

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 (4th 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.

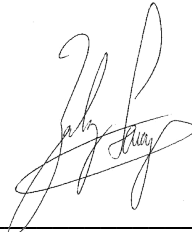
THE FOLLOWING STATUTORY PROVISIONS will be relied on:

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



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