

Court File No.

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 IN RIGHT OF THE GOVERNMENT OF
CANADA and THE MINISTER OF TRANSPORTATION

Defendants

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

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 43 and as a result have had their employment contracts breached further to inducement by the Order. ("Class" or "Class Members", to be further defined in the Plaintiffs' application for certification):
 - a. An order certifying this action as a class proceeding pursuant to Rules 334.16 and 334.17 of the Federal Court Rules, SOR/98-106;
 - b. An order pursuant to Rules 334.12, 334.16 and 334.17 of the Federal Court Rules appointing the Plaintiffs, or, alternatively, one of the Plaintiffs, as the representative Plaintiff(s) for the Class;
 - c. General damages plus damages equal to the cost of administering the plan of distribution;
 - d. Special damages in an amount to be determined, including but not limited to past or future loss of income, medical expenses and out of pocket expenses;
 - e. Exemplary and punitive damages;
 - f. Damages pursuant to 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");
 - g. Punitive damages pursuant to 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");
 - h. Damages for inducing breach of contract, interference with contractual relations, and negligence;

- i. A declaration that the Minister of Transport's conduct in issuing Ministerial Order 43 violates the Plaintiffs' and the Class Members' rights to life, liberty and security of the person and is not in accordance with the principles of fundamental justice, contrary to s.7 of the *Charter* and is not demonstrably justifiable under section 1 of the *Charter*;
- j. A declaration that the Minister of Transport's conduct in issuing Ministerial Order 43 violates the Plaintiffs' and the Class Members' rights to equality, contrary to s.15(1) of the *Charter*, and this violation is not demonstrably justifiable under section 1 of the *Charter*;
- k. 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 conscience to s.2(a) of the *Charter*, and this violation is not demonstrably justifiable under section 1 of the *Charter*;
- l. 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*;
- m. Pre-judgment and post-judgment interest;
- n. Costs; and
- o. 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 a targeted policy respecting mandatory COVID-19 vaccination, in relation to ‘relevant persons’, which included employees, contractors, and all persons hired. According to the Order, the 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”. It also prohibited unvaccinated persons who have not been granted an exemption from accessing aerodrome property (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.
5. The Plaintiffs plead that the Order violated the Plaintiffs’ and Class Members’ rights under ss. 2a, 7, and 15 of the *Charter* and was not saved by s. 1.

The Parties and the Class

6. The Plaintiff Gregory Hill (“Hill”) is an employee of Air Canada and serves as a pilot in the rank of Captain for the airline. 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 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.
7. The Plaintiff Tanya Lewis (“Lewis”) was an employee of WestJet Airlines Inc. (“WestJet”) and served as a flight attendant for the airline. Lewis has

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.

8. The Plaintiff Brent Warren ("Warren") is an employee of Air Canada and serves as a station attendant at Vancouver International Airport for the airline. 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.
9. 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 of employment and termination, pursuant to the Order as a result of failing to disclose their vaccination status or failing to become vaccinated ("Class Members"). The Class Period is October 29, 2021, (when the *Order* came into force) to the date this action is certified as a class proceeding.
10. The Defendant, His Majesty the King ("Canada"), 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.
11. The Defendant, the Minister of Transport, 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. 80.

Standing

12. The Plaintiffs and Class Members assert both private and public interest standing to bring this claim.
13. 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 ancillary harm.
14. The Plaintiffs and Class Members also have public interest standing. They raise a serious justifiable issue of public import respecting the constitutionality of the Minister of Transport's Order which has created, contributed to, and sustained a deprivation of individuals rights guaranteed under the Charter, ss.2a, 7, and 15.
15. 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.
16. This claim advances a reasonable and effective method of bringing the issues before the Court in all of the relevant circumstances. Many individuals impacted by the conduct of the Minister of Transport and the Order have had their contractual employment agreements breached and Charter rights infringed upon and lack the resources to bring forward such a claim.

Background

17. On August 13, 2021, the Federal Government announced its intent to require COVID-19 vaccination for employees in the federally regulated air, rail, and

marine transportation sectors, and for travelers.

18. On October 6, 2021, Prime Minister Justin Trudeau and Deputy Prime Minister Chrystia Freeland announced that, as of October 30, 2021, the Government of Canada would require employers in the federally regulated air, rail, and marine transportation sectors to establish vaccination policies for their employees.

19. The Federal Government advised that as of October 30, 2021, employers in the federally regulated air and rail, and as of November 1, 2021, marine transportation sectors would be required to establish vaccination policies for their organizations. Specifically, the vaccination requirement of the Federal Vaccination Mandate would apply to:

- a. airlines and airports, and other organizations who have employees who enter restricted areas of airports, such as concession and hospitality workers;
- b. federally regulated railways, their rail crew and track employees; and
- c. marine operators with Canadian vessels that operate with 12 or more crew.

20. Furthermore, the Federal Government advised that Transport Canada would use its specific regulatory and oversight authorities related to operations 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 organization would be required to implement a rigorous policy, which was required to:

- a. Include a provision for employee attestation/declaration of their vaccination status;
- b. Include a description of 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 from COVID-19 due to medical contraindication or their sincerely held religious beliefs.

21. The Federal Government advised that after a short phase-in period, each organization would be required to guarantee that employees were fully vaccinated or they would be unable to work.
22. 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 required air carriers to establish and implement a comprehensive or a targeted policy respecting mandatory COVID-19 vaccination, in relation to ‘relevant persons’, which includes employees, contractors, and all persons hired. According to the Order, the 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”. It also prohibited unvaccinated persons who have not been granted an exemption from accessing aerodrome property.
23. As a result of these obligations, pursuant to the Federal Vaccination Mandate, organizations which were federally regulated by Transport Canada introduced mandatory vaccination policies which added a new, hitherto not-existing, fundamental term and condition of employment within contractual employment agreements.
24. Employees who did not agree with or adhere to the policies, in compliance with the Order, were disciplined in the form of suspension from employment, termination of employment or both.
25. The Plaintiffs and Class Members all had freely negotiated, valid, and binding contractual employment agreements with their respective federally regulated employers.

26. None of the Plaintiffs or Class Member contractual employment agreements called for disclosure of Covid-19 vaccination status not mandatory Covid-19 vaccination.

Tortious Inducement to Breach Contractual Relations

27. The Plaintiffs have either refused to share their vaccination status or are otherwise unvaccinated and thus did not conform to the Order and were placed on leave without pay, effectively a suspension, and some were subsequently terminated from employment.
28. The Plaintiffs and Class Members allege that the following actions taken by federally regulated transportation providers (“the Employers”) were in breach of their contractual employment agreements and induced by the Order:
- a. Disclosure of private medical information;
 - b. Being placed on a leave without pay; and
 - c. Termination of their employment.
29. The Plaintiffs and Class Members state that at all material times, their employment contracts were valid and binding upon their Employers. As their Employers have unlawfully purported to suspend or terminate the Plaintiffs’ and Class Members’ contractual agreements and have refused to pay the sums owing to the Plaintiffs and Class Members, the Employers are in breach of their contractual employment agreements.
30. As Minister of Transport, the Defendant was aware of the existence of the contractual employment agreements when it decided to issue the Order.
31. The Plaintiffs and Class Members allege that the Defendants intended to and caused and/or induced the Employers to breach contractual employment agreements by their actions in relation to: the disclosure of private medical information; imposition of a leave without pay; and/or unlawful termination

by ordering the Employers to enforce the Order absent justification. The breaches of contractual employment agreements are therefore a direct result of the unlawful inducement of the breach as herein before particularized and as a result of unlawful interference by the Defendants in the contractual relationship between the Plaintiffs, Class Members and their Employers.

32. The Plaintiffs and Class Members allege that the conduct of the Defendants in inducing the breach of Contract was unjustified and thus unlawful.

33. The Plaintiffs and Class Members allege that as a result of the Defendants' interference with the Plaintiffs' and Class Members' contractual relationship with the Employers, the Defendants have caused the Plaintiffs and Class Members to suffer damages.

Lack of Justification for the Inducement of Breach of Contract

Covid-19 Vaccination As a Means to Prevent Transmission

34. All Health Canada approved COVID-19 vaccinations have filed product monographs which are available to inform the public of the effects of the vaccination. There are currently six (6) COVID-19 vaccines available to the public in Canada. Listed below is the manufacturer with the name of vaccine in brackets.

- a. Pfizer/BioNTech (Comirnaty)
- b. Moderna (Spikevax)
- c. Janssen and Johnson & Johnson (Jcovden)
- d. AstraZeneca (Vaxsevia)
- e. Medicago (Covifenz)
- f. Novavax (Nuvaxovid)

Each of the COVID-19 vaccines presented above have a Product Monograph.

35. A Product Monograph is a factual, scientific document on a drug product that, devoid of promotional material, describes the properties, claims, indications, and conditions of use for the drug, and that contains any other information that may be required for optimal, safe, and effective use of the drug.
36. The Product Monograph of the Pfizer vaccine, Comirnaty, does not include any information related to the transmission of COVID-19. Prevention of viral transmission is NOT an approved indication for Comirnaty. The word 'transmission' or any of its correlates indicating viral conveyance to another person, does not appear in this document and therefore the Plaintiffs plead that the Defendant cannot claim Comirnaty prevents viral transmission of COVID-19 to other people.
37. The Product Monograph of Moderna's vaccine, Spikevax does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim Spikevax prevents viral transmission of COVID-19 to other people.
38. The Product Monograph of VAXZEVRA™, manufactured by AstraZeneca does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim VAXZEVRA™ prevents viral transmission of COVID-19 to other people.
39. The Product Monograph of JCOVDEN™, manufactured by Janssen, does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim JCOVDEN™ prevents viral transmission of COVID-19 to other people.
40. The Product Monograph of COVIFENZ™, manufactured by Medicago does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim COVIFENZ™ prevents viral transmission of COVID-19 to other people.
41. The Product Monograph of NUVAXOVID™, manufactured by Novavax

does not include any information or direction on the transmission of COVID-19 and therefore the Plaintiffs plead that the Defendant cannot claim NUVAXOVID™ prevents viral transmission of COVID-19 to other people.

42. The Plaintiffs and Class Members plead that the Defendant had no basis in fact to justify the Order as a measure to prevent transmission of COVID-19.

43. The Plaintiffs rely on the torts of inducing breach of contract and tortious interference with contractual relations.

44. As a result of the Defendants' interference with and inducement of breach of contract, absent justification, the Plaintiffs and Class Members have suffered damages in that they have had terms and conditions of employment imposed upon them resulting in a loss of private medical information, being placed on leave without pay and being terminated from their employment with the Employers.

Breach of the *Charter*

45. Section 2a of the *Charter* provides that everyone has the fundamental right to freedom of conscience and religion. The protection is for the conscience of individuals, not the conscience of the state. The purpose of this freedom is to allow every individual to be free to hold and manifest whatever beliefs and opinions one's conscience dictates provided that, *inter alia*, such manifestations do not injure his or her neighbors or their parallel rights to hold and manifest beliefs and opinions of their own.

46. The Plaintiffs and Class Members plead that s. 2a of the *Charter* provides them with the freedom of conscience to choose to exercise that freedom and not undergo a medical procedure, such as vaccination, absent injury to their neighbor. As set out in paragraphs 34 to 40 of the Statement of Claim, the mandated vaccinations do not prevent the transmission of Covid-19 and as such are ineffective and immaterial to ensuring the health and well-being of

others. The Plaintiffs and Class Members therefore plead that the Order breaches their rights under s.2a of the *Charter*. The conduct of the Defendants is not proportional, reasonable, justified or saved under s.1 of the Charter

47. The Plaintiffs and Class Members plead that s. 2.d of the Charter provides them protects is their rights as employees to associate in a process of collective action to achieve workplace goals. As such Laws or state actions that prevent or deny meaningful discussion and consultation about working conditions between employees and their employer may substantially interfere with the activity of collective bargaining, as may laws that unilaterally nullify significant negotiated terms in existing collective agreements.

48. The Plaintiffs and Class Members Plead that the Defendant unilaterally inserted a fundamental term and condition of employment into their agreements and as such they have had their rights under s. 2.d infringed upon.

49. Section 7 of the *Charter* provides that everyone has the right to liberty and security of the person and to not be deprived thereof except in accordance with the principles of fundamental justice. It further includes the right “to decide one’s own fate”, including directing the course of their own medical care via informed consent. “The right of medical self-determination is not vitiated by the fact that serious risks or consequences, including death, may flow from the patient’s decision.” This principle is the same in cases regarding the right to give informed consent to medical treatment, the right to refuse consent to medical treatment, and to demand that treatment be withdrawn or discontinued.

50. The Plaintiffs and Class Members plead that the Order violated their rights under s. 7 by infringing on their security of the person, liberty and residual liberty in mandating a medical procedure and, in consequence of non-compliance, penalizing the Plaintiffs and Class Members with significant financial and emotional harm. The penalty imposed by non-compliance with the Order has a specific coercive and deleterious effect on the Plaintiffs and

Class Members resulting in a substantive infringement on their s.7 right. The conduct of the Defendants is not proportional, reasonable, justified or saved under s.1 of the *Charter*

51. Section 15 of the *Charter* provides that every person is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination based on race, ancestry, sex or gender.

52. The Plaintiffs and Class Members plead that as a result of the Order their rights under s. 15 of the *Charter* have been infringed upon as they were subject to differential treatment by imposing a burden upon them and punitively withholding the benefits of employment from them in a manner which reflects the stereotypical application of presumed group or personal characteristics, or which otherwise has the effect of perpetuating or promoting the view that the Plaintiffs and Class Members are less capable or worthy of recognition or value as human beings or as members of Canadian society, equally deserving of concern, respect, and consideration. The conduct of the Defendants is not proportional, reasonable, justified or saved under s.1 of the *Charter*.

53. *Charter* damages are a just and appropriate remedy in this case to vindicate rights, deter conduct, and achieve the objective of compensation.

Privacy Rights

54. The Plaintiffs and Class Members plead that in requiring them to disclose private medical information to the Employers the Order intentionally or recklessly or willfully, and without claim of right, intruded upon the Plaintiffs' and Class Members' private affairs; a reasonable person would regard this intrusion as highly offensive and causative of distress, humiliation or anguish.

55. The Plaintiffs and Class Members plead that the Order's intrusion in

disclosure of private medical information violates common law and statutory privacy rights pursuant to the *Privacy Act*, R.S.B.C. 1996, c. 373; *Privacy Act*, C.C.S.M. 1987, c. P125; *Privacy Act*, R.S.S. 1978. c. P-24; *Privacy Act*, R.S.N.L.1990. c. P-22.

Aggravated and Punitive Damages

56. The Plaintiffs and Class Members plead that Defendants, by virtue of the conduct included in this Statement of Claim have inflicted mental and emotional distress by engaging in conduct:

- a. that constitutes conduct that is flagrant and outrageous;
- b. that was calculated to produce harm and produce the consequences that flowed from the Order; and
- c. that resulted in injury to the Plaintiffs and Class members.

57. The Plaintiffs and Class Members plead that the conduct of the Defendants as outlined in this Statement of Claim demonstrates a wanton, high-handed and callous disregard for the interests of the Plaintiffs and Class Members. This conduct merits an award of aggravated and punitive damages.

Remedies

58. The Plaintiffs and Class Members repeat the claims for relief sought set out in paragraph 1 above.

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

Umar Sheikh

May 15, 2023

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SOR/2021-150, s. 12