

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240607**

**Docket: A-67-23**

**Citation: 2024 FCA 106**

**CORAM: BOIVIN J.A.  
GLEASON J.A.  
LEBLANC J.A.**

**BETWEEN:**

**KAREN ADELBERG, MATTHEW ANDERSON, WYATT GEORGE BAITON,  
PAUL BARZU, NEIL BIRD, CURTIS BIRD, BEAU BJARNASON, LACEY BLAIR,  
MARK BRADLEY, JOHN DOE #1 , DANIEL BULFORD, JOHN DOE #2,  
SHAWN CARMEN, JOHN DOE #3, JONATHAN COREY CHALONER,  
CATHLEEN COLLINS, JANE DOE #1 , JOHN DOE #4, KIRK COX, CHAD COX,  
NEVILLE DAWOOD, RICHARD DE VOS, STEPHANE DROUIN, MIKE DESSON,  
JANE DOE #2, STEPHANE DROUIN, SYLVIE FILTEAU, KIRK FISLER,  
THOR FORSETH, GLEN GABRUCH, BRETT GARNEAU, TRACY LYNN GATES,  
KEVIN GIEN, JANE DOE #3, WARREN GREEN, JONATHAN GRIFFIOEN,  
ROHIT HANNSRAJ, KAITLYN HARDY, SAM HILLIARD, RICHARD HUGGINS,  
LYNNE HUNKA, JOSEPH ISLIEFSON, LEPOSAVA JANKOVIC, JOHN DOE #5,  
PAMELA JOHNSTON, ERIC JONES-GATINEAU, ANNIE JOYAL, JOHN DOE #6,  
MARTY (MARTHA) KLASSEN, JOHN DOE #7, JOHN DOE #8, JOHN DOE #9,  
RYAN KOSKELA, JANE DOE #4, JULIANS LAZOVIKS, JASON LEFEBVRE,  
KIRSTEN LINK, MORGAN LITTLEJOHN, JOHN DOE #10, DIANE MARTIN,  
JOHN DOE #11, RICHARD MEHNER, CELINE MOREAU, ROBIN MORRISON,  
MORTON NG, GLORIA NORMAN, STEVEN O'DOHERTY, DAVID OBIREK,  
JOHN ROBERT QUEEN, NICOLE QUICK, GINETTE ROCHON,  
LOUIS-MARIE ROY, EMAD SADR, MATT SILVER, JINJER SNIDER,  
MAUREEN STEIN, JOHN DOE #12, JOHN DOE #13, ROBERT TUMBAS,  
KYLE VAN DE SYPE, CHANTELE VIEU, JOSHUA (JOSH) VOLD,  
CARLA WALKER, ANDREW WEDLOCK, JENNIFER WELLS, JOHN WELLS,  
MELANIE WILLIAMS, DAVID GEORGE JOHN WISEMAN,  
DANIEL YOUNG, GRATCHEN GRISON,  
(OFFICERS WITH THE ROYAL CANADIAN MOUNTAIN POLICE)**

**and**

**NICOLE AUCLAIR, MICHAEL BALDOCK, SABRINA BARON,  
WILLIAM DEAN BOOTH, CHARLES BORG, MARIE-ÈVE CARON,**

**THOMAS DALLING, JOSEPH ISRAEL MARC ERIC DE LAFONTAINE,  
RICARDO GREEN, JORDAN HARTWIG, RODNEY HOWES,  
CHRISTOPHER MARK JACOBSON, JANE DOE #5, PASCAL LEGENDRE,  
KIMBERLY LEPAGE, KIM MACDONALD, CINDY MACKAY,  
KIM MARTIN-MCKAY, DAVID MASON, ALEXANDRA KATRINA MOIR,  
JOSEPH DANIEL ERIC MONTGRAIN, RADOSLAW NIEDZIELSKI,  
LEANNA JUNE NORDMAN, DONALD POOLE, EDWARD DOMINIC POWER,  
NORMAN L. REED, JANE DOE #6, BRENDEN SANGSTER,  
TIMOTHY JOSEPH SEIBERT, ANN-MARIE LEE TRAYNOR,  
CARL BARRY WOOD, EDDIE EDMOND ANDRUKAITIS, RUBY DAVIS,  
JENNIFER SCHROEDER, JOSEPH SHEA EMPLOYED BY THE  
(DEPARTMENT OF NATIONAL DEFENCE)**

**and**

**STEFANIE ALLARD, JAKE DANIEL BOUGHNER, BRENT CARTER,  
BRIAN COBB, LAURA CONSTANTINESCU, SONIA DINU, ALDONA FEDOR,  
JANE DOE #7, MALORIE KELLY, MATTHEW STEPHEN MACDONALD,  
MITCHELL MACINTYRE, HERTHA MCLENDON, MARCEL MIHAILESCU,  
MICHAEL MUNRO, SEBASTIAN NOWAK, DIANA RODRIGUES,  
NATALIE HOLDEN, ADAM DAWSON WINCHESTER,  
(CANADA BORDER SERVICES AGENCY)**

**and**

**CHRISTINE CLOUTHIER, DEBBIE GRAY, JENNIFER PENNER, DALE WAGNER,  
JOSEPH AYOUB, (AGRICULTURE AND AGRI-FOOD CANADA)**

**and**

**JANE DOE #8, (ATLANTIC CANADA OPPORTUNITIES AGENCY)**

**and**

**MELANIE DUFOUR, (BANK OF CANADA)**

**and**

**JENNIFER AUCIELLO, SHARON ANN JOSEPH, ERIC MUNRO,  
(CANADA MORTGAGE AND HOUSING CORPORATION)**

**and**

**JANE DOE #9, (CANADA PENSION PLAN)**

**and**

**NATALIE BOULARD, BEATA BOZEK, JOHN DOE #14, NERIN ANDREA CARR,  
SARA JESSICA CASTRO, DEBBIE (DUBRAVKA) CUNKO, JOSÉE CYR,  
JANE DOE #10, CAROL GABOURY, TANIA GOMES, JULITA GROCHOCKA,  
MONIQUE HARRIS, WILLIAM HOOKER, KIRSTIN HOUGHTON,  
LEILA KOSTYK, MICHELLE LAMARRE, NICOLAS LEBLOND,  
SUANA-LEE LECLAIR, PAULETTE MORISSETTE, JENNIFER NEAVE,  
PIERRE-ALEXANDRE RACINE, BENJAMIN RUSSELL, ROBERT SNOWDEN,  
AABID THAWER, HEIDI WIENER, SVJETLANA ZELENBABA, NADIA ZINCK,  
AARON JAMES THOMAS SHORROCK, DEIRDRE MCINTOSH,  
(CANADA REVENUE AGENCY)**

**and**

**TAMARA STAMMIS, (CANADA SCHOOL OF THE PUBLIC SERVICE)**

**and**

**JASMIN BOURDON, (CANADA SPACE AGENCY)**

**and**

**SHARON CUNNINGHAM, ALLEN LYNDEN, RORY MATHESON,  
(CANADIANCOAST GUARD)**

**and**

**TATJANA COKLIN, JOHN DOE #15, RAQUEL DELMAS, JANE DOE #11,  
CHELSEA HAYDEN, HELENE JOANNIS, ZAKLINA MAZUR, JANE DOE #12,  
JESSICA SIMPSON, KATARINA SMOLKOVA,  
(CANADIAN FOOD INSPECTION AGENCY)**

**and**

**ALEXANDRE CHARLAND, (CANADIAN FORESTRY SERVICE)**

**and**

**CATHERINE PROVOST, KRISTINA MARTIN, (CANADIAN HERITAGE)**

**and**

**JANE DOE #13, (CANADIAN INSTITUTES OF HEALTH RESEARCH)**

**and**

**BETH BLACKMORE, ROXANNE LORRAIN,  
(CANADIAN NUCLEAR SAFETY COMMISSION)**

**and**

**RÉMI RICHER,  
(CANADIAN RADIO-TELEVISION AND  
TELECOMMUNICATIONS COMMISSION)**

**and**

**OCTAVIA LA PRAIRIE, (CANADIAN SECURITY INTELLIGENCE SERVICE)**

**and**

**ROBERT BESTARD, (CITY OF OTTAWA GARAGE FED REGULATED)**

**and**

**KIMBERLY ANN BECKERT, (CORE PUBLIC SERVICE)**

**and**

**SARAH ANDREYCHUK, FRANCOIS BELLEHUMEUR, PAMELA BLAIKIE,  
NATASHA CAIRNS, ANGELA CIGLENECKI, VERONIKA COLNAR,  
RANDY DOUCET, KARA ERICKSON, JESSE FORCIER, VALÉRIE FORTIN,  
ROXANE GUEUTAL, MELVA ISHERWOOD, MILO JOHNSON,  
VALERIA LUEDEE, LAURIE LYNDEN, ANNETTE MARTIN, CRAIG MCKAY,  
ISABELLE METHOT, SAMANTHA OSYPCHUK, JANE DOE #14,  
WILNIVE PHANORD, ALEXANDRE RICHER LEVASSEUR,  
KATHLEEN SAWYER, TREVOR SCHEFFEL,  
(CORRECTIONAL SERVICE OF CANADA)**

**and**

**JORDAN ST-PIERRE, (COURTS ADMINISTRATION SERVICE)**

**and**

**BRIGITTE SURGUE, JANE DOE #15,  
(DEPARTMENT OF CANADIAN HERITAGE)**

**and**

**GHISLAIN CARDINAL, HEATHER HALLIDAY, PAUL MARTEN,  
CELINE RIVIER, NGOZI UKWU, JEANNINE BASTARACHE, JANE DOE #16,  
HAMID NAGHDIAN-VISHTEH, (DEPARTMENT OF FISHERIES AND OCEAN)**

**and**

**ISHMAEL GAY-LABBE, JANE DOE #17, LEANNE JAMES,  
(DEPARTMENT OF JUSTICE)**

**and**

**DANIELLE BARABE-BUSSIERES, (ELECTIONS CANADA)**

**and**

**TANYA DAECHERT, JANE DOE #18, FRANCOIS ARSENEAU,  
CHANTAL AUTHIER, NATHALIE BENOIT, AERIE BIAFORE, ROCK BRIAND,  
ARNAUD BRIEN-THIFFAULT, SHARON CHIU, MICHEL DAIGLE,  
BRIGITTE DANIELS, LOUISE GAUDREAU, KARRIE GEVAERT,  
MARK GEVAERT, PETER IVERSEN, DERRIK LAMB, JANE DOE #19,  
ANNA MARINIC, DIVINE MASABARAKIZA, JAMES MENDHAM,  
MICHELLE MARINA MICKO, JEAN RICHARD, STEPHANIE SENEAL,  
JANE DOE #20, RYAN SEWELL, KARI SMYTHE, OLIMPIA SOMESAN,  
LLOYD SWANSON, TYRONE WHITE, ELISSA WONG, JENNY ZAMBELAS,  
LI YANG ZHU, PATRICE LEVER,  
(EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA)**

**and**

**JANE DOE #21, BRIAN PHILIP CRENNAN, JANE DOE #22,  
BRADLEY DAVID HIGNELL, ANDREW KALTECK, DANA KELLETT,  
JOSÉE LOSIER, KRISTIN MENSCH, ELSA MOUANA, JANE DOE #23,  
JANE DOE #24, VALENTINA ZAGORENKO,  
(ENVIRONMENT AND CLIMATE CHANGE CANADA)**

**and**

**PIERRE TRUDEL, (EXPORT DEVELOPMENT CANADA)**

**and**

**STEPHEN ALAN COLLEY,  
(FEDERAL ECONOMIC DEVELOPMENT AGENCY FOR SOUTHERN ONTARIO)**

**and**

**VLADIMIR RASKOVIC, (GARDA SECURITY SCREEING INC)**

**and**

**MÉLANIE BORGIA, JONATHAN KYLE SMITH, DONNA STAINFIELD,  
ANNILA THARAKAN, RENEE MICHIKO UMEZUKI,  
(GLOBAL AFFAIRS CANADA)**

**and**

**DENNIS JOHNSON, (GLOBAL CONTAINER TERMINALS CANADA)**

**and**

**ALEXANDRE GUILBEAULT, TARA (MARIA) MCDONOUGH, FRANCE VANIER,  
(GOVERNMENT OF CANADA)**

**and**

**ALEX BRAUN, MARC LESCELLEUR-PAQUETTE, (HOUSE OF COMMONS)**

**and**

**AIMEE LEGAULT, (HUMAN RESOURCE BRANCH)**

**and**

**DORIN ANDREI BOBOC, JANE DOE #25, SOPHIE GUIMARD, ELISA HO,  
KATHY LEAL, CAROLINE LEGENDRE, DIANA VIDA,  
(IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA)**

**and**

**NATHALIE JOANNE GAUTHIER,  
(INDIGENOUS AND NORTHERN AFFAIRS CANADA)**

**and**

**CHRISTINE BIZIER, AMBER DAWN KLETZEL, VERONA LIPKA,  
KERRY SPEARS, (INDIGENOUS SERVICES CANADA)**

**and**

**SUN-HO PAUL JE,  
(INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA)**

**and**

**GILES ROY, (NATIONAL FILM BOARD OF CANADA)**

**and**

**RAY SILVER, MICHELLE DEDYULIN, LETITIA EAKINS,  
JULIE-ANNE KLEINSCHMIT, MARC-ANDRE OCTEAU, HUGUES SCHOLAERT,  
(NATIONAL RESEARCH COUNCIL CANADA)**

**and**

**FELIX BEAUCHAMP,  
(NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY)**

**and**

**JULIA MAY BROWN, CALEB LAM, STEPHANE LEBLANC,  
SERRYNA WHITESIDE, (NATURAL RESOURCES CANADA)**

**and**

**NICOLE HAWLEY, STEEVE L'ITALIEN, MARC LECOCQ, TONY MALLET,  
SANDRA MCKENZIE, (NAV CANADA)**

**and**

**MUHAMMAD ALI, (OFFICE OF THE AUDITOR GENERAL OF CANADA)**

**and**

**RYAN ROGERS, (ONTARIO NORTHLAND TRANSPORTATION COMMISSION)**

**and**

**THERESA STENE, MICHAEL DESSUREAULT, JOHN DOE #16, (PARK CANADA)**

**and**

**CHARLES-ALEXANDRE BEAUCHEMIN, BRETT OLIVER,  
(PARLIMENTARY PROTECTION SERVICE)**

**and**

**CAROLE DUFORD, (POLAR KNOWLEDGE CANADA)**

**and**

**JOANNE GABRIELLE DE MONTIGNY, IVANA ERIC, JANE DOE #26,  
SALYNA LEGARE, JANE DOE #27, ANGIE RICHARDSON, JANE DOE #28,  
(PUBLIC HEALTH AGENCY OF CANADA)**

**and**

**FAY ANNE BARBER, (PUBLIC SAFETY CANADA)**

**and**

**DENIS LANIEL, (PUBLIC SECTOR PENSION INVESTMENT BOARD)**

**and**

**KATHLEEN ELIZABETH BARRETTE, SARAH BEDARD,  
MARIO CONSTANTINEAU, KAREN FLEURY, BRENDA JAIN, MEGAN MARTIN,  
JANE DOE #29, ISABELLE PAQUETTE, RICHARD PARENT,  
ROGER ROBERT RICHARD, NICOLE SINCENNES, CHRISTINE VESSIA,  
JANE DOE #30, PAMELA MCINTYRE,  
(PUBLIC SERVICES AND PROCUREMENT CANADA)**

**and**

**ISABELLE DENIS, (REGISTRAR OF THE SUPREME COURT OF CANADA)**

**and**

**JANE BARTMANOVICH, (ROYAL CANADIAN MINT)**

**and**

**NICOLE BRISSON, (SERVICE CANADA)**

**and**

**DENIS AUDET, MATHIEU ESSIAMBRE, ALAIN HART, ANDREA HOUGHTON,  
NATALIA KWIATEK, DANY LEVESQUE, DAVID MCCARTHY,  
PASCAL MICHAUD, MERVİ PENNANEN, TONYA SHORTILL,  
STEPHANIE TKACHUK, MARSHALL WRIGHT, (SHARED SERVICES CANADA)**

**and**

**EVE MARIE BLOUIN-HUDON, MARC-ANTOINE BOUCHER,  
CHRISTOPHER HUSZAR, (STATISTICS CANADA)**

**and**

**STEVE YOUNG, (TELESTAT CANADA)**

**and**

**NATHAN ALIGIZAKIS, STEPHEN DANIEL, ALAIN DOUCHANT,  
KRYSTAL MCCOLGAN, DEBBIE MENARD, CLARENCE RUTTLE,  
DOROTHY BARRON, ROBERT MCLACHLAN, (TRANSPORT CANADA)**

**and**

**SCOTT ERROLL HENDERSON, DENIS THERIAULT,  
(TREASURY BOARD OF CANADA)**

**and**

**JOSIANE BROUILLARD, ALEXANDRA MCGRATH, NATHALIE STE-CROIX,  
JANE DOE #31, (VETERANS AFFAIRS CANADA)**

**and**

**OLUBUSAYO (BUSAYO) AYENI, JOHN DOE #17, CYNTHIA BAUMAN,  
JANE DOE #32, LAURA CRYSTAL BROWN, KE(JERRY) CAI,  
NICOLINO CAMPANELLI, DONALD KEITH CAMPBELL, COLLEEN CARDER,  
KATHY CARRIERE, MELISSA CARSON, DAVID CLARK,  
BRADLEY CLERMONT, LAURIE COELHO, ESTEE COSTA,  
ANTONIO DA SILVA, BRENDA DARVILL, PATRICK DAVIDSON,  
EUGENE DAVIS, LEAH DAWSON, MARC FONTAINE, JACQUELINE GENAILLE,  
ELDON GOOSSEN, JOYCE GREENAWAY, LORI HAND, DARREN HAY,  
KRISTA IMIOLA, CATHERINE KANUKA, DONNA KELLY, BENJAMIN LEHTO,  
ANTHONY LEON, AKEMI MATSUMIYA, JANE DOE #33, JANE DOE #34,**

**JANE DOE #35, ANNE MARIE MCQUAID-SNIDER, LINO MULA,  
PAMELA OPERSKO, GABRIEL PAQUET, CHRISTINE PAQUETTE,  
CAROLIN JACQUELINE PARIS, JODIE PRICE, KEVIN PRICE,  
GIUSEPPE QUADRINI, SAARAH QUAMINA, SHAWN ROSSITER,  
ANTHONY RUSH, ANTHONY SHATZKO, CHARLES SILVA, RYAN SIMKO,  
NORMAN SIROIS, BRANDON SMITH, CATHARINE SPIAK, SANDRA STROUD,  
ANITA TALARIAN, DARYL TOONK, RYAN TOWERS, LEANNE VERBEEM,  
ERAN VOOYS, ROBERT WAGNER, JASON WEATHERALL, MELANIE BURCH,  
STEVEN COLE, TONI DOWNIE, JODI STAMMIS, (CANADA POST)**

**and**

**NICOLAS BELL, JOHN DOE #18, JOHN DOE #19, JANE DOE #36, JOHN DOE #20,  
PAOLA DI MADDALENA, NATHAN DODDS, JOHN DOE #21, JANE DOE #37,  
NUNZIO GIOLTI, MARIO GIRARD, JANE DOE #38, JANE DOE #39,  
YOU-HUI KIM, JANE DOE #40, SEBASTIAN KORAK, ADA LAI, MIRIUM LO,  
MELANIE MAILLOUX, CAROLYN MUIR, PATRIZIA PABA, RADU RAUTESCU,  
ALDO REANO, JACQUELINE ELISABETH ROBINSON, JOHN DOE #22,  
FREDERICK ROY, JOHN DOE #23, TAEKO SHIMAMURA, JASON SISK,  
BEATA SOSIN, JOEL SZOSTAK, MARIO TCHEON, REBECCA SUE THIESSEN,  
JANE DOE #41, MAUREEN YEARWOOD, (AIR CANADA)**

**and**

**JOHN DOE #24, JOSÉE DEMEULE, JACQUELINE GAMBLE,  
DOMENIC GIANCOLA, SADNA KASSAN, MARCUS STEINER,  
CHRISTINA TRUDEAU, (AIR CANADA JAZZ)**

**and**

**JOHN DOE #25, EMILIE DESPRES, (AIR INUIT)**

**and**

**REJEAN NANTEL, (BANK OF MONTREAL)**

**and**

**LANCE VICTOR SCHILKA, (BC COAST PILOTS LTD)**

**and**

**ELIZABETH GODLER, (BC FERRIES)**

**and**

**JOHN DOE #26, JANE DOE #42, TAMARA DAVIDSON, JANE DOE #43,  
BRAD HOMEWOOD, CHAD HOMEWOOD, CHARLES MICHAEL JEFFERSON,  
JOHN DOE #27, JANICE LARAINÉ KRISTMANSON, JANE DOE #44,  
DARREN LOUIS LAGIMODIERE, JOHN DOE #28, JOHN DOE #29,  
MIRKO MARAS, JOHN DOE #30, JOHN DOE #31, JOHN DOE #32, JOHN DOE #33,  
JOHN DOE #34, JANE DOE #45, JOHN DOE #35, KENDAL STACE-SMITH,  
JOHN DOE #36, STEVE WHEATLEY,  
(BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION)**

**and**

**PAUL VEERMAN, (BROOKFIELD GLOBAL INTEGRATED SOLUTIONS)**

**and**

**MARK BARRON, TREVOR BAZILEWICH, JOHN DOE #37, BRIAN DEKKER,  
JOHN GAETZ, ERNEST GEORGESON, KYLE KORTKO, RICHARD LETAIN,  
JOHN DOE #38, DALE ROBERT ROSS, (CANADIAN NATIONAL RAILWAY)**

**and**

**TIM CASHMORE, ROB GEBERT, MICHEAL ROGER MAILHIOT,  
(CANADIAN PACIFIC RAILWAY)**

**and**

**KARIN LUTZ, (DP WORLD)**

**and**

**CRYSTAL SMEENK, (FARM CREDIT CANADA)**

**and**

**SYLVIE M.F. GELINAS, SUSIE MATIAS, STEW WILLIAMS,  
(G4S AIRPORT SCREENING)**

**and**

**SHAWN CORMAN, (GEOTECH AVIATION)**

**and**

**JUERGEN BRUSCHKEWITZ, ANDRE DEVEAUX, BRYAN FIGUEIRA,  
DAVID SPRATT, GUY HOCKING, SEAN GRANT,  
(GREATER TORONTO AIRPORTS AUTHORITY)**

**and**

**DUSTIN BLAIR, (KELOWNA AIRPORT FIRE FIGHTER)**

**and**

**HANS-PETER LIECHTI, (NATIONAL ART CENTRE)**

**and**

**BRADLEY CURRUTHERS, LANA DOUGLAS, ERIC DUPUIS, SHERRI ELLIOT,  
ROBEN IVENS, JANE DOE #46, LUKE VAN HOEKELLEN, KURT WATSON,  
(ONTARIO POWER GENERATION)**

**and**

**THERESA STENE, MICHAEL DESSUREAULT, ADAM PIDWERBESKI,  
(PARKS CANADA)**

**and**

**JOHN DOE #39, (PACIFIC PILOTAGE AUTHORITY)**

**and**

**ANGELA GROSS, (PUROLATOR INC.)**

**and**

**GERHARD GEERTSEMA, (QUESTRAL HELICOPTERS)**

**and**

**AMANDA RANDALL, JANE DOE #47, FRANK VERI, (RBC ROYAL BANK)**

**and**

**JAMES (JED) FORSMAN, (RISE AIR)**

**and**

**JANE DOE #48, (ROGERS COMMUNICATIONS INC)**

**and**

**JERRILYNN REBEYKA, (SASKTEL)**

**and**

**EILEEN FAHLMAN, MARY TREICHEL, (SCOTIABANK)**

**and**

**JUDAH GAELAN CUMMINS, (SEASPAN VICTORIA DOCKS)**

**and**

**DARIN WATSON, (SHAW)**

**and**

**RICHARD MICHAEL ALAN TABAK, (SKYNORTH AIR LTD)**

**and**

**DEBORAH BOARDMAN, MICHAEL BRIGHAM, (VIA RAIL CANADA)**

**and**

**KEVIN SCOTT ROUTLY, (WASAYA AIRWAYS)**

**and**

**BRYCE SAILOR, (WATERFRONT EMPLOYERS OF BRITISH COLUMBIA)**

**and**

**JOSEPH BAYDA, JAMIE ELLIOTT, JOHN DOE #40, RANDALL MENGERING,  
SAMANTHA NICASTRO, VERONICA STEPHENS, JANE DOE #49, (WESTJET)**

**and**

**MELVIN GEREIN, (WESTSHORE TERMINALS)**

**Appellants**

**and**

**HIS MAJESTY THE KING, PRIME MINISTER JUSTIN TRUDEAU,  
DEPUTY PRIME MINISTER AND MINISTER OF FINANCE  
CHRISTIA FREELAND, CHIEF MEDICAL OFFICER TERESA TAM,  
MINISTER OF TRANSPORT OMAR ALGHABRA, DEPUTY MINISTER OF  
PUBLIC SAFETY MARCO MENDICINO, JOHNS AND JANES DOE**

**Respondents**

Heard at Toronto, Ontario, on November 8, 2023.

Judgment delivered at Ottawa, Ontario, on June 7, 2024.

REASONS FOR JUDGMENT BY:

GLEASON J.A.

CONCURRED IN BY:

BOIVIN J.A.  
LEBLANC J.A.

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240607**

**Docket: A-67-23**

**Citation: 2024 FCA 106**

**CORAM: BOIVIN J.A.  
GLEASON J.A.  
LEBLANC J.A.**

**BETWEEN:**

**KAREN ADELBERG, MATTHEW ANDERSON, WYATT GEORGE BAITON,  
PAUL BARZU, NEIL BIRD, CURTIS BIRD, BEAU BJARNASON, LACEY BLAIR,  
MARK BRADLEY, JOHN DOE #1 , DANIEL BULFORD, JOHN DOE #2,  
SHAWN CARMEN, JOHN DOE #3, JONATHAN COREY CHALONER,  
CATHLEEN COLLINS, JANE DOE #1 , JOHN DOE #4, KIRK COX, CHAD COX,  
NEVILLE DAWOOD, RICHARD DE VOS, STEPHANE DROUIN, MIKE DESSON,  
JANE DOE #2, STEPHANE DROUIN, SYLVIE FILTEAU, KIRK FISLER,  
THOR FORSETH, GLEN GABRUCH, BRETT GARNEAU, TRACY LYNN GATES,  
KEVIN GIEN, JANE DOE #3, WARREN GREEN, JONATHAN GRIFFIOEN,  
ROHIT HANNSRAJ, KAITLYN HARDY, SAM HILLIARD, RICHARD HUGGINS,  
LYNNE HUNKA, JOSEPH ISLIEFSON, LEPOSAVA JANKOVIC, JOHN DOE #5,  
PAMELA JOHNSTON, ERIC JONES-GATINEAU, ANNIE JOYAL, JOHN DOE #6,  
MARTY (MARTHA) KLASSEN, JOHN DOE #7, JOHN DOE #8, JOHN DOE #9,  
RYAN KOSKELA, JANE DOE #4, JULIANS LAZOVIKS, JASON LEFEBVRE,  
KIRSTEN LINK, MORGAN LITTLEJOHN, JOHN DOE #10, DIANE MARTIN,  
JOHN DOE #11, RICHARD MEHNER, CELINE MOREAU, ROBIN MORRISON,  
MORTON NG, GLORIA NORMAN, STEVEN O'DOHERTY, DAVID OBIREK,  
JOHN ROBERT QUEEN, NICOLE QUICK, GINETTE ROCHON,  
LOUIS-MARIE ROY, EMAD SADR, MATT SILVER, JINJER SNIDER,  
MAUREEN STEIN, JOHN DOE #12, JOHN DOE #13, ROBERT TUMBAS,  
KYLE VAN DE SYPE, CHANTELE VIENT, JOSHUA (JOSH) VOLD,  
CARLA WALKER, ANDREW WEDLOCK, JENNIFER WELLS, JOHN WELLS,  
MELANIE WILLIAMS, DAVID GEORGE JOHN WISEMAN,  
DANIEL YOUNG, GRATCHEN GRISON,  
(OFFICERS WITH THE ROYAL CANADIAN MOUNTAIN POLICE)**

**and**

**NICOLE AUCLAIR, MICHAEL BALDOCK, SABRINA BARON,  
WILLIAM DEAN BOOTH, CHARLES BORG, MARIE-ÈVE CARON,**

**THOMAS DALLING, JOSEPH ISRAEL MARC ERIC DE LAFONTAINE,  
RICARDO GREEN, JORDAN HARTWIG, RODNEY HOWES,  
CHRISTOPHER MARK JACOBSON, JANE DOE #5, PASCAL LEGENDRE,  
KIMBERLY LEPAGE, KIM MACDONALD, CINDY MACKAY,  
KIM MARTIN-MCKAY, DAVID MASON, ALEXANDRA KATRINA MOIR,  
JOSEPH DANIEL ERIC MONTGRAIN, RADOSLAW NIEDZIELSKI,  
LEANNA JUNE NORDMAN, DONALD POOLE, EDWARD DOMINIC POWER,  
NORMAN L. REED, JANE DOE #6, BRENDEN SANGSTER,  
TIMOTHY JOSEPH SEIBERT, ANN-MARIE LEE TRAYNOR,  
CARL BARRY WOOD, EDDIE EDMOND ANDRUKAITIS, RUBY DAVIS,  
JENNIFER SCHROEDER, JOSEPH SHEA EMPLOYED BY THE  
(DEPARTMENT OF NATIONAL DEFENCE)**

**and**

**STEFANIE ALLARD, JAKE DANIEL BOUGHNER, BRENT CARTER,  
BRIAN COBB, LAURA CONSTANTINESCU, SONIA DINU, ALDONA FEDOR,  
JANE DOE #7, MALORIE KELLY, MATTHEW STEPHEN MACDONALD,  
MITCHELL MACINTYRE, HERTHA MCLENDON, MARCEL MIHAILESCU,  
MICHAEL MUNRO, SEBASTIAN NOWAK, DIANA RODRIGUES,  
NATALIE HOLDEN, ADAM DAWSON WINCHESTER,  
(CANADA BORDER SERVICES AGENCY)**

**and**

**CHRISTINE CLOUTHIER, DEBBIE GRAY, JENNIFER PENNER, DALE WAGNER,  
JOSEPH AYOUB, (AGRICULTURE AND AGRI-FOOD CANADA)**

**and**

**JANE DOE #8, (ATLANTIC CANADA OPPORTUNITIES AGENCY)**

**and**

**MELANIE DUFOUR, (BANK OF CANADA)**

**and**

**JENNIFER AUCIELLO, SHARON ANN JOSEPH, ERIC MUNRO,  
(CANADA MORTGAGE AND HOUSING CORPORATION)**

**and**

**JANE DOE #9, (CANADA PENSION PLAN)**

**and**

**NATALIE BOULARD, BEATA BOZEK, JOHN DOE #14, NERIN ANDREA CARR,  
SARA JESSICA CASTRO, DEBBIE (DUBRAVKA) CUNKO, JOSÉE CYR,  
JANE DOE #10, CAROL GABOURY, TANIA GOMES, JULITA GROCHOCKA,  
MONIQUE HARRIS, WILLIAM HOOKER, KIRSTIN HOUGHTON,  
LEILA KOSTYK, MICHELLE LAMARRE, NICOLAS LEBLOND,  
SUANA-LEE LECLAIR, PAULETTE MORISSETTE, JENNIFER NEAVE,  
PIERRE-ALEXANDRE RACINE, BENJAMIN RUSSELL, ROBERT SNOWDEN,  
AABID THAWER, HEIDI WIENER, SVJETLANA ZELENBABA, NADIA ZINCK,  
AARON JAMES THOMAS SHORROCK, DEIRDRE MCINTOSH,  
(CANADA REVENUE AGENCY)**

**and**

**TAMARA STAMMIS, (CANADA SCHOOL OF THE PUBLIC SERVICE)**

**and**

**JASMIN BOURDON, (CANADA SPACE AGENCY)**

**and**

**SHARON CUNNINGHAM, ALLEN LYNDEN, RORY MATHESON,  
(CANADIANCOAST GUARD)**

**and**

**TATJANA COKLIN, JOHN DOE #15, RAQUEL DELMAS, JANE DOE #11,  
CHELSEA HAYDEN, HELENE JOANNIS, ZAKLINA MAZUR, JANE DOE #12,  
JESSICA SIMPSON, KATARINA SMOLKOVA,  
(CANADIAN FOOD INSPECTION AGENCY)**

**and**

**ALEXANDRE CHARLAND, (CANADIAN FORESTRY SERVICE)**

**and**

**CATHERINE PROVOST, KRISTINA MARTIN, (CANADIAN HERITAGE)**

**and**

**JANE DOE #13, (CANADIAN INSTITUTES OF HEALTH RESEARCH)**

**and**

**BETH BLACKMORE, ROXANNE LORRAIN,  
(CANADIAN NUCLEAR SAFETY COMMISSION)**

**and**

**RÉMI RICHER,  
(CANADIAN RADIO-TELEVISION AND  
TELECOMMUNICATIONS COMMISSION)**

**and**

**OCTAVIA LA PRAIRIE, (CANADIAN SECURITY INTELLIGENCE SERVICE)**

**and**

**ROBERT BESTARD, (CITY OF OTTAWA GARAGE FED REGULATED)**

**and**

**KIMBERLY ANN BECKERT, (CORE PUBLIC SERVICE)**

**and**

**SARAH ANDREYCHUK, FRANCOIS BELLEHUMEUR, PAMELA BLAIKIE,  
NATASHA CAIRNS, ANGELA CIGLENECKI, VERONIKA COLNAR,  
RANDY DOUCET, KARA ERICKSON, JESSE FORCIER, VALÉRIE FORTIN,  
ROXANE GUEUTAL, MELVA ISHERWOOD, MILO JOHNSON,  
VALERIA LUEDEE, LAURIE LYNDEN, ANNETTE MARTIN, CRAIG MCKAY,  
ISABELLE METHOT, SAMANTHA OSYPCHUK, JANE DOE #14,  
WILNIVE PHANORD, ALEXANDRE RICHER LEVASSEUR,  
KATHLEEN SAWYER, TREVOR SCHEFFEL,  
(CORRECTIONAL SERVICE OF CANADA)**

**and**

**JORDAN ST-PIERRE, (COURTS ADMINISTRATION SERVICE)**

**and**

**BRIGITTE SURGUE, JANE DOE #15,  
(DEPARTMENT OF CANADIAN HERITAGE)**

**and**

**GHISLAIN CARDINAL, HEATHER HALLIDAY, PAUL MARTEN,  
CELINE RIVIER, NGOZI UKWU, JEANNINE BASTARACHE, JANE DOE #16,  
HAMID NAGHDIAN-VISHTEH, (DEPARTMENT OF FISHERIES AND OCEAN)**

**and**

**ISHMAEL GAY-LABBE, JANE DOE #17, LEANNE JAMES,  
(DEPARTMENT OF JUSTICE)**

**and**

**DANIELLE BARABE-BUSSIERES, (ELECTIONS CANADA)**

**and**

**TANYA DAECHERT, JANE DOE #18, FRANCOIS ARSENEAU,  
CHANTAL AUTHIER, NATHALIE BENOIT, AERIE BIAFORE, ROCK BRIAND,  
ARNAUD BRIEN-THIFFAULT, SHARON CHIU, MICHEL DAIGLE,  
BRIGITTE DANIELS, LOUISE GAUDREAU, KARRIE GEVAERT,  
MARK GEVAERT, PETER IVERSEN, DERRIK LAMB, JANE DOE #19,  
ANNA MARINIC, DIVINE MASABARAKIZA, JAMES MENDHAM,  
MICHELLE MARINA MICKO, JEAN RICHARD, STEPHANIE SENEAL,  
JANE DOE #20, RYAN SEWELL, KARI SMYTHE, OLIMPIA SOMESAN,  
LLOYD SWANSON, TYRONE WHITE, ELISSA WONG, JENNY ZAMBELAS,  
LI YANG ZHU, PATRICE LEVER,  
(EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA)**

**and**

**JANE DOE #21, BRIAN PHILIP CRENNAN, JANE DOE #22,  
BRADLEY DAVID HIGNELL, ANDREW KALTECK, DANA KELLETT,  
JOSÉE LOSIER, KRISTIN MENSCH, ELSA MOUANA, JANE DOE #23,  
JANE DOE #24, VALENTINA ZAGORENKO,  
(ENVIRONMENT AND CLIMATE CHANGE CANADA)**

**and**

**PIERRE TRUDEL, (EXPORT DEVELOPMENT CANADA)**

**and**

**STEPHEN ALAN COLLEY,  
(FEDERAL ECONOMIC DEVELOPMENT AGENCY FOR SOUTHERN ONTARIO)**

**and**

**VLADIMIR RASKOVIC, (GARDA SECURITY SCREEING INC)**

**and**

**MÉLANIE BORGIA, JONATHAN KYLE SMITH, DONNA STAINFIELD,  
ANNILA THARAKAN, RENEE MICHIKO UMEZUKI,  
(GLOBAL AFFAIRS CANADA)**

**and**

**DENNIS JOHNSON, (GLOBAL CONTAINER TERMINALS CANADA)**

**and**

**ALEXANDRE GUILBEAULT, TARA (MARIA) MCDONOUGH, FRANCE VANIER,  
(GOVERNMENT OF CANADA)**

**and**

**ALEX BRAUN, MARC LESCELLEUR-PAQUETTE, (HOUSE OF COMMONS)**

**and**

**AIMEE LEGAULT, (HUMAN RESOURCE BRANCH)**

**and**

**DORIN ANDREI BOBOC, JANE DOE #25, SOPHIE GUIMARD, ELISA HO,  
KATHY LEAL, CAROLINE LEGENDRE, DIANA VIDA,  
(IMMIGRATION, REFUGEES AND CITIZENSHIP CANADA)**

**and**

**NATHALIE JOANNE GAUTHIER,  
(INDIGENOUS AND NORTHERN AFFAIRS CANADA)**

**and**

**CHRISTINE BIZIER, AMBER DAWN KLETZEL, VERONA LIPKA,  
KERRY SPEARS, (INDIGENOUS SERVICES CANADA)**

**and**

**SUN-HO PAUL JE,  
(INNOVATION, SCIENCE AND ECONOMIC DEVELOPMENT CANADA)**

**and**

**GILES ROY, (NATIONAL FILM BOARD OF CANADA)**

**and**

**RAY SILVER, MICHELLE DEDYULIN, LETITIA EAKINS,  
JULIE-ANNE KLEINSCHMIT, MARC-ANDRE OCTEAU, HUGUES SCHOLAERT,  
(NATIONAL RESEARCH COUNCIL CANADA)**

**and**

**FELIX BEAUCHAMP,  
(NATIONAL SECURITY AND INTELLIGENCE REVIEW AGENCY)**

**and**

**JULIA MAY BROWN, CALEB LAM, STEPHANE LEBLANC,  
SERRYNA WHITESIDE, (NATURAL RESOURCES CANADA)**

**and**

**NICOLE HAWLEY, STEEVE L'ITALIEN, MARC LECOCQ, TONY MALLET,  
SANDRA MCKENZIE, (NAV CANADA)**

**and**

**MUHAMMAD ALI, (OFFICE OF THE AUDITOR GENERAL OF CANADA)**

**and**

**RYAN ROGERS, (ONTARIO NORTHLAND TRANSPORTATION COMMISSION)**

**and**

**THERESA STENE, MICHAEL DESSUREAULT, JOHN DOE #16, (PARK CANADA)**

**and**

**CHARLES-ALEXANDRE BEAUCHEMIN, BRETT OLIVER,  
(PARLIMENTARY PROTECTION SERVICE)**

**and**

**CAROLE DUFORD, (POLAR KNOWLEDGE CANADA)**

**and**

**JOANNE GABRIELLE DE MONTIGNY, IVANA ERIC, JANE DOE #26,  
SALYNA LEGARE, JANE DOE #27, ANGIE RICHARDSON, JANE DOE #28,  
(PUBLIC HEALTH AGENCY OF CANADA)**

**and**

**FAY ANNE BARBER, (PUBLIC SAFETY CANADA)**

**and**

**DENIS LANIEL, (PUBLIC SECTOR PENSION INVESTMENT BOARD)**

**and**

**KATHLEEN ELIZABETH BARRETTE, SARAH BEDARD,  
MARIO CONSTANTINEAU, KAREN FLEURY, BRENDA JAIN, MEGAN MARTIN,  
JANE DOE #29, ISABELLE PAQUETTE, RICHARD PARENT,  
ROGER ROBERT RICHARD, NICOLE SINCENNES, CHRISTINE VESSIA,  
JANE DOE #30, PAMELA MCINTYRE,  
(PUBLIC SERVICES AND PROCUREMENT CANADA)**

**and**

**ISABELLE DENIS, (REGISTRAR OF THE SUPREME COURT OF CANADA)**

**and**

**JANE BARTMANOVICH, (ROYAL CANADIAN MINT)**

**and**

**NICOLE BRISSON, (SERVICE CANADA)**

**and**

**DENIS AUDET, MATHIEU ESSIAMBRE, ALAIN HART, ANDREA HOUGHTON,  
NATALIA KWIATEK, DANY LEVESQUE, DAVID MCCARTHY,  
PASCAL MICHAUD, MERVİ PENNANEN, TONYA SHORTILL,  
STEPHANIE TKACHUK, MARSHALL WRIGHT, (SHARED SERVICES CANADA)**

**and**

**EVE MARIE BLOUIN-HUDON, MARC-ANTOINE BOUCHER,  
CHRISTOPHER HUSZAR, (STATISTICS CANADA)**

**and**

**STEVE YOUNG, (TELESTAT CANADA)**

**and**

**NATHAN ALIGIZAKIS, STEPHEN DANIEL, ALAIN DOUCHANT,  
KRYSTAL MCCOLGAN, DEBBIE MENARD, CLARENCE RUTTLE,  
DOROTHY BARRON, ROBERT MCLACHLAN, (TRANSPORT CANADA)**

**and**

**SCOTT ERROLL HENDERSON, DENIS THERIAULT,  
(TREASURY BOARD OF CANADA)**

**and**

**JOSIANE BROUILLARD, ALEXANDRA MCGRATH, NATHALIE STE-CROIX,  
JANE DOE #31, (VETERANS AFFAIRS CANADA)**

**and**

**OLUBUSAYO (BUSAYO) AYENI, JOHN DOE #17, CYNTHIA BAUMAN,  
JANE DOE #32, LAURA CRYSTAL BROWN, KE(JERRY) CAI,  
NICOLINO CAMPANELLI, DONALD KEITH CAMPBELL, COLLEEN CARDER,  
KATHY CARRIERE, MELISSA CARSON, DAVID CLARK,  
BRADLEY CLERMONT, LAURIE COELHO, ESTEE COSTA,  
ANTONIO DA SILVA, BRENDA DARVILL, PATRICK DAVIDSON,  
EUGENE DAVIS, LEAH DAWSON, MARC FONTAINE, JACQUELINE GENAILLE,  
ELDON GOOSSEN, JOYCE GREENAWAY, LORI HAND, DARREN HAY,  
KRISTA IMIOLA, CATHERINE KANUKA, DONNA KELLY, BENJAMIN LEHTO,  
ANTHONY LEON, AKEMI MATSUMIYA, JANE DOE #33, JANE DOE #34,**

**JANE DOE #35, ANNE MARIE MCQUAID-SNIDER, LINO MULA,  
PAMELA OPERSKO, GABRIEL PAQUET, CHRISTINE PAQUETTE,  
CAROLIN JACQUELINE PARIS, JODIE PRICE, KEVIN PRICE,  
GIUSEPPE QUADRINI, SAARAH QUAMINA, SHAWN ROSSITER,  
ANTHONY RUSH, ANTHONY SHATZKO, CHARLES SILVA, RYAN SIMKO,  
NORMAN SIROIS, BRANDON SMITH, CATHARINE SPIAK, SANDRA STROUD,  
ANITA TALARIAN, DARYL TOONK, RYAN TOWERS, LEANNE VERBEEM,  
ERAN VOOYS, ROBERT WAGNER, JASON WEATHERALL, MELANIE BURCH,  
STEVEN COLE, TONI DOWNIE, JODI STAMMIS, (CANADA POST)**

**and**

**NICOLAS BELL, JOHN DOE #18, JOHN DOE #19, JANE DOE #36, JOHN DOE #20,  
PAOLA DI MADDALENA, NATHAN DODDS, JOHN DOE #21, JANE DOE #37,  
NUNZIO GIOLTI, MARIO GIRARD, JANE DOE #38, JANE DOE #39,  
YOU-HUI KIM, JANE DOE #40, SEBASTIAN KORAK, ADA LAI, MIRIUM LO,  
MELANIE MAILLOUX, CAROLYN MUIR, PATRIZIA PABA, RADU RAUTESCU,  
ALDO REANO, JACQUELINE ELISABETH ROBINSON, JOHN DOE #22,  
FREDERICK ROY, JOHN DOE #23, TAEKO SHIMAMURA, JASON SISK,  
BEATA SOSIN, JOEL SZOSTAK, MARIO TCHEON, REBECCA SUE THIESSEN,  
JANE DOE #41, MAUREEN YEARWOOD, (AIR CANADA)**

**and**

**JOHN DOE #24, JOSÉE DEMEULE, JACQUELINE GAMBLE,  
DOMENIC GIANCOLA, SADNA KASSAN, MARCUS STEINER,  
CHRISTINA TRUDEAU, (AIR CANADA JAZZ)**

**and**

**JOHN DOE #25, EMILIE DESPRES, (AIR INUIT)**

**and**

**REJEAN NANTEL, (BANK OF MONTREAL)**

**and**

**LANCE VICTOR SCHILKA, (BC COAST PILOTS LTD)**

**and**

**ELIZABETH GODLER, (BC FERRIES)**

**and**

**JOHN DOE #26, JANE DOE #42, TAMARA DAVIDSON, JANE DOE #43,  
BRAD HOMEWOOD, CHAD HOMEWOOD, CHARLES MICHAEL JEFFERSON,  
JOHN DOE #27, JANICE LARAINÉ KRISTMANSON, JANE DOE #44,  
DARREN LOUIS LAGIMODIERE, JOHN DOE #28, JOHN DOE #29,  
MIRKO MARAS, JOHN DOE #30, JOHN DOE #31, JOHN DOE #32, JOHN DOE #33,  
JOHN DOE #34, JANE DOE #45, JOHN DOE #35, KENDAL STACE-SMITH,  
JOHN DOE #36, STEVE WHEATLEY,  
(BRITISH COLUMBIA MARITIME EMPLOYERS ASSOCIATION)**

**and**

**PAUL VEERMAN, (BROOKFIELD GLOBAL INTEGRATED SOLUTIONS)**

**and**

**MARK BARRON, TREVOR BAZILEWICH, JOHN DOE #37, BRIAN DEKKER,  
JOHN GAETZ, ERNEST GEORGESON, KYLE KORTKO, RICHARD LETAIN,  
JOHN DOE #38, DALE ROBERT ROSS, (CANADIAN NATIONAL RAILWAY)**

**and**

**TIM CASHMORE, ROB GEBERT, MICHEAL ROGER MAILHIOT,  
(CANADIAN PACIFIC RAILWAY)**

**and**

**KARIN LUTZ, (DP WORLD)**

**and**

**CRYSTAL SMEENK, (FARM CREDIT CANADA)**

**and**

**SYLVIE M.F. GELINAS, SUSIE MATIAS, STEW WILLIAMS,  
(G4S AIRPORT SCREENING)**

**and**

**SHAWN CORMAN, (GEOTECH AVIATION)**

**and**

**JUERGEN BRUSCHKEWITZ, ANDRE DEVEAUX, BRYAN FIGUEIRA,  
DAVID SPRATT, GUY HOCKING, SEAN GRANT,  
(GREATER TORONTO AIRPORTS AUTHORITY)**

**and**

**DUSTIN BLAIR, (KELOWNA AIRPORT FIRE FIGHTER)**

**and**

**HANS-PETER LIECHTI, (NATIONAL ART CENTRE)**

**and**

**BRADLEY CURRUTHERS, LANA DOUGLAS, ERIC DUPUIS, SHERRI ELLIOT,  
ROBEN IVENS, JANE DOE #46, LUKE VAN HOEKELLEN, KURT WATSON,  
(ONTARIO POWER GENERATION)**

**and**

**THERESA STENE, MICHAEL DESSUREAULT, ADAM PIDWERBESKI,  
(PARKS CANADA)**

**and**

**JOHN DOE #39, (PACIFIC PILOTAGE AUTHORITY)**

**and**

**ANGELA GROSS, (PUROLATOR INC.)**

**and**

**GERHARD GEERTSEMA, (QUESTRAL HELICOPTERS)**

**and**

**AMANDA RANDALL, JANE DOE #47, FRANK VERI, (RBC ROYAL BANK)**

**and**

**JAMES (JED) FORSMAN, (RISE AIR)**

**and**

**JANE DOE #48, (ROGERS COMMUNICATIONS INC)**

**and**

**JERRILYNN REBEYKA, (SASKTEL)**

**and**

**EILEEN FAHLMAN, MARY TREICHEL, (SCOTIABANK)**

**and**

**JUDAH GAELAN CUMMINS, (SEASPAN VICTORIA DOCKS)**

**and**

**DARIN WATSON, (SHAW)**

**and**

**RICHARD MICHAEL ALAN TABAK, (SKYNORTH AIR LTD)**

**and**

**DEBORAH BOARDMAN, MICHAEL BRIGHAM, (VIA RAIL CANADA)**

**and**

**KEVIN SCOTT ROUTLY, (WASAYA AIRWAYS)**

**and**

**BRYCE SAILOR, (WATERFRONT EMPLOYERS OF BRITISH COLUMBIA)**

**and**

**JOSEPH BAYDA, JAMIE ELLIOTT, JOHN DOE #40, RANDALL MENGERING,  
SAMANTHA NICASTRO, VERONICA STEPHENS, JANE DOE #49, (WESTJET)**

**and**

**MELVIN GEREIN, (WESTSHORE TERMINALS)**

**Appellants**

and

**HIS MAJESTY THE KING, PRIME MINISTER JUSTIN TRUDEAU,  
DEPUTY PRIME MINISTER AND MINISTER OF FINANCE  
CHRISTIA FREELAND, CHIEF MEDICAL OFFICER TERESA TAM,  
MINISTER OF TRANSPORT OMAR ALGHABRA, DEPUTY MINISTER OF  
PUBLIC SAFETY MARCO MENDICINO, JOHNS AND JANES DOE**

**Respondents**

**REASONS FOR JUDGMENT**

**GLEASON J.A.**

[1] The appellants appeal from the judgment of the Federal Court in *Adelberg v. Canada*, 2023 FC 252, 2023 A.C.W.S. 557 (*per* Fothergill J.).

[2] In that judgment, the Federal Court struck the claims of those plaintiffs that it found were subject to section 236 of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2 [FPSLRA]. The Federal Court did not grant these plaintiffs leave to amend their claims. The plaintiffs whose claims were struck in their entirety without leave to amend were those who were members of the Royal Canadian Mounted Police (the RCMP) or who were employed in the other federal departments, agencies or other portions of the public service listed in Schedule “A” to the Federal Court’s Reasons. In the judgment under appeal, the Federal Court also struck the claims of all the other plaintiffs who were employed by other organizations, but for this group granted leave to amend their claims. The Federal Court awarded the defendants costs, fixed in the amount of \$5,000.00, payable forthwith and in any event of the cause.

[3] For the reasons that follow, I would grant this appeal in part. I would set aside the judgment of the Federal Court and would amend it to provide all of the plaintiffs leave to amend the Statement of Claim in accordance with these reasons. Because success is divided, I would grant no costs in this appeal and would set aside the Federal Court's costs award.

I. The Statement of Claim

[4] I commence by reviewing the nature of the claims made in the plaintiffs' Statement of Claim. While it is difficult to discern precisely what is being claimed given the way the Statement of Claim was drafted, it seems to me that, when fairly read in its entirety, the Statement of Claim advances two sorts of claims on behalf of all of the plaintiffs.

[5] First, the Statement of Claim alleges that the employer policies—which mandated that the plaintiffs must be vaccinated against COVID-19, failing which they would be placed on leave without pay or be subject to having their employment terminated—violated their rights under the *Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.), 1982, c. 11 [Charter]*, or otherwise gave rise to several claims. The employer policies at issue in this case are the *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police*, issued by the Treasury Board (the TB Policy), and similar policies issued by other federally-regulated employers who employed some of the plaintiffs. Among other things, the Statement of Claim alleges that the respondents are liable for these other employers adopting policies similar to the TB Policy. The bulk of the Statement of Claim is directed towards these employment-related vaccination

policies, which the plaintiffs allege caused them harm and damages because they chose to decline to be vaccinated against COVID-19.

[6] Second, the Statement of Claim alleges that the limitations imposed by the *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 61*, issued by Transport Canada on April 24, 2022 (the Interim Order), violated the *Charter* rights of all of the plaintiffs and gave rise to a host of other claims. Because the plaintiffs chose not to be vaccinated against COVID-19, they claim they were prevented from travelling by airplane by the Interim Order. The plaintiffs also challenge comparable measures that were applicable to train travel and travel by water for similar reasons.

[7] That the latter types of claims, regarding travel impediments, were advanced on behalf of all plaintiffs appears, in particular, from paragraphs 1(f), 12, 30, 67 and 69 of the Statement of Claim. They read as follows:

I. The Plaintiffs claim:

...

(f) a further declaration that Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No.61, requiring covid “vaccination” and masking on planes, trains and boats is unconstitutional and of no force and effect in that:

(i) There is no jurisdiction under s.91 of the *Constitution Act*, 1867 to decree any medical treatment whatsoever as this lies, subject to constitutional restraint(s), within the exclusive jurisdiction of the Provinces;

(ii) That any purported or pretended power, under the emergency branch of P.O.G.G (Peace, Order and and Good Government) can only be done

by Legislation, with the invocation, subject to constitutional constraints, of the *Emergencies Act* (R.S.C., 1985, c. 22 (4th Supp.));

(iii) That the Regulations and Executive decrees mandating such “vaccine mandates” are improper delegation, and constitute “dangling” Regulations, not tied to any Act of Parliament;

(iv) That in any event, any purported mandatory, or coerced *de facto* mandatory vaccine mandates violate ss. 2, 6, 7, and 15 of the *Charter*, as enunciated, inter alia, by the Ontario Court of Appeal in *Fleming v. Reid* (1991) 4 O.R. (3d) 74 and in the Supreme Court of Canada in *Morgentaler* (1988), *Rodriguez* (1993) and *Rasouli* (2013), and *Carter* (2005);

(v) That any purported mandatory, or coerced *de facto* mandatory vaccines violate ss.2 and ss 7 of the *Charter*, as enunciated, inter alia, by the Ontario Court of *Charter* Appeal in *Fleming v. Reid*, and the Supreme Court of Canada in inter alia, *Morgentaler* (1988), *Rodriguez* (1993, and *Carter* (2005) violate international treaty norms which constitute minimal protections to be read into s. 7 of the *Charter* as ruled, inter alia, by the Supreme Court of Canada in *Hape*, and the Federal Court of Appeal in *De Guzman*;

(vi) There is no jurisdiction under s.91 of the *Constitution Act*, 1867 to decree any medical treatment whatsoever as this lies, subject to constitutional restraint(s), within the exclusive jurisdiction of the Provinces;

(vii) The Pre-*Charter* constitutional rights to freedom of conscience and religion as pronounced by the Supreme Court of Canada in, inter alia, *Switzman v Elbing* and *A.G. of Quebec*, [1957] SCR 285 and *Saumur v City of Quebec*, 2 S.C.R. 299;

(viii) violates the rights, under s.2 of the *Charter*, as well as s.1 under the *Canadian Bill of Rights* (1960) to freedom of conscience, belief, and religion;

(ix) violates s.7 of the *Charter* in violating the right to bodily and psychological integrity, as manifested in the constitutionally protected right to informed, voluntary, consent to any medical treatment and procedure. as well as violating international treaty rights, protecting the same right(s) which protections must be read in as minimal protection under s. 7 of the *Charter* in accordance with, inter alia, *Hape* (SCC) and *De Guzman* (FCA);

(x) violating ss.6 and 7 of the *Charter*;

(xi) violating s.9 of the *Charter*;

(xii) violating the pre-*Charter* recognized rights on “the liberty of the subject” remedied by way of *habeas corpus*.

...

12. All of the Plaintiffs wish to exercise their ss. 6 and 7 of the *Charter* rights to travel within Canada, as well as abroad, which is barred to them by virtue of a non- possession of a “vaccine passport”.

...

30. All of the Plaintiffs wish to exercise their ss. 6 and 7 of the *Charter* rights to travel within Canada, as well as abroad, which is barred to them by virtue of a non- possession of a “vaccine passport”, notwithstanding that airlines and foreign countries of destination do not require nor do the airlines.

...

67. The Plaintiffs further state that “vaccine passports” further violate their explicit right(s) under s.6 and 7 of the *Charter* granting them mobility of travel, domestically and internationally, which violations are arbitrary (contrary to s. 7), irrational, and disproportionate, and thus fail any s. 1 fundamental justice, or s.1 *Charter* analysis, in that:

- (a) The Defendants admit, in their public statements, and scientific data, and science confirms, that transmission of the virus as between the vaccinated-to-vaccinated and vaccinated-to-unvaccinated, and vice versa, is NOT prevented by the COVID-19 “vaccines” (inoculations);
- (b) That there is NO rational connection between being unvaccinated and higher risks of transmission;
- (c) That the punitive bar to travel and board planes, trains, and boats is simply an irrational, arbitrary, over-reaching punitive dispensation of *Charter* violations and part of the malicious “consequences” of simply NOT “vaccinating”.

...

69. The Plaintiffs state, and the fact is, that as a result of the “vaccine passports”, and the removal of their mobility rights, the Plaintiffs have suffered, and will continue to suffer damages, which include, but are not restricted to:

- (a) An inability to travel to visit family, which family relationships, particularly between parent and child are constitutionally protected under s. 7 of the *Charter* as set out by the Supreme Court of Canada;

(b) That this restriction under Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No.61, from visiting family creates mental anguish and distress when that travel to visit family includes members facing death, medical conditions, funerals, (particularly when attendance is religiously required), weddings, confirmations, bar mitzvahs, etc;

(c) An inability to vacation which is essential to recouping physical and psychological rest and integrity, which physical and psychological integrity is protected under s. 7 of the *Charter*;

(d) Travel to attend specialized medical treatment not available locally;

(e) Restrictions to obtaining domestic medical treatment in hospital for lack of a “vaccine passport”;

(f) Prohibitions against entering domestic hospitals:

(i) When a spouse is giving birth to their child;

(ii) When a loved-one is dying, under palliative care;

All of which violate physical and psychological integrity under s. 7 of the *Charter*, by denial of the explicit mobility rights protected by s.7 of the *Charter* (liberty and security of the person) as well as the mobility (travel) rights specifically protected under s. 6 of the *Charter*.

[Emphasis omitted].

## II. The Evidence before the Federal Court

[8] I turn next to briefly review the evidence that was before the Federal Court. The defendants filed an affidavit that attached the TB Policy, the Interim Order, and other orders issued pursuant to the *Aeronautics Act*, R.S.C., 1985, c. A-2, as well as a list of all of the interim orders related to COVID-19, issued by Transport Canada. The defendants’ evidence established that the provisions in the TB Policy, the Interim Order, and related orders issued by Transport Canada setting out vaccine requirements had been suspended by the time the defendants brought their motion to strike the plaintiffs’ claims.

[9] A review of the TB Policy shows that it was issued by the Treasury Board under sections 7 and 11.1 of the *Financial Administration Act*, R.S.C., 1985, c. F-11 [FAA], and applied to employees in the core public administration as set out in Schedules I and IV of the FAA. These include the RCMP, as well as the other federal departments, agencies, and other portions of the public service listed in Schedule “A” to the Federal Court’s Reasons. The TB policy required most employees to be vaccinated against COVID-19, failing which they were subject to being placed on administrative leave without pay. The vaccine requirements set out in the TB Policy were terms and conditions of employment for the employees to whom they pertained.

[10] While the foregoing policies were before the Federal Court, there was no evidence before that Court as to the nature of the grievance rights possessed by the plaintiffs. These rights could accordingly only be discerned through a review of the relevant statutory and regulatory provisions applicable to the plaintiffs and the case law interpreting such provisions.

### III. The Reasons of the Federal Court

[11] I turn next to outline the Federal Court’s Reasons. As noted, for those plaintiffs whose claims were dismissed without leave to amend, the Federal Court relied on section 236 of the *FPSLRA*. That section reads as follows:

#### **Disputes relating to employment**

**236(1)** The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the

#### **Différend lié à l’emploi**

**236(1)** Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d’emploi remplace ses droits d’action en justice relativement

employee may have in relation to any act or omission giving rise to the dispute.

### **Application**

(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.

### **Exception**

(3) Subsection (1) does not apply in respect of an employee of a separate agency that has not been designated under subsection 209(3) if the dispute relates to his or her termination of employment for any reason that does not relate to a breach of discipline or misconduct.

aux faits — actions ou omissions — à l’origine du différend.

### **Application**

(2) Le paragraphe (1) s’applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu’il soit possible ou non de soumettre le grief à l’arbitrage.

### **Exception**

(3) Le paragraphe (1) ne s’applique pas au fonctionnaire d’un organisme distinct qui n’a pas été désigné au titre du paragraphe 209(3) si le différend porte sur le licenciement du fonctionnaire pour toute raison autre qu’un manquement à la discipline ou une inconduite.

[12] The Federal Court held that section 236 of the *FPSLRA* barred the claims of the plaintiffs listed in Schedule “A” to the Federal Court’s Reasons, who were members of the RCMP or who worked in the other federal departments, agencies, or portions of the public service. According to the Court, these plaintiffs could have filed grievances challenging the matters to which the Statement of Claim pertained. The Court also held that there was no reason for it to exercise any discretion it might have possessed to relieve the plaintiffs from application of the bar in section 236 of the *FPSLRA*. The Federal Court therefore dismissed the claims of these plaintiffs in their entirety, without leave to amend.

[13] As for the other plaintiffs, for whom the Federal Court found that section 236 of the *FPSLRA* does not apply, the Federal Court struck the Statement of Claim because it found that the plaintiffs failed to plead the requisite material facts in support of their allegations that were

potentially justiciable and that they made several non-justiciable allegations. As noted, the Federal Court granted these plaintiffs leave to amend their claims. In so concluding, the Federal Court adopted the reasoning of the British Columbia Supreme Court in *Action4Canada v. British Columbia (Attorney General)*, 2022 BCSC 1507, 2022 A.C.W.S. 3823 [*Action4Canada*], where that Court wrote as follows, at paragraphs 45-48:

[...] the [Notice of Civil Claim [NOCC]], in its current form, is not a pleading that can properly be answered by a responsive pleading. It describes wide-ranging global conspiracies that may, or may not, have influenced either the federal or the provincial governments. It seeks rulings of the court on issues of science. In addition, it includes improper allegations, including criminal conduct and “crimes against humanity”. In my opinion, it is “bad beyond argument”.

[46] I further find that it is not a document that the court can mend by striking portions. I find that this NOCC is analogous to the Statement of Claim considered by Justice K. Smith (as he then was) in *Homalco Indian Band v. British Columbia* (1998), 1998 CanLII 6658 (BC SC), 25 C.P.C. (4th) 107 (B.C.S.C.) [*Homalco*]. He wrote:

[11] In my view, the statement of claim is an embarrassing pleading. It contains much that appears to be unnecessary. As well, it is constructed in a manner calculated to confuse the defendants and to make it extremely difficult, if not impossible, to answer. As a result, it is prejudicial. Any attempt to reform it by striking out portions and by amending other portions is likely to result in more confusion as to the real issues. ...

[47] As was the case in *Homalco*, attempting to bring the NOCC into compliance with the Rules by piecemeal striking and amending would invite more confusion and greater expenditure of the resources of all concerned.

[48] I find that the NOCC is prolix. It is not a proper pleading that can be answered by the defendants. It cannot be mended. Given that finding, I have no hesitation in ruling that it must be struck in whole.

[14] The Federal Court held that identical reasoning applied to the Statement of Claim in the instant case.

[15] In addition, the Federal Court held that there were numerous claims that could not be advanced in a civil action that were pleaded in the Statement of Claim. These included allegations of criminal behaviour, broad declarations respecting the current state of medical and scientific knowledge, and a declaration that administering medical treatment without informed consent is a crime against humanity.

[16] The Federal Court added that the relief claimed in paragraph 4 of the Statement of Claim, seeking to set aside the Interim Order and TB Policy, could only be obtained via judicial review and not by way of action.

[17] I note parenthetically that, as the Interim Order is no longer in force, a claim seeking to set it aside may now be moot, as was held in *Ben Naoum v. Canada (Attorney General)*, 2022 FC 1463, 2022 CarswellNat 4608 aff'd 2023 FCA 219, 2023 CarswellNat 4443, and *Pickford v. Canada (Attorney General)*, 2023 FCA 219, 2023 CarswellNat 4442. A similar conclusion may well also pertain to a claim to set aside the TB Policy.

[18] The Federal Court granted the plaintiffs, whom it found were not subject to section 236 of the *FPSLRA*, leave to amend their claims that were potentially justiciable and the proper subject of an action. For such plaintiffs, the Federal Court cautioned as follows, at paragraphs 55-57 of its Reasons:

[55] For those Plaintiffs who are employed outside the federal public administration, e.g., with airlines, banks, transportation companies, etc., any amended pleading will have to allege sufficient material facts to provide a basis for the federal Crown's liability.

[56] The Plaintiffs who are not subject to s 236 of the *FPSLRA* have standing to question whether the TB Policy and Interim Order infringed their rights. There is a prospect that the Plaintiffs could put forward a valid claim that certain COVID-related health measures instituted by the Government of Canada contravened their *Charter* rights. It is possible that other valid claims may exist.

[57] It will be for the Plaintiffs to plead those causes of action in accordance with the Rules. The claims must be framed in a manner that is intelligible and allows the Defendants to know the case they have to meet. The claims must also be confined to matters that are capable of adjudication by this Court, and seek relief this Court is capable of granting (*Action4Canada* at para 71).

#### IV. Relevant Statutory and Regulatory Provisions

[19] It is useful to next lay out the relevant statutory and regulatory provisions.

[20] Paragraph 7(1)(e) and sections 11 and 11.1 of the *FAA* grant the Treasury Board authority to set the terms and conditions of employment of employees employed in the public service. This includes the organizations listed in Schedules I, IV, and V to the *FAA*, which encompass the RCMP and the other federal departments, agencies, and other portions of the public service listed in Schedule “A” to the Federal Court’s Reasons.

[21] Part 2 of the *FPSLRA* sets out grievance rights for certain employees employed in the federal public service, and Part 2.1 of that statute sets out a different set of grievance rights for members of the RCMP. Additional grievance and complaint rights are provided to RCMP members under the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 [*RCMP Act*], as well as the Regulations and Standing Orders under that Act.

[22] Turning first to the *FPSLR*, Part 2 of the *FPSLR* affords grievance rights to “employees”, as defined in the statute. For the purposes of Part 2 of the *FPSLR*, “employee” is defined in paragraph 206(1) as follows:

### Definitions

**206 (1)** The following definitions apply in this Part.

**employee** means a person employed in the public service, other than

(a) a person appointed by the Governor in Council under an Act of Parliament to a statutory position described in that Act;

(b) a person locally engaged outside Canada;

(c) a person not ordinarily required to work more than one third of the normal period for persons doing similar work;

(d) a person who is an officer as defined in subsection 2(1) of the *Royal Canadian Mounted Police Act*;

(e) a person employed on a casual basis;

(f) a person employed on a term basis, unless the term of employment is for a period of three months or more or the person has been so employed for a period of three months or more;

(g) a member as defined in subsection 2(1) of the *Royal Canadian Mounted Police Act* who occupies a managerial or confidential position; or

### Définitions

**206 (1)** Les définitions qui suivent s'appliquent à la présente partie.

**fonctionnaire** Personne employée dans la fonction publique, à l'exclusion de toute personne :

a) nommée par le gouverneur en conseil, en vertu d'une loi fédérale, à un poste prévu par cette loi;

b) recrutée sur place à l'étranger;

c) qui n'est pas ordinairement astreinte à travailler plus du tiers du temps normalement exigé des personnes exécutant des tâches semblables;

d) qui est un officier, au sens du paragraphe 2(1) de la *Loi sur la Gendarmerie royale du Canada*;

e) employée à titre occasionnel;

f) employée pour une durée déterminée de moins de trois mois ou ayant travaillé à ce titre pendant moins de trois mois;

g) qui est un membre, au sens du paragraphe 2(1) de la *Loi sur la Gendarmerie royale du Canada*, et qui occupe un poste de direction ou de confiance;

**(h)** a person who is employed under a program designated by the employer as a student employment program. (*fonctionnaire*)

**h)** employée dans le cadre d’un programme désigné par l’employeur comme un programme d’embauche des étudiants. (*employee*)

[23] “Public service” is also a defined term in the *FPSLRA*. Subsection 2(1) of the *FPSLRA* defines “public service” as follows:

**public service**, except in Part 3, means the several positions in or under

**fonction publique** Sauf à la partie 3, l’ensemble des postes qui sont compris dans les entités ci-après ou qui en relèvent :

**(a)** the departments named in Schedule I to the Financial Administration Act;

**a)** les ministères figurant à l’annexe I de la Loi sur la gestion des finances publiques;

**(b)** the other portions of the federal public administration named in Schedule IV to that Act; and

**b)** les autres secteurs de l’administration publique fédérale figurant à l’annexe IV de cette loi;

**(c)** the separate agencies named in Schedule V to that Act. (*fonction publique*)

**c)** les organismes distincts figurant à l’annexe V de la même loi. (*public service*)

[24] As noted, at the request of the Federal Court, the parties developed a list of all the departments, agencies, or other portions of the public administration in which the plaintiffs worked. That list is appended as Schedule “A” to the Federal Court’s Reasons.

[25] It is useful to next repeat section 236 of the *FPSLRA*, which reads as follows:

**No Right of Action**

**Absence de droit d’action**

**Disputes relating to employment**

**Différend lié à l’emploi**

**236 (1)** The right of an employee to seek redress by way of grievance for

**236 (1)** Le droit de recours du fonctionnaire par voie de grief

any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.

**Application**

(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.

**Exception**

(3) Subsection (1) does not apply in respect of an employee of a separate agency that has not been designated under subsection 209(3) if the dispute relates to his or her termination of employment for any reason that does not relate to a breach of discipline or misconduct....

relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

**Application**

(2) Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.

**Exception**

(3) Le paragraphe (1) ne s'applique pas au fonctionnaire d'un organisme distinct qui n'a pas été désigné au titre du paragraphe 209(3) si le différend porte sur le licenciement du fonctionnaire pour toute raison autre qu'un manquement à la discipline ou une inconduite.

[26] “Grievance” is a defined term in the *FPSLRA*, which separately defines “group grievances”, “individual grievances”, and a “policy grievances”. Of the foregoing, only individual grievances are relevant to the instant case. They are defined in subsection 206(1) of the *FPSLRA* as meaning either a grievance presented in accordance with section 208 of the *FPSLRA* or one presented in accordance with section 238.24 of the *FPSLRA*.

[27] Section 208 of the *FPSLRA* is contained in Part 2 (applicable to employees generally) and section 238.4 is contained in Part 2.1 of the *FPSLRA* (applicable to members of the RCMP who meet the statutory definition of employee under the *FPSLRA*).

[28] Section 208 provides, in relevant part as follows:

### **Right of employee**

**208(1)** Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved

(a) by the interpretation or application, in respect of the employee, of

(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or

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

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

### **Limitation**

(2) An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the *Canadian Human Rights Act*.

...

(4) An employee may not present an individual grievance relating to the interpretation or application, in respect of the employee, of a provision of a collective agreement or an arbitral award unless the employee has the approval of and is represented by the bargaining agent for the bargaining unit to which the collective agreement

### **Droit du fonctionnaire**

**208(1)** Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé :

a) par l'interprétation ou l'application à son égard :

(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,

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

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

### **Réserve**

(2) Le fonctionnaire ne peut présenter de grief individuel si un recours administratif de réparation lui est ouvert sous le régime d'une autre loi fédérale, à l'exception de la *Loi canadienne sur les droits de la personne*.

[...]

(4) Le fonctionnaire ne peut présenter de grief individuel portant sur l'interprétation ou l'application à son égard de toute disposition d'une convention collective ou d'une décision arbitrale qu'à condition d'avoir obtenu l'approbation de l'agent négociateur de l'unité de négociation à laquelle s'applique la convention collective ou la décision

or arbitral award applies.

(5) An employee who, in respect of any matter, avails himself or herself of a complaint procedure established by a policy of the employer may not present an individual grievance in respect of that matter if the policy expressly provides that an employee who avails himself or herself of the complaint procedure is precluded from presenting an individual grievance under this Act.

arbitrale et d'être représenté par cet agent.

(5) Le fonctionnaire qui choisit, pour une question donnée, de se prévaloir de la procédure de plainte instituée par une ligne directrice de l'employeur ne peut présenter de grief individuel à l'égard de cette question sous le régime de la présente loi si la ligne directrice prévoit expressément cette impossibilité.

[29] Section 238.02 of the *FPSLRA* provides that section 208 does not apply to RCMP members. It reads in relevant part as follows:

**Inconsistency with Part 1 or 2**

**238.02 (1)** In the event of an inconsistency between a provision of this Part and a provision of Part 1 or 2, the provision of this Part prevails to the extent of the inconsistency.

**Inconsistency — clarification**

(2) Without limiting the generality of subsection (1), section 58, subsections 208(1) and 209(1) and (2) and section 209.1 are inconsistent with this Part.

**Clarification**

- (3) For greater certainty,
- (a) the provisions of Part 1, in so far as they are applicable, apply to employees who are RCMP members or reservists unless there is an indication to the contrary; and
  - (b) the provisions of Part 2, in so

**Incompatibilité**

**238.02 (1)** Les dispositions de la présente partie l'emportent sur les dispositions incompatibles des parties 1 et 2.

**Précision sur l'incompatibilité**

(2) Pour l'application du paragraphe (1), sont notamment incompatibles avec la présente partie, l'article 58, les paragraphes 208(1) et 209(1) et (2) et l'article 209.1.

**Précision**

- (3) Il est entendu que :
- a) les dispositions de la partie 1, dans la mesure où elles sont applicables, s'appliquent aux fonctionnaires qui sont des membres de la GRC ou des réservistes, à moins d'indication contraire;
  - b) les dispositions de la partie 2,

far as they are applicable, apply to employees who are RCMP members, as defined in subsection 238.01(2), or reservists unless there is an indication to the contrary.

dans la mesure où elles sont applicables, s'appliquent aux fonctionnaires qui sont des membres de la GRC, au sens du paragraphe 238.01(2), ou des réservistes, à moins d'indication contraire.

[30] Section 238.24 of the *FPSLRA* sets out the grievance rights of RCMP members under the *FPSLRA*. Those grievance rights only extend to grievances filed under a collective agreement.

Section 238.24 of the *FPSLRA* provides as follows:

**238.24** Subject to subsections 208(2) to (7), an employee who is an RCMP member is entitled to present an individual grievance only if they feel aggrieved by the interpretation or application, in respect of the employee, of a provision of a collective agreement or arbitral award.

**238.24** Sous réserve des paragraphes 208(2) à (7), le fonctionnaire membre de la GRC a le droit de présenter un grief individuel seulement lorsqu'il s'estime lésé par l'interprétation ou l'application à son égard de toute disposition d'une convention collective ou d'une décision arbitrale.

[31] Under the *FPSLRA*, only some of the matters that may be grieved can be referred to adjudication before the Federal Public Sector Labour and Employment Board (the FPSLREB).

[32] For employees generally, subsection 209(1) of the *FPSLRA* provides:

### **Reference to Adjudication**

#### **Reference to adjudication**

**209 (1)** An employee who is not a member as defined in subsection 2(1) of the *Royal Canadian Mounted Police Act* may refer to adjudication an individual grievance that has been presented up to and including the final

### **Renvoi à l'arbitrage**

#### **Renvoi d'un grief à l'arbitrage**

**209 (1)** Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, le fonctionnaire qui n'est pas un membre, au sens du paragraphe 2(1) de la *Loi sur la Gendarmerie*

level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

**(a)** the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award;

**(b)** a disciplinary action resulting in termination, demotion, suspension or financial penalty;

**(c)** in the case of an employee in the core public administration,

**(i)** demotion or termination under paragraph 12(1)(d) of the *Financial Administration Act* for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or

**(ii)** deployment under the Public Service Employment Act without the employee's consent where consent is required; or

**(d)** in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct.

*royale du Canada*, peut renvoyer à l'arbitrage tout grief individuel portant sur :

**a)** soit l'interprétation ou l'application, à son égard, de toute disposition d'une convention collective ou d'une décision arbitrale;

**b)** soit une mesure disciplinaire entraînant le licenciement, la rétrogradation, la suspension ou une sanction pécuniaire;

**c)** soit, s'il est un fonctionnaire de l'administration publique centrale :

**(i)** la rétrogradation ou le licenciement imposé sous le régime soit de l'alinéa 12(1)d de la *Loi sur la gestion des finances publiques pour rendement insuffisant*, soit de l'alinéa 12(1)e de cette loi pour toute raison autre que l'insuffisance du rendement, un manquement à la discipline ou une inconduite,

**(ii)** la mutation sous le régime de la Loi sur l'emploi dans la fonction publique sans son consentement alors que celui-ci était nécessaire;

**d)** soit la rétrogradation ou le licenciement imposé pour toute raison autre qu'un manquement à la discipline ou une inconduite, s'il est un fonctionnaire d'un organisme distinct désigné au titre du paragraphe (3).

[33] For members of the RCMP, section 238.25 provides:

**Limited right to refer to adjudication**

**238.25 (1)** An employee who is an RCMP member may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction only if the grievance is related to the interpretation or application, in respect of the employee, of a provision of a collective agreement or arbitral award.

**Agreement required**

**(2)** Before referring an individual grievance to adjudication, the employee must obtain the approval of their bargaining agent to represent the employee in the adjudication proceedings.

**Grievance related to accessibility**

**(3)** If a grievance referred to in subsection (1) is related to the contravention of a provision of regulations made under subsection 117(1) of the *Accessible Canada Act*, an employee who is an RCMP member may refer the grievance to adjudication only if the employee has suffered physical or psychological harm, property damage or economic loss as a result of — or has otherwise been adversely affected by — the contravention.

**Droit limité de renvoyer un grief à l'arbitrage**

**238.25 (1)** Le fonctionnaire membre de la GRC peut, après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, renvoyer un grief individuel à l'arbitrage seulement si celui-ci porte sur l'interprétation ou l'application à son égard de toute disposition d'une convention collective ou d'une décision arbitrale.

**Approbation requise**

**(2)** Pour que le fonctionnaire puisse renvoyer à l'arbitrage le grief individuel, il faut que son agent négociateur accepte de le représenter dans la procédure d'arbitrage.

**Grief relatif à l'accessibilité**

**(3)** Si le grief visé au paragraphe (1) est relatif à une contravention à une disposition des règlements pris en vertu du paragraphe 117(1) de la *Loi canadienne sur l'accessibilité*, le fonctionnaire membre de la GRC peut seulement le renvoyer à l'arbitrage que s'il a subi des préjudices physiques ou psychologiques, des dommages matériels ou des pertes économiques — ou a été autrement lésé — par suite de cette contravention.

[34] As noted, RCMP members also possess grievance rights under the *RCMP Act* and Regulations and Standing Orders under that Act.

[35] More specifically, section 31 of the *RCMP Act* provides in relevant part as follows:

**Member's right**

**31(1)** Subject to subsections (1.01) to (3), if a member is aggrieved by a decision, act or omission in the administration of the affairs of the Force in respect of which no other process for redress is provided by this Act, the regulations or the Commissioner's standing orders, the member is entitled to present the grievance in writing at each of the levels, up to and including the final level, in the grievance process provided for by this Part.

**Limitation**

**(1.01)** A grievance that relates to the interpretation or application, in respect of a member, of a provision of a collective agreement or arbitral award must be presented under the *Federal Public Sector Labour Relations Act*.

**Limitation**

**(1.1)** A member is not entitled to present a grievance in respect of which an administrative procedure for redress is provided under any other Act of Parliament, other than one provided for in the *Canadian Human Rights Act*.

**Limitation**

**(1.2)** Despite subsection (1.1), a member is not entitled to present a grievance in respect of the right to equal pay for work of equal value.

**Limitation**

**(1.3)** A member is not entitled to

**Règle**

**31(1)** Sous réserve des paragraphes (1.01) à (3), le membre à qui une décision, un acte ou une omission liés à la gestion des affaires de la Gendarmerie causent un préjudice peut présenter son grief par écrit à chacun des niveaux que prévoit la procédure applicable aux griefs prévue par la présente partie dans le cas où la présente loi, ses règlements ou les consignes du commissaire ne prévoient aucune autre procédure pour réparer ce préjudice.

**Réserve**

**(1.01)** Tout grief qui porte sur l'interprétation ou l'application à l'égard d'un membre de toute disposition d'une convention collective ou d'une décision arbitrale doit être présenté sous le régime de la *Loi sur les relations de travail dans le secteur public fédéral*.

**Réserve**

**(1.1)** Le membre ne peut présenter de grief si un recours administratif de réparation lui est ouvert sous le régime d'une autre loi fédérale, à l'exception d'un recours administratif prévu par la *Loi canadienne sur les droits de la personne*.

**Réserve**

**(1.2)** Malgré le paragraphe (1.1), le membre ne peut présenter de grief relativement au droit à la parité salariale pour l'exécution de fonctions équivalentes.

**Réserve**

**(1.3)** Le membre ne peut présenter de

present a grievance relating to any action taken under any instruction, direction or regulation given or made by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.

grief portant sur une mesure prise en vertu d'une instruction, d'une directive ou d'un règlement établis par le gouvernement du Canada, ou au nom de celui-ci, dans l'intérêt de la sécurité du pays ou de tout État allié ou associé au Canada.

[36] A grievance process for RCMP members is prescribed in Part 2 of the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281, and the *Commissioner's Standing Orders (Grievances and Appeals)*, SOR/2014-289. This legislation also contains provisions allowing members to file complaints where they have been disciplined under the RCMP's Code of Conduct.

#### V. Analysis

[37] I turn now to discuss the various issues that arise in this appeal. The appellate standard of review applies to the Federal Court's judgment. Errors of law are reviewable for correctness, whereas errors of fact or of mixed fact and law, which do not disclose an extricable legal issue, are reviewable for palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157, [2018] 2 F.C.R. 344 at para.72, leave to appeal to SCC refused, 37793 (17 May 2018), citing *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 F.C.R. 331 at paras. 28 and 71–72, leave to appeal to SCC refused, 37342 (22 June 2017); *Decor Grates Incorporated v. Imperial Manufacturing Group Inc.*, 2015 FCA 100, [2016] 1 F.C.R. 246 at para. 18.

[38] In striking the claims for which no leave to amend was granted, the Federal Court held that certain claims disclosed no cause of action because they did not exist at law. These determinations are legal in nature and thus fully reviewable by this Court for correctness: *Jensen v. Samsung Electronics Co. Ltd.*, 2023 FCA 89, 482 D.L.R. (4th) 504 at paras. 32-36, leave to appeal to SCC refused, 40807 (11 January 2024) [*Samsung*], citing *Pioneer Corp. v. Godfrey*, 2019 SCC 42, [2019] 3 S.C.R. 295 at para. 27, aff'd 2019 SCC 42, [2019] 3 S.C.R. 295. The Federal Court's interpretation of the relevant statutory provisions also raises legal issues reviewable for correctness.

[39] Conversely, the Federal Court's conclusions as to the adequacy of the material facts pleaded are reviewable under the palpable and overriding standard of review: *Samsung* at para. 38. Likewise, its determination to not exercise its residual discretion to allow the action to advance is reviewable under the palpable and overriding error standard of review: *Canada v. Greenwood*, 2021 FCA 186, [2021] 4 F.C.R. 635 at paras. 119-120, leave to appeal to SCC refused, 39885 (17 March 2022) [*Greenwood*].

[40] A pleading may be struck for disclosing no reasonable cause of action only where this is plain and obvious: *Berenguer v. Sata Internacional - Azores Airlines, S.A.*, 2023 FCA 176, 2023 CarswellNat 2983 at para. 23, leave to appeal to SCC refused, 40949 (11 April 2024) [*Berenguer*], citing *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5, [2020] 1 S.C.R. 166 at para. 64; *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, [2011] 3 S.C.R. 45 at para. 17. The plain and obvious test applies to both the discernment of whether a claim pleaded is justiciable and to the discernment of whether it falls within the jurisdiction of the Federal Court: *Berenguer* at

para. 24; *Windsor (City) v. Canadian Transit Co.*, 2016 SCC 54, [2016] 2 S.C.R. 617 at para. 24.

Where the issue is a jurisdictional one, evidence is admissible and, indeed, may be required:

*Berenguer* at para. 26; *Greenwood* at para. 95; *MIL Davie Inc. v. Société d'Exploitation et de Développement d'Hibernia Ltée* (1998), 226 N.R. 369, 1998 CanLII 7789 (FCA) at paras. 7-8.

[41] Bearing the foregoing general principles in mind, I turn next to assess the issues that arise in this appeal. In my view, they may be usefully broken down as follows:

1. Did the Federal Court err in determining that the plaintiffs employed by the RCMP were subject to the bar in section 236 of the *FPSLRA*?
2. Did the Federal Court err in determining that the bar in section 236 of the *FPSLRA* forecloses the right of action for claims in respect of the Interim Order and other travel related restrictions?
3. Did the Federal Court err in striking, without leave to amend, the claims related to the TB Policy made by the plaintiffs who were employed by the organizations listed in Schedule "A" to the Federal Court's Reasons?
4. Did the Federal Court err in finding certain other claims to be non-justiciable?
5. Did the Federal Court err in striking the Statement of Claim due its being generally improper and failing to plead necessary material facts?

A. *Did the Federal Court err in determining that the plaintiffs employed by the RCMP were subject to the bar in section 236 of the FPSLRA?*

[42] On the first issue, I conclude that the Federal Court erred in finding that the bar in section 236 of the *FPSLRA* applies to the plaintiffs who were members of the RCMP.

[43] It will be recalled that subsection 236(1) of the *FPSLRA* provides that the “right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute”.

[44] To recall, the relevant definition of what constitutes a grievance is set out in subsection 206(1) of the *FPSLRA*. That section states that a grievance is one that may be filed under either section 208 or 238.4 of the *FPSLRA*. Thus, the bar in section 236 applies only to those who could seek redress via a grievance under section 208 or 238.4 of the *FPSLRA*.

[45] Yet, section 238.4 of the *FPSLRA* applies only to grievances arising under a collective agreement applicable to RCMP members who meet the statutory definition of “employee” in the *FPSLRA*. Based on the materials that were before the Federal Court and that are now before this Court, it is impossible to ascertain whether any collective agreement has been negotiated for RCMP members. The National Police Federation was certified as the bargaining agent for RCMP members in 2019 by the FPSLREB in *National Police Federation v. Treasury Board*, 2019 FPSLREB 74. However, it is unclear if a collective agreement has been achieved and, if so, whether a challenge to the TB Policy could be the subject of a grievance under any such

agreement. Given this lack of information, it is not plain and obvious that the plaintiffs who were members of the RCMP possessed rights to grieve the TB Policy under a grievance to which section 238.24 of the *FPSLRA* pertains.

[46] Further, section 208 of the *FPSLRA* is inapplicable to RCMP members by virtue of section 238.02 of that Act. Indeed, the FPSLREB recently confirmed in *Frémy v. Royal Canadian Mounted Police*, 2021 FPSLREB 47 that the only grievance rights RCMP members possess under the *FPSLRA* arise under section 238.24 of the *FPSLRA* and thus only pertain to alleged violations of a collective agreement.

[47] I note that many actions have proceeded against the RCMP for workplace issues, including class actions for matters that could have been the subject of grievances under the *RCMP Act* or Regulations or Standing Orders issued under that Act: see e.g. *Greenwood* at paras. 81, 160; *Tiller v. Canada*, 2019 FC 895, 307 A.C.W.S. (3d) 470; *Merlo v. Canada*, 2017 FC 533, 281 A.C.W.S. 3(d) 702; *Davidson v. Canada (Attorney General)*, 2015 ONSC 8008, 262 A.C.W.S. (3d) 648. There was no suggestion by the respondent in any of the foregoing cases that the bar in section 236 of the *FPSLRA* applied.

[48] I therefore conclude that the Federal Court erred in finding that section 236 of the *FPSLRA* foreclosed the action by the plaintiffs who were members of the RCMP as it is not plain and obvious that the provision applies to them.

B. *Did the Federal Court err in determining that the bar in section 236 of the FPSLRA forecloses the right of action for claims in respect of the Interim Order and other travel related restrictions?*

[49] I turn now to the second issue in this appeal and conclude that the Federal Court erred in determining that the bar in section 236 of the *FPSLRA* applied to the claims related to the Interim Order or the other travel impediments faced by the plaintiffs. These claims should not have been struck without leave to amend.

[50] The Interim Order and related measures could not be the subject of a grievance under either the *FPSLRA*, the *RCMP Act* or Regulations or Standing Orders promulgated under the latter Act.

[51] The *FPSLRA* grants grievance rights only in respect of employment-related matters and the bar in section 236 applies only to disputes “relating to an employee’s terms and conditions of employment”. The Interim Order and related travel measures were general measures that applied to all Canadians and were not imposed on the plaintiffs as a result of their employment. Thus, they could not be grieved under the *FPSLRA* and section 236 of the *FPSLRA* does not apply to them.

[52] Likewise, the Interim Order and related travel measures impugned by the plaintiffs could not be the subject of a grievance under the *RCMP Act* or the Regulations or Standing Orders promulgated under that Act. The Interim Order and other travel-related measures applied to RCMP members like all Canadians, irrespective of their employment and were not “a decision,

act or omission in the administration of the affairs” of the RCMP, within the meaning of section 31 of the *RCMP Act*.

[53] The Federal Court therefore erred in finding that the plaintiffs’ claims related to the Interim Order and other travel-related measures could have been grieved or were subject to section 236 of the *FPSLRA*. While these claims suffer from the lack of proper pleadings and a failure to plead the necessary material facts that characterize the Statement of Claim generally, they should not have been struck without leave to amend. If properly pleaded, it may perhaps be possible for the plaintiffs to raise a claim that could come within the jurisdiction of the Federal Court. Without seeing an amended pleading, however, it is impossible to discern whether or not a valid claim might be advanced. The plaintiffs therefore should have been granted leave to amend the claims related to the Interim Order and other travel-related measures on the same basis as the Federal Court allowed other claims to be amended.

C. *Did the Federal Court err in striking, without leave to amend, the claims related to the TB Policy made by the plaintiffs who were employed by the organizations listed in Schedule “A” to the Federal Court’s Reasons?*

[54] On the third issue, I conclude that the Federal Court did not err in striking, without leave to amend, the claims related to the TB Policy made by the plaintiffs who were employed by the organizations listed in Schedule “A” to the Federal Court’s Reasons, other than the RCMP. However, the Federal Court erred in striking the claims of RCMP members related to the TB Policy.

[55] It is not disputed that the plaintiffs who were employed by organizations other than the RCMP could have filed grievances under section 208 of the *FPSLRA* challenging the TB Policy or its application to them. As noted, the TB Policy was a term and condition of employment and thus subject to grievance under section 208 of the *FPSLRA*, which allows the employees of the organizations listed in Schedule “A” to the Federal Court’s Reasons other than the RCMP to file grievances relating to their terms and conditions of employment. That said, the FPSLREB recently held in *Rehibi v. Deputy Head (Department of Employment and Social Development)*, 2024 FPSLREB 47, that a grievance challenging the application of the TB Policy could not be referred to adjudication due to the fact that only a subset of matters that may be grieved under the *FPSLRA* may be referred to adjudication under subsection 209(1) of the *FPSLRA*.

[56] The bar in section 236 of the *FPSLRA* applies to matters that may be grieved as opposed to those that may be adjudicated. In determining whether an issue is one that may be grieved, what matters is the essence of the claim made and not the way the claim is characterized in the Statement of Claim. Thus, it matters not that the plaintiffs allege a *Charter* breach or various tort claims; one must instead look to the essential character of the dispute to determine if it raises a matter that could have been the subject of a grievance: *Vaughan v. Canada*, 2005 SCC 11, [2005] 1 S.C.R. 146 at para. 13; *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, 1995 CanLII 108 at para. 52 [*Weber*]; *Ebadi v. Canada*, 2024 FCA 39, [2024] F.C.J. No. 380 at para. 24 [*Ebadi*].

[57] Here, compliance with the TB Policy was a term and condition of employment for the plaintiffs employed by the organizations listed in Schedule “A” to the Federal Court’s Reasons. The requirement to have been vaccinated against COVID-19 or face a leave without pay could

therefore have been grieved under section 208 of the *FPSLRA* by those employed in the organizations listed in Schedule “A” to the Federal Court’s Reasons, other than the RCMP.

[58] The case law interpreting section 236 of the *FPSLRA* recognizes that the section is a complete bar to a right of action for any matter that may be the subject of a grievance, subject to the possible caveat that a court may possess the discretion to hear the claim if the internal grievance process does not or cannot provide an adequate remedy or, perhaps, if the case is otherwise exceptional: *Ebadi*, at para. 47; *Bron v. Canada (Attorney General)*, 2010 ONCA 71, 99 O.R. (3d) 749 at paras. 29 and 32; *Robichaud v. Canada (Attorney General)*, 2013 NBCA 3, 225 A.C.W.S. (3d) 430 at para.10.

[59] Here, the Federal Court had no evidence before it as to the efficacy of the grievance process. I therefore conclude that the Federal Court did not err in striking the claims related to the TB Policy made by the plaintiffs who were employed by the organizations listed in Schedule “A” to the Federal Court’s Reasons other than the RCMP by virtue of section 236 of the *FPSLRA*. It was incumbent on the plaintiffs to have filed evidence about the efficacy of the grievance process if they wished the Court to exercise its discretion to hear the claim, as the plaintiffs did in *Greenwood*. In the absence of any such evidence pointing to any inefficacy of the grievance procedure, it was open to the Federal Court to have reached the conclusion that it did and to have struck, without leave to amend, the claims related to the TB Policy made by the plaintiffs employed by the organizations listed in Schedule “A” to the Federal Court’s Reasons other than the RCMP.

[60] For the plaintiffs employed by the RCMP, on the other hand, it is unclear whether they possessed rights to grieve the TB Policy under the *RCMP Act* or the Regulations and Standing Orders under that Act. And, for the reasons already noted above, it is not plain and obvious that they could have grieved under the *FPSLRA*.

[61] The TB Policy was not adopted by the RCMP, but rather by the Treasury Board. It is not plain and obvious that its application would be “a decision, act or omission in the administration of the affairs of the Force” that would be grievable under section 31 of the *RCMP Act*. Somewhat similar policies have been found not to be subject to grievance under the *RCMP Act* because they are not decisions, acts or omissions made in the administration of the affairs of the Force.

[62] For example, in *Pasic v. Canada (Attorney General)*, 2022 FC 1171, 2022 CarswellNat 3030, the Federal Court upheld a decision of the Final Level Adjudicator in the RCMP grievance process. The Adjudicator dismissed the applicant’s grievance challenging where he was placed on the pay grid because pay was fixed by Treasury Board not the RCMP and therefore the grievance could not be dealt with under the *RCMP Act*.

[63] To similar effect, in Commissioner of the RCMP’s grievance decision G-335, dated April 14, 2005, an RCMP member sought to challenge a decision made by an employee of Treasury Board Secretariat to decline to declare the community in which the member resided prior to being transferred a “depressed housing market”. The Commissioner found that he had no jurisdiction to hear a grievance that was based solely on a decision which was rendered by Treasury Board and adopted the External Review Committee’s finding that “the mere fact that

the relocation benefits which are at issue in this grievance pertain to the performance of the member's duties as an RCMP member cannot suffice to subject the decision made by an employee of another government department to a grievance process that is internal to the RCMP": see RCMP External Review Committee, "Grievance Case Summary - G-335", online: <<https://www.canada.ca/en/rcmp-external-review-committee/services/case-summaries/grievance/g-335.html>>. Similarly, in grievance decision G-255, dated March 28, 2001, an RCMP member, stationed in an Isolated Post, contested a decision declaring him ineligible to receive an allowance for fuel and utilities expenses, which was available only under certain conditions (not met by the member), through the Isolated Posts Directive, issued by the Treasury Board. The Commissioner similarly found that he had no jurisdiction to hear the grievance because the RCMP had no authority to pay a fuel and utilities allowance in light of the Treasury Board's Isolated Posts Directive: see RCMP External Review Committee, "Grievance Case Summary - G-255", online: <<https://www.canada.ca/en/rcmp-external-review-committee/services/case-summaries/grievance/g-255.html>>. Likewise, in grievance decision G-484, dated November 6, 2012, an RCMP member grieved the Vacation Travel Assistance rate for his isolated post, which was fixed by the Treasury Board. The Commissioner again found that the member did not have standing to grieve this issue because it was not a decision, act or omission made in the administration of the affairs of the Force: see RCMP External Review Committee, "Grievance Case Summary - G-484", online: <<https://www.canada.ca/en/rcmp-external-review-committee/services/case-summaries/grievance/g-484.html>>.

[64] Since the defendants sought to strike the Statement of Claim based on the fact that a grievance process was available, it was incumbent on the defendants to establish that the TB

Policy could have been grieved by RCMP members. However, no evidence was tendered on this issue and the statutory scheme is not sufficiently clear to definitively establish that the TB Policy could have been grieved by RCMP members. I therefore conclude that the Federal Court erred in striking the claims of RCMP members related to the TB Policy without leave to amend. The plaintiffs who were members of the RCMP should have been granted leave to amend their claims related to the TB Policy on the same basis as the plaintiffs who were employed by organizations other than those listed in Schedule “A” to the Federal Court’s Reasons were granted leave to amend.

D. *Did the Federal Court err in finding certain other claims to be non-justiciable?*

[65] I see no error in the Federal Court’s determination that allegations of criminal behaviour, broad declarations respecting the current state of medical and scientific knowledge, and a declaration that administering medical treatment without informed consent is a crime against humanity, are not justiciable in a civil action.

[66] As for the validity of the TB Policy and the Interim Order, it would appear that those issues may now well be moot. In addition, while it might have been possible to argue that the policies at issue were invalid in the context of a justiciable claim for relief on some other basis in accordance with the decision of the Supreme Court of Canada in *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, the Federal Court did not err in holding that an order setting aside the TB Policy and the Interim Order could only be obtained by way of an application for judicial review.

[67] I accordingly see no basis for setting aside any of the foregoing rulings made by the Federal Court.

E. *Did the Federal Court err in striking the Statement of Claim due to its being generally improper and failing to plead necessary material facts?*

[68] Finally, I see no error in the Federal Court's finding that the Statement of Claim was improperly pleaded and lacked the necessary material facts. As noted in *Mancuso v. Canada (National Health and Welfare)* 2015 FCA 227, [2015] F.C.J. No. 1245 at para. 16, a plaintiff must plead, in summary form, but with sufficient detail, the constituent facts to support the relief sought. As the Federal Court rightly noted in this case, for the claims in respect of which leave to amend is granted, the plaintiffs must set out with sufficient particularity the facts they rely on in support of their claim, including details of how they were specifically impacted by the policies they impugn and the bases for and all material facts necessary to ground the claims advanced. The Statement of Claim, as drafted, is entirely devoid of these necessary material facts.

[69] I therefore see no reviewable error in the decision to strike the Statement of Claim in its entirety. However, leave to amend it should be granted to all the plaintiffs in accordance with these reasons.

## VI. Proposed Disposition

[70] I would therefore allow this appeal in part and grant the plaintiffs leave to amend their Statement of Claim in accordance with these reasons. Since success is divided before this Court

and before the Federal Court, I would set aside the Federal Court's costs award and award no costs in respect of this appeal.

“Mary J.L. Gleason”

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J.A.

“I agree.

Richard Boivin J.A.”

“I agree.

René LeBlanc J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-67-23

**STYLE OF CAUSE:** KAREN ADELBERG ET AL. v.  
HIS MAJESTY THE KING ET AL.

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** NOVEMBER 8, 2023

**REASONS FOR JUDGMENT BY:** GLEASON J.A.

**CONCURRED IN BY:** BOIVIN J.A.  
LEBLANC J.A.

**DATED:** JUNE 7, 2024

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