

e-document	T-2536-23-ID 26	
F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
September 04, 2024 04 septembre 2024		
Cherlin McColman		
TOR		13

Court File No.: T-2536-23

**FEDERAL COURT**

BETWEEN:

**SHAUN RICKARD and KARL HARRISON**

Plaintiffs

and

**HIS MAJESTY THE KING, THE MINISTER OF TRANSPORTATION and  
the ATTORNEY GENERAL OF CANADA**

Defendants

---

**MOTION RECORD OF THE DEFENDANTS/MOVING PARTY**

---

September 4, 2024

**ATTORNEY GENERAL OF CANADA**

Department of Justice Canada  
Ontario Regional Office  
National Litigation Sector  
120 Adelaide Street West, Suite 400  
Toronto, Ontario M5H 1T1

**Per: James Schneider**

Tel: 416-347-8754

Email: [James.Schneider@justice.gc.ca](mailto:James.Schneider@justice.gc.ca)

**Per: Zachary Lanys**

Tel: 416-931-9762

Email: [Zachary.Lanys@justice.gc.ca](mailto:Zachary.Lanys@justice.gc.ca)

Counsel for the Defendants, His Majesty the King, the  
Minister of Transportation, and the Attorney General  
of Canada

**TO:**

**The Administrator**  
Federal Court of Canada  
180 Queen Street West, Suite 200  
Toronto, ON  
M5V 3L6

**AND TO:**

**Presvelos Law LLP**  
141 Adelaide Street West  
Suite 1006  
Toronto, ON M5H 3L5

**Sam A. Presvelos**  
Email: [spresvelos@presveloslaw.com](mailto:spresvelos@presveloslaw.com)

Counsel for the Plaintiffs

**FEDERAL COURT**

BETWEEN:

**SHAUN RICKARD and KARL HARRISON**

Plaintiffs

and

**HIS MAJESTY THE KING, THE MINISTER OF TRANSPORTATION and  
the ATTORNEY GENERAL OF CANADA**

Defendants

**MOTION RECORD INDEX**

<b>TAB</b>	<b>DOCUMENT</b>	<b>PAGE</b>
<b>1</b>	Notice of Motion	1-7
<b>2</b>	Amended Statement of Claim	8-23
<b>3</b>	Written Representations	24-42

# **TAB 1**

Court File No.: T-2536-23

**FEDERAL COURT**

BETWEEN:

**SHAUN RICKARD and KARL HARRISON**

Plaintiffs

and

**HIS MAJESTY THE KING, THE MINISTER OF TRANSPORTATION and  
the ATTORNEY GENERAL OF CANADA**

Defendants

**NOTICE OF MOTION**

**TAKE NOTICE THAT** the Defendants, His Majesty the King, the Minister of Transportation, and the Attorney General of Canada (the “Defendants”) will make a motion to the Federal Court on a date to be determined by the Case Management Judge, Associate Judge Trent Horne, at 180 Queen Street West, Toronto, Ontario. The expected duration of the motion is three hours.

**THE MOTION IS FOR:**

1. An order striking the Amended Statement of Claim (the “Claim”) in its entirety, without leave to amend, with the exception of leave to amend for the aspects of the Claim related to air travel and section 6 of the *Charter of Rights and Freedoms* (“*Charter*”);
2. Costs of this motion;

3. An order providing the Defendants with 60 days to deliver a Statement of Defence from the date of the service of a further amended Statement of Claim, or alternatively, the date that this motion is dismissed;
4. An order amending the title of proceedings to remove as defendants the Minister of Transportation and the Attorney General of Canada; and
5. Such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

1. This Court should strike the Amended Statement of Claim on the basis that it discloses no reasonable cause of action. The Plaintiffs have not pleaded the necessary elements of the *Charter* claims which they allege.

**A. Background**

2. The Plaintiffs have served an Amended Statement of Claim which challenges the constitutionality of the proof of vaccination requirement for federally regulated transportation during a portion of the COVID-19 pandemic. The Plaintiffs allege that the Defendants breached their sections 6, 7 and 15 rights under the *Charter*.
3. Specifically, the Plaintiffs allege that interim Ministerial Orders made under the *Aeronautics Act* (RSC 1985, c A-2) and *Railway Safety Act* (RSC, 1985, c 32 (4<sup>th</sup> Supp)) (the “Ministerial Orders”) breached their *Charter* rights. The Plaintiffs seek *Charter* damages under subsection 24(1) of the *Charter* with respect to damages allegedly caused by these Orders.

**B. Section 6 of the Charter**

4. The Plaintiffs allege that the Ministerial Orders violate their section 6 rights. However, they have not pleaded the necessary elements of a section 6 claim for two distinct reasons.

*i. The Plaintiffs have not pleaded that they are Canadian citizens*

5. Firstly, the Plaintiffs allege that the Ministerial Orders restricted their international movement because they were unable to board airplanes to leave Canada and fly to the United Kingdom during the material time. This allegation is a reference to subsection 6(1) of the *Charter*.

6. However, subsection 6(1) expressly provides that “every **citizen of Canada** has the right to enter in, remain in, and leave Canada”.

7. In the Amended Statement of Claim, the Plaintiffs do not identify themselves as Canadian citizens.

8. The Plaintiffs have failed to plead the necessary elements of a section 6(1) claim and have not disclosed a reasonable cause of action with respect to section 6(1).

*ii. The Applicants have no cause of action regarding rail transport*

9. Second, the Plaintiffs allege that the Ministerial Orders related to rail transport violate section 6 of the *Charter*. They do not identify if this violation relates to subsection 6(1) or 6(2) of the *Charter*.

10. In the Amended Statement of Claim, the Plaintiffs do not plead that the Ministerial Orders related to rail transport had any impact on them.

11. The Plaintiffs have failed to plead the necessary elements of either a section 6(1) or (2) claim in relation to rail transport and have not disclosed a reasonable cause of action with respect to section 6.

**C. Section 7 of the Charter**

12. The Plaintiffs allege that the Ministerial Orders violate their section 7 rights to liberty by forcing them to choose between vaccination and travel beyond Canada through federally regulated transportation. They allege that this compromised their decision-making in a way which undermines their dignity and independence.

13. The liberty interest under section 7 of the *Charter* does not confer protection for the ability to travel by federally regulated means of transportation. Further, a Ministerial Order which requires an individual to make a choice does not undermine the liberty interest. The Plaintiffs plead that they were not vaccinated, demonstrating that they had the ability to make a choice.

14. The Plaintiffs have failed to plead the necessary elements of a section 7 claim and do not disclose a reasonable cause of action with respect to section 7.

**D. Section 15 of the Charter**

15. The Plaintiffs allege that they were discriminated against on the basis of their vaccination status, which they allege violated section 15 of the *Charter*.

16. However, “vaccination status” is not an enumerated or analogous ground under section 15 of the *Charter*. It is a personal choice and not an immutable personal characteristic. It is not contrary to section 15 of the *Charter* for individuals to be treated differently based on their choice whether or not to be vaccinated.



17. As a result, the Plaintiffs have failed to plead the necessary elements of a cause of action with respect to section 15 and do not disclose a reasonable cause of action with respect to section 15.

**E. Leave to amend should not be granted, except with regards to section 6 regarding air transport**

18. Leave to amend is generally granted where the defects in the claim are curable by amendments.

19. Leave to amend should only be granted in this case with regards to the Plaintiff's failure to plead whether they are citizens. If the Plaintiffs are Canadian citizens, this aspect of the claim could be cured by amendment.

20. However, all other aspects of the claim cannot be cured by amendment. In the case of rail transportation, the Plaintiffs do not appear to have any interaction with rail. In the cases of section 7 and 15, the Plaintiffs claims are legally untenable and cannot be cured.

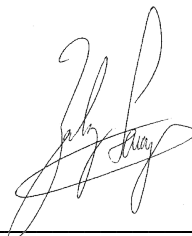
**THE FOLLOWING STATUTORY PROVISIONS** will be relied on:

1. *Federal Courts Act*, RSC, 1985, c F-7, as amended, s. 18.1, 48(1) and Schedule.
2. *Federal Courts Rules*, SOR/98-106, rules 221, 359, 385.
3. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s 91(24).
4. Such further and other statutory provisions as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Amended Statement of Claim; and
2. Such further and other documents as counsel may advise and this Honourable Court may permit.

July 02, 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

**Per: James Schneider / Zachary Lanys /  
Robert Drummond**

Tel.: (416) 347-8754 / (416) 931-9762 / 780-394-3447

E-mail: James.Schneider@justice.gc.ca /  
zachary.lanys@justice.gc.ca /  
robert.drummond@justice.gc.ca

**Counsel for the Defendants, His Majesty  
the King, the Minister of Transportation,  
and the Attorney General of Canada**

TO: **The Administrator**  
Federal Court of Canada  
Application Division  
180 Queen St. West, Suite 200  
Toronto, Ontario M5V 3L6

AND TO: **Presvelos Law LLP**  
141 Adelaide Street West  
Suite 1006  
Toronto, Ontario M5H 3L5

**Sam A. Presvelos**

Email: [spresvelos@presveloslaw.com](mailto:spresvelos@presveloslaw.com)

**Counsel for the Plaintiffs**

**TAB 2**

Court File No. T-2536-23

**FEDERAL COURT**

**BETWEEN:**

**SHAUN RICKARD and KARL HARRISON**

**Plaintiffs**

**AND**

**HIS MAJESTY THE KING, THE MINISTER OF TRANSPORTATION AND THE**

**ATTORNEY GENERAL OF CANADA**

**Defendants**

**AMENDED STATEMENT OF CLAIM**

**TO THE DEFENDANTS:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.

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

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

June 3, 2024

Issued by: \_\_\_\_\_

---

Federal Court of Canada  
180 Queen Street West  
Toronto, Ontario  
M5V 1Z4

TO: **Department of Justice Canada**  
Civil Litigation Section  
50 O'Connor Street, 5th Floor  
Ottawa, Ontario  
K1A 0H8  
Telephone: 613-670-6214  
Fax: 613-954-1920  
Email: [AGC\\_PGC\\_OTTAWA@JUSTICE.GC.CA](mailto:AGC_PGC_OTTAWA@JUSTICE.GC.CA)

AND TO: **Department of Justice Canada**  
Ontario Regional Office  
120 Adelaide Street West, Suite 400  
Toronto, Ontario  
M5H 1T1  
Telephone: 416-973-0942  
Fax: 416-954-8982  
Email: [AGC\\_PGC\\_TORONTO.LEAD-DCECJ@JUSTICE.GC.CA](mailto:AGC_PGC_TORONTO.LEAD-DCECJ@JUSTICE.GC.CA)

### AMENDED CLAIM

1. The Plaintiffs claim the following:
  - a. Constitutional damages pursuant to Section 24(1) of the *Canadian Charter of Rights and Freedoms* (the “**Charter**”), in the amount of \$1,000,000, exclusive of interest and costs, for breach of the Plaintiffs’ Section 6, 7 and 15 rights and freedoms as guaranteed by the *Charter* as a result of government decision-making and ~~action~~ conduct that was rooted in negligence, bad faith and willfully blind to the ~~lack~~ absence of scientific evidence or disconfirming scientific evidence regarding the role, and, in particular, the unknown efficacy, of Covid-19 vaccination in reducing the risk of Covid-19 transmission and infection within the transportation sector;
  - b. Costs of this action in accordance with the *Federal Court Rules*, SOR/98-106; and,
  - c. Such further and other relief as counsel may advise and this Honorable Court deem just.

### The Parties

2. The Plaintiff, Shaun Rickard, is an individual residing in Pickering, Ontario. At all material times, Mr. Rickard did not receive one of Canada’s authorized Covid-19 vaccines.
3. The Plaintiff, Karl Harrison, is an individual residing in Vancouver, British Columbia. At all material times, Mr. Harrison did not receive one of Canada’s authorized Covid-19 vaccines.
4. The Attorney General is named as a Defendant as ~~this claim~~ the impugned conduct directly involves governmental decisions and actions made and implemented by the Federal Minister of Transportation and the bureaucracy that supports this Ministry.

### **The Vaccine Travel Mandate's Impact on the Plaintiffs**

5. At the time of the pandemic, Mr. Rickard had an ailing father who lived in Southampton, Hampshire, England. Mr. Rickard's father, now deceased, was suffering from advanced Alzheimer's. Mr. Rickard would visit his father as often as he could to comfort him and spend time together.
6. Similarly, Mr. Harrison's mother, aged 90 years old, lives alone in Blackpool, England. Mr. Harrison and his mother share a very close relationship and Mr. Harrison makes a point of visiting his mother multiple times a year.
7. Additionally, Mr. Harrison operates several businesses out of England, including a travel company, MagicBreaks. Through his business ventures, Mr. Harrison employs around 150 people in London. The nature of these businesses is such that he frequently travels to the UK, Ireland, Spain and other European countries for meetings with senior management and commercial partners.

### **The Prime Minister's Campaign Promise to Implement a Vaccine Mandate in the 2021 General Elections**

8. In August 2021, during the Canadian general election, Prime Minister Justin Trudeau made a campaign pledge that if re-elected he would mandate that Canadians must be vaccinated against Covid-19 in order to board a plane, train or boat, that is for all federally – regulated transportation services. ~~Indeed,~~ This campaign pledge formed an official part of the Liberal Government's re-election platform, *Forward for Everyone*.
9. The federal election was held on September 20, 2021, and Mr. Trudeau was re-elected as Canada's Prime Minister.



### **Mandatory Vaccination Formally Announced by the Prime Minister**

10. Shortly after being re-elected as Prime Minister, on October 6, 2021, the Canadian Government announced it will require mandatory vaccination against Covid-19 for all travelers (a) departing from Canadian airports (b) boarding VIA and Rocky Mountaineer trains and (c) using federally regulated marine transportation (the “**Vaccine Mandates**”).
11. The Canadian Government introduced these unprecedented Vaccine Mandates under the pretext that vaccination would help to both limit the risk of spreading Covid-19 and prevent and mitigate against future Covid-19 outbreaks, however no scientific evidence was provided to support that mandatory vaccination was, in fact, required to keep Canadians safe within the transportation system.
12. The Vaccine Mandates allowed Canadian travelers until November 30<sup>th</sup>, 2021, to comply with its requirements in order to access federally – regulated transportation services (i.e. to ensure that they had sufficient time to receive a the prescribed Covid-19 vaccine–vaccination regiment).

### **Implementation of the Vaccine Mandate through Interim Ministerial Orders**

13. The Vaccine Mandates were implemented through a perpetual series of Interim Ministerial Orders (“**Vaccine MO**”) that were made pursuant to the *Aeronautics Act* (R.S.C., 1985, c. A-2) and the *Railway Safety Act* (R.S.C., 1985, c. 32 (4<sup>th</sup> Supp.)). The Vaccine MO’s were renewed repeatedly between November 2021 until they were suspended in June 2022.
14. Specifically, the Minister of Transportation relied on Section 4.71 (Aviation security regulations), 4.9 (Regulations respecting aeronautics) and 6.41(1) (Interim orders) of the *Aeronautics Act* as well as Section 4(4), 32.01 and 36 of the *Railway Safety Act* to enact and renew the Vaccine Mandates MOs.

15. Section 4.71 of the *Aeronautics Act* deals with Aviation Security Regulations. It confers powers to implement regulations affecting the safety of air travel. Section 4.71(1), (2) provides as follows:

Aviation security regulations

4.71 (1) The Governor in Council may make regulations respecting aviation security.

Contents of regulations

(2) Without limiting the generality of subsection (1), regulations may be made under that subsection (a) respecting the safety of the public, passengers, crew members, aircraft and aerodromes and other aviation facilities;

16. Section 4.91(2) provides as follows:

Order must relate to safety

(2) The Minister may make an order under subsection (1) only if the Minister is of the opinion that the order is necessary for aviation safety or the safety of the public.

17. Section 6.41(1) of the *Aeronautics Act* concerns Interim Orders that may be made by the Minister. Its provides, in part, as follows:

Interim orders

6.41 (1) The Minister may make an interim order that contains any provision that may be contained in a regulation made under this Part

(a) to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public;

18. The *Railway Safety Act* also contains several provisions intended to protect public safety in this mode of transport. Section 4(4) of the *Act* provides as follows:

Safe railway operations, etc.

(4) In determining, for the purposes of this Act, whether railway operations are safe railway operations, or whether an act or thing constitutes a threat to safe railway operations or enhances the safety of railway operations, regard shall be had not only to the safety of persons and property transported by railways but also to the safety of other persons and other property.

18. Section 32.01 of the *Railway Safety Act* enables the Minister to make Orders where there is a “threat to safe railway operations”:

Order — safe railway operations

32.01 If the Minister considers it necessary in the interests of safe railway operations, the Minister may, by order sent to a company, road authority or municipality, require the company, road authority or municipality to stop any activity that might constitute a threat to safe railway operations or to follow the procedures or take the corrective measures specified in the order, including constructing, altering, operating or maintaining a railway work.

19. Section 36(1) of the *Railway Safety Act* provides the Minister with the power to require a company to provide information necessary for Orders made under the *Act*:

Power to require information

36 (1) The Minister may order that a company provide, in the specified form and within the specified period, information or documents that he or she considers necessary for the purposes of ensuring compliance with this Act and with the regulations, rules, orders, standards and emergency directives made under this Act.

20. The Plaintiffs plead, and the fact is, that the Minister of Transportation has never before used these or other provisions within the above referenced legislation to require a medical procedure as a pre-condition to accessing federally regulated transportation services. Put differently, the Vaccine Mandates were truly unprecedented in Canadian history.

21. The first Vaccine MO, with respect to aviation, was implemented on October 30, 2022, officially titled, “Interim Order for Civil Aviation Respecting Requirements Related to Vaccination Due to COVID-19”. These Vaccine MOs were renewed by the Minister for a total of 79 times, until they were finally suspended on June 20, 2022.

22. In repealing the (most recent) Vaccine MO, the Minister declared that the “Interim Order is no longer required to deal with a significant risk, direct or indirect, to aviation safety or the safety of the public”. No particular evidence was provided to substantiate this significant change in government policy that justified the sudden suspension of the Vaccine MO’s.

~~The impugned MOs were enacted between October 2021 until June 20, 2022, after which the impugned MOs were suddenly “suspended”.~~

### **Vaccine Mandate's Impact on the Plaintiffs' Section 6, 7, and 15 Charter Rights**

23. The Vaccine Mandates, as implemented and renewed through the Vaccine MOs, violated several of the Plaintiffs' rights under the Charter, in a manner that was not demonstrably justifiable.
24. The Vaccine Mandates, as implemented through the Vaccine MOs, violated the Plaintiffs' Section 6 Charter Mobility Rights. By making vaccination a precondition of travel, the Plaintiffs were unable to board an airplane to leave Canada and fly to the United Kingdom. As such, the Plaintiffs' international movement was restricted such that it was not realistically possible for the Plaintiffs to leave Canada for Europe or elsewhere, considering the modern realities of travel.
25. The Vaccine Mandates, as implemented through the Vaccine MOs, violated the Plaintiff's Section 7 right to liberty. By forcing these Plaintiffs to choose between undertaking an irreversible medical treatment as a precondition for any travel beyond Canada and within Canada, through federally regulated transportation, the Plaintiffs' decision-making concerning their personal autonomy was compromised undermining their dignity and independence as human beings in a democratic society and their independence.
26. The Plaintiffs further plead that their violation of Section 7 liberty rights was not in accordance with the principles of fundamental justice as the Vaccine Mandates were arbitrary and grossly disproportionate for reasons identified hereafter.
27. The Vaccine Mandates, as implemented through the Vaccines MOs, also violated Section 15 of the Charter which guarantees equality rights under Canadian law.
28. ~~As a result of Vaccine Mandates, the Plaintiffs were unable to travel within Canada or outside of Canada until June 20, 2022 using federally regulated transportation.~~

29. ~~During this time, both Plaintiffs were confronted with an option to either receive an irreversible medical treatment, against their will and conscience, or forego any travel beyond Canada or within Canada using federally regulated transportation.~~
30. The Plaintiffs plead that, on its face, the Vaccine MOs were discriminatory by segregating Canadians, including these Plaintiffs into identifiable categories of the “vaccinated” and “unvaccinated”. This distinction was discriminatory as it prejudiced the rights of these Plaintiffs to access and make use of federally regulated transportation services putting them at a disadvantage and withholding a benefit that was available to vaccinated Canadians. Consequently, this perpetuated an unsubstantiated and prejudicial stereotype that unvaccinated Canadians, like these Plaintiffs, posed some higher risk of Covid-19 transmission or infection within the transportation system.
31. As a result of their personal medical choice to forego vaccination against Covid-19, the Plaintiffs were effectively identified as belonging to a new, segregated class of Canadians who could not travel by plane or train. Consequently, for a period of seven (7) months, the Plaintiffs could not visit their respective parents, who reside in the United Kingdom, and who are both in poor health and aging. Additionally, Mr. Harrison could not travel to the UK to attend to his businesses.

**The Canadian Government knew the Vaccine Mandate, which is a Prima Facie Charter Breach, had no Empirical Scientific or Epidemiological Basis**

**The Canadian Government's Vaccine Mandate was Grossly Negligent and Implemented in Bad Faith**

32. The Plaintiffs plead that the Vaccine Mandates were not implemented to protect public safety in the transportation system, but rather ~~implemented~~ to fulfil the Prime Minister's political pledge that was expressly made during the general election period – and formally incorporated into the campaign platform of the Liberal Party as a wedge issue at the time of the 2021 general election.
33. The Plaintiffs plead that the Vaccine Mandate, as a piece of policy, was unsupported by any cognizant scientific basis. Further, it was not recommended by Public Health Agency of Canada or by Health Canada.
34. Alternatively, Additionally, the Plaintiffs plead that the Federal Government restricted Canadians' access and use of the federally regulated transportation sector in order to enhance its own, desired public health objective of achieving mass vaccination among Canadians while being willfully blind or without any due regard as to: (a) the efficacy (or lack thereof) of this policy and (b) suitable alternatives that would not require Canadians to effectively undergo ~~an~~ effectively compelled what is still an experimental medical procedure, namely vaccination.
35. The Plaintiffs further plead that the decision, implementation and continuation of the Vaccine Mandates was made in a manner that was clearly wrong, grossly negligent and rooted in bad faith.

36. In particular, the Minister of Transportation and the Public Health Agency of Canada failed and neglected to:

- a. Conduct any investigation, study, review, or analysis as to the risk and risk profile that Covid-19 specifically presented to the transportation sector, including having regard to (a) existing protective measures in place against Covid-19 during the relevant time period and (b) risk of Covid-19 transmission within the transportation system (i.e. airports, airplanes etc.) despite the obvious relevance this information would have in implementing a mandatory vaccine policy;
- b. Implement any ~~system, whatsoever,~~ mechanism by which to monitor and review the effectiveness of Covid-19 vaccination within the transportation sector on an on-going basis, or at all during the time in which the Vaccine Mandates were in placed and renewed on a periodic basis;
- c. Investigate and Evaluate the vaccine's purported protection against Covid-19 transmission;
- d. Investigate, Evaluate and consider the protection against infection and transmission of Covid-19 that was afforded by alternative, Non-Pharmaceutical Interventions, including masking, negative PCR testing as well as natural immunity;
- e. Establish a cogent, intelligible and transparent method of analyzing the unique risk of infection and transmission for different Covid-19 variants during the time period that the Vaccine Mandates were ~~maintained~~ implemented and renewed;
- f. Establish *any* framework or criteria for decision-making with respect to extending the ~~Vaccine Mandates~~ Vaccine MOs for such time as it was in force and effect;

- g. Consider, study, monitor and understand the anticipated effects of the proposed Vaccine Mandates within a broader, epidemiological context to assess the risk of Covid-19 transmission and/or an outbreak of Covid-19 within the transportation sector as compared to the same risk within the community, generally.
  - h. Ignored or trivialized the medical/scientific evidence as to the ineffectiveness (and therefore the utility and appropriateness) of the Covid-19 vaccines, namely waning immunity, on reducing or stopping the transmission of Covid-19.
37. Furthermore, the Plaintiffs state that the Public Health Agency of Canada never recommended or advised to the Minister of Transportation and Transport Canada to implement a vaccine mandate for travel. In fact, in the weeks and days leading to the Government's announcement of the Vaccine Mandate, members within the Government were actively seeking a public health *justification* to support ~~their~~ the political decision to implement a ~~the~~ Vaccine Mandate.
- ~~38. The Plaintiffs also state that~~ The Government was willfully blind, reckless, or and acted in bad faith in developing the scope of the Vaccine Mandate, for those reasons listed in paragraph 36 19(a). ~~In fact, the team within the Ministry of Transportation that was responsible for its policy development and implementation did not even include a medical doctor or an epidemiologist who might have advised as to the initial and continued scientific justification, or lack thereof, for various aspects of the Vaccine Mandates.~~
39. In fact, the Plaintiffs plead that the Government had multiple opportunity to assess and evaluate the efficacy of the Vaccine Mandates each time the Vaccine MO's were renewed, but failed to do so in order to aggressively promote an agenda to achieve mass vaccination among Canadians despite no demonstrable evidence that this would improve public safety within the transportation system or more broadly within the local community.



40. Similarly, the Canadian Government was grossly negligent, willfully blind ~~or~~ and acted in bad faith in maintaining the Vaccine Mandate despite ~~knowing~~ having scientific evidence that the Covid-19 vaccine provided imperfect and time – limited protection against infection from Covid-19 and despite having little to no scientific certainty as to the vaccine’s impact on the transmission of Covid-19 between infected and non-infected individuals, especially in different settings within the transportation system.
41. The Government acted in bad faith by withholding information that the risk of vaccination were still unknown, yet publicly declaring them to be “safe”.
42. The Government acted in bad faith by neglecting to conduct periodic studies of vaccination efficacy and effectiveness (particularly within the transportation system) before it renewed each Vaccine MO.
43. In light of the foregoing, the Canadian Government, including the Minister of Transportation and the individuals involved with developing and implementing the Vaccine Mandates acted in a manner that was negligent and willfully blind with respect to relevant scientific and epidemiological facts and data known to them at that time. Accordingly, the decision to both enact the several impugned MOs and maintain these MOs until June 20, 2022, was an act of bad faith by the Defendant.

**The Vaccine Mandates were not Justified by Section 1 of the Charter**

44. The Plaintiffs plead that the Charter – infringing Vaccine Mandate is not saved by Section 1 of the Charter.
45. The Vaccine Mandates, as implemented through the Vaccine MOs do not meet the proportionality requirement under the Oakes test. The Plaintiffs plead those alternative measures – including, but not limited to, masking and recognizing natural immunity – would equally serve the Government’s stated objective of protect public safety within the transportation system. The singular requirement for vaccination to access transportation services was a grossly disproportionate and unnecessary means to meet the Government’s stated objective.
46. The Plaintiffs plead that the Vaccine Mandates also lacked a rational connection to the Government’s objective; the Government lacked the scientific evidence that Covid-19 vaccination meaningfully reduced the risk of transmitting Covid-19 in a transportation contact. Put differently, there was no causal link between Covid-19 vaccination and a reduction in the onward transmission of Covid-19.
47. The Plaintiffs plead that the Vaccine Mandates, as implemented through the Vaccine MOs, offended the “minimal impairment” requirement. The Government had alternative and equally effective measures to ensure public safety against Covid-19 within the transportation context, which it ignored. There were, in fact, less right-impairing means of achieving their objective in a real and substantial matter, including by recognizing natural immunity to Covid-19 infections and implementing non-pharmacological intervention such as testing, masking, and temperature checks all of which were, inexplicably, deemed inadequate.

48. The Plaintiffs plead the Government fundamentally failed to carefully tailor the Vaccine Mandates to its objectives and significantly and unnecessarily impaired the rights of these Plaintiffs beyond what was reasonably necessary having regard to the know science at the time concerning both the Covid-19 vaccines and the Covid-19 virus. Indeed, the Government showed a complete disregard in assessing credible alternatives to vaccinations that would minimally (or not at all) impair *Charter* rights while achieving reasonable safety within the transportation sector.

**Section 24(1) *Charter* Damages are Just and Appropriate in the Circumstances**

49. The Plaintiffs state that, in light of the foregoing, the manner in which the Defendant introduced and maintained the Vaccine Mandates through repeatedly renewing the Vaccine MOs notwithstanding the lack of scientific justification for doing so at each renewal, amounts to a clear disregard for the *Charter* rights and freedoms of these Plaintiffs and, indeed, of all Canadians.

50. The Government's strategic disregard for (a) disconfirming scientific evidence challenging the efficacy of Covid-19 vaccination together with the known waning efficacy of vaccination (b) lack of recommendation from public health about the need for vaccination as a pre-condition for travel (c) its own admission that the risks of the Covid-19 vaccination were yet unknown and little understood and (d) lack of intelligible criteria against which the decision to continue to discontinue the Vaccine MOs could be made and (e) the absence of any scientific studies that considered the efficacy of Covid-19 vaccine against each Covid-19 variant, highlight the fact that the decision to implement and maintain the Vaccine MOs was made in bad faith and in a grossly negligent manner.

51. Furthermore, the *Charter* – infringing Vaccine Mandates diminished public faith in the efficacy of the *Charter*'s protection of fundamental rights and freedoms.

52. In light of the foregoing, an award of constitutional damages pursuant to Section 24(1) of the *Charter* is functionally justified in the circumstances. In particular, such an award would:

- a. compensate the Plaintiffs for their humiliation, indignity and inability to travel, at all, using federally regulated transportation in order to visit their ailing parents;
- b. vindicate their *Charter* rights and freedoms that were breached; and,
- c. deter similar, unjustifiable and politically-motivated policies which prima facie breach the *Charter* rights and freedoms of Canadians.

53. The Plaintiff proposes that this action be tried at Ottawa, Ontario.

~~November 28, 2023~~

June 3, 2024

---

**Sam A. Presvelos**  
Counsel for the Plaintiffs

**Presvelos Law LLP**  
141 Adelaide Street West, Suite 1006  
Toronto, Ontario  
M5H 3L5

**Sam A. Presvelos**  
Tel: (416) 844-3457  
Email: [spresvelos@presveloslaw.com](mailto:spresvelos@presveloslaw.com)

[SOR/2021-150, s. 12](#)

# TAB 3

**Court file No.:** T-2536-23

**FEDERAL COURT**

BETWEEN:

**SHAUN RICKARD and KARL HARRISON**

Plaintiffs

- and -

**HIS MAJESTY THE KING, THE MINISTER OF TRANSPORTATION, and the  
ATTORNEY GENERAL OF CANADA**

Defendants

---

**WRITTEN REPRESENTATIONS OF THE DEFENDANT / MOVING PARTY**

---

**Attorney General of Canada**

Department of Justice Canada  
Ontario Regional Office  
National Litigation Sector  
120 Adelaide Street West Suite #400  
Toronto, Ontario M5H 1T1

**Per: James Schneider / Zachary Lanys**

Tel: (416) 347-8754 / (416) 931-9762

E-mail: [James.Schneider@justice.gc.ca](mailto:James.Schneider@justice.gc.ca)

[Zachary.Lanys@justice.gc.ca](mailto:Zachary.Lanys@justice.gc.ca)

**Counsel for the Defendants**

## OVERVIEW

1. The Plaintiffs' Amended Statement of Claim alleges that COVID-19 "vaccine mandates" caused them damages by violating their rights under sections 6, 7 and 15 of the *Canadian Charter of Rights and Freedoms* ("**Charter**").<sup>1</sup> The Plaintiffs allege that the harms were caused by Ministerial Orders made by the Minister of Transportation requiring vaccination against COVID-19 in order to access federally regulated modes of transportation during a portion of the COVID-19 pandemic.

2. The Amended Statement of Claim should be struck for failing to disclose any cause of action. Regarding section 6, the alleged impacts on the Plaintiffs relate to their inability to board a plane to leave Canada, however, the Plaintiffs have not identified themselves as Canadian citizens at the relevant times for the purposes of subsection 6(1). They have not pleaded any limits on any rights protected under subsection 6(2). Regarding section 7, the Plaintiffs, who ultimately chose not to be vaccinated, fail to demonstrate how the Ministerial Orders impact their liberty. To the extent the Plaintiff's section 7 claim is just a repetition of section 6, this is also inappropriate. Regarding section 15, a person's vaccination status is not an enumerated or analogous ground and cannot support a claim under this section.

3. Leave to amend should not be granted for the majority of these claims because they cannot be cured. The sections 7 and 15 claims are based on principles which are legally untenable. The only exception is the Plaintiff's subsection 6(1) *Charter* claim, which could potentially proceed if the Plaintiffs plead that they were Canadian citizens at the relevant times.

---

<sup>1</sup> June 3, 2024, Amended Statement of Claim ("**ASOC**"), **Tab 2, Motion Record of the Defendant** ("**DMR**"), p 10.

## PART I – STATEMENT OF FACTS

### A. The Plaintiff's Amended Statement of Claim

4. The Plaintiffs together seek \$1,000,000 in damages pursuant to section 24(1) of the *Charter* for alleged breaches of their sections 6, 7 and 15 rights. The Plaintiffs allege that the damages were caused by Ministerial Orders related to air and rail transport.

#### i. The Ministerial Orders

5. The Plaintiffs allege that two types of Ministerial Orders made by the Minister of Transportation caused them their harms: orders made under the *Aeronautics Act*, and orders made under the *Railway Safety Act*.<sup>2</sup>

6. Regarding the *Aeronautics Act*, the Plaintiffs identify that the first Ministerial Order was implemented on October 30, 2021<sup>3</sup> and it was renewed until finally being suspended on June 20, 2022.<sup>4</sup> The Amended Statement of Claim indicates that this Ministerial Order implemented a requirement for travellers departing from Canadian airports to be vaccinated against COVID-19.<sup>5</sup> The Amended Statement of Claim does not identify how these Ministerial Orders were structured and whether they contained any exceptions.

7. The Plaintiffs do not identify any specific Ministerial Orders made under the *Railway Safety Act*. The Amended Statement of Claim suggests that these orders would have required mandatory vaccination for boarding VIA and Rocky Mountaineer Trains.<sup>6</sup>

---

<sup>2</sup> ASOC at para 13, **Tab 2, DMR, p 12.**

<sup>3</sup> The Plaintiffs write October 30, 2022, in the ASOC but this is presumably a typo. ASOC at para 21, **Tab 2, DMR, p 14.**

<sup>4</sup> ASOC at para 21, **Tab 2, DMR, p 14.**

<sup>5</sup> ASOC at paras 10, 12, 13 and 21, **Tab 2, DMR, pp 12, 14.**

<sup>6</sup> ASOC at para 10, **Tab 2, DMR, p 12.**



ii. *The Plaintiffs*

8. The Plaintiffs identify themselves as “individuals” residing in Pickering, Ontario and Vancouver, British Columbia, respectively.<sup>7</sup> Neither Plaintiff pleads that they are a Canadian citizen or were a Canadian citizen at the material times the impugned Ministerial Orders were in effect.

9. The Plaintiffs both plead that they have parents in the United Kingdom they frequently visit. The Plaintiff Mr. Harrison also indicates that he frequently travels to the United Kingdom and other countries in Europe for business.<sup>8</sup>

10. The Plaintiffs plead that, notwithstanding the Ministerial Orders, they chose not to receive a COVID-19 Vaccination.<sup>9</sup> As a result, for seven months they did not travel to visit their parents, and Mr. Harrison did not travel to operate his business.<sup>10</sup>

iii. *The Alleged Charter Damages*

11. The Plaintiffs claim that the Minister’s Orders violate their *Charter* rights in a manner which cannot be demonstrably justified.<sup>11</sup>

12. Regarding section 6, the Plaintiffs have not specified whether they are alleging a violation of rights protected under subsections 6(1) or 6(2) of the *Charter*. However, the alleged impacts and alleged violation of their section 6 mobility rights exclusively relate to international travel. Specifically, the Plaintiffs allege that the Ministerial Orders violate their mobility rights because by making vaccination a precondition of travel, they were unable to fly to the United

---

<sup>7</sup> ASOC at para 2-3, **Tab 2, DMR, p 10.**

<sup>8</sup> ASOC at para 5-7, **Tab 2, DMR, p 11.**

<sup>9</sup> ASOC at para 2-3, **Tab 2, DMR, p 10.**

<sup>10</sup> ASOC at para 31, **Tab 2, DMR, p 16.**

<sup>11</sup> ASOC at para 2-3, **Tab 2, DMR, p 10.**

Kingdom. The Plaintiffs allege that the effect of this was a restriction on their international movement because of the modern realities of travel. The Plaintiffs do not mention rail travel.<sup>12</sup>

13. Regarding section 7, the Plaintiffs allege that the Ministerial Order violate their rights to liberty by forcing them to choose between vaccination and travel beyond Canada. The Plaintiffs allege this choice undermined their dignity and independence.<sup>13</sup>

14. Regarding section 15, the Plaintiffs allege that the Ministerial Orders are discriminatory because they segregate Canadians into the “vaccinated” and “unvaccinated” and discriminates against the unvaccinated in their ability to access transportation.<sup>14</sup>

## **B. Procedural History**

15. The Plaintiffs originally commenced an application challenging vaccine requirements for rail and air travel in the matter T-1991-21. This matter was dismissed by the Federal Court on the basis of mootness, which decision was upheld by the Federal Court of Appeal.<sup>15</sup>

16. The Plaintiffs then commenced this action on November 29, 2023.<sup>16</sup> The Plaintiffs subsequently amended their statement of claim on June 3, 2024, to particularize their allegations as to how the Ministerial Orders impact their *Charter* rights.<sup>17</sup>

---

<sup>12</sup> ASOC at para 5-7, 24, 31, **Tab 2, DMR, p 15.**

<sup>13</sup> ASOC at para 25, **Tab 2, DMR, p 15.**

<sup>14</sup> ASOC at para 27, 30, **Tab 2, DMR, pp 15,16.**

<sup>15</sup> *Ben Naoum v Canada (Attorney General)*, [2022 FC 1463](#), *aff'd Peckford v Canada (Attorney General)*, [2023 FCA 219](#), applications leave to appeal by the other applicants to the SCC refused, [41100](#), [41081](#), [41082](#). Note that the Plaintiffs in this matter appealed to the FCA, but they did not seek leave to appeal to the SCC.

<sup>16</sup> ASOC at para 53, **Tab 2, DMR p 23.**

<sup>17</sup> ASOC at paras 23-30, **Tab 2, DMR pp 15-16.**

## PART II – POINTS IN ISSUE

17. The issues before the Court on this motion are:

- a. The Plaintiffs' Amended Statement of Claim should be struck; and,
- b. Leave to further amend should not be granted, except with regard to the section 6 claim.

## PART III – SUBMISSIONS

### A. The Plaintiff's Amended Statement of Claim should be struck

#### i. The Test to Strike

18. Rule 221 of the *Federal Courts Rules* allows a defendant to move to strike out some or all of a claim if it discloses no reasonable cause of action.<sup>18</sup> The power to strike out a claim is a “valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial.”<sup>19</sup>

19. The test on a motion to strike is whether it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action.<sup>20</sup> A claim discloses no reasonable cause of action and ought to be struck where it has no reasonable prospect of success.<sup>21</sup> The facts pleaded are assumed true unless they are manifestly incapable of being proven or patently ridiculous.<sup>22</sup> The claimant must allege all the facts necessary to prove a

---

<sup>18</sup> *Federal Courts Rules*, [SOR/98-106](#) at [s 221\(1\)\(a\)](#) [*Rules*].

<sup>19</sup> *R v Imperial Tobacco Canada Ltd*, [2011 SCC 42](#) at [para 19](#) [*Imperial Tobacco*].

<sup>20</sup> *Imperial Tobacco* at [para 17](#); *Canada v Harris*, [2020 FCA 124](#) at [para 23](#) [*Harris*].

<sup>21</sup> *Imperial Tobacco* at [para 17](#).

<sup>22</sup> *Imperial Tobacco* at [para 22](#); *Edell v Canada*, [2010 FCA 26](#) at [para 5](#).

claim recognized at law; if a necessary element of the claim is missing, the pleading will be struck.<sup>23</sup>

20. The standard requirements of pleadings are not relaxed simply because a *Charter* claim is involved.<sup>24</sup> A rights claimant must plead sufficient material facts to satisfy the criteria applicable to each *Charter* right in question.<sup>25</sup>

ii. **The Plaintiffs have not pleaded the necessary elements of section 6**

21. The Plaintiffs have alleged that the Ministerial Orders violate their section 6 rights, without specifying the s. 6 subsection on which they are relying. Regardless, the allegation that the Ministerial Orders violate their section 6 rights is deficiently pleaded for both subsections 6(1) and 6(2) of the *Charter*. Given that the mobility rights impacts alleged by the Plaintiffs relate exclusively to international travel—that they were unable to board an airplane “to leave” Canada<sup>26</sup>—the Plaintiffs appear to be relying on subsection 6(1). However, the Plaintiffs do not plead that they are Canadian citizens, or that they were Canadian citizens at all material times. The Plaintiffs have not pleaded any impacts or restrictions on their rights under subsection 6(2). The Amended Statement of Claim also fails to disclose any cause of action regarding rail transport.

22. Subsection 6(1) of the *Charter* provides that Canadian citizens have the right to enter, remain in, and leave Canada.<sup>27</sup> Canadian citizenship is a necessary condition to making a

---

<sup>23</sup> *Mahoney v Canada*, 2020 FC 975 at para 27 [Mahoney].

<sup>24</sup> *La Rose v Canada*, 2023 FCA 241 at para 132.

<sup>25</sup> *Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 21.

<sup>26</sup> ASOC at para 24, **Tab 2, DMR p 15**.

<sup>27</sup> *Canadian Charter of Rights and Freedoms*, The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 at s 6(1) [*Charter*]; *Divito v Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47 at para 18.

*Charter* claim pursuant to this provision.<sup>28</sup> Subsection 6(1) is concerned with international movement, and its central purpose is to prevent exile and banishment by constitutionalizing the right to enter, remain, and leave Canada for Canadian citizens.<sup>29</sup>

23. Subsection 6(2) of the *Charter* relates to interprovincial mobility rights. It provides that Canadian citizens and permanent residents have the right “to move to and take up residence in any province”, and “to pursue the gaining of a livelihood in any province”.<sup>30</sup> The Plaintiffs have not pleaded any limit on their interprovincial mobility rights.

a. The Plaintiffs do not identify as Canadian citizens

24. The Plaintiffs allege that the Ministerial Orders restricted their international movement because they were unable to board airplanes to leave Canada to fly to the United Kingdom and visit their parents and, in Mr. Harrison’s case, to run his business.

25. Nowhere in the Amended Statement of Claim do the Plaintiffs plead that they are Canadian citizens. Rather, the Plaintiffs simply identify themselves as “individuals” residing in Pickering and Vancouver, respectively.<sup>31</sup>

26. Subsection 6(1) of the *Charter* only provides the right to enter, remain in, and leave Canada to Canadian citizens. Therefore, the Amended Statement of Claim as currently pleaded is fundamentally flawed and ought to be struck.

---

<sup>28</sup> *Canada (Minister of Employment and Immigration) v Chiarelli*, [1992 CanLII 87](#) (SCC) at paras 26 and 32.

<sup>29</sup> *United States of America v Cotroni*, [1989 CanLII 106](#) (SCC); *Canada v Boloh 1(a)*, [2023 FCA 120](#) at [para 36](#).

<sup>30</sup> *Charter* at [s 6\(2\)](#).

<sup>31</sup> ASOC at paras 2-3, **Tab 2, DMR, p 10**.

b. The Amended Statement of Claim fails to disclose a cause of action for rail transport

27. The Plaintiffs allege that the Ministerial Orders related to rail transport violate section 6 of the *Charter*.<sup>32</sup> However, the Plaintiffs fail to plead any material facts relating to how their decision to forego vaccination caused them damages by impacting their ability to travel by rail. It is, of course, impossible to travel from Pickering or Vancouver to the United Kingdom or other parts of Europe by rail. However, the Plaintiff's inability to travel to these overseas destinations are the only material facts pleaded by the Plaintiffs in respect of their section 6 allegation.

28. In any event, the Ministerial Orders related to rail would not have precluded the Plaintiffs from exercising their interprovincial mobility rights notwithstanding their decision to not be vaccinated—the Plaintiffs were free to move within Canada by car, since automobiles are not federally-regulated transportation covered by the Ministerial Orders.

29. Therefore, it is unclear how the Ministerial Orders in respect of rail had any impact on the Plaintiffs whatsoever, and certainly not in a manner that infringed their *Charter* rights. The Amended Statement of Claim fails to plead the elements necessary to satisfy section 6 of the *Charter*, and as such fail to disclose a reasonable cause of action in relation to rail.

iii. **The Plaintiffs' section 7 claim fails to disclose a reasonable a cause of action**

30. The Plaintiff's pleadings regarding section 7 of the *Charter* are also deficient and ought to be struck. Requiring the Plaintiffs to choose between vaccination and air travel does not engage the Plaintiff's "liberty" interests. To the contrary, the Plaintiffs had a choice, and they exercised

---

<sup>32</sup> Note that the Plaintiffs do not identify any Ministerial Orders, ASOC at para 10, **Tab 2, DMR, p 12.**

their right. Courts have consistently held that even where a mandate makes individuals to choose between vaccination and something else, they are not being forced to become vaccinated.<sup>33</sup>

31. Section 7 protects a right, in certain cases, to make fundamental personal choices. As explained by the Supreme Court of Canada in *Blencoe*:

Although an individual has the right to make fundamental personal choices free from state interference, **such personal autonomy is not synonymous with unconstrained freedom. In the circumstances of this case, the state has not prevented the respondent from making any “fundamental personal choices”**. The interests sought to be protected in this case do not in my opinion fall within the “liberty” interest protected by s. 7.<sup>34</sup>

32. The Plaintiffs claim that the Ministerial Orders “forced” them to choose between vaccination and travel by air, which they submit undermined their dignity and independence.<sup>35</sup> However, this allegation cannot support a section 7 claim because as the Plaintiffs’ own pleadings demonstrate, the Plaintiffs remained at all times free to make their own decisions about vaccination and, indeed, chose not to be vaccinated. The fact that the Plaintiffs may have faced consequences in terms of their ability to travel by air does not amount to coercion and is insufficient to trigger the section 7 rights to liberty.

33. Instead, what was at stake for the Plaintiffs was not forcible vaccination, but rather the consequences of their own choice to remain unvaccinated. Indeed, what the Plaintiffs are

---

<sup>33</sup> *Wojdan v Canada (Attorney General)*, [2021 FC 1341](#) at [paras 35-36](#) (aff’d [2022 FCA 120](#)), *Amalgamated Transit Union, Local 113 v Toronto Transit Commission*, [2021 ONSC 7658](#) at [para 77](#), *Neri v Canada*, [2021 FC 1443](#) at [para 59](#).

<sup>34</sup> *Blencoe v British Columbia (Human Rights Commission)*, [2000 SCC 44 \(CanLII\)](#)

<sup>35</sup> ASOC at para 25, **Tab 2, DMR, p 15**.

fundamentally alleging is that they had a right to choose not to be vaccinated *and* to travel by air. This argument is just a duplicate of an argument for mobility rights.

34. Mobility rights are not protected under section 7 but under section 6. To expand section 7 to include additional mobility rights would be to rewrite the *Charter* and undermine the specific design of section 6. The same conclusion was reached by this Court in *Khadr v Canada (Attorney General)* when considering section 6 and 7:

The ability to travel where and when one wants outside Canada does not strike at that basic value of individual dignity and independence. **I say this because the matter of choice to leave Canada is enshrined in section 6 of the Charter.** If one provision of the Charter covers a specific freedom, other sections of the Charter should not be presumed to cover the same freedom. There is a presumption against redundancies in legislation.<sup>36</sup>

35. The Plaintiffs' section 7 argument does not give rise to a reasonable cause of action, and ought to be struck.

**iv. The Plaintiffs' section 15 claim fails to disclose a reasonable cause of action**

36. The Plaintiffs identify vaccination status as the ground upon which they were allegedly discriminated against. Specifically, the Plaintiffs plead that Ministerial Orders violate section 15 because they segregate Canadians into categories as "vaccinated" and "unvaccinated".<sup>37</sup>

37. The Plaintiffs receiving different treatment because of their vaccination status does not engage section 15 of the *Charter*. Vaccination status is not an enumerated ground or an analogous ground under section 15 of the *Charter*. As a result, the Plaintiffs' claims regarding section 15 of the *Charter* disclose no reasonable cause of action and ought to be struck.

---

<sup>36</sup> *Khadr v Canada (Attorney General)*, [2006 FC 727](#) at [para 75](#).

<sup>37</sup> ASOC at paras 27-30, **Tab 2, DMR, pp 15-16**.



38. Vaccination status is not an enumerated ground under the *Charter*. Subsection 15(1) of the *Charter* enumerates race, national or ethnic origin, colour, religion, sex, age or mental or physical disability as grounds which engage section 15. Vaccination status is not one of these.

39. Vaccination status is also not an analogous ground under the *Charter*. As explained by the Supreme Court of Canada in *Corbiere v Canada (Minister of Indian and Northern Affairs)*, analogous grounds are those similar to the enumerated grounds that would “often serve as the basis for stereotypical decisions made not on the basis of merit but on the basis of a personal characteristic that is immutable or changeable only at unacceptable cost to personal identity.”<sup>38</sup>

40. Vaccination status is not an immutable characteristic or one which is constructively immutable. It is a choice. As explained by the Court of Appeal of Alberta:

[the Appellant’s] COVID-19 vaccination status is not who she is. **It is not an immutable personal characteristic, nor is it one that is changeable only at unacceptable cost to personal identity.** Her choice not to get vaccinated against COVID-19 is just that – a choice. And while the decision whether to get a COVID-19 vaccine is personal, it remains fluid, made at a moment in time, based on available information and often in response to specific circumstances and influences. **The decision can change, and often does, all with minimal or no cost to personal identity.**<sup>39</sup>

41. This same reasoning—that vaccination status is not immutable and therefore does not engage section 15 of the *Charter*—has also been expressed by the Ontario Superior Court and Ontario Court of Justice.<sup>40</sup> These cases are persuasive and this reasoning should be followed

---

<sup>38</sup> *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999 CanLII 687 \(SCC\)](#) at [para 13](#)

<sup>39</sup> *Lewis v Alberta Health Services*, [2022 ABCA 359](#) at [para 62-70](#).

<sup>40</sup> See *Costa, Love, Badowich and Mandekic v. Seneca College of Applied Arts and Technology*, [2022 ONSC 5111](#) at [paras 91-95](#) and *R v Lauterpacht*, [2023 ONCJ 51](#) at [paras 85-89](#).

by this Court. The allegations relating to section 15 should be struck as they do not disclose a cause of action.

**B. LEAVE TO FURTHER AMEND SHOULD NOT BE GRANTED, EXCEPT FOR THE SECTION 6 CLAIM AS RELATED TO AIR TRAVEL**

42. To be struck without leave to amend, the defect in an Amended Statement of Claim must be one that cannot be cured by amendment.<sup>41</sup>

v. **Most of the Plaintiff's Amended Statement of Claim cannot be cured**

43. The Plaintiffs' claims based on section 6 and inability to travel by rail transport, section 7, and section 15 cannot be cured because they are grounded in fundamentally flawed legal arguments and lack of any factual foundation.

44. With respect to section 6 and rail transport, there is no allegation in the Plaintiffs' Amended Statement of Claim that they were affected by any Ministerial Orders regarding rail transport. Additionally, even if they were, there is no basis upon which to find that a right to rail transport is protected under either subsection of section 6. There are other means for persons to move between provinces other than rail.

45. With respect to section 7, the Plaintiffs' claim is ultimately about attempting to find mobility rights in section 7. Given that this would serve to re-write the *Charter*, there is no amendment which would cure this claim.

46. With respect to section 15, because vaccination status is not an enumerated or analogous ground, there is no amendment which could cure this issue.

---

<sup>41</sup> *Simon v Canada*, [2011 FCA 6](#) at [para 8](#).

vi. **Limited leave to amend can be granted for section 6**

47. The Defendants dispute that there was any limitation on the Plaintiffs' section 6(1) rights and dispute that section 6 provides any right to air travel. Indeed, the Federal Court of Appeal has noted that there "is reason to doubt" whether it does so.<sup>42</sup> However, unlike the *Charter* claims noted above, there is no conclusive case law on this issue.

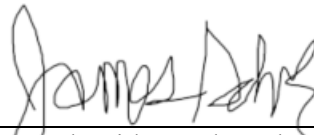
48. If the Plaintiffs were to amend their claims to identify that the Plaintiffs were Canadian citizens at the relevant times of the Ministerial Orders, and therefore captured within section 6(1) of the *Charter*, such an amendment could cure this aspect of the pleadings.

**PART IV – ORDER SOUGHT**

49. The Defendants seek an Order:

- a. Striking the Amended Statement of Claim in its entirety, with no leave to amend except with regards to the subsection 6(1) claim as it relates to air travel;
- b. Costs; and
- c. Such further and other relief as this Honourable Court may permit.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4<sup>TH</sup> DAY OF SEPTEMBER, 2024**



---

James Schneider and Zachary Lanys  
Counsel for the Defendants/Moving  
Party, the Attorney General of  
Canada

---

<sup>42</sup> *Singh Brar v Canada (Public Safety and Emergency Preparedness)*, [2024 FCA 114](#) at [para 11](#).

**PART V – LIST OF AUTHORITIES**

1. *Amalgamated Transit Union, Local 113 v Toronto Transit Commission*, [2021 ONSC 7658](#)
2. *Ben Naoum v Canada (Attorney General)*, [2022 FC 1463](#)
3. *Blencoe v British Columbia (Human Rights Commission)*, [2000 SCC 44 \(CanLII\)](#)
4. *Canada v Boloh 1(a)*, [2023 FCA 120](#)
5. *Canada (Minister of Employment and Immigration) v Chiarelli*, [1992 CanLII 87 \(SCC\)](#)
6. *Canada v Harris*, [2020 FCA 124](#)
7. *Corbiere v Canada (Minister of Indian and Northern Affairs)*, [1999 CanLII 687 \(SCC\)](#)
8. *Costa, Love, Badowich and Mandekic v Seneca College of Applied Arts and Technology*, [2022 ONSC 5111](#)
9. *Divito v Canada (Public Safety and Emergency Preparedness)*, [2013 SCC 47](#)
10. *Edell v Canada*, [2010 FCA 26](#)
11. *Khadr v Canada (Attorney General)*, [2006 FC 727](#)
12. *La Rose v Canada*, [2023 FCA 241](#)
13. *Lewis v Alberta Health Services*, [2022 ABCA 359](#)
14. *Mahoney v Canada*, [2020 FC 975](#)
15. *Mancuso v Canada (National Health and Welfare)*, [2015 FCA 227](#)
16. *Neri v Canada*, [2021 FC 1443](#)
17. *Peckford v Canada (Attorney General)*, [2023 FCA 219](#)
18. *R v Imperial Tobacco Canada Ltd*, [2011 SCC 42](#)
19. *R v Lauterpacht*, [2023 ONCJ 51](#)
20. *Simon v Canada*, [2011 FCA 6](#)
21. *Singh Brar v Canada (Public Safety and Emergency Preparedness)*, [2024 FCA 114](#)

22. *United States of America v Cotroni*, [1989 CanLII 106 \(SCC\)](#)
23. *Wojdan v Canada (Attorney General)*, [2021 FC 1341](#), (aff'd [2022 FCA 120](#))

**APPENDIX A – STATUTES AND REGULATIONS**

1. [Federal Courts Rules](#), SOR/98-106, s 221(1)(a).
2. [Canadian Charter of Rights and Freedoms](#), The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK), 1982, c 11 at s 6(1).

<b><i>Federal Courts Rules, SOR/98-106</i></b>	
Rule 221(1)(a)	
<p><b>Motion to strike</b></p> <p>221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it</p> <p>(a) discloses no reasonable cause of action or defence, as the case may be,</p>	<p><b>Requête en radiation</b></p> <p>221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :</p> <p>a) qu'il ne révèle aucune cause d'action ou de défense valable;</p>
<b><i>Canadian Charter of Rights and Freedoms, The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK),</i></b>	
<p><b>Mobility of citizens</b></p> <p>6 (1) Every citizen of Canada has the right to enter, remain in and leave Canada.</p> <p><b>Rights to move and gain livelihood</b></p> <p>(2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right</p> <p>(a) to move to and take up residence in any province; and</p> <p>(b) to pursue the gaining of a livelihood in any province.</p>	<p><b>Liberté de circulation</b></p> <p>6 (1) Tout citoyen canadien a le droit de demeurer au Canada, d'y entrer ou d'en sortir.</p> <p><b>Liberté d'établissement</b></p> <p>(2) Tout citoyen canadien et toute personne ayant le statut de résident permanent au Canada ont le droit :</p> <p>a) de se déplacer dans tout le pays et d'établir leur résidence dans toute province;</p> <p>b) de gagner leur vie dans toute province.</p>

<b>Limitation</b>	<b>Restriction</b>
<p>(3) The rights specified in subsection (2) are subject to</p> <p>(a) any laws or practices of general application in force in a province other than those that discriminate among persons primarily on the basis of province of present or previous residence; and</p> <p>(b) any laws providing for reasonable residency requirements as a qualification for the receipt of publicly provided social services.</p>	<p>(3) Les droits mentionnés au paragraphe (2) sont subordonnés :</p> <p>a) aux lois et usages d'application générale en vigueur dans une province donnée, s'ils n'établissent entre les personnes aucune distinction fondée principalement sur la province de résidence antérieure ou actuelle;</p> <p>b) aux lois prévoyant de justes conditions de résidence en vue de l'obtention des services sociaux publics.</p>
<p><b>Affirmative action programs</b></p>	<p><b>Programmes de promotion sociale</b></p>
<p>(4) Subsections (2) and (3) do not preclude any law, program or activity that has as its object the amelioration in a province of conditions of individuals in that province who are socially or economically disadvantaged if the rate of employment in that province is below the rate of employment in Canada.</p>	<p>(4) Les paragraphes (2) et (3) n'ont pas pour objet d'interdire les lois, programmes ou activités destinés à améliorer, dans une province, la situation d'individus défavorisés socialement ou économiquement, si le taux d'emploi dans la province est inférieur à la moyenne nationale.</p>
<p><b>Legal Rights</b></p>	<p><b>Vie, liberté et sécurité</b></p>
<p><b>Life, liberty and security of person</b></p>	<p><b>7 Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.</b></p>
<p>7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.</p>	<p><b>Égalité devant la loi, égalité de bénéfice et protection égale de la loi</b></p>
<p><b>Equality before and under law and equal protection and benefit of law</b></p>	<p><b>15 (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.</b></p>
<p>15 (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.</p>	<p><b>Programmes de promotion sociale</b></p>
<p><b>Affirmative action programs</b></p> <p>(2) Subsection (1) does not preclude any law, program or activity that has as its object the</p>	<p>(2) Le paragraphe (1) n'a pas pour effet d'interdire les lois, programmes ou activités</p>

<p>amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.</p>	<p>destinés à améliorer la situation d'individus ou de groupes défavorisés, notamment du fait de leur race, de leur origine nationale ou ethnique, de leur couleur, de leur religion, de leur sexe, de leur âge ou de leurs déficiences mentales ou physiques.</p>
--	--