

Amended pursuant to the Orders of the Honourable Justice Crinson dated April 5, 2024, and February 7, 2025.

Court File No. T-1081-23

**FEDERAL COURT**  
PROPOSED CLASS PROCEEDING

B E T W E E N:

*(Court Seal)*

GREGORY HILL, BRENT WARREN and TANYA LEWIS

Plaintiffs

and

HIS MAJESTY THE KING

Defendants

**FURTHER AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANTS:

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

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

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

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

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

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

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

April 24, 2023

Issued by:

Address of local office: Pacific Centre  
P.O. Box 10065  
701 West Georgia Street  
Vancouver BC V7Y 1B6

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TO: His Majesty The King in Right of the Government of Canada

AND TO: The Minister of Transportation

AND TO: The Attorney General of Canada

## CLAIM

### RELIEF SOUGHT

1. The Plaintiffs, Gregory Hill, Brent Warren, and Tanya Lewis, claim on their own behalf and on behalf of a proposed class of employees of federally regulated transportation providers who have been subjected to the Minister of Transport's Interim Order No. 43 and as a result have had their employment contracts breached by inducement of that Order (the "Class" or "Class Members", to be further defined in the Plaintiffs' application for certification), for:
  - a. An order certifying this action as a class proceeding pursuant to Rules 334.16 and 334.17 of the Federal Courts Rules, SOR/98-106;
  - b. An order pursuant to Rules 334.12, 334.16 and 334.17 of the Federal Courts Rules appointing the Plaintiffs, or, alternatively, one of the Plaintiffs, as the representative Plaintiff(s) for the Class;
  - c. General, exemplary, and punitive damages, plus damages equal to the cost of administering the plan of distribution pursuant to:
    - i. The *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11, s. 24(1) (the "*Charter*");

- ii. The *Charter of Human Rights and Freedoms*, C.Q.L.R. c. C-12, s. 49 and the *Civil Code of Québec*, C.Q.L.R. c. C-1991, s. 1621 (the “*Québec Charter*”);
  - iii. Misfeasance in Public Office; and
  - iv. Inducement to Breach Contract.
- d. A declaration that the Minister of Transport’s conduct in issuing Ministerial Order 43 violates the Plaintiffs’ and the Class Members’ rights to freedom of association to s.2(d) of the Charter, and this violation is not demonstrably justifiable under section 1 of the Charter;
- e. Pre-judgment and post-judgment interest;
- f. Costs; and
- g. Such further and other relief as this Honourable Court may deem just.

### **Nature of this Action**

2. On October 29, 2021, the Minister of Transport issued *Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 43* pursuant to subsection 6.41(1) of the *Aeronautics Act*, R.S.C. 1985, c. A-2 (the “*Order*”).
3. The *Order* required air carriers to establish and implement a comprehensive or targeted policy respecting mandatory COVID-19 vaccination in relation to “relevant persons,” which included employees, contractors, and all persons hired. According to the *Order*, an air carrier must “ensure that while a relevant person is carrying out their duties related to commercial flight operations, no in-person interactions occur between the relevant person and an unvaccinated person who has not been granted an exemption.” The *Order* also prohibited unvaccinated persons who have not been granted an exemption from accessing aerodrome property (this federal vaccination mandate is referred to herein as the “Federal Vaccination Mandate”).
4. The Plaintiffs plead that the *Order* tortiously induced the breach of the Plaintiffs’ and Class Members’ contractual employment agreements, absent

justification. Particulars of this inducement are set out below.

5. The Plaintiffs plead that, in issuing the *Order*, the Minister of Transport committed the tort of misfeasance in public office toward the Plaintiffs and Class Members. Particulars of this misfeasance are set out below.
6. The Plaintiffs plead that the *Order* violated the Plaintiffs' and Class Members' rights under s. 2(d) of the *Charter*, and that this violation is not saved by s. 1. Particulars of these *Charter* breaches are set out below.

### **The Parties and the Class**

7. The Plaintiff Gregory Hill ("Hill") is an employee of Air Canada, working as a pilot (Captain). Hill has been an employee of Air Canada since 2006 and maintained an exemplary and unblemished record until his suspension in 2021. Hill was suspended pursuant to Air Canada's mandatory COVID-19 vaccination policy, which was induced by the *Order*. Hill is a member of the Air Canada Pilots Association ("ACPA") and, at all material times, his employment was governed by the ACPA–Air Canada collective agreement. Hill is a resident of Ontario.
8. The Plaintiff Tanya Lewis ("Lewis") was an employee of WestJet Airlines Ltd. ("WestJet"), serving as a flight attendant. Lewis had been an employee of WestJet since 2011 and maintained an exemplary and unblemished record until her suspension in 2021 and her termination in 2022. Lewis was suspended and terminated pursuant to WestJet's mandatory vaccination policy, which was induced by the *Order*. Lewis was a member of the Canadian Union of Public Employees Local 4070 ("CUPE") and, at all material times, her employment was governed by the CUPE–WestJet collective agreement. Lewis is a resident of Alberta.
9. The Plaintiff Brent Warren ("Warren") is an employee of Air Canada, working as a station attendant at Vancouver International Airport. Warren has been an employee of Air Canada since 2005 and maintained an exemplary and unblemished record until his suspension in 2021. Warren was suspended pursuant to Air Canada's mandatory vaccination policy, which was induced by the *Order*. Warren is a member of the International Association of Machinists and Aerospace Workers – District 140 ("IAMAW") and, at all

material times, his employment was governed by the IAMAW–Air Canada collective agreement. Warren is a resident of British Columbia.

10. The Class (to be defined by the Court) is intended to include all employees, contractors, and all persons hired within the federally regulated aviation industry during the Class Period who were subjected to discipline (including but not limited to suspension without pay or termination of employment) pursuant to the *Order*, as a result of failing to disclose their vaccination status or failing to become vaccinated (the “Class Members”). The “Class Period” is from October 29, 2021 (when the *Order* came into force) to the date this action is certified as a class proceeding.
11. The Defendant, His Majesty the King (“Government”), is liable for the acts, omissions, negligence, and malfeasance of the employees, agents, and management of Transport Canada, pursuant to the Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50.
12. The Minister of Transport (“Minister”) issued the *Order* pursuant to subsection 6.41(1) of the *Aeronautics Act*, R.S.C. 1985, c. A-2, and is represented in this action by the Attorney General of Canada pursuant to s. 23(1) of the Crown Liability and Proceedings Act, R.S.C. 1985, c. C-50.

### **Standing**

13. The Plaintiffs and Class Members assert both private interest standing and public interest standing to bring this claim.
14. The Plaintiffs and Class Members have private interest standing because they are directly affected by the Minister of Transport’s decision to issue the *Order* and thereby induce the breach of their contractual employment agreements, leading to significant financial and other harms. They are also directly affected by the Minister of Transport’s misfeasance in public office in issuing the *Order*, having been subjected to the foreseeable harm resulting from that misconduct.
15. The Plaintiffs and Class Members also have public interest standing. This proceeding raises serious justiciable issues of public importance respecting the constitutionality of the Minister of Transport’s *Order*, which created, contributed to, and sustained a deprivation of individuals’ rights guaranteed

under s. 2(d) of the *Charter*.

16. The Plaintiffs and Class Members have a real stake in the Minister of Transport's conduct and are both directly and genuinely interested in the resolution of this claim. Moreover, this claim advances a reasonable and effective means of bringing the issues before the Court. Many individuals impacted by the Minister of Transport's conduct and by the *Order* have had their employment contracts breached, have been subjected to foreseeable harm caused by misfeasance in public office, and have had their *Charter* rights infringed, yet lack the individual resources to bring forth such claims on their own.

### **Background**

17. On August 13, 2021, the Government announced its intent to require COVID-19 vaccination for employees in the federally regulated air, rail, and marine transportation sectors, as well as for travelers in those sectors.
18. On October 6, 2021, Prime Minister Justin Trudeau and Deputy Prime Minister Chrystia Freeland confirmed that, as of October 30, 2021, employers in the federally regulated air, rail, and marine transportation sectors would be required to establish vaccination policies for their employees. The Government further specified that as of October 30, 2021, in the air and rail sectors (and as of November 1, 2021, in the marine sector), federally regulated transportation employers would be required to implement vaccination requirements. Specifically, the vaccination mandate would apply to:
  - a. airlines and airports (including airport security and other organizations with employees who enter restricted areas of airports, such as concession and hospitality workers);
  - b. federally regulated railways, including rail crew and track employees; and
  - c. marine operators with Canadian vessels that operate with 12 or more crew.

19. The Government advised that Transport Canada would use its regulatory and oversight authorities related to the operation of federally regulated air, rail, and marine transportation service providers to ensure that the transportation system and these workplaces were safe through vaccination mandates. Each affected organization would be required to implement a rigorous COVID-19 vaccination policy, which policy was required to:
  - a. include a provision for employee attestation or declaration of their vaccination status;
  - b. include a description of the consequences for employees who do not comply or who falsify information;
  - c. meet standards consistent with the approach taken by the Government of Canada for the Core Public Administration; and
  - d. provide for a procedure for granting an exemption to individuals who have not been fully vaccinated due to a medical contraindication or sincerely held religious belief.
  
20. The Government indicated that, after a short phase-in period, each organization would be required to ensure that employees were fully vaccinated or else those employees would be unable to work.
  
21. On October 29, 2021, pursuant to the above announcements, the Minister issued the *Order*. The *Order* required federally regulated air carriers to establish and implement mandatory COVID-19 vaccination policies for their relevant employees, contractors, and new hires, in alignment with the Federal Vaccination Mandate.
  
22. As a result of the obligations imposed by the *Order* and the Federal Vaccination Mandate, federally regulated air transportation organizations (including Air Canada and WestJet) introduced mandatory vaccination policies that added a new, hitherto non-existent, fundamental term and condition of employment to employees' contracts – namely, a requirement to be vaccinated against COVID-19 as a condition of continued employment.

23. Employees who did not agree to or comply with these mandatory vaccination policies were disciplined by their employers in the form of suspension without pay, termination of employment, or both.
24. Air Canada's Mandatory Vaccination Policy: On August 25, 2021, in response to the Government's announcement and in anticipation of the forthcoming *Order*, Air Canada announced a mandatory COVID-19 vaccination policy ("AC Policy"). The AC Policy stated, inter alia:
- a. On August 13, the federal government announced that COVID-19 vaccinations would be mandatory for federal employees and those working in some federally regulated industries, including our own.
  - b. With this in mind, we have carefully thought about what comes next and decided that we will now require all our employees to be fully vaccinated by a government approved vaccine by October 31st without exception, except under our Duty to Accommodate obligations. Note that you are only considered to be fully vaccinated 14 days after your second dose in a 2-dose series, such as the Pfizer, Moderna or AstraZeneca vaccines, or 14 days after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine.
  - c. The government's announced requirements for travelers are expected to go into effect on October 31 and will accordingly apply to employees at that time.
  - d. As of October 31st, employees who have not reported and documented that they are fully vaccinated will no longer be able to enter any Air Canada workplace.
  - e. failure to be fully vaccinated by October 30, 2021, will have consequences up to and including unpaid leave or termination, except for those who qualify for accommodation.
25. On October 30, 2021, in accordance with the AC Policy (which had been implemented to comply with the *Order*), the Plaintiff Hill was placed on an unpaid leave of absence from his employment with Air Canada (effectively, a suspension without pay). At all material times, Hill's employment was governed by the ACPA–Air Canada collective agreement ("ACPA Agreement").

The ACPA Agreement does not contain any term or condition of employment that allows an employee to be unilaterally placed on an unpaid leave of absence, nor does it contain any term or condition that mandates COVID-19 vaccination. Hill pleads that Air Canada's act of mandating COVID-19 vaccination and placing him on unpaid leave constituted a breach of the ACPA Agreement.

26. On October 30, 2021, the Plaintiff Warren was likewise placed on an unpaid leave of absence (suspended without pay) from his employment with Air Canada under the AC Policy. At all material times, Warren's employment was governed by the IAMAW–Air Canada collective agreement (“IAMAW Agreement”). The IAMAW Agreement does not contain any term or condition of employment permitting an employee to be unilaterally placed on an unpaid leave of absence, nor any term or condition that mandates COVID-19 vaccination. Warren pleads that mandating COVID-19 vaccination and placing him on unpaid leave constituted a breach of the IAMAW Agreement.

27. On or about June 16, 2022, Air Canada announced that it was rescinding the AC Policy. In its announcement, Air Canada stated, *inter alia*:

- a. In August of 2021, we informed all employees of our vaccination policy, which required all employees, unless being accommodated for religious or medical reasons, to be fully vaccinated in accordance with our health and safety obligations and later as required by Transport Canada's Interim *Order* for air and rail travel and for employees in the transportation industry. You were not compliant with that policy and therefore considered unavailable to fulfill your duties and you were placed on unpaid leave of absence.
- b. By June 14, 2022, the Government of Canada announced that, effective June 20, 2022, it would suspend the vaccination requirements for domestic and outbound travel and for employees in the transportation sector. In light of the evolving state of the pandemic, Air Canada stated that effective June 20, 2022, it would suspend its COVID-19 Vaccination Policy, and that employees who were on leave due to their vaccination status would be allowed to return to work.

28. The Plaintiffs Hill and Warren plead that in enacting, implementing, enforcing, and later rescinding the AC Policy, Air Canada was acting pursuant to the direction of the Minister of Transport and the requirements of the *Order*.
29. WestJet's Mandatory Vaccination Policy: On October 16, 2021, WestJet issued its COVID-19 Mandatory Vaccination Policy ("WJ Policy"). The WJ Policy stated, inter alia:
  - a. The Government of Canada announced it required employees in the federally regulated air, rail, and marine transportation sectors to be vaccinated by a COVID-19 vaccine series by the end of October 2021.
  - b. Absent an approved accommodation, personnel who do not comply with this Policy and who are not vaccinated are subject to discipline up to and including termination of employment for cause.
30. On or about October 14, 2021, WestJet also sent a "Vaccination Requirement Notice" to its employees stating, inter alia:
  - a. On August 13, 2021, the Government of Canada announced its intent to require COVID-19 vaccination for employees in the federally regulated air transportation sector.
  - b. On October 6, 2021, the Government of Canada confirmed that, as of October 30, 2021, workers in the federally regulated air transportation sector are required to be fully vaccinated.
  - c. In compliance with the federal mandate and with our occupational health and safety obligations, WestJet announced on September 8, 2021, that full vaccination against COVID-19 was mandatory for all employees effective October 30, 2021.
31. On March 11, 2022, WestJet terminated the Plaintiff Lewis's employment for cause, by letter, citing her non-compliance with the vaccination requirement. The termination letter stated, inter alia:
  - a. This letter confirms that due to your inability to fulfill a condition of employment as outlined below, WestJet is terminating your employment with cause effective March 11, 2022.

- b. As of October 30, 2021, WestJet’s COVID-19 Vaccination Policy requires that all WestJet employees be fully vaccinated against COVID-19 unless they have an approved accommodation. This requirement complies with WestJet’s occupational health and safety obligations and our obligations under the Government of Canada’s mandate for employers in the air transportation sector. Transport Canada has begun oversight and enforcement measures to ensure federal employers, like WestJet, are compliant with the federal vaccination mandate.

32. Effective June 20, 2022, the Government suspended the vaccine requirements for federally regulated transportation employees. WestJet correspondingly suspended its Vaccination Policy on June 27, 2022.

33. At all material times, the Plaintiff Lewis’s employment was governed by the CUPE–WestJet collective agreement (“CUPE Agreement”).

34. Lewis pleads that in enacting, implementing, enforcing, and later suspending the WJ Policy, WestJet was acting pursuant to direction from the Minister of Transport and in compliance with the Order. The CUPE Agreement does not contain any term or condition of employment mandating COVID-19 vaccination. Lewis pleads that mandating COVID-19 vaccination and terminating her employment for non-compliance constituted a breach of the CUPE Agreement.

**Collective Agreements and Grievance Procedure:**

35. The Plaintiffs and Class Members plead that their employment relationships with their respective employers were exhaustively and comprehensively governed by the above-mentioned collective agreements. By enacting the Order, the Minister induced the Employers to unilaterally impose new terms and conditions of employment that had not been contemplated by the parties or reflected in those collective agreements. In this action, the Plaintiffs and Class Members dispute the legality of the Minister’s conduct in enacting and enforcing the Order and the consequent (and unlawful) collateral effects that the Order had on their collective agreements.

36. The Plaintiffs and Class Members are not challenging the interpretation, application, or administration of any of the negotiated terms of their collective agreements. Rather, they challenge the imposition of extraneous terms through the Order. Accordingly, the grievance and arbitration procedures provided in their collective agreements are not the appropriate forum to determine this dispute, which properly lies before this Court.

### **COVID -19 Vaccinations – Preventing Transmission**

37. The mandatory vaccination policies (“the Policy” in the context of the Federal Vaccination Mandate) introduced by the Employers required employees to receive COVID-19 vaccines that had been authorized for use by Health Canada. Health Canada’s regulatory approval decisions, product reviews, product monographs, and clinical study data regarding the COVID-19 vaccines were, at all material times, available to the Government (including the Treasury Board and Transport Canada) to inform the development, implementation, and enforcement of the Policy.

38. At the time the Policy was enacted, all COVID-19 vaccines approved by Health Canada had publicly available product monographs informing the public of the vaccines’ properties and effects. There were six COVID-19 vaccines available in Canada at that time, listed below with their manufacturers and product names:

- a. Pfizer/BioNTech (“Comirnaty”) – The product monograph for Comirnaty does not include any information indicating that the vaccine prevents transmission of COVID-19. Prevention of viral transmission is not an approved indication for Comirnaty. (Indeed, the word “transmission,” or any similar term indicating contagious spread to others, does not appear in the monograph.) Accordingly, the Plaintiffs plead that the Defendant cannot claim that Comirnaty prevents the transmission of COVID-19 to other people.
- b. Moderna (“Spikevax”) – The product monograph for Spikevax does not include any information or guidance on preventing the transmission of COVID-19. The Plaintiffs plead that the Defendant cannot claim that Spikevax prevents viral transmission of COVID-19 to others.

- c. AstraZeneca (“Vaxzevria”) – The product monograph for Vaxzevria contains no information or direction on the transmission of COVID-19. The Plaintiffs plead that the Defendant cannot claim that Vaxzevria prevents the transmission of COVID-19 to others.
- d. Janssen/Johnson & Johnson (“Jcovden”) – The product monograph for Jcovden contains no information or direction on the transmission of COVID-19. The Plaintiffs plead that the Defendant cannot claim that Jcovden prevents the transmission of COVID-19 to others.
- e. Medicago (“Covifenz”) – The product monograph for Covifenz contains no information or direction on the transmission of COVID-19. The Plaintiffs plead that the Defendant cannot claim that Covifenz prevents the transmission of COVID-19 to others.
- f. Novavax (“Nuvaxovid”) – The product monograph for Nuvaxovid contains no information or direction on the transmission of COVID-19. The Plaintiffs plead that the Defendant cannot claim that Nuvaxovid prevents the transmission of COVID-19 to others.

### **COVID-19 Vaccination – Safety and Risk of Adverse Events**

39. Information about the safety profile and potential risks of the COVID-19 vaccines was emerging both before and during the implementation of the vaccination mandate:

- a. On March 29, 2021, the National Advisory Committee on Immunization (NACI) recommended immediately suspending the use of the AstraZeneca-Oxford COVID-19 vaccine in Canadians under 55 years of age.
- b. On June 26, 2021, Health Canada updated the product label for AstraZeneca’s Vaxzevria vaccine to acknowledge the potential side effect of blood clots associated with low levels of platelets following immunization.
- c. On November 18, 2020, Pfizer-BioNTech had released and published initial Phase 3 clinical trial results for its COVID-19 vaccine

(“Study 1”). Study 1 showed that out of 18,198 individuals in the vaccinated group, 5,770 (approximately 26.7%) experienced an adverse reaction.

- d. On April 1, 2021, Pfizer-BioNTech released updated Phase 3 trial results (“Study 2”). Study 2 showed that out of 21,923 individuals in the vaccinated group, 5,241 (23.9%) had a “related” adverse event, and 127 participants (0.6%) suffered a serious adverse event.
- e. On or about May 1, 2021, Health Canada announced it was halting distribution of 300,000 doses of Johnson & Johnson’s Jcovden vaccine to provinces and territories after learning that the active ingredient was made at a Baltimore facility where an inspection raised quality concerns.
- f. On or about May 3, 2021, NACI recommended that the J&J/Janssen (Jcovden) vaccine not be given to anyone under 30, due to the risk of an extremely rare blood clotting syndrome (vaccine-induced immune thrombotic thrombocytopenia, or VITT) associated with that vaccine.
- g. In support of the emergency use authorization for its vaccine, Moderna submitted results of a Phase 3 trial for use in adults. The Moderna trial data showed a 6% higher risk of serious adverse events in the vaccinated group compared to the placebo group (136 per 10,000 in the vaccine group vs. 129 per 10,000 in placebo; a risk difference of 7.1 per 10,000, or about a 5.5% relative increase). In that trial, adverse events of special interest (AESI) were reported at a rate of 57.3 per 10,000 in the vaccine group (87 incidents) versus 42.2 per 10,000 in the placebo group (64 incidents), which represents a 36% higher risk of serious AESIs in the vaccinated group.
- h. The Medicago Covifenz COVID-19 vaccine was authorized on February 24, 2022, for use in Canada under the Food and Drug Regulations. However, the manufacturer announced the cancellation of the Covifenz vaccine project on March 31, 2023, before it ever saw widespread use.

### **Misfeasance in Public Office**

40. The Minister, acting under the authority of the Aeronautics Act, issued and mandated the implementation of the Order. The Plaintiffs and Class Members plead that the Minister acted with reckless indifference and willful blindness in issuing and enforcing the Order, as detailed below.
  
41. Ultra Vires Purpose and Improper Motive: The Minister knew or ought to have known that his authority to make interim Orders under the Aeronautics Act was confined to matters of aviation safety or public safety. Notwithstanding that, he deliberately used this power to impose a vaccination mandate for purposes motivated by political pressure and self-interest, unrelated to genuine aviation or public safety concerns. The Minister was under intense political pressure for the government to appear responsive to the COVID-19 pandemic, and his decision to enact the Order was driven by that improper motive. Even if reducing the spread or severity of COVID-19 in the transportation sector was a stated objective, the Minister knew or should have known that the Order was not necessary to achieve that objective and would not materially further it.
  
42. Lack of Factual or Scientific Basis: The Minister had no factual basis or scientific evidence sufficient to justify the Order as a measure to prevent the transmission of COVID-19 or to protect public safety in air travel. He knew, or ought to have known, that the Order was not supported by the available scientific data and that its purported safety benefits were illusory. In perpetuating the stated objective of the Order (preventing transmission of COVID-19) despite this lack of evidence, the Minister recklessly or willfully ignored the reality of the vaccines' capabilities and limitations when exercising his authority under the Aeronautics Act.
  
43. Disregard of Known Risks and Relevant Information: The Minister deliberately or recklessly ignored relevant safety information about the COVID-19 vaccines when enacting and enforcing the Order. Known and potential risks of adverse events associated with COVID-19 vaccination were disregarded, and the absence of long-term safety data was ignored, thereby creating a foreseeable and unreasonable risk of harm to the Plaintiffs and Class

Members.

44. In particular, the Minister knew or ought to have known that the product monographs for the approved COVID-19 vaccines contained information only about the relative effectiveness of the vaccines and did not provide information on the absolute effectiveness of the vaccines in preventing infection or transmission in real-world terms. Such absolute effectiveness information would have been more directly relevant to determining whether vaccination would actually prevent the spread or severity of COVID-19 in the aviation context. The Minister failed to take into account this critical information and thus proceeded with a mandate that was not genuinely aimed at improving safety.
45. Failure to Consult: The Minister also deliberately failed to hold any meaningful consultation with the Plaintiffs' and Class Members' respective bargaining agents (unions) prior to enacting the Order. Despite the significant impact that the Order would have on unionized employees' terms and conditions of employment, the Minister did not give the unions an adequate opportunity to be heard or to influence the development of the Order, nor were the unions on an equal footing with the Minister in any discussions that did occur.
46. Knowledge of Illegality and Harm: At all times, the Minister knew or ought to have known that exercising his interim Order powers for a purpose unrelated to aviation or public safety was unlawful. The Minister further knew or ought to have known that imposing the Order would unilaterally alter fundamental terms of the Plaintiffs' and Class Members' employment, terms that had been previously negotiated through collective bargaining, rendering the Order unconstitutional.
47. The Minister was aware that enacting the Order would likely lead to Class Members being suspended without pay or terminated from their jobs, and that it would cause significant economic loss (wages, benefits, and employment opportunities) and emotional distress to those individuals. Despite this knowledge, the Minister proceeded to issue the Order with a callous disregard for the illegality of his actions and the predictable harm they would

cause. He was recklessly indifferent to, willfully blind to, and otherwise unlawfully dismissive of the unconstitutionality of the Order and its foreseeable consequences for the Plaintiffs and Class Members.

48. Commission of the Tort: By deliberately acting outside his lawful authority, for improper and ulterior purposes, and with reckless indifference to the rights of the Plaintiffs and Class Members and the harm that would befall them, the Minister committed the tort of misfeasance in public office.

### **Tortious Inducement to Breach Contractual Relations**

49. The Plaintiffs and Class Members have either refused to disclose their vaccination status or remained unvaccinated and thus did not conform to the Order's requirements. As a result, they were placed on leaves without pay (effectively suspensions) and, in many cases, were subsequently terminated from their employment.

50. The Plaintiffs and Class Members plead that the actions taken by their federally regulated transportation employers ("the Employers") in response to the Order were in breach of the Plaintiffs' and Class Members' contractual employment agreements. Specifically, the following measures — all taken at the direction or behest of the Order — constituted breaches of the terms of the Plaintiffs' and Class Members' employment contracts and collective agreements by:

- a. the compelled disclosure of the Plaintiffs' and Class Members' private medical information (their COVID-19 vaccination status);
- b. placing the Plaintiffs and Class Members on unpaid leaves of absence; and
- c. terminating the Plaintiffs' and Class Members' employment.

51. At all material times, the Plaintiffs' and Class Members' employment agreements (including the applicable collective agreements) were valid and in full force. By purporting to suspend the Plaintiffs and Class Members without pay, or to terminate their employment, and by refusing to pay wages and

benefits owing to them, the Employers acted in breach of those contractual agreements.

52. The Minister was aware of the existence of the Plaintiffs' and Class Members' employment agreements and their terms when he decided to issue the Order. The Plaintiffs and Class Members plead that the Defendants intended to, and did in fact, cause or induce the Employers to breach the contractual employment agreements. The Employers' imposition of the above measures (disclosure of medical information, unpaid leave, and/or termination) was done at the Defendants' direction under the Order and without any legitimate justification under the contracts. These breaches of the Plaintiffs' and Class Members' contracts were a direct result of the Defendants' unlawful inducement and interference in the contractual relationships between the Plaintiffs/Class Members and their Employers.

53. The Plaintiffs and Class Members further plead that the Defendants' conduct in inducing the breaches of contract was unjustified, in bad faith, and unlawful. The Minister had no legal justification or lawful purpose for inducing the Employers to violate the collective agreements. In enacting and enforcing the Order, the Minister acted with reckless indifference and willful blindness to the Plaintiffs' and Class Members' contractual rights and interests. The Minister's actions were carried out for an improper purpose — namely, political gain and self-interest — outside the scope of his lawful powers.

54. As a result of the Minister's interference with the Plaintiffs' and Class Members' contractual relationships, the Plaintiffs and Class Members have suffered damages. These damages include, but are not limited to, loss of pay, benefits and other employment entitlements, as well as significant emotional distress, including loss of self-worth, personal security, and the satisfaction derived from gainful employment.

#### **Freedom of Association – Section 2(d) of the *Charter***

55. The Plaintiffs and Class Members plead that the Order was issued in bad faith and with reckless disregard for its disproportional and unsubstantiated impact on their fundamental freedoms. In so doing, the Minister violated

the Plaintiffs' and Class Members' right to freedom of association guaranteed by s. 2(d) of the Charter.

56. Section 2(d) of the Charter guarantees, among other things, the right of employees to band together and engage in collective bargaining with their employer on fundamental workplace issues. The Order imposed a new term and condition of employment — mandatory COVID-19 vaccination (and consequences for non-compliance) — unilaterally, without any collective bargaining or agreement, and over the objections of many employees. This was an improper and unjustified imposition by the Minister of a workplace rule that was not the product of negotiation.

57. The Order thereby circumvented and effectively nullified the Plaintiffs' and Class Members' collectively bargained agreements, which did not contain any such vaccination requirement. Imposing this new condition of employment outside the established collective bargaining process violated the Plaintiffs' and Class Members' freedom of association under s. 2(d).

58. The terms governing the Plaintiffs' and Class Members' ability to perform their job duties, and the terms governing the manner and reasons for which they could be disciplined, were issues of fundamental importance to those employees. These terms formed the basis of prior negotiations between the Plaintiffs' and Class Members' respective unions and their Employers and were reflected in the collective agreements. Prior to the Order, the existing collective agreements contained specific protections and limitations regarding conditions of employment, the collection of personal information, and disciplinary measures — none of which contemplated mandatory vaccination or punishment for vaccination status.

59. The Order unilaterally imposed new conditions that ran contrary to these negotiated protections. By requiring employees to be vaccinated (or to disclose private medical information) on pain of suspension or termination, the Minister's Order overrode key terms of the collective agreements that had been freely negotiated. This unilateral change not only breached the contracts (as pleaded above) but also substantially interfered with the process of collective bargaining and the ability of employees to act in concert to

determine their working conditions, which is the essence of freedom of association in the workplace context.

60. The Minister's process in introducing the Order also violated s. 2(d). The Minister failed to meaningfully engage with or consult the Plaintiffs' and Class Members' bargaining agents (unions) before implementing the Order. The Plaintiffs' unions were not given any real opportunity to influence the content of the Order, nor did they have bargaining power remotely equal to that of the government in any discussions regarding the Order. By bypassing the unions and imposing a new term unilaterally, the Minister denied the Plaintiffs and Class Members a meaningful process through which their collective voice could be heard on this important workplace issue. This failure to consult or bargain in good faith, and the imposition of the Order from a position of overwhelming power, infringed the freedom of association of the Plaintiffs and Class Members.

### **Section 1 of the *Charter* – Lack of Justification**

61. The infringement of the Plaintiffs' and Class Members' Charter rights cannot be justified under s. 1 of the Charter. The Defendants are unable to satisfy the requirements of the Oakes test for justifying a limit on Charter rights, for the following reasons:

- a. Objective Not Pressing and Substantial: The main objective of the *Order* was political and ulterior to the purposes of the *Aeronautics Act*. The Minister's primary aims in enacting the *Order* was to assuage public and political pressure by appearing to take swift action on COVID-19, rather than to address a genuine, evidence-based aviation safety concern. An objective of political expediency — essentially, alleviating the perception of government inaction — is not a pressing and substantial objective that can justify infringing *Charter* rights, especially when it falls outside the statutory scope of "aviation safety or security" required for an interim *Order* under the *Aeronautics Act*.
- b. In the alternative, even if the *Order* was intended to reduce COVID-19 transmission and illness in the air transportation sector (a potentially pressing objective), that objective must be pursued in a *Charter*-compliant manner and with evidence that the measures would be

effective, which was not the case here.

- c. No Rational Connection/Minimal Impairment: The means chosen by the Minister — a unilateral imposition of a vaccine mandate without consultation — were not rationally connected to any valid objective, nor were they minimally impairing of the rights in question. The timeline and manner in which the *Order* was enacted belie any claim of exigent circumstances justifying the bypassing of normal collective bargaining processes. There was no demonstrated urgency that prevented the Minister from consulting the unions or exploring alternative measures.
- d. Indeed, the Minister has provided no explanation for why he failed to engage with the Plaintiffs' unions or why the measures in the *Order* could not have been implemented (if truly necessary) through negotiation or with some accommodation for collective input. The complete lack of meaningful consultation represents a failure to minimally impair the employees' associational rights. Moreover, imposing a blanket vaccine mandate on all aviation employees, regardless of role or feasible alternatives (such as regular testing or remote work), was an overbroad response that impaired rights more than necessary to achieve any health-related goal.
- e. Disproportionate Effect (Balancing): The deleterious effects of the *Order* on the Plaintiffs and Class Members far outweighed any purported salutary effects. The *Order* caused many Class Members to lose their jobs or livelihoods and severely infringed their *Charter*-protected right to collective bargaining, causing significant personal and financial harm. On the other side of the balance, the public health benefit of the *Order* was questionable and negligible. Emerging scientific and medical evidence (including evidence acknowledged by the government) demonstrated that COVID-19 infection rates and transmission could be as high in vaccinated populations as in unvaccinated ones, especially with newer variants of the virus.
- f. The *Order*'s vaccine mandate did not meaningfully improve safety or reduce transmission in the aviation sector when compared to less intrusive measures. The Defendants have not shown why other measures that would have been less infringing of rights — for

example, regular COVID-19 testing of unvaccinated employees, masking, or other accommodations — could not have been effective or were not pursued. In sum, the benefits (if any) of the *Order* were not proportional to the severe infringement of the Plaintiffs' and Class Members' rights and the devastation of their livelihoods. Therefore, the violation of s. 2(d) cannot be justified under s. 1 of the *Charter* in a free and democratic society.

### **Charter Damages (Section 24(1))**

62. The Plaintiffs and Class Members seek an appropriate and just remedy under s. 24(1) of the Charter, namely an award of Charter damages against the Defendant. They plead that an award of damages is warranted in this case to compensate them for the losses caused by the Charter breach, to vindicate the fundamental rights that were violated, and to deter similar unconstitutional conduct by government officials in the future.

63. The Plaintiffs and Class Members further plead that the Minister's conduct in enacting and enforcing the Order was egregious and clearly meets the threshold for awarding Charter damages. The Minister acted recklessly, in a grossly negligent manner, in bad faith, and in abuse of his power. He knew, or ought to have known, that the Order was unconstitutional and that it would unjustifiably infringe the Charter rights of those to whom it applied. Despite this knowledge, he proceeded to enforce the Order, putting political self-interest above his duty to uphold the law and the rights of citizens. In other words, the Charter breach in this case was the result of conscious, high-handed government misconduct rather than a good-faith policy choice.

64. In light of the above, the Plaintiffs and Class Members plead that an award of damages under s. 24(1) of the Charter is essential to fully address the wrong that has been done to them. Such damages would serve to acknowledge and vindicate their Charter rights, provide financial compensation for the harms they suffered, and deter the Defendants (and state actors generally) from engaging in similar unconstitutional actions in the future.

### **Aggravated and Punitive Damages**

65. The Plaintiffs and Class Members plead that the Minister, by virtue of the conduct outlined in this Statement of Claim, has inflicted mental and emotional distress on the Plaintiffs and Class Members by engaging in conduct:

- a. that constitutes behavior which is flagrant and outrageous;
- b. that was calculated to produce harm and produced the consequences that flowed from the *Order*; and
- c. that resulted in injury to the Plaintiffs and Class Members.

66. The Plaintiffs and Class Members further plead that the Minister's conduct, as described in this Statement of Claim, demonstrates a wanton, high-handed, and callous disregard for the rights and interests of the Plaintiffs and Class Members. This misconduct merits an award of aggravated and punitive damages.

### **Remedies**

67. The Plaintiffs and Class Members repeat the claims for relief sought set out in the Relief Sought section (paragraph [1] above).

68. The Plaintiffs propose that this action be tried at the City of Vancouver, in the Province of British Columbia.

Umar A. Sheikh

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**SHEIKH LAW**  
PO Box 24062 Broadmead RPO  
Victoria BC V8X 0B2

Umar A. Sheikh  
usheikh@sheikhlaw.ca  
Tel: 250-413-7497

Solicitors for the Plaintiffs

