the Class

5. The Plaintiff Stacey Helena Payne (“Payne”) had been an employee of the Department of National Defence (“DND”) as a graphic design technician since 2018 and maintained an exemplary and unblemished record of employment until her suspension from employment on December 15, 2021.

-6-

Payne was suspended pursuant to the Policy. Payne was a member of the Public Service Alliance of Canada (“PSAC”) and at all material times her employment was governed by the PSAC Technical Services Agreement between PSAC and Treasury Board. Payne is a resident of New Brunswick.

6. The Plaintiff John Harvey (“Harvey”) had been an employee with Correctional Service Canada (“Corrections”) serving as Corrections Officer since 2008 and maintained an exemplary and unblemished record of employment until his suspension on March 11, 2022. Harvey was suspended pursuant to the Policy. Harvey is a member of the Union of Canadian Correctional Officers (“UCCO”) and at all material times his employment was governed by the UCCO- Treasury Board collective agreement. Harvey is a resident of Saskatchewan.

7. The Plaintiff Lucas Diaz Molaro (“Molaro”) was an employee of the Federal Economic Development Agency for Southern Ontario (“FEDA”) and served as Monitoring and Verification Officer. Molaro has been an employee of FEDA since 2019 and maintained an exemplary and unblemished record until his resignation October 25, 2021. Molaro resigned pursuant to the Policy. Molaro was a member of the Professional Institute of the Public Service of Canada (“PIPSC”) and at all material times his employment was governed by the PIPSC- Treasury Board collective agreement. Molaro is a resident of Ontario.

8. The Class (to be defined by the Court) is intended to include all existing unionized employees and all persons hired within the core public administration of the Federal public service and the RCMP during the Class Period who were either subject to or subjected to discipline, including but not limited to suspension of employment and termination, pursuant to the Policy as a result of failing to disclose their vaccination status or failing to become vaccinated (“Class Members”). The Class Period is October 6, 2021, (when

-7-

the *Policy* came into force) to the date this action is certified as a class proceeding.

9. The Defendant, His Majesty the King ("Canada"), is liable for the acts, omissions, negligence and malfeasance of the employees, agents and management of Treasury Board, pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c C-50.

Standing

10. The Plaintiffs and Class Members assert both private and public interest standing to bring this claim.
11. The Plaintiffs and Class Members have private interest standing because they are directly affected by the conduct of the Treasury Board in issuing the *Policy* and have been subjected to ensuing harm as a result of such conduct.
12. The Plaintiffs and Class Members also have public interest standing. They raise a serious justifiable issue of public importance respecting the constitutionality of the *Policy* which has created, contributed to, and sustained a deprivation of individuals' rights guaranteed under the Charter, s. 2d.
13. The Plaintiffs and Class Members have a real stake in the Treasury Boards' conduct and are both directly impacted and genuinely interested in the resolution of this claim.
14. This claim advances a reasonable and effective method of bringing the issues before the court in all relevant circumstances. As a result of the conduct of the Treasury Board, including but not limited to the enactment of the *Vaccine Policy* which was imposed as a contractual term within their employment agreement, impacted many individuals as a result, which included a breach to their employment contract and their Charter rights were infringed. These abhorrent acts committed by the Treasury Board also impacted the Plaintiff

and the Class's resources to bring forward such a claim.

Background on the Policy

15. On October 6, 2021, pursuant to ss. 7 and 11.1 of the *Financial Administration Act*, the Treasury Board issued the *Policy*.

16. The stated objectives of the *Policy* were, inter alia:

- a. "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".
- b. "To improve the vaccination rate across Canada of employees in the core public administration through COVID-19 vaccination".
- c. "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."

17. According to Treasury Board the expected results of the *Policy* were inter alia:

- a. "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*".

18. As per the *Policy*, Deputy Heads of departments of core public administration and the RCMP were responsible for, inter alia:

- a. Implementing this policy within their organization.
- b. Complying with directions received from the Treasury Board, the President of Treasury Board, the Secretary of the Treasury Board and other members or the Chief Human Resources Officer regarding how

to implement this policy.

- c. 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:
 - Collecting and storing data and information regarding vaccine attestations, testing, and testing results in any system prescribed by the Chief Human Resources Officer.
- d. Collecting and storing attestation and consent forms once signed for those unable to use the Government of Canada Vaccine Attestation Tracking System (GC-VATS).
- e. Conducting audits on attestations and consent forms.

19. As per the Policy, employees were responsible for inter alia:

- a. 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.
- b. Disclosing their vaccination and testing status accurately as required by this policy.
- c. Complying with this policy regardless of whether they work onsite, remotely, or telework.

20. As a consequence for non-compliance with the Policy, the Policy stated:

- a. For employees unwilling to be fully vaccinated or to disclose their vaccination status, as per Appendix A, the employer will implement the following measures:
 - Within 2 weeks of the attestation deadline, require

-10-

employees to attend an online training session on COVID-19 vaccination;

- At 2 weeks after the attestation deadline:
 - Restrict employees' access to the workplace, off-site visits, business travel and conferences; and,
 - 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.

Covid -19 Vaccinations – Preventing Transmission

21. The Policy mandated Covid-19 vaccinations which were approved by Health Canada.
22. 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.
23. 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”)

-11-

e. Medicago (“Covifenz”)

f. Novavax (“Nuvaxovid”)

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

24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. The Product Monograph of COVIFENZ™, manufactured by Medicago does not include any information or direction on the transmission of COVID-19

-12-

and therefore the Plaintiffs plead that the Defendant cannot claim COVIFENZ™ prevents viral transmission of COVID-19 to other people.

30. 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

31. 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.

32. 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.

33. 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”).

34. Study 1 showed that of 18,198 individuals in the Vaccination group, 5770 individuals (26.7%) had an adverse reaction.

35. On April 1, 2021, Pfizer-BioNTech released and published updated results of their Phase 3 clinical trials. (“Study 2”).

36. 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”.

37. 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.

38. 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).
39. 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.
40. 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.
41. 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

42. The Treasury Board acting under authority of the Financial Administration Act issued and mandated implementation of the Policy. The Plaintiffs and Class Members plead that Treasury Board acted with reckless indifference or willful blindness in issuing and enforcing the Policy including:
 - a. The Treasury Board had no basis in fact to justify the Policy as a measure to prevent transmission of COVID-19. As such the Plaintiffs’ and Class Members plead that perpetuating the stated objective of the Policy to prevent transmission of Covid-19, Treasury Board was either reckless or willfully ignored the reality of the vaccine in exercising their authority under the Financial Administrations Act, with

-14-

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 Policy under the Financial Administrations Act, with foreseeable losses to the Plaintiffs' and Class Members as a result of non-compliance with the *Policy*.
- c. There was no long-term safety data available to the Treasury Board when enacting and enforcing the Policy on mandatory vaccinations and as such the Policy created a foreseeable and unreasonable risk of harm to the Plaintiffs' and Class Members.
- d. The Plaintiffs' and Class Members plead that as a result of the Treasury Boards actions in enacting and enforcing the Policy on mandatory vaccinations, they suffered significant economic deprivation and emotional trauma and that such harm was foreseeable by the Treasury Board.

43. The Plaintiffs' and Class Members plead that the Treasury Board in exercising their statutory authority under the Financial Administrations Act committed the tort of Misfeasance in Public Office.

The Charter of Rights and Freedoms

44. The Plaintiffs' and Class Members plead that *s. 2d* of the *Charter* provides for Freedom of association which guarantees the right of employees to meaningfully associate in the pursuit of collective workplace goals, which includes a right to collective bargaining. As such Laws or state actions that prevent or deny meaningful discussion and consultation about working conditions between employees and their employer may substantially interfere with the activity of collective bargaining, as may laws that unilaterally nullify significant negotiated terms in existing collective agreements.

-15-

45. The Plaintiffs and Class Members all had freely negotiated, valid, and binding contractual employment agreements with the Treasury Board.
46. None of the Plaintiffs or Class Member contractual employment agreements called for disclosure of Covid-19 vaccination status nor mandatory Covid-19 vaccination.
47. The Plaintiffs' and Class Members plead that the Policy was a new term and condition placed upon their employment by the Treasury Board absent collective bargaining, memoranda of agreement, consideration, or consent.
48. The Plaintiffs' and Class Members plead that the imposition by Treasury Board of a new term and condition of employment absent collective bargaining, memoranda of agreement, consideration, or consent violates their protected right under s. 2d of the *Charter*.
49. The Plaintiffs' and Class Members plead that the action of the Treasury Board in imposing a new term and condition of employment absent collective bargaining, memoranda of agreement, consideration, or consent is not saved by s.1 of the *Charter* as the Treasury Board did not possess the requisite justification based upon the objectives espoused by the Policy.

Aggravated and Punitive Damages

50. 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 or foreseeably produced harm and produce the consequences that flowed from the Policy; and
 - c. that resulted in injury to the Plaintiffs and Class members.
51. 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.

-16-

This conduct merits an award of aggravated and punitive damages.

Remedies

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

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

Umar A. Sheikh

October 5, 2023

SHEIKH LAW

PO Box 24062 Broadmead RPO
Victoria BC V8X 0B2

Umar A. Sheikh
usheikh@sheikhlaw.ca
Tel: 250-413-7497

Angela Wood
awood@sheikhlaw.ca
Tel: 587-893-6369

Solicitors for the Plaintiffs

I HERBY CERTIFY that the
above document is a true
copy of the original filed in
the Court on
October 6, 2023

Dated October 11, 2023
Ginette Lischenski

SOR/2021-150, s. 12

Court File No.: T-2142-23

FEDERAL COURT
Proposed Class Proceeding

BETWEEN:

STACEY HELENA PAYNE, JOHN HARVEY AND LUCAS DIAZ MOLARO

Plaintiffs

and

HIS MAJESTY THE KING

Defendant

WRITTEN REPRESENTATIONS OF THE DEFENDANT / MOVING PARTY
(Motion to Strike)

August 19, 2024

ATTORNEY GENERAL OF CANADA
Department of Justice Canada
Ontario Regional Office
National Litigation Sector
120 Adelaide Street West, Suite 400
Toronto, ON M5H 1T1
Fax: (416) 973-0809

Per: Kathryn Hucal
Adam Gilani
Renuka Koilpillai
Tel: (416) 557-3574
(416) 458-5530
Email: kathryn.hucal@justice.gc.ca
adam.gilani@justice.gc.ca
renuka.koilpillai@justice.gc.ca

Lawyers for the Defendant

TO: SHEIKH LAW
Barristers and Solicitors
Box 24062 Broadmead RPO
Victoria, BC V8X 0B2

Per: Umar Sheikh
Tel: (250) 413-7497
Email: usheikh@sheikhlaw.ca

Lawyers for the Plaintiffs

OVERVIEW

1. The Statement of Claim (“Claim”) should be struck in its entirety, without leave to amend because the pleading discloses no reasonable cause of action, and the claims fall outside the jurisdiction of this Honourable Court.
2. The three proposed plaintiffs (“plaintiffs”) allege that they were suspended from employment (Stacey Helena Payne and John Harvey) or resigned (Lucas Diaz Molaro) because of the Treasury Board of Canada (“Treasury Board”) *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (“Policy”).¹ The essence of the claim relates purely to the plaintiffs’ terms and conditions of employment.
3. This Claim is barred by s. 236 of the *Federal Public Sector Labour Relations Act* (“*FPSLRA*”), which provides that the statutory grievance rights accorded to employees are in lieu of any right of action they may have.
4. In *Adelberg* the Federal Court of Appeal confirmed that, “compliance with the [vaccination policy] was a term and condition of employment for the plaintiffs [...] and could therefore have been grieved under section 208 of the *FPSLRA*,”² striking the claims of those employees in the core public administration with grievance rights under s. 208, without leave to amend.
5. The plaintiffs, who all are or were employees of the core public administration with grievance rights under s. 208 of the *FPSLRA* are statutorily barred from bringing this Claim.

PART I – FACTS

A. THE CLAIM AND THE PLAINTIFFS

6. On October 6, 2023, the Claim was issued in the Federal Court.
7. This is a proposed class action brought by three employees who worked in the core public administration.³

¹ *Policy on COVID-19 Vaccination for the Core Public Administration Including the RCMP*, dated October 6, 2021 [“**Treasury Board Policy**”], Affidavit of Charles Vézina, Tab B of the Defendant’s Motion Record. [“**Vézina Affidavit**”], Exhibit A.

² *Adelberg v Canada*, [2024 FCA 106](#) at paras [57](#).

³ Core Public Administration, as defined in the *Financial Administration Act*, [RSC, 1985, c F-11](#), s. 11(1) and Schedules I, IV

8. The plaintiffs in this action claim that the Treasury Board Policy violated their rights under s. 2 (d) of the *Charter*. The plaintiffs also assert a claim for damages in tort for misfeasance in public office.

9. The plaintiffs state that they are all current or former unionized employees of the Government of Canada in the core public administration. As employees in the core public administration, the plaintiffs are or were employees with grievance rights pursuant to s. 208 of the *FPSLRA*, and thereby are prohibited from bringing this claim by s. 236 of the *FPSLRA*.

B. BACKGROUND – TREASURY BOARD POLICY

10. On October 6, 2021, the Treasury Board, implemented a vaccination policy pursuant to its authority under ss. 7 and 11.1 of the *Financial Administration Act*⁴ (the “*FAA*”).⁵ The Treasury Board Policy required all employees of the core public administration to be fully vaccinated against COVID-19 unless they could not be vaccinated due to a certified medical contraindication, their religion, or if to do so would constitute discrimination as defined in the *Canadian Human Rights Act*. Employees unwilling to be fully vaccinated or to disclose their vaccination status were placed on administrative leave without pay.

11. One of the primary objectives of the Policy was to “take every precaution reasonable, in the circumstances, for the protection of the health and safety of employees.”⁶ Given that operational requirements may include *ad hoc* onsite presence, the Policy stipulated that “all employees, including those working remotely and teleworking must be fully vaccinated to protect themselves, colleagues, and clients from COVID-19.”⁷

12. 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 as set out in the Treasury Board Policy.⁸

13. As a result, effective June 20, 2022, employees of the core public administration were no longer required to be vaccinated as a condition of employment.

⁴ *Financial Administration Act*, [RSC, 1985, c F-11](#).

⁵ *Treasury Board Policy*, Vézina Affidavit, Exhibit A.

⁶ *Treasury Board Policy*, Vézina Affidavit, Exhibit A.

⁷ *Treasury Board Policy*, Vézina Affidavit, Exhibit A.

⁸ Government of Canada News release, “Suspension of the vaccine mandates for domestic travellers, transportation workers and federal employees”, dated June 14, 2022, Vézina Affidavit, Exhibit B.

14. Further, as of June 20, 2022, federal public servants in the core public administration who were subject to administrative leave without pay because of the requirement to be vaccinated, were permitted to resume regular work duties with pay. Accommodation measures put in place under the Treasury Board Policy also came to an end.

PART II – ISSUES

15. The legal issues to be determined are:

- a. whether this Court has jurisdiction over the claims in view of s. 236 *FPSLRA*; and,
- b. whether the pleading discloses a reasonable cause of action for misfeasance in public office.

16. It is plain and obvious that the entire Claim should be struck, without leave to amend.

PART III – SUBMISSIONS

A. THE LAW – RULE 221 OF THE *FEDERAL COURTS RULES*

17. 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.

18. 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).⁹

19. 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*:¹⁰

[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:

⁹ *Oman v Hudson Bay Port Co.*, [2016 FC 1269](#) at para [10](#); *Chase v Canada*, [2004 FC 273](#) at para [6](#).

¹⁰ *Shebib v Canada*, [2016 FC 539](#) at paras [10](#), [11](#).

A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no 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.

20. The basis of the Court’s assessment is the pleading itself.¹¹ The facts pleaded are assumed to be true,¹² unless they are manifestly incapable of being proven, such as bare assumptions, conclusions and speculations.¹³

21. 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.¹⁴ 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.¹⁵ Rule 181(1) also requires pleadings to contain particulars of every allegation contained therein.

22. 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 legal ground raised”.¹⁶ 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.”¹⁷

23. 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

¹¹ *R v Imperial Tobacco Canada Ltd.*, [2011 SCC 42](#) at para [21](#).

¹² *R v Imperial Tobacco Canada Ltd.*, [2011 SCC 42](#) at para [22](#).

¹³ *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](#).

¹⁴ *Sivak v Canada*, [2012 FC 272](#) at para 11; *Mancuso v Canada*, [2015 FCA 227](#) at para [16](#).

¹⁵ *Mancuso v Canada*, [2015 FCA 227](#) at para [19](#).

¹⁶ *Mancuso v Canada*, [2015 FCA 227](#) at para [19](#).

¹⁷ *Zbarsky v Canada*, [2022 FC 195](#) at para [13](#); *Bérubé v Canada*, [2009 FC 43](#) at para [24](#), aff’d [2010 FCA 276](#).

their claims.¹⁸ Litigants, whether self-represented or not, do “not have an unqualified right to rely on defective pleadings”.¹⁹

24. Pleading sufficient material facts is especially important in *Charter* cases because sufficiently pleaded facts are necessary for a proper and contextual consideration of the *Charter* issues.²⁰ As confirmed by the Federal Court of Appeal in *Mancuso*, this is no “mere technicality”; “rather, it is essential to the proper presentation of Charter issues...”.²¹

25. Defendants cannot be left to speculate, “as to how the facts might be variously arranged to support various causes of action.”²² 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.²³

26. 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. THIS CLAIM IS BARRED BY S. 236 OF THE *FPSLRA*

i. Section 236 bars the claims of all public servants who can grieve under s. 208 (without exception)

27. The *FPSLRA* sets out an exclusive and comprehensive scheme for resolving employment-related disputes. Consequently, this action is beyond the Court’s jurisdiction and should be struck.

28. This proposed class action seeks a declaration that the Treasury Board’s conduct in issuing the Policy is an unjustifiable violation of the plaintiffs’ *Charter* rights under s. 2(d) [freedom of association] and seek damages for the alleged violation under s. 24(1) [court may order an individual remedy for a *Charter* violation that is appropriate and just in the circumstance]. The plaintiffs also seek damages for the alleged tort of misfeasance in public office by the Treasury Board for the enactment and enforcement of the Treasury Board Policy.

¹⁸ *Zbarsky v Canada*, [2022 FC 195](#) at para [15](#).

¹⁹ *Brauer v Canada*, [2021 FCA 198](#) at para [14](#).

²⁰ *Reference re Same-Sex Marriage*, [2004 SCC 79](#), [2004] 3 SCR 698 at para [51](#); *Mancuso v Canada*, [2015 FCA 227](#) at paras [21](#), [32](#); *Mackay v Manitoba*, [1989 CanLII 26 \(SCC\)](#), [1989] 2 SCR 357 at 361–362.

²¹ *Mancuso v Canada*, [2015 FCA 227](#) at para [21](#); *Adelberg v Canada*, [2024 FCA 106](#) at paras [68](#).

²² *Mancuso v Canada*, [2015 FCA 227](#) at para [16](#).

²³ *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).

29. Section 236 of the *FPSLRA* is a complete ouster of the Court’s jurisdiction and a complete bar to any right of action for employees who have the right to grieve.²⁴ Both unionized and non-unionized employees have the right to file a grievance under the *FPSLRA* scheme.

30. As the Court of Appeal in *Bron* held,²⁵ and as consistently affirmed by this Court,²⁶ 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*].”²⁷

31. The Federal Court of Appeal’s decision in *Adelberg* held that the essential character of the impugned Treasury Board Policy relates to the terms and conditions of employment and upheld this Court’s decision barring the claims of the employees who had grievance rights under section 208.²⁸

32. Courts across Canada have consistently applied s. 236 to bar civil actions raising grievable issues,²⁹ expressly holding that the provision “completely ousts this Court’s jurisdiction over certain disputes [and] leaves no room for residual jurisdiction”.³⁰

33. While some Courts have made *obiter* comments suggesting that it is possible that residual jurisdiction for a court to assume jurisdiction remains, but that if such a residual jurisdiction exists, it would be limited to exceptional circumstances where there is evidence to establish that the

²⁴ *Bron v Canada*, [2010 ONCA 71](#) at paras [14–15](#); *Yeates v Canada*, [2011 ONCA 83](#) at para [3](#); *Goulet c Mondoux*, [2010 QCCA 468](#) at paras [5–6](#); *Nosistel v Canada*, [2018 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](#); section 236 has a single express exception at s. 236(3) [that it does not apply to employees of separate agencies designated under s. 209(3) for disputes relating to termination for non-disciplinary reasons] and thus, Parliament did not intend to permit any other exception.

²⁵ *Bron v Canada*, [2010 ONCA 71](#) at paras [29, 33](#).

²⁶ See, *Hudson v Canada*, [2022 FC 694](#), at [para 73](#); *Adelberg v Canada*, [2023 FC 252](#), at para [13](#), aff’d on this point [2024 FCA 106](#) at para [58](#); *McMillan v Canada*, [2023 FC 1752](#), at para [24](#)

²⁷ *Bron v Canada*, [2010 ONCA 71](#) at paras [29](#).

²⁸ *Adelberg v Canada*, [2024 FCA 106](#) at paras [9, 55–57](#), aff’g *Adelberg v Canada*, [2023 FC 252](#) at para [30](#).

²⁹ *Adelberg v Canada*, [2023 FC 252](#), var’d on other grounds [2024 FCA 106](#); *Wojdan v Canada*, [2023 FC 182](#); *Horsman v Canada*, [2023 FC 929](#); *Davis v Canada (Royal Mounted Police)*, [2023 FC 280](#), aff’d [2024 FCA 115](#); *Price v Canada*, [2016 FC 649](#); *Thompson v Kolotinsky*, [2023 ONSC 1588](#); *Bron v Canada*, [2010 ONCA 71](#); *Yeates v Canada*, [2011 ONCA 83](#); *Martell v Canada (Attorney General) & Ors*, [2016 PECA 8](#); *Barber, Nadel et Procureur general du Canada c J.T.*, [2016 QCCA 1194](#), leave to appeal to SCC denied, [2017 CanLII 2712 \(SCC\)](#); *Cyr c Radermaker*, [2010 QCCA 389](#); *Baxter v Harder*, [2011 ABQB 730](#); *Dufour c Bouchard*, [2013 QCCS 6544](#); *Bouchard c Procureure générale du Canada*, [2018 QCCS 1486](#); *Bouchard c Procureur général du Canada*, [2019 QCCA 2067](#), leave to appeal to the SCC dismissed [2020 CanLII 29400 \(SCC\)](#); *Robinson v Canada (Parks Canada Agency)*, [2017 FC 613](#); *Suss v Canada*, [2024 FC 137](#); *Doe v Canada*, [2023 BCSC 1701](#).

³⁰ *McMillan*, [2023 FC 1752](#) at [para 24](#). See also *Suss v Canada*, [2024 FC 137](#) at para [44](#), this Court held that “section 236 of the *FPSLRA* completely ousts this Court’s jurisdiction over the disputes that are captured by it”.

grievance process is entirely corrupt and therefore unable to provide effective redress.³¹ However, since the enactment of s. 236, no court has ever assumed jurisdiction over a labour dispute in that involves employees accorded grievance rights.³²

34. As is abundantly clear from the wording of s. 236(2), the fact that one of the plaintiffs has not filed a grievance is not relevant.³³ As this Court held in *Green*, “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....”³⁴

35. Section 208 of the *FPSLRA* sets out the broad types of grievances available to the plaintiffs:

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

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

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

³¹ *Adelberg v Canada*, [2024 FCA 106](#) at para 58, aff’g on this point [2023 FC 252](#) at para 17; *Bron*, [2010 ONCA 71](#) at para 29; *Canada v Robichaud and McKinnon*, 2013 [NBCA 3](#) at para 10.

³² *Adelberg*, [2023 FC 252](#) at para 17, var’d on other grounds [2024 FCA 106](#); *Davis v Canada (Royal Canadian Mounted Police)*, [2024 FCA 115](#) at paras 88-89.

³³ *Vézina Affidavit*, at para 16.c.

³⁴ *Green v Canada (Border Services Agency)*, [2018 FC 414](#) at para 16.

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

[Emphasis added]

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

[gras ajouté]

36. 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.³⁵

37. Section 236 of the *FPSLRA* provides that the right to grieve under the *FPSLRA* is in lieu of any right of action.

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.

³⁵ See definitions of “employee” and “employer”, *Federal Public Sector Labour Relations Act*, [SC 2003, c 22, s 2](#), s. 2(1).

ii. The claims asserted are grievable under s. 208

38. The plaintiffs, as employees in the core public administration, can obtain the ultimate remedies they seek, including in respect of the *Charter* claims, through the exclusive and comprehensive grievance process of the *FPSLRA* scheme.³⁶ The conclusive and consistent case law interpreting s. 236 holds that a court must look at the essential character of the dispute, even if the plaintiffs allege *Charter* breaches or other torts.³⁷ There is no challenge to the efficacy of the grievance process.

39. Plaintiffs cannot escape the application of the statutory bar in s. 236 by asserting that the claim is not an ordinary workplace dispute. As the Court of Appeal in *Bron* found, and affirmed repeatedly by this Court,³⁸ “[a]lmost all employment-related disputes can be grieved.”

40. As the Federal Court of Appeal held in *Ebadi*,

To allow large categories of claims—such as any claim involving an intentional tort or *Charter* breach—to escape the operation of the *FPSLRA* would undermine Parliament’s intent. Many if not all workplace grievances could, through artful pleading, be cast as intentional torts: for example, a manager speaking harshly to an employee could be said to be intentionally inflicting mental harm, or the failure to be promoted an act of discrimination. To exempt these claims from the grievance process could effectively gut the scheme, reducing it to the most mechanical and administrative elements of employment relationships, such as hours of work, overtime, classification and pay.³⁹

41. The decision in *Adelberg* is consistent with respect to the essence of the claim brought by these plaintiffs and the Federal Court of Appeal’s decision is binding.⁴⁰ These plaintiffs were all employed by organizations within the category of organizations within the core public administration (listed in Schedule “A” to the Federal Court’s reasons in *Adelberg*) with grievance rights under s. 208 of the *FPSLRA* and whose claims relating to the Policy were struck, without leave to amend.⁴¹ This was also recently reaffirmed by the Federal Court of Appeal in *Davis*.⁴²

³⁶ *Adelberg v Canada*, [2023 FC 252](#) at para 34; *Wojdan v Canada*, [2021 FC 1341](#) at paras 23–26; *Weber v Ontario Hydro*, [1995 CanLII 108](#), [1995] 2 SCR 929, at paras 60–61 and *R v Conway*, [2010 SCC 22](#) at para 78.

³⁷ *Adelberg v Canada*, [2024 FCA 106](#) at para 56.

³⁸ *Adelberg v Canada*, [2023 FC 252](#) at para 32; *Davis v Canada (Royal Canadian Mounted Police)*, [2024 FCA 115](#) at para 68.

³⁹ *Ebadi v Canada*, [2024 FCA 39](#) at para 36.

⁴⁰ *Adelberg v Canada*, [2023 FC 252](#) at para 34; *Wojdan v Canada*, [2021 FC 1341](#) at paras 23–26; *Weber v Ontario Hydro*, [1995 CanLII 108](#), [1995] 2 SCR 929, at paras 60–61 and *R v Conway*, [2010 SCC 22](#) at para 78.

⁴¹ *Adelberg v Canada*, [2024 FCA 106](#) at para 54 and 59.

⁴² *Davis v Canada (Royal Canadian Mounted Police)*, [2024 FCA 115](#) at para 86.

42. The framing of the allegations as tort and *Charter* claims cannot circumvent the essence of the claim. As in *Adelberg*, claims brought by employees in the core public administration in relation to the Policy, should be struck even in the face of creative pleadings casting the claims as a tort or a *Charter* violation.⁴³

C. THE CLAIM DISCLOSES NO REASONABLE CAUSE OF ACTION

43. Even if this Court were able to take jurisdiction to adjudicate this claim, notwithstanding the statutory bar in the *FPSLRA*, this claim does not disclose a cause of action for misfeasance in public office.

44. The plaintiffs fail to plead the necessary elements with respect to the allegation of misfeasance in public office.

45. Moreover, the allegation of misfeasance in public office is pleaded in a manner that lacks sufficient clarity to discern the elements of the claim.

i. General principles of proper pleadings

46. It is well established that pleadings should be struck if they are so confusing that it is difficult to understand what is being pled.⁴⁴

47. A plaintiff must plead material facts in sufficient detail to support the claim and the relief sought.⁴⁵ The Court and opposing parties cannot be left to speculate as to how the facts “might be variously arranged to support various causes of action”.⁴⁶ The pleading must tell the defendant who, when, where, how and what gave rise to its liability.⁴⁷

48. The statement of claim fails to plead a reasonable cause of action with respect to the allegations of misfeasance in public office. The plaintiffs fail to “(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

⁴³ *Adelberg v Canada*, [2024 FCA 106](#) at paras 68.

⁴⁴ See, for example, *kisikawpimootewin v Canada*, [2004 FC 1426](#) at paras 8-9; *Guillaume v Toronto (City)*, [2010 ONSC 5045](#) at para 54; *Keremelevski v Ukrainian Orthodox Church St. Mary Metropolitan*, [2012 BCSC 2083](#) at para 18.

⁴⁵ *Hudson v Canada*, [2022 FC 694](#) at para 68, citing *Mancuso v Canada (National Health and Welfare)*, [2015 FCA 227](#) at para 16.

⁴⁶ *Hudson v Canada*, [2022 FC 694](#) at para 68.

⁴⁷ *Hudson v Canada*, [2022 FC 694](#) at para 69; *Doan v Canada*, [2023 FC 968](#) at para 46.

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.”⁴⁸

49. 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].⁴⁹

ii. The Claim does not disclose a cause of action for misfeasance in public office

50. To properly plead a tort the plaintiff must identify the tort – in this case, misfeasance in public office – and set out the material facts necessary to satisfy the elements of the tort.

51. To plead the tort of misfeasance in public office, the plaintiff must have “a pleading of a particular state of mind by a public official – deliberate, specific conduct which the official knows to be inconsistent with their legal obligations.”⁵⁰ As in *Mancuso*, the plaintiffs assert the tort of misfeasance in public office but, “they do not link any particular conduct to the elements of the tort.”⁵¹

52. While it may be impossible for a plaintiff to name the particular public servant responsible, generalized claims against an entire department, agency, or public body, in this case, the allegation broadly against the Treasury Board, is insufficient, “and amounts to just throwing out what is at best a ‘Hail Mary’ with no chance of success.”⁵² Some level of specification is necessary to plead misfeasance in public office, “such as identifying the job positions, the organizational branch, the office, or even the building in which those dealing with the matter worked.”⁵³

⁴⁸ *Zbarsky v Canada*, [2022 FC 195](#) at para [13](#); *Bérubé v Canada*, [2009 FC 43](#) at para [24](#), aff’d [2010 FCA 276](#).

⁴⁹ *Guillaume v Toronto (City)*, [2010 ONSC 5045](#) at para [54](#).

⁵⁰ *Bigeagle v Canada*, [2023 FCA 128](#) at para [80](#); *Mancuso v Canada*, [2015 FCA 227](#) at para [26](#); citing *Odhavji Estate v Woodhouse*, [2003 SCC 69](#); *St. John's Port Authority v Adventure Tours Inc.*, [2011 FCA 198](#); *Merchant Law Group v Canada Revenue Agency*, [2010 FCA 184](#).

⁵¹ *Mancuso v Canada*, [2015 FCA 227](#) at para [26](#).

⁵² *Bigeagle v Canada*, [2021 FC 504](#) at para [192](#); *Merchant Law Group v Canada Revenue Agency*, [2010 FCA 184](#) at para [38](#).

⁵³ *Bigeagle v Canada*, [2023 FCA 128](#) at para [80](#), citing *Merchant Law Group v Canada Revenue Agency*, [2010 FCA 184](#) at para [38](#).

53. In the Statement of Claim, the plaintiffs make broad allegations against Treasury Board, without any further specificity.⁵⁴ This allegation is further mired in a lack of clarity because while the Policy was enacted by the Treasury Board, the plaintiff also alleges that misfeasance also arises out of the enforcement of the Policy.⁵⁵ However, elsewhere the plaintiffs plead that the enforcement of the Policy was the responsibility of the Deputy Heads of the departments in the core public administration.⁵⁶

54. As in *Bigeagle*, there is also no specificity to any particularized harm to an individual arising out of the alleged misfeasance, other than to employees at large, across Canada.⁵⁷ This is not a sufficient pleading.

55. Finally, the plaintiffs have not pled a specific intention to deliberately cause harm to an individual that the official knows to be inconsistent with their legal obligations. At its highest, the plaintiffs allege that the “Treasury Board”, when enacting and enforcing the Policy, “created a foreseeable and unreasonable risk of harm” without any particularization of the alleged harm, and “they suffered significant economic deprivation and emotional trauma and that such harm was foreseeable by the Treasury Board.”⁵⁸ The plaintiffs did not and could not plead that the Treasury Board intended to cause the plaintiffs any harm, especially considering that the stated objective of the Policy was to “take every precaution reasonable, in the circumstances, for the protection of the health and safety of employees.”⁵⁹

56. The plaintiff’s failure to plead the material facts necessary for the elements of the tort makes it plain and obvious that the cause of action for misfeasance in public office is doomed to fail.

⁵⁴ Statement of Claim issued October 6, 2024, at para 42.

⁵⁵ Statement of Claim issued October 6, 2024, at para 42, 42.b., 42.c., and 42.d.

⁵⁶ Statement of Claim issued October 6, 2024, at para 18.

⁵⁷ *Bigeagle v Canada*, [2021 FC 504](#) at para [191](#).

⁵⁸ Statement of Claim issued October 6, 2024, at para 42.c., and 42.d.

⁵⁹ *Treasury Board Policy*, Vézina Affidavit, Exhibit A.

iii. The expansive proposed class does not save the Claim

57. The normal rules of pleading also apply with equal force to a proposed class action. The launching of a proposed class action is a matter of “great seriousness”, potentially affecting many class members’ rights and the liabilities and interests of defendants. Complying with the Rules is not “trifling or optional; it is mandatory and essential”.⁶⁰

58. However, the fact that the plaintiffs bring this action as a proposed class action does not impact the statutory bar or alter the analysis under s. 236. As confirmed by the Supreme Court in *Bisaillon*, the class action mechanism cannot confer jurisdiction to a court over a group of cases that otherwise fall within the jurisdiction of another court or tribunal.⁶¹ Courts, including this Court, have confirmed this principle,⁶² and acknowledged that the grievance procedure cannot be circumvented, even for reasons of procedural efficiency.⁶³

59. The Statement of Claim provides no factual allegations, that if taken to be true, form the basis for any reasonable cause of action. Without any such pleading, Canada has no information and cannot plead with respect to possible claims beyond the specific claims of the three plaintiffs, who are all unionized employees in the core public administration within the meaning of the *FPSLRA* and subject to grievance rights under s. 208.

D. THE COURT SHOULD NOT GRANT LEAVE TO AMEND

60. The Court should not grant the plaintiffs leave to amend because the deficiencies in the pleadings are so fundamental that they cannot be cured by an amendment.⁶⁴

61. 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.⁶⁵

⁶⁰ *Hudson v Canada*, [2022 FC 694](#) at para [70](#) citing *Merchant Law Group v Canada Revenue Agency*, [2010 FCA 184](#) at para [40](#); *Bisaillon v Concordia University*, [2006 SCC 19](#) at para [17](#); *Doan v Canada*, [2023 FC 968](#) at paras [42-52](#).

⁶¹ *Bisaillon v Concordia University*, [2006 SCC 19](#), at para [17](#).

⁶² *Hudson v Canada*, [2022 FC 694](#), at para [73](#).

⁶³ *Bouchard*, [2018 QCCS 1486](#) at paras [50, 59](#).

⁶⁴ See, *Collins v Canada*, [2011 FCA 140](#) at para [26](#); *Simon v Canada*, [2011 FCA 6](#) at para [8](#).

⁶⁵ *Turmel v Canada*, [2022 FC 732](#) at para [37](#).

62. The claim should be struck because the plaintiffs have no right of action pursuant s. 236 of the *FPSLRA*; any amendment cannot repair this fundamental lack of jurisdiction.

63. The plaintiffs did not plead material facts necessary to establish a cause of action for misfeasance in public office. The plaintiffs have not and cannot meet the low threshold for pleading the cause of action and it is doomed to fail. There is also no indication that the plaintiffs can remedy this deficiency.

64. The Claim does not satisfy the bare minimum requirements of pleadings. The deficiencies in the Claim are not mere drafting deficiencies that could plausibly be remedied through amendment. Rather, they are symptomatic of an underlying problem in the Claim that is fatal. No amendment can cure the deficiency of this claim.

PART IV – ORDER SOUGHT

65. The defendant requests that the Statement of Claim be struck in its entirety, without leave to amend, and the matter be dismissed.

66. The respondent seeks its costs in the amount of \$1500.00, payable forthwith.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Toronto, in the Province of Ontario this 19th day of August 2024.



Adam Gilani

PART V – LIST OF AUTHORITIES

Appendix “A” – Statutes and Regulations

1. *Federal Courts Act*, RSC, [1985, c F-7](#)
2. *Federal Courts Rules*, [SOR/98-106](#)
3. *Federal Public Sector Labour Relations Act*, [SC 2003, c 22, s 2](#)
4. *Financial Administration Act*, [RSC, 1985, c F-11](#)

Appendix “B” – Book of Authorities

5. *AstraZeneca Canada Inc. v Novopharm Limited*, [2010 FCA 112](#)
6. *Barber, Nadel et Procureur general du Canada c J.T.*, [2016 QCCA 1194](#)
7. *Baxter v Harder*, [2011 ABQB 730](#)
8. *Bérubé v Canada*, [2009 FC 43](#), aff'd [2010 FCA 276](#)
9. *Bigeagle v Canada*, [2021 FC 504](#)
10. *Bigeagle v Canada*, [2023 FCA 128](#)
11. *Bisaillon v Concordia University*, [2006 SCC 19](#)
12. *Bouchard c Procureure générale du Canada*, [2018 QCCS 1486](#)
13. *Bouchard c Procureur général du Canada*, [2019 QCCA 2067](#)
14. *Brauer v Canada*, [2021 FCA 198](#)
15. *Bron v Canada*, [2010 ONCA 71](#)
16. *Canada v Robichaud and McKinnon*, 2013 [NBCA 3](#)
17. *Chase v Canada*, [2004 FC 273](#)
18. *Collins v Canada*, [2011 FCA 140](#)
19. *Cyr c Radermaker*, [2010 QCCA 389](#)
20. *Davis v Canada (Royal Mounted Police)*, [2023 FC 280](#)
21. *Davis v Canada (Royal Mounted Police)*, [2024 FCA 115](#)
22. *Doan v Canada*, [2023 FC 968](#)

23. *Doe v Canada*, [2023 BCSC 1701](#)
24. *Dufour c Bouchard*, [2013 QCCS 6544](#)
25. *Goulet c Mondoux*, [2010 QCCA 468](#)
26. *Green v Canada (Border Services Agency)*, [2018 FC 414](#)
27. *Guillaume v Toronto (City)*, [2010 ONSC 5045](#)
28. *Hudson v Canada*, [2022 FC 694](#)
29. *Horsman v Canada*, [2023 FC 929](#)
30. *Keremelevski v Ukranian Orthodox Church St. Mary Metropolitan*, [2012 BCSC 2083](#)
31. *kisikawpimootewin v Canada*, [2004 FC 1426](#)
32. *Mackay v Manitoba*, [1989 CanLII 26 \(SCC\)](#), [1989] 2 SCR 357
33. *Mancuso v Canada*, [2015 FCA 227](#)
34. *Marshall v Canada*, [2006 FC 51](#)
35. *Martell v Canada (Attorney General) & Ors*, [2016 PECA 8](#)
36. *McMillan v Canada*, [2023 FC 1752](#)
37. *Merchant Law Group v Canada Revenue Agency*, [2010 FCA 184](#)
38. *Nosistel v Canada*, [2018 FC 618](#)
39. *Odhavji Estate v Woodhouse*, [2003 SCC 69](#)
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](#)
43. *Price v Canada*, [2016 FC 649](#)
44. *R v Conway*, [2010 SCC 22](#)
45. *R v Imperial Tobacco Canada Ltd.*, [2011 SCC 42](#)
46. *Reference re Same-Sex Marriage*, [2004 SCC 79](#), [2004] 3 SCR 698
47. *Robinson v Canada (Parks Canada Agency)*, [2017 FC 613](#)

48. *Shebib v Canada*, [2016 FC 539](#)
49. *Simon v Canada*, [2011 FCA 6](#)
50. *Sivak v Canada*, [2012 FC 272](#)
51. *Suss v Canada*, [2024 FC 137](#)
52. *St John's Port Authority v Adventure Tours Inc.*, [2011 FCA 198](#)
53. *Thompson v Kolotinsky*, [2023 ONSC 1588](#)
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](#), [1992] 3 FC 458
57. *Weber v Ontario Hydro*, [1995 CanLII 108](#), [1995] 2 SCR 929
58. *Wojdan v Canada*, [2021 FC 1244](#)
59. *Wojdan v Canada*, [2022 FCA 120](#)
60. *Yeates v Canada*, [2011 ONCA 83](#)
61. *Zbarsky v Canada*, [2022 FC 195](#)