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F I L E D	FEDERAL COURT OF APPEAL COUR D'APPEL FÉDÉRALE January 23, 2025 23 janvier 2025 Irena Stojanovska
EDM	1

FCA Court File No : _____

FEDERAL COURT OF APPEAL

BETWEEN :

Francesco Gabriele Qualizza, Joel Thomas William Ellis, Patrick Mercier, Jill Lyne Duchesneau, Joseph Benjamin Stewart, Eric David Faucher, Scott Peter Bacon, Stephen Troy Chledowski, Amanda Leigh Benham, Joshua Martin Mcculloch, Kyle Corriveau, Joseph Daniel Eric Louis Montgrain, Dustin Shane Wiebe, Stephen Wj Morris, David Garcia Vargas, Michael Joseph Lis, Natasha Katrina Lis, Solange Sine Djoueche, Peter Vlassov, Frederic Villeneuve-Normand, Estate Of Jonathan Emmerson Jenkinson, Valentin Lavrov, Marie-Eve Labonte, Jesse Dale Friesen, Tania Catherine Nordli, Andrzej Skulski, Dennis John Paul Tondreau, Emmy-Lou Laurie Forget, Dallas Alexander Flamand, Chelsea Elaine Rogal, Baron Hordo, Taylor Michael Harvie, Vanessa Rae Laroche, Jacqueline Marie France Boehme, James Paul Daniel Formosa, Kaitlyn E Campbell, Lucas Timothy Vancuren, Jermaine Sheridan Burrell, Anthony David Hiatt, Michael St-Laurent, Armand Edward A. Garner, Amit Sodhi, Camille Felix J Turgeon, Samantha Gwendolyn Styles, Carol- Ann Mary T Ouellette, Robert James Teremchuk, Nathaniel J P Tondreau, Nikola J Guy Tondreau, Lisa Pauline Leopold, Hailey Noelle Schroder, Dominique Lauzier, Valerie Ouellet, John M Gillis, Morgan Christopher Warren, Mark Andrew Good, Sean Michael Marcotte, Mark Andrew Lolacher, Gabriel Villeneuve, Kira Anne Yakimovich, Mathieu W Petit-Marceau, Kimberly Nedra Ettl, Christopher William Rambharose, Michael Ryan Frank, Evan Jeffery Mcfatridge, Pierre-Elie Lasnier, Alessandru Ward Forster Brown, Danis Doiron, Carl Joseph D Rivest-Marier, Jaroslaw T Ciesinski, Stephen William Holt, Randolph Raymond Jenkins, Andrew John Macphee, Valerie Palin-Robert, Roger Cory Stoesz, Shane

Thomas Whitson, Christian Kurt Carter, Matthew James Rowe, Dave Bouchard, Laurie C. Baker, Frederic Lauzier, Lucas Shane O'connor, Laura Dianne Allan, George Vriniotis, Sienna Germaine Quirk, Charles Bruno Alexandre Turmel, Jaroslaw Grzegorz Marczewski, Christopher Nightingale Anderson, Francis Joseph Michel Archambault, Christopher Raymond Austin, John Anthony Baklinski, David Glen Barkhouse, Michael Barrette, Darrin Thomas Beaton, Bobak Beheshti, Andres Felipe Bocanegra Beltran, Nathan Kyle Johnson, Conrad Joseph Benoit, Mathieu Bernard, Brian James Bews, Michael Christopher Bill, Robert Stewart Bishop, Jefferson Malcome Bissengue, Steven Bolduc, Thomas Gill Bonnett, Charles Anthony Valmhor Borg, Patrick James Boschalk, Karla Rae Bowler, Kenneth Scott Bradley, Dwayne Armand Bratzke, Ryan Douglas Breau, Chara Loren Browne, William Frederick Bull, Mark A Calow, James Gregory Cameron, Brett Grant Gordon Campbell, Damian Ronald Cayer, Jesse Shayne Chambers, Vladimir Charnine, Shaun Kyle Charpentier, Daniel Robert Cheshire, Dave Cimon, Charles Benoit-Jean Cote, Remi Cote, Matthieu Coulombe, Rebekah Kathleen Courtney, Maverick Jeremy Joseph Cowx, Jonathan Wayne Crouch, Nicole Johnna Crowder, Bartlomiej David Cychner, Beata Margaret Czapla, Sara Darby, Brady Damien Dedam, Virgil Severin Dessouroux, Sean Robert Dixon, Robert Adam Doliwa, Daniel Pierre Drolet, Samuel Drouin, Benjamin Graham Dunbar, Matthew Alexander J. Durda, Stephen Andrew Terence Ells, Austin Karn Faulkner, Eric Michel C S Fontaine, William Joseph R Forget, Sean Michael Francis, Kory Michael Fraser, Jason Joseph Kevin Frechette, Christopher Benjamin Fuellert, Steven James Gallant, Steven Roy Gamble, Tanya Lee Gaudet, Emilie Gauthier-Wong, Tommy Gauvreau, Nicolas Alexander Gleis, Marcel Joseph G E Gobeil, Tammy Danielle Greening, Eugene Pieter Greyling, Kevin Clarence J Griffin, Dominic Joseph S Guenette, Darcy Wayne Hansen, Brett Nevin Wellicome, Rory Alexander Hawman, James Adam Heald, Kyle Keith Hepner, Jason Stanley Gilbert Ignatescu, Thanarajan Jesuthasan, Kevin Thomas Johnson, Gary Adam Johnston, Ryan Gregory Jones, Jamie Alexander Curtis Jorstad, Attila Stephen Kadlecsik, Dusty Lewis Kennedy, Hunter Elmer Kersey, Liam Owen Kiropoulos, Christopher Robert Knorr, Evan Victor Koziel, Martin Philippe Labrosse, Gerald

Jn- Fritz Lafortune, Andre Lahaye, Kelly-Lee Marie Lake, Nicholas Edward Lange, Sarah-Emilie Lasnier, Dominic Joseph M. Lavoie, Tara Lavoie, Drake Michael Le Couteur, Marc Leclair, Pierre Lemay, Jonathan Joseph A. Lemire, Daniel Paul Loader, Garrett Curtis Logan, Jordan Terrence Logan, Alexandre Guy Richard Loiselle, Adam Fernand C. Lupien, Walter George Lyon, Joseph Brefni W. Macdonald, Christien Tavis Roger Macdonnell, Jean Joseph Madore, Charles Joseph J. Magnan, Andrew Robert Paul Mallory, Marylene Ginette S. Martin, Marco Mastantuono, Jamie Richard Mcewen, Johannes Wouter Mulder, Tyler Edwin Neufeld, Laura Lee Nicholson, Keri Merriam Nixon, Jonathan Noel, Joshua Bruce Olson, Caroline Mary Audrey Ouellet, Joseph Anthony Papalia, Melanie Marie I. Pare, Alexandru Patularu, Joshua Alexander Pickford, Agnes Pinter-Kadlecsik, Jean-Simon Plamondon, Krister Alexander Pohjolainen, Aura A. Pon, Brody Allen Poznikoff, Stefan Prisacari, Monika Anna Quillan, Romain Racine, Dominic Laurens William Ragetli, Stephane Ratte, Bryan Thomas Richter, William Rios, Jenna Leigh Roberts, Joshua Calvin Roberts, Laurie Rose, Rory Alexander David Rosen, Sebastien Salvas, Cameron Ray S. Sanders, Carl Jean G. Savard, Torsten Schulz, Paul Russell Shapka, Blake Alexander Sheedy, Quinton James Stender, Caleb Ethan M. Stener, Gabriel-Alexandre St-Gelais, Nicolas Joseph St-Germain, Robert Christopher Stull, James Roark Suter, Dalen Drew Tanner, Justin Myles Tenhage, Jacob Cyril Theriault, Simon Bobby H Tilly, Jean-Philippe Trudel, Albert Jason Tschetter, Shelley Diane Tully, Magali Turpin, Julian Philip Tutino, Gregory Vincent-Walker, Cade Austin Walker, Brennen Bo Anthony Watson, Benjamin Kyle Weston, Matthew Max Whicher, Joshua James White, Andrew Ernest Wilkowski, Donald James Williams, Curtis Malcom Wilson, Wade George Wilson, Andrew Dean Wychnenka, Marc Zorayan, Brandon Tyler Peter Zwicker, William H L Levi Wall, Karen Paige Nightingale, Marc- Antoine Poulin, Keegan Marsh, Ryan Michael, Thomas Patrick Hayes, James Mark Charlebois, Halston Randal Nicholson, Melissa-Jane Sarah Krieger, Gianluca Luchetta, Benjamin James Wilcox, Mark Ronkin, Serge Joseph Leo Faucher, Jacob Thomas Fidor, Lucas Gerard Ziegelbauer, Spencer Daniel Lord, Ian Oceguela, John Nesrallah, Daniel Ninian Rodrigues, Cory Jason Kruger, Stephen Young Smith, Fourat

Yacoub Yousif Jajou, Anthony Bilodeau, Jonathan Michael Recoskie, Thomas L. Edwards, Lindsay Anne Mackenzie, Sarah Evelyn Laprade, Dany Pilon, James Andrew Cook, Derek John Gauthier, David Adam Dobbie, Gabrielle Charpentier, Daniel Johannes Reckman, Zachary Cleeland, Mateusz Cameron Kowalski, Tara J. Macdonald, Paul David Wilson, Brendan V. T. Lebert, Jocelyn Lamotte, Anthony J. Duke, Riley Malcolm Macpherson, Kim Noel Lauzon, Kurtis Rockefeller Rutherford, Sergiu George Candea, Jesse Henry Field, William Edward Brendon, Cameron Samuel Nobert, David Houde, Alyssa Joy Blatkewicz, Colin Perry Kaiser, Fabrice Dourlent, Cory Lance Gargin, Anita Grace Hessling, Jennifer Bethany Frizzley, David Andrew Benson, Brandon John Armstrong, Rejean Berube, Jean-Philippe Joseph Bouchard, Dhillon David Cole, Pierre-Olivier Cote-Guay, Ian M Menzies, Eric Monnin, Elliot Gamache, Nicholas Neil Lloyd Crocker, Robert Allan Henderson, Gabriel Gilles Rj Ramsay, Devin James Mckenna

APPELLANTS

AND

His Majesty the King in Right of Canada, Chief of the Defence Staff General Wayne Eyre, Vice Chief of Defence Staff Lieutenant-General Frances J Allen, Lieutenant General Jocelyn J M J Paul, Vice Admiral Angus I Topshee, and Lieutenant General Eric J Kenny, Minister of National Defence, The Honourable Anita Anand, Former Deputy Minister of National Defence Jody Thomas, Surgeon General Major-General JGM Bilodeau, Chaplain General Brigadier- General JLG Belisle, Judge Advocate General Rear-Admiral Genevieve Bernatchez, and Brigadier General Liam Wade Rutland

RESPONDENTS

Notice of Appeal

TO THE RESPONDENT:

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

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Edmonton, Alberta

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

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

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

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

22 January 2025

Issued by: _____ (*Registry Officer*)

Rice Howard Place
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Tower 1, Suite 530
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TO:

HIS MAJESTY THE KING IN RIGHT OF CANADA

Department of Justice Canada

Floor 1, 10423 101 Street NW

Edmonton, AB T5J 4Y8

TO:

Chief of Defence Staff, General Wayne Eyre

Department of Justice Canada

Floor 1, 10423 101 Street NW

Edmonton, AB T5J 4Y8

TO:

Vice Chief of Defence Staff, Lieutenant General Frances J Allen

Department of Justice Canada

Floor 1, 10423 101 Street NW

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TO:

Minister of Defence, The Honourable Anita Anand

Department of Justice Canada

Floor 1, 10423 101 Street NW

Edmonton, AB T5J 4Y8

TO:

Former Deputy Minister of Defence, Jody Thomas

Department of Justice Canada

Floor 1, 10423 101 Street NW

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TO:

**Surgeon General, Major General JGM Bilodeau
Department of Justice Canada
Floor 1, 10423 101 Street NW
Edmonton, AB T5J 4Y8**

TO:

**Chaplain-General, Brigadier General JLG Belisle
Department of Justice Canada
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TO:

**Judge Advocate General, Rear Admiral G Bernatchez
Department of Justice Canada
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TO:

**Brigadier General LW Rutland
Department of Justice Canada
Floor 1, 10423 101 Street NW
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TO:

**Commander Royal Canadian Navy, Vice Admiral AI Topshee
Department of Justice Canada
Floor 1, 10423 101 Street NW
Edmonton, AB T5J 4Y8**

Appeal

THE APPELLANTS APPEAL to the Federal Court of Appeal under section 27 of the *Federal Courts Act*, RSC 1985 c F-7, from the order of Justice Michael D Manson dated January 14, 2025 dismissing the Appellants' Motion for an Extension to Appeal, under Federal Court file no. T- 1296-23 related to the decision of Associate Judge Catherine A. Coughlan of the Federal Court dated November 13, 2024, striking the Appellants' Statement of Claim without leave to amend pursuant to Rule 221 of the Federal Courts Rules.

THE APPELLANTS ASK for the following relief:

1. An order granting the Appellants' leave to file the Notice to Appeal;
2. An order setting aside the Federal Court's decision striking the Statement of Claim;
3. An order reinstating the Statement of Claim or, alternatively, granting the Appellants leave to amend their pleadings;
4. Prejudgment and post-judgment interest;
5. The costs of this appeal, including GST and other taxes applicable, on a full indemnity basis; and
6. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS OF APPEAL are as follows:

1. **Procedural Issues in the Appeal Motion.** The Appellants' Motion for extension was rejected due to procedural error. While this error was acknowledged, it primarily affected how the Motion was processed rather than the substantive merits of the Appeal itself. The Court was too strict in its application of Rule 82 given the unique circumstances of several hundred Plaintiffs requiring legal advice. The Court also did not allow for amendment of the pleadings on procedural errors.
2. **Failure to Engage with the Appellants' Charter Claims.** The Federal Court erred in striking the Statement of Claim without substantively engaging with the Appellants' claims under sections 2(a), 2(d), 7, 8, and 15(1) of the *Canadian Charter of Rights and Freedoms*. In doing so, the Court failed to recognize the unique vulnerability experienced by CAF members due to the rigid hierarchical structure of the military. This structure places extraordinary control over

members' lives that do not exist in civilian employment contexts. The imbalance of power creates systemic barriers to autonomy and justice. By failing to engage meaningfully with the Appellants' claims and prematurely striking the Statement of Claim without leave to amend, the Federal Court perpetuated these systemic vulnerabilities and undermined the Appellants' ability to access justice and to hold executive decision-makers accountable. Notably, the Federal Court did not address the findings and recommendations of the Military Grievances External Review Committee ("MGERC"), an independent administrative tribunal appointed to review military grievances and provide findings and recommendations to the CDS. The MGERC identified section 7 *Charter* breaches after reviewing the grievance files of some of the Appellants. This oversight contributed to an erroneous conclusion regarding the Appellants' claims.

3. **Emerging case law leaves the law uncertain requiring clarification from the Federal Court of Appeal.** In *Payne v Canada* 2025 FC 5, the court ruled that it is "it is not plain and obvious that the Plaintiffs have grievance rights in relation to those claims [related to Charter of Rights and Freedoms]" at para 4. While this was a decision related to Federal employees, the issue of grievance systems and how they apply is also an important issue for the Canadian Armed Forces. In *Payne*, the Court allowed for the pleadings to be amended for material facts which was denied to the Appellants in this action.
4. **Jurisdictional Error and Failure to Apply Relevant Precedent.** The Federal Court erred in concluding that the CAF grievance process was an adequate alternative remedy, contrary to the principles set out in *Strickland v Canada (Attorney General)* 2015 SCC 37 and related jurisprudence. The grievance process cannot provide remedies for systemic constitutional violations, particularly where the issues raised extend beyond the chain of command and require judicial oversight, as seen in *Bernath v Canada*, 2007 FC 104, and affirmed by *Bernath v Canada*, 2007 FCA 400. A case running concurrently to the Appellants' cases has determined that the grievance system cannot be sued for claims related to *Charter Rights (Payne Harvey & Molaro v HMTK* 2025 FC 5 "Payne") which now creates conflicting decisions within the Federal Court system on the same issue. This conflict creates uncertainty in the legal system for Plaintiffs subject to a grievance process in their employment.
5. **Failure to Consider the Limits of the CAF Grievance System.** The Federal Court failed to consider the findings of the 2021 *Report of the Third Independent Review Authority to the Minister of National Defence*, prepared by the Honourable Morris J. Fish, C.C., Q.C., which highlighted systemic delays,

inadequate remedial capacity (including the lack of power to grant financial relief as a remedy to a grievance or to reverse administrative release found to be unwarranted), and significant barriers to justice in the CAF grievance system. The reliance on this process ignored its inability to address constitutional claims, breaches of informed consent, and other serious issues raised by the Appellants.

6. **Failure to Consider the Breadth of Remedies Required.** The Appellants' claims involve constitutional and systemic issues beyond the jurisdiction of the CAF grievance process. The Federal Court failed to recognize that only a judicial review process can address such issues comprehensively and hold executive decision-makers accountable as was decided in *Payne*.
7. **Procedural Unfairness in Ignoring Systemic Delays in Grievances.** The Court failed to adequately consider the systemic delays and lack of timely remedies in the CAF grievance process, which were highlighted in independent reviews such as those completed by the Right Honourable Antonio Lamer P.C., C.C., C.D. and the Honourable Morris J. Fish, C.C., Q.C.. These delays rendered the grievance process ineffective and unsuitable as an alternative remedy. The *Military Justice System Time Standards* sets a presumptive ceiling of 18 months for the completion of court martials; the process that would have been followed had the legislative framework provided in section 126 of the *NDA* been adhered to by Command. Twice that amount of time (over three years) has already elapsed as the Appellants navigate the CAF grievance system and attempt to seek a remedy through the Federal Court. To date, not one of the Plaintiffs have received a decision by the Final Authority on their grievances. This delay in receiving a decision from the Final Authority prejudices the Plaintiffs in their ability to bring a claim within a reasonable time as well as seek review by the Court.
8. **Failure to Address the Impact of Regulatory Barriers on Grievance Filing.** The Court overlooked that approximately 230 Appellants did not file grievances within the narrow three-month regulatory deadline, shortened further by the expedited release process experienced by many of the Appellants. By focusing only on the grievances submitted by a subset of Appellants, the Court failed to acknowledge the broader systemic barriers to justice faced by CAF members under the CAF COVID-19 vaccination mandate.
9. **Reliance on Non-Party Grievance (Paragraph 67).** The Federal Court improperly relied on a grievance decided by the Chief of the Defence Staff ("CDS") from an individual not party to the proceedings. While the grievance

concerned similar issues, it did not reflect the Appellants' experiences or their unresolved grievances. Including a Final Authority decision on a grievance of a third party was misleading to the Court. This reliance then skewed the analysis and failed to account for the fact that all of the Appellants' grievances remain unresolved due to systemic barriers.

- 10. Failure to Properly Apply the Legislative Scheme of the *National Defence Act* (“*NDA*”) (Paragraph 45).** The Federal Court erred by overlooking the legislative framework provided in section 126 of the *NDA* and instead applying Defence Administrative Orders and Directives (“*DAOD*”) 5019-4, a subordinate policy instrument designed to address conduct deficiencies such as alcohol misconduct, prohibited drug use, hateful conduct, and sexual misconduct. *DAOD* 5019-4 is issued under the authority of the Deputy Minister and the Chief of the Defence Staff and does not have the statutory force of section 126 of the *NDA*. The Court’s reliance on *Hoffman v Canada (Attorney General)*, which pertains to sexual misconduct—a category explicitly addressed under *DAOD* 5019-4—was inappropriate and distinguishable from the Appellants’ case. This misapplication of law undermined the proper legal and procedural analysis required in the context of the Canadian Armed Forces (“*CAF*”) COVID-19 vaccination mandate and its enforcement mechanisms.
- 11. Availability of New Evidence Undermining the Legal Basis of the Mandate.** New evidence obtained after the Federal Court dismissed the claim directly challenges the legal basis upon which the *CAF* justified its COVID-19 vaccination mandate, which restricted members’ rights. This evidence includes statements from the CDS and the Director Force Health Protection/Communicable Disease Control Program indicating that COVID-19 vaccination was not a *bona fide* operational requirement sufficient to justify a broad vaccination mandate. As this evidence was unavailable at the time of the Federal Court’s decision, it warrants appellate consideration to ensure a complete and accurate evaluation of the mandate’s legality and its impact on the rights of *CAF* members.
- 12. Improper Use of Rule 221 and Denial of Leave to Amend.** The Court struck the Statement of Claim under Rule 221, concluding that it disclosed no reasonable cause of action, failed to plead material facts, used vexatious language throughout, and included assertions that constituted abuse of process, without granting leave to amend. The noted deficiencies were procedural and related to a breach of Rules 363 and 365, and not to a lack of evidence. The premature dismissal of the claim was contrary to established legal principles favoring access to justice and the right to amend pleadings to address any

perceived deficiencies. The Appellants contend that the pleading disclosed reasonable causes of action and raised significant legal and factual issues, which merited consideration on their merits.

21 January 2025



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