

FEDERAL COURT

Docket: T-145-22

BETWEEN:

NABIL BEN NAOUM

demandeur

et

LE PROCUREUR GÉNÈRAL DU CANADA

défendeur

Docket: T-247-22

AND BETWEEN:

L'HONORABLE MAXIME BERNIER

demandeur

et

LE PROCUREUR GÉNÈRAL DU CANADA

défendeur

Docket: T-168-22

AND BETWEEN:

**THE HONOURABLE A. BRIAN PECKFORD, LEESHA NIKKANEN
KEN BAIGENT, DREW BELOBABA, NATALIE GRCIC,
AND AEDAN MACDONALD**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

AND BETWEEN:

SHAUN RICKARD AND KARL HARRISON

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER ss. 18 and 18.1 of the Federal Courts Act, RSC 1985, c F-7 and Rules 300(a) and 317 of the Federal Courts Rules, SOR/98-106.

**WRITTEN REPRESENTATION OF THE APPLICANTS,
THE HONORABLE A. BRIAN PECKFORD, LEESHA NIKKANEN, KEN BAIGENT,
DREW BELOBABA, NATALIE GRIC, AND AEDAN MACDONALD**

August 9, 2022

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While explicit constitutional reference will have a significant normative value, the ultimate guarantee of liberty rests with the vigilance of the citizen, the accountability of government, the independence of the judiciary and the rule of law.’¹

- The Honorable Brian Peckford, August 1980

I. OVERVIEW

1. These Applicants seek judicial review of *Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid, No. 52*, and its successor orders (“Interim Orders”)² made pursuant to section 6.41 of the *Aeronautics Act*.³

2. These Applicants seek an order of *certiorari* quashing and setting aside the Interim Orders. These Applicants seek a Declaration that the Interim Orders are *ultra vires* the *Aeronautics Act*, and therefore of no force and effect. These Applicants also seek a Declaration, pursuant to section 52(1) of the *Constitution Act, 1982*,⁴ or alternatively pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”),⁵ that sections 17.1 to 17.4, 17.7, 17.9, 17.10, 17.22, 17.30 to 17.33, 17.36, and 17.40 of the Interim Orders (“the Vaccine Provisions”), violate sections 2(a), 6, 7, 8, and 15 of the *Charter*, and that these violations are not in accordance with the principles of fundamental justice and are not demonstrably justified under section 1 of the *Charter*.

3. Additionally, these Applicants seek a Declaration that the Vaccine Provisions of the Interim Orders are invalid due to errors in law, jurisdiction, fact and/or mixed fact and law, a Declaration that the Vaccine Provisions of the Interim Orders violate sections 1(a) and (b) of the *Canadian Bill of Rights* (the “*Bill of Rights*”),⁶ a Declaration that the Vaccine Provisions of the Interim Orders violate Articles 7, 12, 18, and 26 of the *International Covenant on Civil and*

¹ The Honourable Brian Peckford, Premier of Newfoundland and Intergovernmental Affairs Minister, *Towards the Twenty First Century Together*, August 1980.

² *Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid, No. 52*.

³ *Aeronautics Act*, R.S.C. 1986, c. A-2 [“*Aeronautics Act*”].

⁴ *Constitution Act*, 1982.

⁵ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act*, 1982.

⁶ *Canadian Bill of Rights*, SC 1960, c 44.

Political Rights,⁷ and a Declaration prohibiting the Respondents from issuing subsequent orders of a substantially similar or identical nature that prohibit or further restrict individuals who are not vaccinated against Covid from boarding aircraft leaving Canadian airports. In the alternative, these Applicants seek a Declaration that “natural immunity to Covid”, as evidenced by a serology test, be recognized as equivalent to being “fully vaccinated”, as defined in the Interim Orders.

4. The Interim Orders implement restrictions on Canadians that are not related to a “significant risk, direct or indirect, to aviation safety or the safety of the public” and are *ultra vires* the authority of the *Aeronautics Act*. The Interim Orders, with limited exceptions, effectively ban unvaccinated Canadians from domestic and international travel by airplane. The result is discrimination and a gross violation of the constitutionally protected rights of Canadians, as guaranteed by the *Charter*.

II. STATEMENT OF FACTS

A. Facts Relating to the Interim Orders

5. The Interim Orders were issued by the Honourable Minister of Transport, Omar Alghabra on January 15, 2022. Sections 17.1 to 17.9 of the Interim Orders require travellers, with limited exceptions, to show proof of Covid vaccinations to board an airplane departing from an airport in Canada listed in Schedule 2 of the orders, including all major airports in Canada.

6. In or around December 2021, the Prime Minister of Canada made pejorative and discriminatory statements toward unvaccinated Canadians and called them “racists”, “misogynists” and asked whether we should “tolerate these people”.⁸

7. On December 16, 2021, the Prime Minister wrote to the Minister of Transport directing him to enforce vaccination requirements on federally regulated commercial flights departing from Canada.⁹

⁷ *International Covenant on Civil and Political Rights*, United Nations General Assembly, 1966.

⁸ Affidavit of the Honourable A. Brian Peckford, at para. 15 and Exhibit “B” at pages 62-63 [“Peckford Affidavit” AR TAB 13].

⁹ *Ibid.* at para. 16, Exhibit “C” at page 67.

8. None of the vaccines prevent the infection or transmission of Covid.¹⁰ Covid vaccines, while recommended by Canadian public health authorities, are also known to cause severe adverse effects and injuries for some individuals, including serious disabilities and death.¹¹

9. The Interim Orders do not provide exemptions for Canadians who have natural immunity to Covid or those with conscientious objections. Medical exemptions were not granted and the management of religious exemptions was imposed on Canadian airlines.

10. These Applicants have chosen not to receive the Covid vaccine at this time, and did not to qualify for any of the exemptions.

B. The Impact of the Interim Orders on these Applicants

11. The Applicant, The Honourable A. Brian Peckford (“Mr. Peckford”), is 79 years old and resides in Parksville, Vancouver Island in British Columbia.¹² He served as the third Premier of Newfoundland¹³ and is the last surviving First Minister who drafted the *Constitution Act, 1982*, including the *Charter*.¹⁴ Mr. Peckford relies on air travel to visit his family in Ontario, Newfoundland, and Nova Scotia.¹⁵

12. Mr. Peckford was unable to provide informed consent to the Covid vaccine because of the uncertainty and risk with this medical intervention.¹⁶ Mr. Peckford has been segregated from other vaccinated Canadian air travellers, which renders him a second-class citizen.¹⁷

13. The Applicant, Leesha Nikkanen (“Ms. Nikkanen”), is a 44-year-old woman residing in Surrey, British Columbia.¹⁸ Her family lives in Ontario and Alberta.¹⁹ Ms. Nikkanen relies on air

¹⁰ Transcript of Celia Lourenco at paras 653-655 [“Lourenco Transcript” AR TAB 62/63], Transcript of Jennifer Little at paras 262-263 [“Little Transcript” AR TAB 67/68] and Transcript of Elizabeth Harris at para 148 [“Harris Transcript” AR TAB 72].

¹¹ Transcript of Dr. Peter Liu at para. 89 [“Liu Transcript” AR TAB 60/61], Affidavit of Celia Lourenco at para. 146 [“Lourenco Affidavit”], Affidavit of Byram Bridle at paras. 44-57 [“Bridle Affidavit” AR TAB 58], Affidavit of Steven Pelech, Exhibit “B”, at paras. 12 and 36-52 [“Pelech Affidavit” AR TAB 57].

¹² Peckford Affidavit *supra* note 8 at para. 2.

¹³ *Ibid.* at paras. 2 and 3.

¹⁴ *Ibid.* at paras. 6-12.

¹⁵ *Ibid.* at paras. 3 and 22.

¹⁶ *Ibid.* at para. 23.

¹⁷ *Ibid.* at para. 25.

¹⁸ Affidavit of Leesha Nikkanen at para 3 [“Nikkanen Affidavit” AR TAB 14].

¹⁹ *Ibid.* at para. 4.

travel to visit them.²⁰ She recently suffered a miscarriage and is anxious to try to become pregnant again.²¹

14. Ms. Nikkanen cannot exercise informed consent because she fears the potential side effects of Covid vaccines²² and the unknown potential risks to her fertility.²³ She objects to the use of aborted fetuses in the Covid vaccine based on her religious beliefs and conscience.²⁴ Ms. Nikkanen applied to WestJet Airlines for a religious exemption and was denied.²⁵

15. The Applicant, Ken Baigent (“Mr. Baigent”), is a 57-year-old man who, until recently, worked in Yellowknife, Northwest Territories.²⁶ He and his family live in Jordan, Ontario.²⁷ Mr. Baigent completed multiple return flights annually from Ontario to Yellowknife for his employment.²⁸ Due to the travel mandate, Mr. Baigent had to drive 5,000 kilometers of dangerous highways in extreme winter weather to return to his family in Ontario.²⁹ He resigned from his job in June of 2022 because driving 5,000 in winter conditions was not reasonable and was dangerous.³⁰

16. Mr. Baigent applied to the Northwest Territories Chief Public Health Officer for a religious exemption to vaccine passport restrictions in the Northwest Territories, and was granted an exemption.³¹ He submitted a request for a religious exemption from WestJet Airlines but was denied.³² Air Canada did not accept or approve religious exemptions.³³

17. The Applicant, Drew Belobaba (“Mr. Belobaba”), is a 48-year-old man residing in the United Kingdom, who has family in Canada and a residence in Outlook, Saskatchewan.³⁴ While

²⁰ *Ibid.* at paras. 11 and 13-16.

²¹ *Ibid.* at para. 6.

²² *Ibid.* at paras. 23-25.

²³ *Ibid.* at paras. 6 and 27.

²⁴ *Ibid.* at paras. 17-33.

²⁵ *Ibid.* at paras. 17-19.

²⁶ Affidavit of Kenneth Baigent at para. 3 [“Baigent Affidavit” AR TAB 11].

²⁷ *Ibid.* at paras. 3-4.

²⁸ *Ibid.* at para 5.

²⁹ *Ibid.* at paras, 23 and 32.

³⁰ Written Examination of Ken Baigent, sworn June 1, 2022 at para 13 [“Baigent Examination” AR TAB 48].

³¹ *Ibid.* at para. 27.

³² *Ibid.* at paras 28 and 29.

³³ *Ibid.* at paras. 30-31 and 35, Exhibit “N” at page 74 and Baigent Examination *supra* note 30 at para. 13

³⁴ Affidavit of Drew Belobaba at paras. 2, 5 and 20 [“Belobaba Affidavit” AR TAB 15].

he can board an airplane to Canada without showing proof of Covid vaccination, he cannot return home to the United Kingdom.³⁵

18. Mr. Belobaba fears the potential side effects of the Covid vaccines.³⁶ Mr. Belobaba had Covid and recovered.³⁷ Mr. Belobaba believes that there are too many known risks and further uncertainty with this novel medical intervention for him to properly exercise informed consent.

19. The Applicant, Natalie Grcic (“Ms. Grcic”) is a 38-year-old woman residing in Gatineau, Québec.³⁸ She was born in South Africa and is a permanent resident in Canada.³⁹ Ms. Grcic has elderly parents in South Africa and family in Europe.⁴⁰

20. Ms. Grcic is a healthy and active individual and fears the potential side effects of Covid vaccines.⁴¹ She would like to have more children and fears the effects of Covid vaccines on her fertility.⁴² She cannot exercise informed consent in respect of the Covid vaccines.

21. The Applicant, Aedan MacDonald (“Mr. MacDonald”), is an 18-year-old man attending his first year at Trinity Western University in Langley, British Columbia on a rugby scholarship.⁴³ His family lives in Ontario.⁴⁴ Driving home to Ontario would take approximately three days one-way and is not feasible with his school schedule. During his first year away, he was not able to reunite with his family for the Christmas season.⁴⁵

22. Mr. MacDonald is a healthy and active young man and fears the potential side effects of Covid vaccines, especially myocarditis.⁴⁶ He is not able to exercise informed consent due to all of the unknown vaccine risks. He objects to the use of aborted fetuses in the Covid vaccine based on his religious beliefs and conscience.⁴⁷

³⁵ *Ibid.* at paras. 19 and 20.

³⁶ *Ibid.* at para. 9.

³⁷ *Ibid.* at paras. 13-15.

³⁸ *Ibid.* at para. 9.

³⁹ *Ibid.*

⁴⁰ *Ibid.* at paras. 19 and 21.

⁴¹ *Ibid.* at paras. 11-18.

⁴² *Ibid.* at para. 11.

⁴³ Affidavit of Aedan MacDonald at para 2 [“MacDonald Affidavit” AR TAB 16].

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* at para. 8

⁴⁶ *Ibid.* at paras. 2 and 12-16.

⁴⁷ *Ibid.*, at para. 11.

23. These Applicants cannot afford to fly in a private chartered aircraft.⁴⁸ They object to the use of the Covid vaccines based on religious beliefs, conscience, the exercise of bodily autonomy, life, liberty, and security of the person, mobility rights, privacy rights, and breaches of their equality rights.⁴⁹

III. ISSUES

24. This case raises five issues of public importance that warrant the guidance of this Court:

Issue 1: Are the Vaccine Provisions of the Interim Orders *ultra vires* the *Aeronautics Act* and therefore of no force and effect?

Issue 2: What Weight Ought to be Attributed to the Respondent's Expert Witnesses?

Issue 3: Do the Vaccine Provisions of the Interim Orders violate these Applicants' section 2(a), 6, 7, 8, and 15 *Charter* rights, and if so is the section 7 violation in accordance with the principles of fundamental justice?

Issue 4: Are the Vaccine Provisions of the Interim Orders justifiable violations of these Applicants' *Charter* rights under section 1 of the *Charter*?

Issue 5: Do the Vaccine Provisions of the Interim Orders violate sections 1(a) and (b) of the *Canadian Bill of Rights*?

Issue 6: Do the Vaccine Provisions of the Interim Orders violate Articles 7, 12, 18, and 26 of the *International Covenant on Civil and Political Rights*?

IV. SUBMISSIONS

A. The Standard of Review

25. The *Charter* issues raised by the Applicants are constitutional questions, namely whether the Interim Orders violate the *Charter*. Such issues must be reviewed on a standard of correctness. The Supreme Court of Canada ruled in *Canada (Minister of Citizenship and Immigration v.*

⁴⁸ Nikkanen Affidavit, *supra* note 18 at para. 13, Belobaba Affidavit, *supra* note 34 at para. 20 and Grcic Affidavit, *supra* note 39 at para. 20 [AR TAB 12].

⁴⁹ Peckford Affidavit, *supra* note 8 at paras. 2-4, 7, 15, 17 and 21-26, Nikkanen Affidavit, *supra* note 18 at paras. 2-6, 11, 13, and 31-33, Baigent Affidavit, *supra* note 26 at paras. 2-5, 7, 11-12, 22-23, 27, 29-38, Belobaba Affidavit, *supra* note 34 at paras. 2, 5, 9-12 and 19-21, Grcic Affidavit, *supra* note 39 at paras. 2-4, 8-23 and 25-28, and MacDonald Affidavit, *supra* note 44 at para 2-4, 8 and 11-17.

*Vavilov*⁵⁰ that: “The constitutional authority to act must have determinate, defined and consistent limits, which necessitates the application of the correctness standard.

26. Whether the Minister of Transport’s decisions to enact the Interim Orders were made for an improper purpose or in bad faith in furtherance of an ulterior motive is a question of jurisdiction resulting in a standard of review of correctness.⁵¹

B. The Interim Orders are *Ultra Vires* the *Aeronautics Act*

27. The *Aeronautics Act* is an act to control aeronautics. Section 6.41 of the *Act* allows the Minister to make interim orders but the subject matter of interim orders must be limited to subject matter of regulation-making powers under Part 1 of the *Aeronautics Act*.⁵² Part 1 of the *Aeronautics Act* is focused on keeping aircraft airworthy, safely flown, and secure from threats of terrorism to ensure the safety of the flying public. The *Act* does not allow regulations—nor interim orders—to be used to promote public health goals such as incentivizing the public to take a Covid vaccine. The Interim Orders force Canadians to be vaccinated for Covid to be allowed to fly. Canadians who are not vaccinated for Covid do not make aircraft less airworthy, or less safely flown, nor have any impact on security threats. It is submitted that the public health object of the Interim Orders is *ultra vires* the Minister’s powers under the *Aeronautics Act*.

Improper Purpose and Ulterior Motive – Jurisdictional Error

28. On August 13, 2021, two days before the Prime Minister called a federal election, the Federal Government announced its intention to make rules requiring all air passengers to be vaccinated for Covid in order to travel.

29. In September 2021, during the election campaign, Prime Minister Justin Trudeau made hateful and discriminatory public statements targeting unvaccinated Canadians:

We are going to end this pandemic with vaccination.

We know people who are a little hesitant, who can be convinced.

But also people who are fiercely opposed to vaccination...who do not believe in science.

⁵⁰ *Canada (Minister of Citizenship and Immigration) v Vavilov*, [2019] SCJ No 65. See also *Nova Scotia (Workers' Compensation Board) v. Martin*, 2003 SCC 54, [2003] 2 S.C.R. 504, at para. 65].

⁵¹ Jones, David Phillip, de Villars, Anne (2020). Chapter 7: Losing Jurisdiction Through an Abuse of Discretion. *Principles of Administrative Law* (Seventh Edition, pp. 183–215). Thomson Reuters.

⁵² *Aeronautics Act*, *supra* note 3 ss. 4.9, 4.71 and 76.

Who are often misogynistic, often are racist. There are not very many of them, but they take a lot of space.

And there, we have a choice to make, as a leader, as a country. Do we tolerate these people?

Or do we say: come on... most people 80% of Quebecers have done the right thing, gotten vaccinated, we want to get back to the things we like. It's those people who are going to block us now...⁵³ [Emphasis added]

30. On October 6, 2021, the Prime Minister announced that the mandatory air travel vaccination requirements would come into effect on October 30, 2021.⁵⁴ Transport Canada officials began working on a rationale to justify the new travel restrictions. Emails between senior officials expressed concerns about a rationale for the mandatory vaccination requirements for air travellers and sought to rely on research completed by epidemiologists from the Public Health Agency of Canada (“PHAC”).⁵⁵

31. The lead epidemiologist from PHAC testified in cross examination that vaccination of air travellers was not one of the mitigation strategies identified by the Agency and that the scientific evidence did not support its effectiveness as a mitigation strategy.⁵⁶

32. It is respectively submitted that the evidentiary record supports the conclusion that the Interim Orders’ mandatory vaccination requirements affecting the Applicants and millions of Canadians were not made for the proper purpose of the *Act*—aviation safety—but rather for the ulterior motive and improper purpose of seeking to carry out the Prime Minister’s stated objective of forcing all Canadians to be vaccinated.⁵⁷

33. In *Roncarelli v. Duplessis*,⁵⁸ the Supreme Court of Canada held that government decisions made according to arbitrary and irrelevant purposes violate the rule of law. The Court expressed that the discretion of executive or administrative actors must not clearly depart from the purpose

⁵³ Peckford Affidavit, *supra* note 8 at para 15 and Exhibit “B” at pages 62 and 63.

⁵⁴ Affidavit of Jennifer Little at para. 30, Exhibit “F” at page 1 [“Little Affidavit” AR TAB 25].

⁵⁵ Little Affidavit, *supra*, at paras. 32, 36, Exhibit “G” at pages 1-2, Exhibit “J” at pages 3-5; See also: Mario Boily, Directeur exécutif, Développement de programmes, Sûreté de l’aviation, TC, testified during cross examination that most of the factors that influence risk tolerance for the importation or transmission of Covid cases came from epidemiological data provided by the Public Health Agency of Canada (“PHAC Transcript of Mario Boily, June 28, 2022, at paras. 136-137 (“Boily Transcript” AR TAB 79))

⁵⁶ Transcript of the Cross Examination of Lisa Waddell, at paras. 300-305 [AR TAB 59]

⁵⁷ Jones, David Phillip, de Villars, Anne (2020). Chapter 7: Losing Jurisdiction Through an Abuse of Discretion. *Principles of Administrative Law* (Seventh Edition, pp. 183–215). Thomson Reuters.

⁵⁸ *Roncarelli v. Duplessis*, [1959] SCR 121, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2751/index.do>

of their empowering statute. The Court stated: ““Discretion” necessarily implies good faith in discharging public duty; there is always a perspective within which a statute is intended to operate; and any clear departure from its lines or objects is just as objectionable as fraud or corruption.”⁵⁹

34. The Interim Orders are *ultra vires* the authority delegated to the Minister of Transport under section 6.41(1) of the *Act*, which restricts the Minister’s order-making power to matters related to aviation safety consistent with the scope and objects of the Act. The Interim Orders are *ultra vires* as it was made for an improper purpose, and in bad faith in furtherance of an ulterior motive to pressure Canadians into taking Covid vaccines.⁶⁰

The Weight and Admissibility of Expert Evidence

35. The Supreme Court of Canada in *White Burgess Langille Inman v. Abbott and Haliburton Company* said:

In my view, expert witnesses have a duty to the court to give fair, objective and non-partisan opinion evidence. They must be aware of this duty and able and willing to carry it out. If they do not meet this threshold requirement, their evidence should not be admitted. Once this threshold is met, however, concerns about an expert witness’s independence or impartiality should be considered as part of the overall weighing of the costs and benefits of admitting the evidence.⁶¹

36. The Respondent’s expert evidence is partisan. Dr. Dawn Bowdish, the Respondent’s expert on vaccine safety and efficacy, is an innate immunologist with no significant history of vaccine research or vaccine development. Prior to Covid, Dr. Bowdish had very limited research and funding for vaccine research. Post-Covid, Dr. Bowdish’s research funding amounted to over 12 million dollars⁶² including direct funding from Pfizer and AstraZeneca.⁶³ It is apparent that Dr. Bowdish has a pecuniary interest in favour of vaccines and has taken a personal interest in understanding the psychology of why people choose not to take the vaccine.⁶⁴ It is these

⁵⁹ *Ibid.* at page 140

⁶⁰ Jones, David Phillip, de Villars, Anne (2020). Chapter 7: Losing Jurisdiction Through an Abuse of Discretion. *Principles of Administrative Law* (Seventh Edition, pp. 183–215). Thomson Reuters.

⁶¹ *White Burgess Langille Inman v Abbott and Haliburton Company* [2015] 2 SCR 182, at para. 10

⁶² Bowdish Cross Examination Transcript, at pages 18-22 [AR TAB 65/66]

⁶³ Bowdish Affidavit [AR TAB 46], at Exhibit “A”, pages 2, 5, 12, 17, 29-30, Transcript of the Cross Examination of Dawn Bowdish at paras. 51-60

⁶⁴ Bowdish Transcript, pages. 323-333

Applicants' position that she is not impartial, or objective and her evidence should be given little weight.

37. Dr. Vanessa Poliquin, the Respondent's maternal care expert, was argumentative during her cross examination. She wrongly concluded that pregnant women have twice the risk to end up in the ICU with Covid.⁶⁵ When data from the United States supported her opinion, she used data from the CDC.⁶⁶ When data from the United States did not support her opinion, she disregarded on the basis that Canada and the United States had different health care systems.⁶⁷ Dr. Poliquin used this argument about different countries' healthcare systems in an attempt to set aside Pfizer's own clinical trial data.⁶⁸ Her report should be given little weight.

D. Charter Violations

38. The Vaccine Provisions of the Interim Orders represent a gross violation of the constitutionally protected rights and freedoms of Canadians, at a degree and scale that is unprecedented in Canada's history. The burden of proving the justification of a limit on *Charter* rights therefore lies on the state actor responsible for the limitations on rights.

1. Breach of Section 2(a) of the Charter

a. Freedom of Religion

39. Freedom of religion under section 2(a) of the *Charter* includes the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly, without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.⁶⁹ The Supreme Court of Canada expressed that freedom only exists when people are not constrained or coerced.⁷⁰

40. The Interim Orders are the epitome of coercion and do not provide a lawful policy for religious exemption. The Applicants Ms. Nikkanen, Mr. Baigent, and Mr. MacDonald have

⁶⁵ Transcript of the Cross Examination of Vanessa Poliquin, at paras. 229-273 [AR TAB 74/75]

⁶⁶ V. Poliquin Transcript, page 124, lines 4-12

⁶⁷ V. Poliquin Transcript, page 51, lines 2-6

⁶⁸ V. Poliquin Transcript, pages 299-300

⁶⁹ *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/43/index.do>, at para. 94.

⁷⁰ *Ibid*, at para 95.

sincerely held religious objections to receiving the Covid vaccine. Mr. Baigent believes that God provides for his health and healing, and resultingly, he does not take any prescription pharmaceuticals, and has not received any form of vaccination for over 30 years.⁷¹ Ms. Nikkanen and Mr. MacDonald have concerns about aborted fetal cells used in the Covid vaccines.⁷² The Johnson and Johnson and Astra Zeneca vaccines were manufactured using fetal cell lines (HEK 293 and PER.C6) which were derived from aborted fetuses, and some trace amounts of components of the fetal cells are present in the batches of vaccines that people are injected with.⁷³ The Pfizer and Moderna vaccines used the aborted fetus-derived HEK 293 cell line in the research and development phase of their Covid vaccine program.⁷⁴

41. Air Canada stopped granting religious exemptions since December 2021.⁷⁵ Jennifer Little, Director General of Covid Recovery at Transport Canada, stated in her affidavit, between October 30, 2021, and April 19, 2022, air operators had approved 38% of passenger requests for Religious Exceptions.⁷⁶ Mario Boily, the Executive Director of Program Development, Aviation Security, at Transport Canada, stated the intention of the religious exception was to allow the airline industry to accommodate people under Human Rights obligations, yet said he “can’t make the judgement on whether or not they would do a good job doing that or not.”⁷⁷ There is no evidence of federal oversight or management of the airlines’ approval process for religious exemptions. The Respondent was aware that Air Canada stopped granting religious exemptions since December 2021⁷⁸ yet there is no evidence that the Respondent investigated Air Canada’s reasoning over ceasing approving religious exemption, nor is there evidence that the Respondent requested that Air Canada begin approving some religious exemption requests again.

b. Freedom of Conscience

⁷¹ Baigent Affidavit, at para. 25, Exhibit “B” at pages 29-31, Exhibit “G” at pages 46-51, Exhibit “H” at pages 53-55

⁷² Nikkanen Affidavit, at paras. 21, 27, Exhibit “at pages 18, 22, MacDonald Affidavit, at para. 11

⁷³ Bridle Affidavit, Exhibit “A”, at para. 89

⁷⁴ Bridle Affidavit, Exhibit “A”, at para. 90

⁷⁵ Baigent Affidavit, at paras. 30-31, 35, Exhibit “N”, at page 2

⁷⁶ Affidavit of Jennifer Little, at para 55, page 19 [AR TAB 25]

⁷⁷ Transcript of the Cross Examination of Mario Boily, at pages 9-10

⁷⁸ Transcript of the Cross Examination of Jennifer Little, at para. 1373-1377

42. Legislation which violates freedom of conscience cannot be in accordance with the principles of fundamental justice within the meaning of section 7.⁷⁹ The legal analysis for freedom of conscience is analogous to freedom of religion: does the claimant hold a sincere moral commitment with which the state has interfered in a manner that is more than trivial?⁸⁰ Matters of conscience are also often fundamental to identity, linked to integrity.⁸¹

43. The Applicants Mr. Peckford, Ms. Nikkanen, Ms. Grcic, Mr. Baigent, Mr. Belobaba, and Mr. MacDonald have sincerely held conscientious objections to receiving a Covid vaccine. The Vaccine Provisions of the Interim Orders violate section 2(a) of the *Charter* by requiring these Applicants to take Covid vaccines to travel by air, without providing a lawful policy for conscientious exemptions and coerces these Applicants to act in contravention of their conscience by restricting their rights until they comply.

2. Breach of Section 6 of the *Charter*

44. Section 6 of the Charter provides:

6. (1) Every citizen of Canada has the right to enter, remain in and leave Canada.
- (2) Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right:
 - a. to move to and take up residence in any province; and
 - b. to pursue the gaining of a livelihood in any province.

45. Section 6 rights are among the most cherished rights of citizenship,⁸² and they merit expansive breadth and plenitude.⁸³ This right grants Canadians passage to and from the country.

⁷⁹ “The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government,”⁷⁹ and “[t]he values that underlie our political and philosophic traditions demand that every individual be free to hold and to manifest whatever beliefs and opinions his or her conscience dictates...” *R. v. Morgentaler*, 1988 90 (SCC), [1988] 1 SCR 30, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/288/index.do>, at para. 257

⁸⁰ Brian Bird, “The Reasons for Freedom of Conscience,” *The Forgotten Fundamental Freedoms of the Charter* (Toronto: Lexis Nexis, 2020) at 118.

⁸¹ *Ibid* at 112.

⁸² *Divito v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 47, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13233/index.do>, at para 1 [*Divito*]

⁸³ *Divito*, *supra*, at para 29

Section 6 of the *Charter* guarantees the mobility of persons to “further a human rights purpose” and is “centered on the individual.”⁸⁴

46. Canadian citizens cannot be forced to stay in Canada or return to Canada, subject only to reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.⁸⁵ The right to “remain in” Canada, as embodied in section 6(1) includes the right of Canadian citizens to travel in Canada for lawful purposes.⁸⁶ Section 6(2) protects one’s right to move about the country, to reside where one chooses, and to pursue one’s livelihood without regard to provincial boundaries. Government cannot limit these rights in terms of provincial boundaries.⁸⁷

47. The important and fundamental nature of section 6 of the *Charter* is evidenced in its inability to be overridden by the notwithstanding clause under section 33 of the *Charter*.⁸⁸

48. The Interim Orders violate these Applicants’ rights under section 6 of the *Charter* by banning their only means of exiting Canada to travel overseas or travelling long distances interprovincially in a timely, affordable, and safe manner.

3. Breach of Section 7 of the *Charter*

49. Section 7 of the *Charter* provides that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. The principles of fundamental justice guard against laws, government decisions, or state action that is overbroad, arbitrary, or grossly disproportionate.

⁸⁴ *Canadian Egg Marketing Agency v. Richardson*, [1998] 3 SCR 157, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1661/index.do>, at para 66 [*Canadian Egg Marketing Agency*]

⁸⁵ *Droit de la famille – 13328*, 2013 QCCA 277 (CanLII), <https://www.canlii.org/en/qc/qcca/doc/2013/2013qcca277/2013qcca277.html?autocompleteStr=droit%20de%20la%20QCCA%20277&autocompletePos=1>, at para 40; See also: *Kamel v. Canada (Attorney General)*, 2009 FCA 21 (CanLII), [2009] 4 FCR 449, 2009 FCA 21 (CanLII) | *Kamel v. Canada (Attorney General)* | CanLII, at para 15

⁸⁶ *Taylor v. Newfoundland and Labrador*, [2020] NLSC, 2020 NLSC 125 (CanLII) | *Taylor v. Newfoundland and Labrador* | CanLII, at para 301 [*Taylor*]

⁸⁷ *Black v. Law Society of Alberta*, [1989] 1 SCR 591, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/432/index.do>

⁸⁸ *Charter*, section 33. (1) Parliament or the legislature of a province may expressly declare in an Act of Parliament or of the legislature, as the case may be, that the Act or a provision thereof shall operate notwithstanding a provision included in section 2 or sections 7 to 15 of this Charter.

a. The Right to Life

50. The right to life is engaged where a law or state action imposes death or an increased risk of death, either directly or indirectly.⁸⁹ By prohibiting air travel unless these Applicants receive Covid vaccines, these Applicants are pressured to subject themselves to the risks of harmful side effects including death.

51. An expert witness for the Respondent, Dr. Liu, cardiovascular specialists at the University of Ottawa Heart Institute, admitted during his cross examination that Covid vaccines have caused deaths.⁹⁰ When asked if vaccine-induced heart failure could be underreported, he said “yes, there always could be. Yeah, absolutely.”⁹¹ The risk of death is increased for Mr. MacDonald, as Covid vaccines have caused death for young males in his age group due to heart inflammation and damage, and he is a healthy young man who is least at risk from Covid.⁹² The Covid vaccines have also caused blood clots that can cause death, and Health Canada determined this is serious enough to put a safety warning on the vaccines in this regard.⁹³

b. The Right to Liberty

52. The right to liberty under section 7 of the *Charter* is engaged where there is an imposition of a physical restraint such as imprisonment or the threat of imprisonment.⁹⁴ Additionally, state compulsions or prohibitions affecting one’s ability to move freely violate the right to liberty.⁹⁵ The right to liberty includes the right to refuse medical treatment,⁹⁶ and the right to make “reasonable medical choices” without threat of criminal prosecution.⁹⁷ In *Carter*, the Supreme

⁸⁹ *Carter v. Canada (Attorney General)*, 2015 SCC 5, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do>, at para 62

⁹⁰ Transcript of Cross Examination of Dr. Peter Liu, June 1, 2022, at para. 89

⁹¹ Transcript of the Cross Examination of Peter Liu, at para. 438

⁹² McCullough Affidavit, Exhibit “B”, at paras. 4-30 [AR TAB 40]

⁹³ Affidavit of Steven Pelech,[AR TAB 38] Exhibit “B”, at para. 12, Affidavit of Byram Bridle, Exhibit “B”, at paras. 38, 39, 44, 49, 56, Affidavit of Celia Lourenco, at para. 146, Cross Examination of Dr. Lourenco, at paras. 725-728, 738-746, 799 Exhibit No. 7, No. 8 to the cross examination of Dr. Lourenco

⁹⁴ *R. v. Vaillancourt*, [1987] 2 S.C.R. 636, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/272/index.do>

⁹⁵ *R. v. Heywood*, [1994] S.C.R. 761, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1198/index.do>

⁹⁶ *A.C. v. Manitoba (Director of Child and Family Services)*, 2009 SCC 30, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7795/index.do>, at para 100-102, 136

⁹⁷ *R. v. Smith*, 2015 SCC 34, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15403/index.do>, at para 18

Court found that state interference with an individual's ability to make decisions concerning their bodily integrity and medical care trenches on liberty.⁹⁸

53. These Applicants' mobility rights are hindered significantly and at an unprecedented level by the Interim Orders. They are forced to comply with a medical intervention which they are strongly opposed to, representing an imposition on personal autonomy and inherently private choices. A Respondent's witness, Ms. Little, who had significant involvement in the development of the travel vaccine mandate,⁹⁹ acknowledged that the outcome of the policy prevents the majority of unvaccinated Canadian citizens from travelling,¹⁰⁰ thus impacting millions of Canadians.¹⁰¹

c. Breach of the Right to Security of the Person

54. The Supreme Court of Canada held¹⁰² that security of the person is engaged by state interference with an individual's physical or psychological integrity, including any state action that causes physical or serious psychological suffering.¹⁰³ Security of the person protects individuals from the imposition of unwanted medical treatment.¹⁰⁴ These Applicants argue that their security of the person right has been infringed because the Respondent has taken away their personal autonomy if they want to travel by air. There are also many known and unknown reported serious adverse events and risks discussed at length in the Applicants expert scientific and medical reports.¹⁰⁵

i. Informed Consent – Liberty and Security of the Person

55. In *Carter v Canada*, the Supreme Court of Canada determined that competent individuals should be free to make decisions about their bodily integrity, and that it is this principle that

⁹⁸ *Carter, supra*, at para 66

⁹⁹ Transcript of the Cross Examination of Jennifer Little at para 39, 42, 44-45, 519, and 696-697

¹⁰⁰ Transcript of the Cross Examination of Jennifer Little, at paras 1346-1347

¹⁰¹ Transcript of the Cross Examination of Jennifer Little, at para 1256

¹⁰² *Rodriguez v. British Columbia (Attorney General)*, [1993] 3 SCR 519, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1054/index.do>

¹⁰³ *Carter, supra*, at para 64; *New Brunswick, supra*, at paras. 58, 59; *Chaoulli, supra*, at paras. 43, 116, 119

¹⁰⁴ *A.C., supra*, at para 44

¹⁰⁵ See Cvetic Affidavit [AR TAB 39], at para 6, Exhibit "B", at paras.20-61; Bridle Affidavit, Exhibit "B", at paras. 16, 35-60, 67-80, 82-88; McCullough Affidavit, Exhibit "B", at paras. 1-29; Pelech Affidavit, Exhibit "B", at paras. 6-13, 36-53

underlies the concept of “informed consent” and is protected by section 7’s guarantee of liberty and security of the person.¹⁰⁶

56. A patient must be given sufficient information to weigh the risks and benefits for consent to be informed. In *Reibl v. Hughes*, the Supreme Court of Canada held that the test is whether the reasonable person in the patient's position, knowing of the risks, would have consented to the treatment.¹⁰⁷ The New Brunswick Court of Appeal found that a doctor’s failure to inform a patient of a risk that was “uncommon,” “extraordinary,” but known to “occur occasionally” was a breach of his duty to inform his patient before treatment.¹⁰⁸

57. All Covid vaccines are still undergoing clinical trials,¹⁰⁹ yet these Applicants are being coerced into taking these vaccines in order to exercise their basic, fundamental, and constitutionally protected rights and freedoms. The Covid vaccines are experimental because the clinical trials are not completed. Submitting to a novel and experimental medical intervention against one’s will and without informed consent, in order to be able to attend to the needs of loved ones overseas and to travel to their jobs in other provinces is the epitome of coercion. The Respondent has dangled a carrot in front of unvaccinated Canadians to coerce them and make it clear that if they choose not to take it, they will forfeit seeing family, perhaps ever again in the case of Ms. Grcic with sick and elderly parents.

58. All these Applicants attested that the Respondent has never fully explained the risks of the Covid vaccines to them.¹¹⁰

¹⁰⁶ *Carter*, at para. 67

¹⁰⁷ *Reibl v. Hughes*, [1980] 2 SCR 880, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2563/index.do>, at pages 898-900

¹⁰⁸ *Kitchen v. McMullen*, 1989 CanLII 218 (NB CA),

<https://www.canlii.org/en/nb/nbca/doc/1989/1989canlii218/1989canlii218.html?autocompleteStr=1989%20canlii%20218&autocompletePos=1>, at para. 22

¹⁰⁹ Transcript of the Cross Examination of Celia Lourenco, at paras 691-694 [AR TAB 62/63]

¹¹⁰ Peckford Affidavit, *supra*, at para 23, Nikkanen Affidavit, *supra*, at para 23, 25, Baigent Affidavit, *supra*, at para 38, Belobaba Affidavit, *supra*, at para 21, Grcic Affidavit, *supra*, at para 11, MacDonald Affidavit, *supra*, at para 15

d. The Breach of Section 7 is Unjustified According to the Principles of Fundamental Justice

59. Limitations of the section 7 interests are only lawful so long as the infringements caused by government action, or a law are in accordance with the principles of fundamental justice.¹¹¹

i. The Interim Orders are Arbitrary

60. A law is arbitrary when there is no rational connection between the limit on the right and the object of the law. An arbitrary law is one that limits rights but is not capable of fulfilling or in any way furthering the objectives of that law.¹¹²

61. The Interim Orders' infringement on section 7 rights is arbitrary in light of the allowable purpose of the Interim Orders—aviation safety—for the following reasons, and are more fully discussed in the section below on “Rational Connection” and Section 1 of the *Charter* argument:

- Covid infected vaccinated people are allowed on airplanes;¹¹³
- Since mid-December 2021, the vaccinated were more likely than the unvaccinated to be infected or hospitalized with Covid;¹¹⁴
- Viral loads in the fully vaccinated (two doses) are the same as in the unvaccinated¹¹⁵
- Secondary Attack Rates¹¹⁶ from an unvaccinated index case is almost identical to the Secondary Attack Rate from a vaccinated index case;¹¹⁷
- Fully vaccinated people are more likely to get Omicron than unvaccinated people;¹¹⁸
- The Interim Orders ignore natural immunity, which is long lasting and confers better protection from infection than the Covid vaccines;¹¹⁹
- After six months, the protective effect of the Covid vaccines wanes to less than 20%;¹²⁰

¹¹¹ *Canada (Attorney General) v. Bedford*, 2013 SCC 72, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/13389/index.do>, at para 58 [*Bedford*]

¹¹² *Carter, supra*, at para. 83; *Bedford, ibid*, at para 111; *Bedford, supra*, at para 111

¹¹³ G. Poliquin Cross Exam Transcript, at paras. 434, 440; Boily Cross Exam Transcript, at pages 35-37; Transcript of the Cross Examination of Tyler Brooks, at para 186

¹¹⁴ Bridle Affidavit, Exhibit “A”, at para. 9-10, Figure “3” and Figure “4”

¹¹⁵ Kindrachuk Cross Examination Transcript, at paras. 155-158

¹¹⁶ Kindrachuk Cross Examination Transcript, at para. 272

¹¹⁷ Kindrachuk Cross Examination Transcript, at para. 323

¹¹⁸ Kindrachuk Cross Examination Transcript, at paras. 330-331, 346, 1013; Bridle Affidavit, Exhibit “A”, at para. 9, Figure “3”; Bridle Affidavit, Exhibit “A”, at para. 10, Figure “4”

¹¹⁹ Bridle Affidavit, Exhibit “B”, at paras. 19-23; Pelech Affidavit, Exhibit “B”, at para 54, 61, 66

¹²⁰ Affidavit of Jennifer Little, paragraphs 72, 71, 69, Exhibit “X”, at page 12, 21, Exhibit “W”, at page 4, Exhibit “V”, at page 7; Affidavit of Dawn Bowdish, at para vii, page 5; See also Transcript of the Cross Examination of Jason Kindrachuk, at paras 69-70, Transcript of the Cross Examination of Tyler Brooks, at paras 271-275; Transcript of the Cross Examination of Celia Lourenco, at paras 152-158, Transcript of the Cross Examination of Jason Kindrachuk Exhibit No. 1

- No reliable evidence exists that the PHAC recommended the vaccine mandate to Transport Canada;¹²¹ and,
- There is no evidence demonstrating that unvaccinated people represent a significant risk to the safety of the air transportation.¹²²

ii. The Interim Orders are Overbroad

62. If an impugned law or government measure which limits section 7 rights “goes too far and interferes with some conduct that bears no connection to its objective,” it will be overbroad.¹²³

63. The Interim Orders are overbroad since it makes no distinction between those who are subject to significant risk from Covid, and those who are not, and restricts people from travelling who are at low risk of serious Covid effects. They are also overbroad insofar as they prevent individuals with natural immunity to Covid from boarding airplanes. These individuals are protected against Covid infection and transmission, in a way that is similar to, or more effective than, that provided by vaccination.¹²⁴ Mr. Belobaba is an example of someone who has proof of past Covid infection.¹²⁵

64. Additionally, the Interim Orders are overbroad as they prevent asymptomatic unvaccinated people from boarding airplanes when they cannot transmit Covid.¹²⁶ An expert witness for the Respondent, Dr. Kindrachuk, Canada Research Chair in emerging viruses in the Department of Medical Microbiology & Infectious Diseases at the University of Manitoba, testified “The viral load provides us with some context for the potential that somebody might be able to spread virus, but it is not the sole variable that indicates whether or not someone will be able to transmit. Symptoms of disease are also required.”¹²⁷ It is Dr. Kindrachuk’s evidence that asymptomatic unvaccinated individuals cannot transmit the virus.

¹²¹ Transcript of the Cross Examination of Jennifer Little, at para 162-163; Transcript of the Cross Examination of Mario Boily, at pages 77-78, 81-83, 90-91; See also Transcript of the Cross Examination of Lisa Waddell, at paras. 300-305

¹²² Transcript of the Cross Examination of Lisa Waddell, at paras. 59-64, 101-109, 143-144, 235-236, 243-246, 300-305, 372; Affidavit of Jennifer Little, paras. 30, 36-37, 72, Exhibit “X”, at page 21, Exhibit “J”, page 1; Transcript of the Cross Examination of Jason Kindrachuk, at paras 69-70; Transcript of the Cross Examination of Tyler Brooks, at paras 185-187, 271-275; Transcript of the Cross Examination of Jennifer Little at para 39, 42, 44-45, 72-74, 76, 519, and 696-697

¹²³ *Bedford, supra*, at para 101

¹²⁴ Affidavit of Steven Pelech, Exhibit “B”, at paras. 54, 61, 66, Bridle Affidavit, Exhibit “B”, at paras. 19-23

¹²⁵ Belobaba Affidavit, at paras. 13-15

¹²⁶ Kindrachuk Cross Examination Transcript, at para. 152.

¹²⁷ *Ibid.*

iii. The Interim Orders are Grossly Disproportionate

65. The Supreme Court of Canada stated, “if the impact of the restriction on the individual's life, liberty or security of the person is grossly disproportionate to the object of the measure,” the restriction will not be found to accord with the principles of fundamental justice.¹²⁸

66. The deleterious and negative impacts of the Interim Orders are grossly disproportionate to the minimal or non-existent benefits it may have. The Interim Orders represent a gross violation of bodily integrity, as they pressure citizens to subject themselves to a medical intervention, and the potential of serious side effects or death, in order to avoid having their basic and fundamental rights stripped away.

67. The Supreme Court of Canada in *Bedford* held:

...gross disproportionality under s.7 of the *Charter* does *not* consider the beneficial effects of the law for society. It balances the negative effect on the individual against the purpose of the law, *not* against societal benefit that might flow from the law...[G]ross disproportionality is not concerned with the number of people who experience grossly disproportionate effects; a grossly disproportionate effect on one person is sufficient to violate the norm.¹²⁹
[Emphasis added]

68. The Covid vaccines cause serious adverse events such as myocarditis, blood clots and Bell's Palsy among others.¹³⁰ Dr. Liu admitted in cross examination that young males have died directly from the Covid vaccines.¹³¹ As per *Bedford*, it doesn't matter that the number of people who have experienced serious adverse events may be small. Since it has been proven that at least one person has died directly from these vaccines, the Interim Orders are grossly disproportionate.

¹²⁸*Carter, supra*, at para 89

¹²⁹ *Bedford, supra*, at paras. 121-123

¹³⁰ Lourenco Transcriptat paras. 109, 721, 725-726

¹³¹ Liu Cross Examination Transcript, at para 89, Affidavit of Peter Liu at para 18, page 13

4. Breach of Section 8 of the *Charter*

69. Section 8 of the *Charter* protects individuals against unreasonable search and seizure, and provides a reasonable expectation of privacy for people, as opposed to places.¹³² Dignity, integrity and autonomy are values underlying the privacy interest.¹³³¹³⁴ A person's medical details represent intimate and personal information, deserving of protection under section 8 of the *Charter*.¹³⁵ The Interim Orders violate these Applicants' reasonable expectations of privacy, by forcing them to disclose private medical information as a precondition to boarding an airplane.

5. Breach of Section 15 of the *Charter*

70. The overarching principle of section 15 of the *Charter* is the provision of equal protection from discrimination on both enumerated and analogous grounds. The Supreme Court of Canada determined that the list of analogous grounds is not closed.¹³⁶ The Supreme Court of Canada in *Fraser v Canada (Attorney General)*¹³⁷ held that the claimant must first demonstrate that the effect of an impugned law or policy creates a distinction based on an enumerated or analogous ground, in the sense that the law or policy disproportionately impacts members of a protected group.¹³⁸ At the second stage of the section 15 test, the claimant must demonstrate that the challenged law or policy has the effect of reinforcing, perpetuating, or exacerbating disadvantage.¹³⁹

71. These Applicants are denied benefits more often than others, as not only are they prohibited from travel, but were also banned from most other services. The Prime Minister's comments also

¹³² *Hunter v. Southam Inc.*, [1984] 2 SCR 145, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/5274/index.do>; *R. v. Gomboc*, 2010 SCC 55, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7898/index.do>, at para 17, 75

¹³³ *R. v. Plant*, [1993] 3 SCR 281, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1049/index.do>

¹³⁴ *R. v. Ahmad*, 2020 SCC 11, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18383/index.do>, at para 38

¹³⁵ *R. v. Morelli*, 2010 SCC 8, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7847/index.do>, at paras 105-106; *R. v. Cole*, 2012 SCC 53, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/12615/index.do>, at paras 47-48; *R. v. Dersch*, [1993] 3 SCR 768, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1068/index.do>, at para XXX; see also *Droit de la famille – 13328*, 2013 QCCA 277 (CanLII), [2013 QCCA 277 \(CanLII\)](https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1068/index.do) | *Droit de la famille — 13328* | CanLII, at para 39; see also *Godbout v. Longueuil (City)*, [1997] 3 SCR 844, *Godbout v. Longueuil (City) - SCC Cases (lexum.com)*, at para 99

¹³⁶ *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1691/index.do>, at para. 88

¹³⁷ *Fraser v Canada (Attorney General)*, 2020 SCC 28, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/18510/index.do>, [Fraser].

¹³⁸ *Fraser*, at para 52

¹³⁹ *Fraser*, at para 76

had the effect of perpetuating their disadvantage by encouraging continued discrimination against them.

6. Section 1 Analysis

a. Deference

72. Where a *Charter* infringement arises from a law of general application, the reviewing court must apply a section 1 *Oakes* test analysis.¹⁴⁰ Laws of general application affect the general public, as opposed to being limited to the rights of the particular applicants before the court.¹⁴¹

73. When undertaking a section 1 *Oakes* test analysis, a court's reasoning for showing deference, if any, must always reflect the two guiding principles of justification: the impugned measure must be shown to be consistent with democratic values, and it must be necessary in order to maintain public order and the general well-being of citizens.¹⁴²

73. The evidence in this Application shows that this travel ban was unnecessary to maintain citizens' well-being. The vaccines do not prevent transmission. The more fundamental the interest that is impaired by the government's actions, the less deferential a court should be toward government.¹⁴³ Mobility rights are among the most fundamental of Canadians' rights. The Respondent cannot argue two years into the pandemic that Covid is an unknown crisis that requires deference.

i. The Violations are not Saved Under Section 1 of the Charter

74. The preamble to the Charter states that "Whereas Canada is founded upon the principles that recognize the supremacy of God and the rule of law". Section 1 of the Charter guarantees the rights and freedoms subject only to limits on a *Charter* right that are "reasonable" and "demonstrably justified in a free and democratic society." The government bears the burden of proving that the limit has a sufficiently pressing objective and that the means chosen are

¹⁴⁰ *Doré v. Barreau du Québec*, 2012 SCC 12, *Doré v. Barreau du Québec - SCC Cases* (lexum.com), at para 36

¹⁴¹ *Alberta v. Hutterian Brethren of Wilson Colony*, 2009 SCC 37, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7808/index.do> [Hutterian Brethren], at para 23

¹⁴² *Chaoulli v. Québec (Attorney General)*, 2005 SCC 35, <https://scc-csc.lexum.com/scc-csc/scccsc/en/item/2237/index.do>, at para 93

¹⁴³ *M. v. H.*, [1999] 2 SCR 3, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1702/index.do>, at paragraph 295
164 *Ibid.* at para 305

proportional to the objective. The onus of proving that a limit or freedom guaranteed by the *Charter* meets the criteria of section 1 rests upon the party seeking to uphold the limitation. The civil standard of proof on a balance of probabilities applies.¹⁴⁴

75. For a limit to be prescribed by law: (1) the government entity in question must have been authorized to enact the policy; (2) the policy in question must set out binding rules of general application; (3) the policy must be sufficiently precise so as to enable people to regulate their conduct by it, and so as to provide guidance to those who apply the law; (4) the policy must be sufficiently accessible to give notice to the public of the rules to which they are subject.¹⁴⁵

76. These Applicants submit that the Interim Orders do not constitute a limit “prescribed by law” since they were enacted without proper governmental authority and are *ultra vires* the *Aeronautics Act*. As such, these Applicants submit the Interim Orders are not capable of justification under section 1 of the *Charter* and is therefore of no force and effect.

77. In the alternative, the Interim Orders fail the *Oakes* test for the reasons set out below.

b. The *Oakes* Test

i. First Branch – The Objective Is Not Pressing and Substantial

78. To satisfy this first stage of the *Oakes* test, “the objectives must be neither “trivial” nor “discordant with the principles integral to a free and democratic society.”¹⁴⁶ The government must submit evidence in order to prove the pressing and substantial nature of their goal.¹⁴⁷ In determining the purpose of a law, the courts must consider the entire context of the law, the object of the law, and the intention of Parliament.¹⁴⁸

79. These Applicants submit that the Interim Orders were not made in the public interest. The Respondent failed to provide credible or reliable evidence demonstrating any significant aviation

¹⁴⁴ *Oakes, supra*, at para 67

¹⁴⁵ *Greater Vancouver Transportation Authority v. Canadian Federation of Students*, 2009 SCC 31, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/7796/index.do>

¹⁴⁶ *Figueroa v. Canada (Attorney General)*, 2003 SCC 37, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2069/index.do>, at para 59

¹⁴⁷ *Vriend v. Alberta*, [1998] 1 SCR 493, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1607/index.do>, at para 115

¹⁴⁸ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1581/index.do>, at para 21

safety or security benefit achieved by banning unvaccinated Canadians from air travel, and as such, the Interim Orders are not in pursuit of a pressing and substantial objective.

80. The Respondent's Ms. Little testified that the purpose of the Vaccine Provisions was to ensure the safety and security of the transport system.¹⁴⁹ Ms. Little stated that "safety" in the context of the Vaccine Provisions for the transport sector includes protection against Covid infection even though both vaccinated and unvaccinated air travellers can be infected and spread Covid.¹⁵⁰

81. These Applicants submit that any objective that seeks to reduce transmission of Covid or reduce hospitalization is based on a flawed premise that every death in the Statistics Canada data is actually caused by Covid, and that the death statistics are accurate.

82. The Respondent's Owen Phillips, a senior analyst for Mortality and Quality of End of Life at Statistics Canada, testified that the Federal Government's guidelines for death reporting allow a doctor to make "an assumption" that Covid was the cause of a person's death, and that Covid as a cause of death can be coded based on a suspicion, even where there is no confirmation of Covid by testing.¹⁵¹ He confirmed that even where Covid's existence is just "probable" or "suspected" and it be counted as a "Covid death."¹⁵²

83. The Respondent's Dr. Guillaume Poliquin, Vice-President of PHAC tasked with the direction of the National Microbiology Laboratory, admitted during cross-examination that a positive PCR test result does not mean that the person with the positive result has an active Covid infection.¹⁵³ The PCR test could be positive for up to 100 days after an active Covid infection.¹⁵⁴

84. Dr. Bridle explained that as of February 17, 2022, almost half of "Covid-positive" hospital admissions were not due to Covid. They were admitted for other health reasons but had a positive PCR test.¹⁵⁵

¹⁴⁹ Transcript of the Cross Examination of Jennifer Little, at para 47

¹⁵⁰ Transcript of the Cross Examination of Jennifer Little, at para 54

¹⁵¹ Transcript of Owen Phillips, June 29, 2022, at paras. 26-30, 46-50 ("Phillips transcript")

¹⁵² Phillips Transcript, at paras. 53-55

¹⁵³ Transcript of G. Poliquin Cross Examination, June 15, 2022, at para. 390

¹⁵⁴ *Ibid.* at para. 391

¹⁵⁵ Bridle Affidavit, Exhibit "A", at paras. 10, 11, Figure "5"

85. Dr. Bridle and Dr. Pelech explained that the Omicron variant, which was the dominant Covid variant since December 2021,¹⁵⁶ is less serious than previous variants, resulting in high “cases”, but very low numbers of deaths and serious outcomes.¹⁵⁷ Further, the Respondent’s Dr. Kindrachuk admitted in cross examination that “...generally there’s more data right now supporting a lower associated risk of severe disease with Omicron than Delta.”¹⁵⁸

86. Susan Martinuk is a research expert retained to provide a professional opinion on the status of Canada’s healthcare system. Ms. Martinuk stated in her expert report:

Canada’s health care system was in a fragile and dysfunctional state prior to the Covid-19 pandemic...

Our medical systems often operate at near- or over-capacity levels. Patient care is compromised by limited numbers of hospital beds. This restriction is further exacerbated as Canada’s hospital beds are associated with high occupancy rates, low discharge rates, and long hospital stays when compared to other wealthy nations.¹⁵⁹

87. She cautioned that years of rationed services has resulted in fragmented and fragile medical system that can best be described as “dysfunctional and unable to provide comprehensive care to Canadians on a daily basis, let alone to adequately serve all Canadians during a prolonged pandemic.”¹⁶⁰ Canada’s hospital system was already strained. Covid is not the cause of overburdened hospitals.

88. Omicron is milder than previous strains of Covid, Canada’s death statistics from Covid are unreliable and likely overestimated, and Canada’s hospital system has for years, and before Covid, been at its breaking point. Any argument that the Interim Orders was necessary to protect Canadians from Covid, or to preserve the hospital system ought to be dismissed outright.

¹⁵⁶ Affidavit of Jennifer Little, page 25-26, para 72, Exhibit “X”, at page 21, Transcript of the Cross Examination of Jason Kindrachuk, at paras 69-70, Transcript of the Cross Examination of Tyler Brooks, at paras 271-275

¹⁵⁷ Affidavit of Steven Pelech, *supra*, at para 22, Affidavit of Byram Bridle *supra*, at para 6

¹⁵⁸ Kindrachuk Cross Examination Transcript, at para. 988

¹⁵⁹ Affidavit of Susan Martinuk [AR TAB 41], Exhibit “B” at para. 3.

¹⁶⁰ *Ibid.* Exhibit “B”, at para 11 and 12.

ii. Second Branch – The Interim Orders Are Not Reasonable or Demonstrably Justified

89. These Applicants submit that the Interim Orders fail all three parts of the second branch of the *Oakes* test.

a. There Is No Rational Connection Between the Interim Orders and the Government’s Objective

90. Section 1 requires government “to show a rational connection between the infringement and the benefit sought on the basis of reason or logic.”¹⁶¹ Where possible, the causal relationship between the limit and the objective should be proved by scientific evidence showing that as a matter of repeated observation, one affects the other.¹⁶² The Interim Orders’ infringement on *Charter* rights is not rationally connected to the government’s stated objective for the following reasons:

Covid Infected Vaccinated People Allowed on Airplanes

91. The Respondent's Dr. G. Poliquin admitted he is aware that there is no pre-departure testing for domestic flights in Canada for fully vaccinated people.¹⁶³ Mario Boily, Executive Director, Program Development, Aviation Security, Transport Canada, Dr. Tyler Brooks, Director of the Civil Aviation Medicine Branch at Transport Canada, and Dr. G. Poliquin all admitted in cross-examination that vaccinated passengers who are boarding an aircraft could be Covid positive.¹⁶⁴ Further, Dr. G. Poliquin admitted in cross-examination that not everyone who gets a Covid vaccine will develop antibodies to Covid.¹⁶⁵

92. It is irrational and unfair to permit people who have Covid to board airplanes just because they are fully vaccinated, and deny unvaccinated people from boarding airplanes even if they were to test negative for Covid. It is similarly arbitrary to permit vaccinated people to board airplanes

¹⁶¹ *Hutterian Brethren*, *supra*, at para. 48

¹⁶² *RJR-MacDonald Inc.*, *supra*, at para. 154; *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14577/index.do>, at paras 143-144; See also: *Mounted Police Association of Ontario*, *supra*, at para 143.

¹⁶³ G. Poliquin Cross Exam Transcript, at para. 440

¹⁶⁴ Boily Cross Exam Transcript, at pages 35-37; G. Poliquin Cross Exam Transcript, at para. 440, Transcript of the Cross Examination of Tyler Brooks, at para 186

¹⁶⁵ G. Poliquin Cross Exam Transcript, at para. 434

in Canada without pre-departure testing when the evidence is clear that fully vaccinated people can and do transmit Covid.

Since mid-December 2021, the Vaccinated Were More Likely than the Unvaccinated to Be infected or hospitalized with Covid

93. Ontario Public Health data showed that as of December 24, 2021, cases of Covid occurred predominantly among fully vaccinated individuals¹⁶⁶ and that most people in Ontario hospitals, including intensive care units, were vaccinated.¹⁶⁷ Vaccines intended to reduce the incidence of disease should not be mandated when those who are vaccinated have the highest incidence of the disease.

Viral Loads in the Fully Vaccinated (two doses) are the Same as in the Unvaccinated

94. In his expert report, Dr. Kindrachuk cited a March 2022 study by Puhach in *Nature Medicine* which compared “Infectious Virus Load in Unvaccinated and Vaccinated Individuals Infected with Ancestral, Delta, or Omicron SARS-Co-V-2”. Dr. Kindrachuk failed to mention that the authors found that there was no difference between fully vaccinated (two doses) people and unvaccinated people with respect to viral load in the context of Omicron.¹⁶⁸ He admitted he missed putting those vital details into his report.

Secondary Attack Rates from Unvaccinated Index Case is Almost Identical to Secondary Attack Rate from Vaccinated Index Case

95. Dr. Kindrachuk cited a meta-analysis by Madewell which studied secondary attack rates – the rates at which a second person acquires Covid from a first person - based on vaccination status. He admitted in cross-examination that the study showed that the secondary attack rate from an unvaccinated index case was almost identical to the secondary attack rate in a household from a fully vaccinated (two dose) case of Covid.¹⁶⁹

¹⁶⁶ Bridle Affidavit, Exhibit “A”, at para. 9, Figure “3”

¹⁶⁷ Bridle Affidavit, Exhibit “A”, at para. 10, Figure “4”

¹⁶⁸ Kindrachuk Cross Examination Transcript, at paras. 155-158

¹⁶⁹ Kindrachuk Cross Examination Transcript, at para. 323

Fully Vaccinated People More Likely to Get Omicron from Covid infected person than Unvaccinated People

96. Dr. Kindrachuk's Madewell meta-analysis also showed that fully vaccinated household contacts were more likely to get Omicron from an infected index case than unvaccinated household contacts, and he admitted that he left that part of the table out of his expert report.¹⁷⁰ He conceded that "you can make generalizations based off" of this data.¹⁷¹

The Interim Orders Ignore Natural Immunity, Which is Long Lasting and Confers Better Protection From Infection Than Protection From The Covid Vaccines

97. The Interim Orders do not allow people to provide evidence of natural immunity to board an aircraft, despite scientific evidence from two experts in immunology that naturally acquired immunity against SARS-CoV-2 has been shown to be long-lasting and protective for at least as long as this has able to be studied in the context of the Covid pandemic.¹⁷²

98. Dr. Pelech's evidence was that the presence of multiple antibodies against the SARS-CoV-2 protein was present at least 22 months after their initial SARS-CoV-2 infection.¹⁷³ It was his evidence that natural immunity offers exponentially more protection than the vaccines, and vaccinated people are 13 times more likely to get a symptomatic Covid infection than those with natural immunity.¹⁷⁴

Protective Effect of the Covid Vaccines Wanes Significantly After Six Months

99. The Omicron variant was the dominant variant in Canada since December of 2021 and represented 99.9-100% of Covid variants in Canada as early as April of 2022.¹⁷⁵ Covid vaccines wane significantly. After six months, two doses of Covid vaccines provide "very low"¹⁷⁶ protection against infection and transmission of Omicron.

¹⁷⁰ Kindrachuk Cross Examination Transcript, at paras. 330-331, 346

¹⁷¹ Kindrachuk Cross Examination Transcript, at para. 1013

¹⁷² Bridle Affidavit, Exhibit "B", at paras. 19-23; Pelech Affidavit, Exhibit "B", at para 54

¹⁷³ Pelech Affidavit [AR TAB38], Exhibit "B", at para. 61

¹⁷⁴ Pelech Affidavit, Exhibit "B", at para. 66

¹⁷⁵ Affidavit of Jennifer Little, page 25-26, para 72, Exhibit "X", at page 21, Transcript of the Cross Examination of Jason Kindrachuk, at paras 69-70, Transcript of the Cross Examination of Tyler Brooks, at paras 271-275

¹⁷⁶ Affidavit of Jennifer Little, paragraphs 72, 71, 69, Exhibit "X", at page 21, Exhibit "W", at page 4, Exhibit "V", at page 7

100. Dr. Bowdish, the Canada Research Chair in Aging and Immunity, admitted that “two doses of the vaccines approved for use in Canada do not protect against symptomatic infection with the Omicron variant (estimated 19% protection or less)”.¹⁷⁷ Recently PHAC studies found that two doses “did not show a statistically significant benefit of two doses on transmissions.”¹⁷⁸ Dr. Celia Lourenco, Director General, Biologic and Radiopharmaceutical Drugs Directorate in the Health Products and Food Branch, Health Canada, admitted that after three months the effectiveness of two doses does not meet the level of effectiveness required for the initial approval of a vaccination, which is 50% effective against infection.¹⁷⁹

101. Recent data showed there were millions of Canadians who received their second dose over six months ago.¹⁸⁰ As of August 2021, almost 70% of Canadians received two doses of a Covid vaccine. As of May 2022, under 50% of Canadians received three doses of a Covid vaccine. A significant percentage of Canadians did not receive a booster and would have received a second dose more than six months ago. These vaccinated Canadians were not protected against Covid and were transmitting Covid given the lapse from their last vaccine.

No Reliable Evidence That PHAC Recommended the Vaccine Mandate to Transport Canada

102. Ms. Little and Mr. Boily provided evidence on the policy reasons for the Interim Orders. Ms. Little stated that she had never seen a direct recommendation by PHAC to implement a vaccine mandate.¹⁸¹ Mr. Boily stated that PHAC recommended the vaccine mandate and he first became aware of the recommendation in August 2021.¹⁸² Mr. Boily also testified that the recommendation was updated in April 2022, however he refused to answer whether the recommendation was updated at any other time¹⁸³ or clarify what changes to the recommendations were made, citing cabinet privilege.¹⁸⁴ An undertaking to provide the PHAC recommendation and

¹⁷⁷ Affidavit of Dawn Bowdish, at para vii, page 5

¹⁷⁸ Affidavit of Jennifer Little, Exhibit “X”, at page 12

¹⁷⁹ Transcript of the Cross Examination of Celia Lourenco, at paras 152-158

¹⁸⁰ Transcript of the Cross Examination of Jason Kindrachuk, Exhibit No. 1

¹⁸¹ Transcript of the Cross Examination of Jennifer Little, at para 162-163

¹⁸² Transcript of the Cross Examination of Mario Boily, at pages 77-78

¹⁸³ Transcript of the Cross Examination of Mario Boily, at page 81-83

¹⁸⁴ Transcript of the Cross Examination of Mario Boily, at page 81-83

its updates was refused.¹⁸⁵ As a result of these omissions and refusals, and the contradictory evidence from Ms. Little, Mr. Boily's evidence on this point is unreliable.

103. The Respondent also provided a mitigation strategy for Covid from PHAC dated November 25, 2021, that did not recommend vaccination as a pre-requisite to travel by air.¹⁸⁶ It is these Applicants' submission that there is no credible or reliable evidence to confirm that PHAC made such a recommendation.¹⁸⁷ As such, prohibiting the unvaccinated Applicants from travelling by air is not rationally connected to the stated objective of the government.

Arbitrariness and Lack of Evidence in the Transportation Sector

104. The Interim Orders arbitrarily prohibit unvaccinated Canadians from leaving Canada by airplane, while allowing them to fly into Canada on the same airplane with vaccinated individuals. The only difference in those scenarios is the destination of the airplane. No scientific evidence was presented show that unvaccinated individuals present a greater risk of transmitting Covid to vaccinated people depending on which direction the airplane is flying.¹⁸⁸ The Interim Orders defy common sense and logic.

105. The Respondent did not provide evidence to show how many passengers entering, leaving, or flying within Canada were infected with Covid. Dr. Waddell, Knowledge Synthesis Team Lead at PHAC, responsible for Covid data review, did not believe this data is available.¹⁸⁹ Dr. Waddell stated that there were few studies that look at the effect of vaccination status on in-flight transmission, and that this has limited the ability to have confidence in the association between these factors.¹⁹⁰ Dr. Waddell also stated that the most recent update on in-flight transmission of Covid occurred in November 2021,¹⁹¹ which preceded the arrival of the now dominant Omicron

¹⁸⁵ Transcript of the Cross Examination of Mario Boily, at page 90-91

¹⁸⁶ Waddell Cross Exam, at paras. 300-305

¹⁸⁷ Transcript of the Cross Examination of Lisa Waddell, at para 300-305

¹⁸⁸ Waddell Cross Exam, at para. 372

¹⁸⁹ Transcript of the Cross Examination of Lisa Waddell, at paras 59-64

¹⁹⁰ Waddell Cross Examination, supra, at paras. 143-144, paras 243-246, See also Waddell Cross Examination at paras. 235-236, 300-305

¹⁹¹ Transcript of the Cross Examination of Lisa Waddell, at paras 235-236, 300-301

variant in Canada.¹⁹²¹⁹³¹⁹⁴ Dr. Waddell also stated that making vaccination a prerequisite to fly was not identified as a mitigation strategy in evidence briefs provided by PHAC since it has not been evaluated in scientific literature.¹⁹⁵

106. Ms. Little, who had significant responsibility in the construction of the Interim Orders,¹⁹⁶ stated she was unaware of any in-flight transmission studies since May 2021,¹⁹⁷ and that this study was “not specifically relevant to the vaccination mandate” since it did not provide data in the context of the Delta variant.¹⁹⁸ PHAC stated this study was the most recent evidence on in-flight transmission before the implementation of the mandate.¹⁹⁹ Ms. Little also stated that she was not aware of any studies, data, or conversations regarding infection and absenteeism of those employed in the transportation sector before the vaccine mandate was implemented.²⁰⁰

107. Dr. Tyler Brooks stated that attempting to obtain data about the effectiveness of a single implemented measure, including testing and vaccination, is impossible.²⁰¹

108. These Applicants submit that the Respondent’s lack of evidence on the effectiveness of vaccination on in-flight transmission illustrates the lack of a rational connection between the objective of the Interim Orders.

b. The Interim Orders Do Not Minimally Impair the *Charter* Rights They Infringe

109. Under section 1, the limit must impair the right or freedom “as little as possible”. This means that the impugned measure “must be carefully tailored so that rights are impaired no more than necessary”.²⁰² A failure to “explain why a significantly less intrusive and equally effective

¹⁹² Affidavit of Jennifer Little, para 72, page 25-26, Exhibit “X”, at page 21, Transcript of the Cross Examination of Jason Kindrachuk, at paras 69-70, Transcript of the Cross Examination of Tyler Brooks, at paras 271-275

¹⁹³ Transcript of the Cross Examination of Lisa Waddell, at paras 235-236, 300-301

¹⁹⁴ Affidavit of Jennifer Little, page 25-26, para 72, Exhibit “X”, at page 21, Transcript of the Cross Examination of Jason Kindrachuk, at paras 69-70, Transcript of the Cross Examination of Tyler Brooks, at paras 271-275

¹⁹⁵ Transcript of the Cross Examination of Lisa Waddell, at para 300-305

¹⁹⁶ Transcript of the Cross Examination of Jennifer Little at para 39, 42, 44-45, 519, and 696-697

¹⁹⁷ Transcript of the Cross Examination of Jennifer Little, at para 76

¹⁹⁸ Transcript of the Cross Examination of Jennifer Little, at para 72-74, Affidavit of Jennifer Little, at paras. 36-37, pages 13-14, Exhibit ”J”, page 1

¹⁹⁹ Affidavit of Jennifer Little, at paras. 30, 36-37, pages 11, 13-14, Exhibit ”J”, page 1

²⁰⁰ Transcript of the Cross Examination of Jennifer Little, at para 101-109

²⁰¹ Transcript of the Cross Examination of Tyler Brooks, at para 185-187

²⁰² *Oakes, supra*, at para 70, *Hutterian Brethren, supra*, at para 145

measure was not chosen” may be fatal to the impugned measure.²⁰³

110. There is some flexibility in what constitutes an acceptable alternative: “...the court need not be satisfied that the alternative would satisfy the objective to *exactly* the same extent or degree as the impugned measure... The requirement for an “equally effective” alternative measure...should not be taken to an impractical extreme. It includes alternative measures that give sufficient protection, in all the circumstances, to the government’s goal”²⁰⁴ The Interim Orders do not minimally impair the *Charter* rights of these Applicants. There are alternative measures available to the Respondent that give sufficient protection to travellers from Covid.

Covid Testing and Masking

111. On cross examination, Dr. G. Poliquin agreed with a “layered approach” to try to prevent transmission of Covid.²⁰⁵ He also admitted he would have a higher degree of comfort that a person was not infectious or going to transmit Covid if he had a negative PCR nasal swab and saliva test 48 hours before a flight, a negative antigen test on the same day as the flight, and wore a mask.²⁰⁶

Vitamin D as a Preventative Measure for Covid

112. The Respondent could have recommended Vitamin D supplementation and testing during the Covid pandemic. Dr. Bridle’s evidence (77 peer-reviewed scientific articles) showed that Vitamin D sufficiency is strongly associated with lower risk of developing Covid, less severity of Covid, reduced hospital admissions, faster recovery if admitted to a hospital, and a reduced risk of Covid induced death.²⁰⁷

Early Treatment Options

113. Dr. Bridle and Dr. Pelech recommended the Nobel Prize winning anti-parasitic drug Ivermectin for early out-patient treatment for Covid.²⁰⁸ Multiple clinical trials from other countries

²⁰³ *Alberta v. Hutterian Brethren, supra*, at para. 54

²⁰⁴ *Hutterian Brethren, supra*, at para. 55; See also *Multani v. Commission scolaire Marguerite-Bourgeoys*, 2006 SCC 6, at para. 77 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15/index.do>; See also *Syndicat Northcrest v. Amselem*, 2004 SCC 47, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2161/index.do>

²⁰⁵ G. Poliquin Cross Exam, at para. 418

²⁰⁶ *Ibid.* at paras. 234-426

²⁰⁷ Bridle Affidavit, Exhibit “A”, at paras. 99-100

²⁰⁸ Bridle Affidavit, Exhibit “A”, at para 101; Pelech Affidavit, Exhibit “B”, at paras. 75-79

found that the treatment works in early and late stages of the disease.²⁰⁹ The drug has been used to treat patients for 40 years, has a proven safety record, and has never been withdrawn off of the market for safety reasons.²¹⁰

Screening for Covid Symptoms

114. These Applicants submit that a less drastic and effective measure to protect air travellers would have been to screen for Covid symptoms before boarding an airplane. As noted above, Dr. Kindrachuk testified in cross examination that there is an “impact of symptoms on transmission” of Covid in the context of the Omicron variant. He stated: “The viral load provides us with some context for the potential that somebody might be able to spread virus, but it is not the sole variable that indicates whether or not someone will be able to transmit. Symptoms of disease are also required.”²¹¹ As per Dr. Kindrachuk’s evidence, if unvaccinated people do not have symptoms of Covid, they cannot transmit the virus.

c. The Deleterious Effects Outweigh Any Salutary Benefits

Severe Mobility Restrictions

115. Ms. Little acknowledged that the outcome of the policy prevents the majority of unvaccinated Canadian citizens from travelling,²¹² thus impacting millions of Canadians.²¹³²¹⁴ These Applicants as well as millions of other unvaccinated Canadians have been prevented from visiting family, been unable to do their jobs,²¹⁵ and barred from international vacations.²¹⁶ These unprecedented and significant effects of mobility restrictions on their own is enough of a deleterious effect to satisfy this part of the test.

Risk of Myocarditis and Permanent Heart Damage

²⁰⁹ Pelech Affidavit, Exhibit “B”, at para. 78

²¹⁰ Bridle Affidavit, Exhibit “A”, at para. 101; See also Dr. Pelech Response to Undertaking Re: Minister of Health suggests ivermectin for “off-label” use.

²¹¹ Kindrachuk Cross Examination Transcript, at para. 152

²¹² Transcript of the Cross Examination of Jennifer Little, at paras 1346-1347

²¹³ Transcript of the Cross Examination of Jennifer Little, at para 1256

²¹⁴ Transcript of the Cross Examination of Jennifer Little, at para 1314

²¹⁵ Baigent Examination at para. 13

²¹⁶ Peckford Affidavit, supra, at paras. 2-4, 22-25, Nikkanen Affidavit, supra, at paras. 2-5,11, 13-19, 22, 32, Baigent Affidavit, supra, at paras. 2-5, 7, 16-17, 22-23, 32, Belobaba Affidavit, supra, at paras. 2,5,19-20, Grcic Affidavit, supra, at paras. 2, 19-23, 26, 28, MacDonald Affidavit, supra, at paras. 2, 8

116. Covid vaccines can cause myocarditis and sudden death.²¹⁷ Dr. McCullough's evidence was that myocarditis was not mild or rare, and Dr. Liu's evidence was that it could be considered "mild" because young males typically are discharged from the hospital with no lingering symptoms.²¹⁸ However, Dr. Liu admitted on cross examination that just because a patient who has Covid vaccine induced myocarditis goes home from the hospital after a couple of days and has clinical improvement does not mean that there are not underlying issues that will present in the long-term.²¹⁹ Dr. Liu was shown in cross examination a study that followed young males with Covid induced myocarditis who had "rapid clinical improvement and normalization of echocardiographic measures of systolic function" when they were discharged home from the hospital, and brought them back for further testing 3-8 months after their diagnosis of myocarditis. A large portion had persistent late gadolinium enhancement abnormalities and "abnormal strain persisted for the majority of patients at follow up".²²⁰ These conditions are indicative of heart damage.²²¹ Dr. Liu admitted that he is also seeing these results when he follows up with patients with Covid vaccine induced myocarditis.²²² This study shows it is erroneous and foolish to label vaccine-induced myocarditis as "mild" when young males are showing persistent cardiac abnormalities longer term. In his affidavit, Dr. Liu also referred to myocarditis from the Covid vaccine in young males as an "emergency".²²³

117. Dr. McCullough's evidence was that the vaccine-induced myocarditis in young males was worse than myocarditis from Covid, and Dr. Liu's evidence was the opposite. Dr. Liu relied heavily on a Centre for Disease Control ("CDC") document²²⁴ that analyzed codes in US hospitals for myocarditis from Covid and vaccine-induced myocarditis, and determined that the prevalence of myocarditis from Covid was higher for young males than myocarditis amongst young males vaccinated with two doses for Covid.²²⁵ The CDC document is unreliable because:

²¹⁷ McCullough Affidavit, at Exhibit "B", paras. 4-11, 17-19; Liu Cross Exam Transcript, at para. 89

²¹⁸ Liu Cross Exam Transcript 2022-06-01, at para. 134

²¹⁹ Liu Cross Examination Transcript, at para. 172

²²⁰ Liu Cross Examination Transcript, paras. 170-171

²²¹ McCullough Affidavit, Exhibit "B", at paras. 12-16

²²² *Ibid.* at para. 170

²²³ Liu Affidavit, at Exhibit "B", at page 3

²²⁴ CDC Morbidity and Mortality Weekly Report "Cardiac Complications after SARS-CoV-2 Infection and mRNA COVID-19 Vaccination PCORnet, United States, 10 January 2021 to January 2022"

²²⁵ Liu Affidavit, *supra*, at pages 6-7

- a) It is not externally peer-reviewed;²²⁶
- b) Myocarditis was not diagnosed with an EKG or an MRI,²²⁷ which is how Dr. Liu says myocarditis is properly diagnosed.²²⁸ The study warned that chart reviews were not done of the patients with myocarditis, which meant that the myocarditis cases could have been misclassified.²²⁹
- c) The Covid diagnosis was made based only on a positive PCR test, which could have been positive from finding fragments of a previous infection. The patients with a positive PCR test who coded for myocarditis could have been in the hospital from a condition other than Covid, such as diabetes, hypertension, or had other co-morbidities;²³⁰
- d) The study excluded people who received the Covid vaccine and then tested positive for Covid within 30 days – they could have myocarditis from the vaccine, but they would not have been counted;²³¹
- e) The study used two different data sets: it counted patients who were classified with myocarditis and a positive Covid test from January 2021-January 2022 (12 months of data) and compared those numbers to patients who were diagnosed with myocarditis after the Covid vaccine from May 2021-January 2022 (young people weren't being vaccinated until Spring 2021 after the initial vaccine rollout in December 2020 in the US – there is only 8 months of data for this group) – there was clearly 4 more months for the Covid myocarditis diagnoses cases to accumulate. A more accurate comparison would have been from May 2021-January 2022 for both groups.²³²
- f) There is an “unspecified dose” cohort of over 1 million patients that had myocarditis post-Covid vaccine, and some of those people may have had two doses but were excluded from the two-dose category because the dosage number was unknown.²³³

118. Dr. Liu is aware of research that shows that people who have recovered from SARS-CoV-2 and then receive a Covid vaccine are more likely to develop myocarditis.²³⁴ He agreed that it is not “recommended” or “standard” practice to vaccinate someone for Covid when they have just

²²⁶ Liu Cross Examination Transcript, at para. 296

²²⁷ Liu Cross Examination Transcript, at para. 313

²²⁸ Liu Cross Examination Transcript, at para. 81

²²⁹ Liu Cross Examination Transcript, at para. 314

²³⁰ Liu Cross Examination Transcript, at paras. 305-312

²³¹ Liu Cross Examination Transcript, at para. 325

²³² Liu Cross Examination Transcript, at paras. 337-339

²³³ Liu Cross Examination Transcript, at paras. 380-387

²³⁴ Liu Cross Examination Transcript, at para. 321

recovered from Covid.²³⁵ But because the Interim Orders do not exempt people who have recovered from Covid from the travel mandate, Covid recovered Canadians could be receive the vaccines because they want to travel, and increase their chances of getting myocarditis. Myocarditis can lead to heart failure and death, and people who have heart failure from myocarditis have a 50% chance of death in the following five years.²³⁶

119. The Interim Orders are reckless with the heart health of Canadians, particularly of young males who are at high risk to suffer permanent heart damage due to the Covid vaccines,²³⁷ and have a very low risk of a negative outcome from Covid.²³⁸ The situation is even worse for young male athletes, like Aedan MacDonald, who have an even higher risk of myocarditis after the Covid vaccine.²³⁹

Risk of Infertility and Harm to Pregnant Mothers

120. Dr. Valentina Cvetic, an obstetrician and gynecologist with over 20 years of experience in a clinical practice explained the risks of the Covid vaccines on female fertility and pregnant women. In her professional opinion: (1) women of childbearing age who are healthy and who do not have co-morbidities are at very low risk of developing severe disease if infected with Covid;²⁴⁰ (2) there is no proven long-term safety record in pregnancy;²⁴¹ (3) there are no studies proving the Covid vaccines are safe for pregnant or breastfeeding women;²⁴² (4) there are no studies proving that these vaccines are not associated with miscarriage in the first or early second trimester;²⁴³ (5) the toxic spike protein in the body after Covid-19 vaccination travels to the ovaries;²⁴⁴ and (6) there are reports of abnormal menstrual bleeding after the Covid-19 vaccinations which is concerning for womens' reproductive health.²⁴⁵

²³⁵ Liu Cross Examination Transcript, at paras. 321-324

²³⁶ McCullough Affidavit, Exhibit "B", at paras. 3, 15-16

²³⁷ McCullough Affidavit, at para 14, Exhibit "B", at paras. 4-23

²³⁸ McCullough Affidavit, at para 14, Exhibit "B", at paras. 24-29

²³⁹ McCullough Affidavit, at para 14, Exhibit "B", at para. 20, figure 4; Liu Cross Examination Transcript, at paras. 183-184

²⁴⁰ Affidavit of Valentina Cvetic, para 6, ["Cvetic Affidavit"]

²⁴¹ Cvetic Affidavit, at para 6

²⁴² Cvetic Affidavit, at para. 6

²⁴³ Cvetic Affidavit, at para. 6

²⁴⁴ Cvetic Affidavit, at para. 6

²⁴⁵ Cvetic Affidavit, at para. 6

121. Dr. V. Poliquin, the Respondent's maternal health expert, admitted in cross examination that stillbirth in the Pfizer trial (0.7%) was two times the 5-year pre-Covid average in Ontario (0.47%)²⁴⁶ and that observational data of pregnant women will only be available now given that at the earliest mothers were first vaccinated in March of 2021 and 9 months takes us to the present time.²⁴⁷

122. It is further submitted by these Applicants that Dr. V. Poliquin made several fatal errors in her expert report, including a gross misunderstanding of the difference between odds ratios and risk ratios where she claimed that pregnant women had twice the risk of ICU admissions. This statement is not supported by the evidence.²⁴⁸ Some of the authors of the studies she relied on received funding from Pfizer and other pharmaceutical companies, which renders them biased and unreliable.²⁴⁹

Mandating a Vaccine With No Long-Term Safety Data Is Dangerous

123. Dr. Lourenco confirmed that phase 3 clinical trials of the Pfizer, Moderna, AstraZeneca, and Johnson and Johnson Covid vaccines are not completed,²⁵⁰ and that phase 3 clinical trials continue in order to collect long-term efficacy and safety data.²⁵¹ While the annual flu vaccine is updated for yearly strains, the initial authorization of the flu vaccine completed phase 3 clinical trials prior to its initial authorization.²⁵²

124. Dr. Bridle and Dr. Pelech consider them to be experimental because they are in clinical trials, and also because they are using technology that has never been injected into humans except in small-scale clinical trials.²⁵³ There is no long-term safety data, and the drug is new. The clinical trials for the mRNA vaccines for HIV, rabies, Zika and Influenza that Dr. Kindrachuk references

²⁴⁶ Cross Examination of Dr. Vanessa Poliquin, at pages 298 and 299

²⁴⁷ *Ibid.*, at page 267, lines 1-7.

²⁴⁸ *Ibid.*, at pages 81, lines 1-18.

²⁴⁹ Cross Examination of Dr. V. Poliquin, at paras. 706, 708-709, 717; Cross Examination of Dr. Cvetic, at para. 149

²⁵⁰ Transcript of the Cross Examination of Celia Lourenco, at paras 691-694

²⁵¹ Cross Examination of Celia Lourenco, at paras 691-694, 781

²⁵² Transcript of the Cross Examination of Celia Lourenco, at paras 689-690

²⁵³ Bridle Affidavit, *supra*, at paras. 35-36, 40, 72, Pelech Affidavit, *supra*, at paras. 6-13, See also, Cross Examination of Jason Kindrachuk, at para 404-410, Lourenco Affidavit, *supra*, at para. 82, Cross Examination of Celia Lourenco, *supra*, at paras. 691-694, 781; The Zabdeno vaccine referenced by Dr. Kindrachuk was not an mRNA vaccine, and it was only given to 190,000 people – not billions of people. (Dr. Jason Kindrachuk Response to Undertakings, No. 2 [AR TAB 96])

were never completed because they failed based on efficacy, and they were never injected into the general public outside of the clinical trials.²⁵⁴

125. Dr. Bridle’s evidence is that a typical 10–15-year timeline is appropriate to develop a short, mid, and long-term safety profile for a new vaccine.²⁵⁵ He explained the perils of rushed vaccine programs in the past, where the following vaccines caused harm to people:

- i.) 1976 – the swine flu vaccine caused Guillain Barre syndrome in the US
- ii.) 2009 – the Pandemrix swine flu vaccine caused narcolepsy in Europe
- iii.) 2016 – Dengvaxia vaccine caused a worsening of dengue virus in the Phillipines
- iv.) 1955 – Salk polio vaccine caused paralysis²⁵⁶

126. It is vitally important to obtain long-term safety data before fully assessing the safety of the Covid vaccines because adverse events from vaccines can manifest after months post-vaccination. Dr. Kindrachuk admitted in cross examination that narcolepsy from the Pandemrix vaccine started later than two months after the vaccine was administered, and that there was a two-year risk window of developing narcolepsy post-Pandemrix vaccination.²⁵⁷ And Dr. Liu admitted that he has seen heart damage months after vaccine-induced myocarditis was diagnosed and after young males were sent home from the hospital with resolved symptoms.²⁵⁸

i. Limited Salutary Benefits

127. As described in the “rational connection” section, there is a clear lack of evidence demonstrative of any benefit provided by the Interim Order in the transportation sector.

128. Omicron has been the dominant variant in Canada since December 2021.²⁵⁹ Covid vaccines effectiveness wanes significantly, and after six months two doses of Covid vaccines have “very low” protection against Omicron infection.²⁶⁰ PHAC studies and multiple witnesses have

²⁵⁴ Cross Examination of Jason Kindrachuk, at paras. 404-410

²⁵⁵ Affidavit of Dr. Bridle, Exhibit “A”, at paras. 91-97

²⁵⁶ *Ibid.*

²⁵⁷ Kindrachuk Cross Examination Transcript, at paras. 478-479, paras. 485-486

²⁵⁸ Liu Cross Examination Transcript, *supra*, at paras. 151-155, 159-161-163, 170-173

²⁵⁹ Affidavit of Jennifer Little, para 72, page 25-26, Exhibit “X”, at page 21, Transcript of the Cross Examination of Tyler Brooks, at paras 271-275

²⁶⁰ Affidavit of Jennifer Little, paragraphs 72, 71, 69, pages 24-26, Exhibit “X”, at page 21, Exhibit “W”, at page 4, Exhibit “V”, at page 7

consistently stated that effectiveness against Omicron infection is less than 20% after 6 months.²⁶¹ Vaccine effectiveness against Omicron transmission is low for two doses,²⁶² and recent studies provided by PHAC “did not show a statistically significant benefit of two doses on transmissions.”²⁶³ The ability of individuals to mitigate Covid-associated risk using free will and personal risk assessment further detracts from the Interim Order’s ability to provide any benefit.

129. It is submitted that the Respondents have failed to establish an evidentiary foundation which demonstrates any significant benefit obtained by the impugned Interim Order.

The *Doré* Analysis

130. In the alternative, if the court finds that the proper framework is the *Dore* analysis, as opposed to the *Oakes* test analysis, these Applicants submit that the Interim Orders are unreasonable based on the analysis of the evidence cited above. The Supreme Court of Canada has been clear that the *Doré* framework “works the same justificatory muscles” as the *Oakes* test.²⁶⁴ The Interim Orders fail to proportionately balance these Applicants’ *Charter* rights and represents a measure totally inconsistent with a free and democratic society.

E. The Interim Orders Contravene the *Canadian Bill of Rights*

131. The *Canadian Bill of Rights* has among its objects the affirmation of the dignity and worth of the human person in Canadian society, and the respect for the rule of law. It is paramount to other federal legislation and regulations and is quasi-constitutional in nature. The *Aeronautics Act* and the Interim Orders must be construed and applied as not to abrogate, abridge, or infringe, or to authorize the abrogation, abridgement, or infringement, of the rights and freedoms recognized and declared in the *Bill of Rights*. The Interim Orders violate sections 1(a) and 1(b) in a similar manner to the comparable sections of the *Charter*.²⁶⁵

²⁶¹ Affidavit of Jennifer Little, paragraphs 72, 71, pages 25-26, Exhibit “X”, at page 12, Exhibit “W”, at page 4, Affidavit of Jason Kindrachuk, Exhibit “B” at page 28, figure 19, Affidavit of Dawn Bowdish, at para vii, page 5

²⁶² Affidavit of Jennifer Little, at para 72, page 26, Exhibit “X” at page 21

²⁶³ Affidavit of Jennifer Little, at Exhibit “X”, page 12

²⁶⁴ *Loyola High School v. Quebec (Attorney General)*, 2015 SCC 12, at para 40, <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14703/index.do>

²⁶⁵ These Applicants will address this further in oral argument.

F. The Interim Orders Violate the International Covenant of Civil and Political Rights

132. The *International Covenant on Civil and Political Rights* (ICCPR)²⁶⁶ was adopted by the United General Assembly on December 16, 1966. Canada acceded to the Covenant on May 19, 1976. As a result, Canada has contracted to abide by the terms of the ICCPR through ratification of the treaty. The Interim Orders violate Articles 7, 12, 18 and 26 of the ICCPR in a similar manner to the comparable sections of the *Charter*.²⁶⁷

PART V - CONCLUSION

133. These Applicants respectfully submit that this Court ought to allow their Application for judicial review due to the various *Charter* breaches, ultra vires nature of the Interim Orders, breaches of the *Bill of Rights* and International Covenant, and the Respondent's failure to justify its breaches with cogent, demonstrable evidence.

All of which is respectfully submitted this 10th day of August 2022.



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²⁶⁶ *International Covenant on Civil and Political Rights*, United Nations (General Assembly), Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49

²⁶⁷ These Applicants will address this further in oral argument.

LIST OF AUTHORITIES

TAB	AUTHORITY
1.	<i>Canada (Minister of Citizenship and Immigration) v Vavilov</i> , [2019] SCJ No 65
2.	<i>Nova Scotia (Workers' Compensation Board) v. Martin</i> , 2003 SCC 54
3.	<i>Roncarelli v. Duplessis</i> , [1959] SCR 121
4.	<i>White Burgess Langille Inman v Abbott and Haliburton Company</i> [2015] 2 SCR 182
5.	<i>R. v. Big M Drug Mart Ltd.</i> , [1985] 1 SCR 295
6.	<i>R. v. Morgentaler</i> , 1988 90 (SCC), [1988] 1 SCR 30
7.	<i>Divito v. Canada (Public Safety and Emergency Preparedness)</i> , 2013 SCC 47
8.	<i>Canadian Egg Marketing Agency v. Richardson</i> , [1998] 3 SCR 157
9.	<i>Droit de la famille – 13328</i> , 2013 QCCA 277 (CanLII)
10.	<i>Kamel v. Canada (Attorney General)</i> , 2009 FCA 21
11.	<i>Taylor v. Newfoundland and Labrador</i> , [2020] NLSC 125
12.	<i>Black v. Law Society of Alberta</i> , [1989] 1 SCR 591
13.	<i>Carter v. Canada (Attorney General)</i> , 2015 SCC 5
14.	<i>R. v. Vaillancourt</i> , [1987] 2 S.C.R. 636
15.	<i>R. v. Heywood</i> , [1994] S.C.R. 761
16.	<i>A.C. v. Manitoba (Director of Child and Family Services)</i> , 2009 SCC 30
17.	<i>R. v. Smith</i> , 2015 SCC 34
18.	<i>Rodriguez v. British Columbia (Attorney General)</i>
19.	<i>Reibl v. Hughes</i> , [1980] 2 SCR 880
20.	<i>Kitchen v. McMullen</i> , 1989 CanLII 218 (NB CA)
21.	<i>Canada (Attorney General) v. Bedford</i> , 2013 SCC 72
22.	<i>Hunter v. Southam Inc.</i> , [1984] 2 SCR 145
23.	<i>R. v. Gomboc</i> , 2010 SCC 55
24.	<i>R. v. Plant</i> , [1993] 3 SCR 281
25.	<i>R. v. Ahmad</i> , 2020 SCC 11
26.	<i>R. v. Morelli</i> , 2010 SCC 8
27.	<i>R. v. Cole</i> , 2012 SCC 53
28.	<i>R. v. Dersch</i> , [1993] 3 SCR 768
29.	<i>Godbout v. Longueuil (City)</i> , [1997] 3 SCR 844
30.	<i>Law v. Canada (Minister of Employment and Immigration)</i> , [1999] 1 S.C.R. 497
31.	<i>Fraser v Canada (Attorney General)</i> , 2020 SCC 28
32.	<i>Dore v. Barreau du Quebec</i> , 2012 SCC 12
33.	<i>Alberta v. Hutterian Brethren of Wilson Colony</i> , 2009 SCC 37
34.	<i>Chaoulli v. Quebec (Attorney General)</i> , 2005 SCC 35
35.	<i>M. v. H.</i> , [1999] 2 SCR 3
36.	<i>Greater Vancouver Transportation Authority v. Canadian Federation of Students</i> , 2009 SCC 31
37.	<i>Figueiroa v. Canada (Attorney General)</i> , 2003 SCC 37
38.	<i>Vriend v. Alberta</i> , [1998] 1 SCR 493
39.	<i>Rizzo & Rizzo Shoes Ltd. (Re)</i> , [1998] 1 SCR 27
40.	<i>RJR-MacDonald Inc. v. Canada (Attorney General)</i> , [1995] 3 SCR 199

41.	<i>Mounted Police Association of Ontario v. Canada (Attorney General), 2015 SCC 1</i>
42.	<i>Multani v. Commission scolaire Marguerite-Bourgeoys, 2006 SCC 6</i>
43.	<i>Syndicat Northcrest v. Amselem, 2004 SCC 47</i>
44.	<i>Loyola High School v. Quebec (Attorney General), 2015 SCC 12</i>
45.	<i>R. v. Oakes, [1986] 1 SCR 103</i>
LEGISLATION AND REGULATIONS	
46.	<i>Interim Order Respecting Certain Requirements for Civil Aviation Due to Covid-19, No. 52</i>
47.	<i>Aeronautics Act, R.S.C. 1986, c. A-2</i>
48.	<i>Constitution Act, 1982</i>
49.	<i>Canadian Charter of Rights and Freedoms, Part 1 of the Constitution Act, 1982</i>
50.	<i>Canadian Bill of Rights, SC 1960, c 44</i>
51.	<i>International Covenant on Civil and Political Rights, United Nations General Assembly, 1966</i>
52.	<i>Federal Courts Act, R.S.C., c. F-7</i>
OTHER SOURCES	
53.	<i>The Honourable Brian Peckford, Premier of Newfoundland and Intergovernmental Affairs Minister, Towards the Twenty First Century Together, August 1980</i>
54.	<i>Jones, David Phillip, de Villars, Anne (2020). Chapter 7: Losing Jurisdiction Through an Abuse of Discretion</i>
55.	<i>Brian Bird, "The Reasons for Freedom of Conscience," The Forgotten Fundamental Freedoms of the Charter (Toronto: Lexis Nexis, 2020) at 118</i>